

Cleveland County Board of Commissioners
January 21, 2020

The Cleveland County Board of Commissioners met in a regular session on this date, at the hour of 6:00 p.m. in the Commission Chamber of the Cleveland County Administrative Offices.

PRESENT: Susan Allen, Chairman
Ronnie Whetstine, Vice-Chair
Johnny Hutchins, Commissioner
Doug Bridges, Commissioner
Deb Hardin, Commissioner
Brian Epley, County Manager
Tim Moore, County Attorney
April Crotts, Deputy County Clerk
Kerri Melton, Assistant County Manager
Chris Green, Tax Administrator
Allison Mauney, Human Resources Director
Clifton Philbeck, Board of Elections Director
Lorie Poston, E-911 Communications Director
Katie Swanson, Social Services Director
Ryan Wilmoth, Emergency Medical Services Director
Lucas Jackson, Finance Director
Scott Bowman, Maintenance Director
Marty Gold, IT Director
Kristin Reese, CCEDP
Daryl Sando, Electronic Maintenance Director

CALL TO ORDER

Chairman Allen called the meeting to order and Chris Green, Tax Administrator, provided the invocation and led the audience in the Pledge of Allegiance.

AGENDA ADOPTION

ACTION: Commissioner Hutchins made the motion, seconded by Commissioner Hardin and unanimously approved by the Board to, *approve the agenda as presented.*

SPECIAL RECOGNITION

Long Leaf Pine Award- Paula Parker: Chairman Allen called Zack Parker, to the podium to present Paula Parker the Long Leaf Pine Award. Mr. Parker spoke about his mother's work for Cleveland County Government and the community. The Board thanked Mrs. Parker for her hard work and dedication to the citizens of Cleveland County during her tenure of 30 years of service with the Department of Social Services.

CITIZEN PRESENTATION

Radon Action Month: Chairman Allen called Phillip Gibson, NC Radon Program Coordinator for the NC Department of Health and Human Services, to the podium to present a proclamation about Radon Action Month. Mr. Gibson spoke about the dangers of radon and introduced Nancy H. Abasiekong, Extension Agent, Family & Consumer Sciences NC Cooperative Extension. Ms. Abasiekong spoke about what NC Cooperative Extension has done over the past several years to educate the public on the dangers of radon.



Proclamation

01-2020

Cleveland County Board of Commissioners Proclamation in Support of January 2020 National Radon Action Month

WHEREAS, radon is a colorless, odorless, radioactive gas that may threaten the health of our citizens and their families; and

WHEREAS, the National Academy of Sciences estimates that up to 21,000 lung cancer deaths occur in the United States each year;

WHEREAS, radon is the second leading cause of lung cancer in the U.S. and is the leading cause of lung cancer in non-smokers; and

WHEREAS, 1 in 15 homes across the U.S. have elevated radon levels; and

WHEREAS, any home may have elevated levels of radon, even if neighboring homes do not, and living in a home with an average radon level of 4 picocuries per liter of air poses a similar risk of developing lung cancer as smoking half a pack of cigarettes a day; and

WHEREAS, testing for radon is simple and inexpensive and radon problems can be fixed; and

WHEREAS, Cleveland County, the U.S. Surgeon General, the U.S. Environmental Protection Agency, the NC Department of Health and Human Services' NC Radon Program and the North Carolina Advisory Committee on Cancer Coordination and Control support efforts to encourage homeowners to test their homes for radon; and

WHEREAS, many residents in Cleveland County don't know about radon, yet need to know, for the safety and health of their families and a proclamation of National Radon Action Month is an opportunity to educate individuals on the available measures to reduce radon.

NOW, THEREFORE BE IT RESOLVED the Cleveland Board of Commissioners hereby proclaim January 2020 as National Radon Action Month.

Adopted this the 21st day of January, 2020.


Susan Allen, Chairman


Ronnie Whetstine, Vice-Chairman


Johnny Hutchins, Commissioner


Douglas Bridges, Commissioner


Deb Hardin, Commissioner

CITIZEN RECOGNITION

Richard Steeves- spoke about his concerns with Cleveland County Public Health Center and the relationship between the local hospital and CLECO.

CONSENT AGENDA

APPROVAL OF MINUTES

The Clerk to the Board included the Minutes from the **December 17, 2019 regular meeting**, in board members packets.

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and passed unanimously by the Board to, **approve the minutes as written.**

TAX COLLECTOR'S MONTHLY REPORT

The Tax Collector provided Commissioners with the following detailed written report regarding taxes collected during **December 2019.**

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board, *to approve the Abatements and Supplements and Pending Refunds/Releases as submitted by the Tax Assessor.*

MANAGER'S MONTHLY REPORT

- The County's 6/30/19 annual audit report has been approved by the Local Government Commission. This report received an unmodified opinion (best opinion) indicating the report was free of material misstatements and appeared reasonably stated. This report has been submitted for the Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting for the sixth consecutive year. This prestigious award is recognized across all local government.
- Planning for the 2020-2021 budget year is well underway and County Departments will be receiving budget packets and a budget calendar this week.
- The County's Central Collections department has collected slightly over \$1.7M in EMS revenues through December of this fiscal year. This is an increase of approx. \$300k when compared to prior year.
- The County has collected nearly \$500k in investment income through the month of December. Through strategic cash flow planning and forecasting the County has recognized increase of approx. \$140k in investment income when compared to prior year.

See below for lateral and departmental line item transfers between 11/26/19-1/6/20:

County of Cleveland, North Carolina
 Manager's Budget Summary
 Presented at the 1/21/20 Board Meeting
 Time Period Covered : 11/26/19 to 1/6/20
 For Fiscal Year Ending June 30, 2019

BUDGET TRANSFERS LEGEND: D = DEPARTMENTAL; L = LATERAL

BUD #	BUDGET TYPE	DATE SUBMITTED BY DEPT	DEPT NAME TO	DEPT NAME FROM	EXPLANATION	BUDGET AMOUNT
423	D	11/26/2019	Janitorial Facilities		Move funds to purchase taser	\$ 1,065
425	D	12/10/2019	Env Health		Move funds to cover equipment purchase	\$ 2,538
426	D	12/16/2019	Employee Wellness		Move funds to cover purchase of prescription drugs	\$ 46,978
427	D	12/16/2019	SW Landfill		Move funds to cover purchase of centrifugal pump & RSV stainless steel dispense coupler	\$ 922
428	D	12/17/2019	Cap Projs-Gen		Move funds cover purchase of Grasshopper 725DT mower, Office365 licenses, professional services; airport	\$ 105,993
429	D	12/17/2019	Register of Deeds		Move funds cover passport car magnets	\$ 100
430	D	12/17/2019	Animal Control		Move funds cover furniture, refrigerator, education expense, garbage expense; refunds	\$ 5,653
431	D	12/18/2019	Cap Proj-Graham Sch/TACC		Move funds to cover telecommunication expense	\$ 457
432	D	12/18/2019	Electronic Maint		Move funds to cover Polkville Tower site rental payments	\$ 2,196
433	L	12/19/2019	Cap Proj-EMS Polkville	Cap Proj-Gen	Transfer funds to cover Polkville EMS Base expenses	\$ 6,744
434	D	12/19/2019	Social Services Admin		Move funds to cover eq1603 new transmission and purchase of color printer	\$ 4,620
435	L	12/19/2019	Maintenance	Contingency	Transfer funds to cover LED Lighting upgrades in County Buildings	\$ 2,000

SOCIAL SERVICES: BUDGET AMENDMENT (BNA #026)

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, *approve the following budget amendment:*

Account Number	Project Code	Department/Account Name	Increase	Decrease
010.497.4.350.00	08300-P432	3 rd Party Grants/ State Grant	\$66,697.00	
010.497.5.700.00	08300-P432	3 rd Party Grants/ Grant	\$66,697.00	
011.508.4.350.00	08300-P432	Income Maintenance/St Grants	\$3,781.00	
011.508.5.500.00	08300-P432	income Maintenance/ Misc Expense	\$3,781.00	

Explanation of Revisions: Budget \$70,477 in grant award verses the original budget from NCDOT for the 2020 Rural Operating Assistance Program funds.

PUBLIC SAFETY: BUDGET AMENDMENT (BNA #027)

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, *approve the following budget amendment:*

Account Number	Project Code	Department/Account Name	Increase	Decrease
010.437.4.310.00	97067-HSGP #2	Public Safety/Federal Govt Grants	\$35,839.00	
010.437.5.700.00	97067-HSGP #2	Public Safety/Grants	\$35,839.00	

Explanation of Revisions: to budget NC Department of Public Safety Grant to purchase 7 logistic support trailers. One will stay in Cleveland County. The other 6 will go to other counties. Funds are running thru Cleveland County due to earlier grant received by Cleveland County EMS.

PUBLIC HEALTH: BUDGET AMENDMENT (BNA #028)

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<u>Account Number</u>	<u>Project Code</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
012.530.4.810.00		Health Gen Admin/Donations/Contributions	\$490.00	
012.530.5.790.00		Health Gen Admin/Donations/Contribution	\$490.00	

Explanation of Revisions: Alliance for Health donated \$490.00 to purchase a 2 door enclosed Bulletin Board to be used in the Health Department for posting of Health Education notices.

PUBLIC HEALTH: BUDGET AMENDMENT (BNA #029)

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<u>Account Number</u>	<u>Project Code</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
012.530.4.800.00		Health Gen Admin/Misc. Revenue	\$500.00	
012.530.5.800.00		Health Gen Admin/Misc. Expense	\$500.00	

Explanation of Revisions: Wingate University has given Cleveland County Health Department a \$500 pharmacy student stipend. This will be used towards miscellaneous expenses for the Pharmacy Department.

ENVIROMENTAL HEALTH: BUDGET AMENDMENT (BNA #030)

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<u>Account Number</u>	<u>Project Code</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
012.541.4.801.00		Environmental Health/ Refunds Co/St Funds	\$2,000.00	
012.541.5.310.00		Environmental Health/ Travel/ Training	\$2,000.00	

Explanation of Revisions: NC Environmental Health State of Practice Committee awarded Jasa Greene the 2019 Whitwam and Diderksen Education Scholarship to attend the 2019 NEHA Conference. The \$2,000.00 is to go toward her travel expenses.

PUBLIC HEALTH: BUDGET AMENDMENT (BNA #031)

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<u>Account Number</u>	<u>Project Code</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
012.545.4.810.00		Nurse Family Partnership/ Donations/Contributions	\$100.00	
012.545.5.790.00		Nurse Family Partnership/ Donations/Contributions	\$100.00	

Explanation of Revisions: Nurse Family Partnership donated \$100 toward the purchase of food for the NFP departments Graduation for First Time Mothers that was held on 12/5/2019.

PUBLIC HEALTH: BUDGET AMENDMENT (BNA #032)

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<u>Account Number</u>	<u>Project Code</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
010.438.4.310.38	16575-LEVS	Law Enforcement Grants/Federal Govt Grant	\$251,000.00	
010.438.5.210.38	16575-LEVS	Law Enforcement Grants/ Departmental Supply	\$2,888.00	
010.438.5.211.38	16575-LEVS	Law Enforcement Grants/Controlled Property Exp	\$500.00	
010.438.5.310.38	16575-LEVS	Law Enforcement Grants/Travel and Training	\$8,157.00	
010.438.5.321.38	16575-LEVS	Law Enforcement Grants/Telecommunication	\$7,720.00	
010.438.5.322.38	16575-LEVS	Law Enforcement Grants/Postage	\$2,047.00	
010.438.5.460.38	16575-LEVS	Law Enforcement Grants/Dues/ Subscriptions	\$2,300.00	

010.438.5.490.38	16575-LEVS	Law Enforcement Grants/Professional Services	\$5,100.00
010.438.5.910.38	16575-LEVS	Law Enforcement Grants/ Capital Equipment	\$3,156.00
010.438.5.121.00		Law Enforcement Grants/Salary/Wages- F/T	\$95,981.00
010.438.5.122.00		Law Enforcement Grants/Salary/Wages P/T	\$52,760.00
010.438.5.131.00		Law Enforcement Grants/Social Security Taxes	\$11,736.00
010.438.5.132.00		Law Enforcement Grants/Retirement	\$11,390.00
010.438.5.133.00		Law Enforcement Grants/Hospital Insurance	\$34,725.00
010.438.5.134.00		Law Enforcement Grants/Dental Insurance	\$1,900.00
010.438.5.135.00		Law Enforcement Grants/Employer 401K	\$6,864.00
010.438.5.136.00		Law Enforcement Grants/Medicare Taxes	\$3,776.00

Explanation of Revisions: To budget funds of \$251K received from USDOJ Office for Victims of Crime Law Enforcement Based Victim Specialist Grant Program. Total award 276K for 3 year period. Already budgeted 25K as a conditional clearance grant in Dec 2019.

SHERIFF'S OFFICE: SERVICE WEAPON REMOVAL FOR RETIRING LIEUTENANT THOMAS LEWIS

The Cleveland County Sheriff's Office would like to present retiring Lieutenant Thomas Lewis his departmental service weapon. Lieutenant Lewis will retire January 31, 2020, after 27 years of full time law enforcement service with the Cleveland County Sheriff's Office. Lieutenant Lewis's service weapon that will be removed from county inventory is a *Glock 9mm, Model 17 with serial number **BDKT-873***. The county asset number is #201221.

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board, *to approve the request to present retiring Lieutenant Thomas Lewis his departmental service weapon and remove from county inventory asset number 201221 a Glock 9mm, Model 17 with serial number **BDKT-873**.*

LIBRARY: LIBRARY BOARD BY-LAW REVISIONS

The Cleveland County Library Director has requested the following changes to be made to the Library Board By-Laws:

1. Rename the Board from Board of Trustees to Advisory Board.
2. Increase the number of reappoints of membership from two to three reappointments.
3. Require a minimum of 50% attendance to board meetings.

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, *approve Library Board By-Law Revisions.*

Cleveland County Library System
Advisory Board

Bylaws

Article 1. Powers and Duties.

The members of the Advisory Board shall be appointed by the Cleveland County Board of Commissioners. The Advisory Board shall have the following powers and duties:

- (1) To advise the Board of Commissioners on the formulation of programs, policies, and regulations for the government of the Cleveland County Library System.
- (2) To make recommendations to the Board of Commissioners concerning the construction and improvement of buildings and other structures for the library system.
- (3) To assist in the raising of funds from the community to help finance the operations and programs of the library system.
- (4) To otherwise advise the Board of Commissioners on library matters.
- (5) To make an annual report on the operations of the library to the Board of Commissioners and to make an annual report to the North Carolina State Library which is a section of the Department of Natural and Cultural Resources as required by N.C.G.S. 125-5.

Article 2. Appointment and Terms of Trustees.

- (1) The Advisory Board shall consist of nine (9) members who shall be appointed by the Board of Commissioners for terms of three (3) years beginning July 1 in the year of appointment.
- (2) At least one (1) permanent seat on the Advisory Board must be a current member of the Cleveland County Board of Commissioners.
- (3) One (1) permanent seat on the Board will be the President of the Friends of the Library or their designee may serve for one year at a time.
- (4) A board member may serve up to three (3) successive, three (3) year terms. A past member of the Board may serve again, if they have been off the Board for one (1) full year.

the Chairman's authorization, of all special meetings; have custody of the minutes and the other records of the Board; and notify the Board of Commissioners of any vacancies on the Advisory Board. (The Library Director shall act as Recording Secretary when needed.)

Article 5. Committees.

Special committees for the study and investigation of special situations may be appointed by the Chairman to serve until they have completed the work for which they were appointed.

Article 6. Quorum.

A quorum for the transaction of business shall be a simple majority of the Board members.

Article 7. Amendments.

These bylaws may be amended from time to time by the Board of Commissioners.

Reviewed and amended by the Cleveland County Board of Commissioners on _____ (date).

(5) Any vacancy on the Advisory Board regardless of how created shall be filled by appointment by the Board of Commissioners for the unexpired term of the vacant position (with suggestions for future members submitted by the current board.)

(6) (A minimum of 50% attendance is required to remain on the Advisory Board, unless the Commissioners determine otherwise on a case by case basis.)

(7) As provided in N.C.G.S. 153A-265, the Board of Commissioners may remove a Board member at any time for incapacity, unfitness, misconduct, or neglect of duty.

Article 3. Meetings.

(1) The Advisory Board shall meet at least quarterly at a time and place to be determined from time to time by said Board.

(2) An annual meeting shall be held at the time of the regular quarterly meeting for the third quarter each calendar year.

(3) Special meetings may be called by the Chairman or on written request of three (3) members of the Advisory Board or on motion by the Board of Commissioners for the transaction of business stated in the call for the meeting.

(4) The Secretary of the Advisory Board shall give at least five (5) days written notice to all members of the Advisory Board of all meetings, whether regular or special.

Article 4. Officers.

(1) The Advisory Board officers shall be elected at its regular annual meeting. They shall be as follows: Chairman, Vice-Chairman and Secretary.

(2) The Board Chairman shall preside at all meetings, appoint all committees, certify all actions approved by the Board, authorize calls for special meetings, and generally perform the duties of a presiding officer.

(3) When the Chairman is absent from a Board meeting, the Vice-Chairman shall preside.

(4) The Board Secretary shall be responsible for a true and accurate account of all proceedings of the Board meetings plus issuing notices of all regular meetings and, on

ECONOMIC DEVELOPMENT: IGA RESOLUTION

On October 1, 2019, the Board of Commissioners authorized Commissioner Johnny Hutchins to execute an intergovernmental agreement (IGA) with the Catawba Indian Nation. Commissioner Hutchins did so on December 5, 2019. The Clerk to the Board has now received the final and fully executed agreement from the Catawba Indian Nation. The Board of Commissioners now should enter the fully executed agreement and Resolution into its meeting minutes.

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the Resolution and fully execute this agreement.***



Resolution

01-2020

Resolution Accepting and Ratifying Intergovernmental Agreement with Catawba Indian Nation on Behalf of Cleveland County

WHEREAS, N.C.G.S. § 153A-11 and N.C.G.S. § 153A-12 authorize the Board of Commissioners to enter into contracts on behalf of the County; and

WHEREAS, N.C.G.S. § 153A-12 authorizes the Board of Commissioners to exercise the powers and functions of the County, including the power to enter into contracts; and

WHEREAS, N.C.G.S. § 153A-12 further authorizes the Board of Commissioners to pass resolutions as to how its powers and functions are to be exercised, including the delegation of such powers and functions; and

WHEREAS, the Catawba Indian Nation (the "Nation") is seeking to develop an entertainment complex (the "Project") on lands located in Cleveland County; and

WHEREAS, the County and the Nation have together developed an Intergovernmental Agreement ("IGA") which will serve their mutual interest in promoting cooperation between the County and the Nation and will provide for the general welfare of all people in the County and within the proposed Project site with respect to issues including public finance, health and safety, and land use and development; and

WHEREAS, the County, in open session during its regularly scheduled meeting on October 1, 2019, authorized Commissioner Johnny Hutchins to execute the IGA on behalf the County; and

WHEREAS, the Clerk to the Board has now received the fully executed copy of the Agreement from the Nation; and

WHEREAS, the fully executed IGA is attached to this resolution as "Exhibit A";

THEREFORE, THE CLEVELAND COUNTY BOARD OF COMMISSIONERS RESOLVES THAT:

- 1. The Board of Commissioners approves of Commissioner Hutchins's signing of the IGA and, to the extent necessary, ratifies the IGA on behalf of Cleveland County;

- 2. The Clerk shall enter this resolution and the attached IGA into the minutes of this meeting of the Board of Commissioners.

Adopted this the 21st day of January, 2020.

By: Susan K. Allen, Chairman
Cleveland County Board of Commissioners

ATTEST: April Crofts, Deputy Clerk
Cleveland County Board of Commissioners



INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN CLEVELAND COUNTY, NORTH CAROLINA AND THE CATAWBA INDIAN NATION

This Intergovernmental Agreement (the "Agreement") is made on this the 5th day of December, 2019 (the "Effective Date"), by and between Cleveland County, North Carolina, a political subdivision of the State of North Carolina (the "County"), and the Catawba Indian Nation, a federally recognized Indian Tribe headquartered in Rock Hill, York County, South Carolina (the "Nation") (each a "Party" or collectively the "Parties").

WITNESSETH:

WHEREAS, the Nation, as an exercise of its sovereign authority, is seeking to acquire into trust status certain lands within its aboriginal territory that lie within the boundaries of the County;

WHEREAS, the Nation desires to develop an entertainment complex (the "Project"), on said lands consisting of approximately sixteen (16) acres located in the County (the "Property"), and more specifically located at Exit No. 5, United States Interstate 85 South, off of N.C. State Road No. 2283 (known locally as Dixon School Road);

WHEREAS, while the current plans for the Project are fluid and uncertain, the Parties nonetheless wish to delineate in this Agreement the terms and conditions pertaining to the development, construction, management, and operation of the Project;

WHEREAS, if the Nation is legally authorized to develop its Project on the Property, the Parties wish to set forth their understanding concerning the relationship between the Parties as to the development and operation of the Project and the Property;

WHEREAS, the County and the Nation have a mutual interest in promoting cooperation between the County and the Nation that will provide for the general welfare of all people in the County and within the Property with respect to issues including public finance, health and safety, and land use and development;

WHEREAS, the County and the Nation respect each other's governmental responsibilities and priorities for serving the people living within the County and the people visiting or working within the Property;

WHEREAS, the County and the Nation wish to enter into this Agreement, which respects the jurisdiction of both Parties, to ensure orderly and efficient delivery of services and to provide similar governing standards between the two jurisdictions;

WHEREAS, the Nation, in entering into this Agreement, is not limiting its sovereign powers but rather using them to advance the well-being of the Catawba people and surrounding communities; and

WHEREAS, the County and the Nation are entering into this Agreement in reliance on the commitments made herein.

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Nation agree as follows:

Section 1. Property Subject to this Agreement. This Agreement concerns the Nation's development and operation of the Project and use of the Property in the County. A map and legal description of the Property is attached hereto and incorporated herein as Exhibit "A".

Section 2. Definitions.

The following terms shall have the following meanings for purposes of this Agreement:

"Accommodation" means a hotel room, a motel room, a residence, a cottage, or a lodging facility of any kind that is designed and used for occupancy by an individual.

"County" means Cleveland County, North Carolina, duly organized under the laws of the State of North Carolina.

"Gaming Activities" or "Gaming" means (1) the conduct of Class II or Class III gaming as defined in the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et. seq.; (2) the conduct of gaming that would otherwise meet the Class II and Class III definitions in the Indian Gaming Regulatory Act even if that act was not applicable; or (3) the conduct of gaming as defined under the relevant authorizing statutes, regulations, and/or judicial opinions. "Gaming Activities" shall be deemed to have commenced as of the date on which gaming operations are first made available to the public.

Provided, that the Nation shall provide the County with written notice of the commencement of Gaming Activities on the Property within ten (10) days of such commencement.

JH CC

WA CIN

JH CC

WA CIN

"Imminent or Immediate Threat" means a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.

"Nation" means the Catawba Indian Nation, a federally recognized tribe, duly organized under its Constitution.

"Project" means that entertainment, lodging, and/or gaming complex and all associated improvements, buildings, facilities, roads, structures, and fixtures of any kind that are now or may after the Effective Date be built, erected, placed, installed, or otherwise situated on or in the Property.

"Property" means that real estate within the County that is described in that survey map a complete and accurate copy of which is attached hereto as Exhibit "A", and all improvements located thereon.

"Public Health and Safety" means matters related to environmental conditions, occupational conditions, water quality, wastewater disposal, solid waste disposal, and food and beverage services.

"State" means the State of North Carolina.

"Sheriff" means the Cleveland County Sheriff's Office.

"Tribe" or "tribal" refers to the Nation or an aspect of the Nation, as the case may be.

Section 3. County Fees and Service Payments; Sales Taxes. The Parties recognize and agree that the Nation will require a number of services from the County, including, but not limited to, law enforcement services, fire protection services, and public health and safety services. The Parties further recognize that operation of the Project on the Property will result in a number of impacts to the County services and an increased financial burden to the County. The Parties recognize and agree that, although the Nation, and its Project and Property are not subject to County taxation, it is in the interest of both Parties to insure a sufficient revenue stream to the County to enable the County to provide such services and to be able to meet the increased burdens resulting from the Nation's operation of the Project. It is the intent of the County and the Nation that, to the fullest extent possible, the Nation will bear the same financial burdens as would any other non-Indian business in the County, subject to the conditions and limitations set forth herein. Therefore, notwithstanding that the Nation does not owe any taxes to the County, the Nation agrees

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exceed the minimal level of access required to complete the assessment of all other real and personal property within the County. The County agrees that the real and personal property assessments of the Property shall be made in a manner consistent with the County's real and personal property assessment procedures applicable to other property owners located in the County.

2. Rate.

The methods of determining the tax rate(s) and calculating the amount of each PILOT Payment shall be the same as the methods used to determine the tax rate(s) and calculating the amount of all taxes due for all other property in the County.

3. Disputes.

Any dispute arising under this Section 3 is subject to the dispute resolution procedures set forth in Section 11 and the limited sovereign immunity waiver set forth in Section 11(G). *Provided*, however, that, for any dispute over the County's calculation of the amount of any PILOT Payment in which the Nation claims that the amount of any PILOT Payment should be other than the amount that has been calculated by the County Tax Assessor and billed by the County, the Parties agree as follows :

a. The Nation may contest the annual assessment before the County Board of Equalization and Review and, if unresolved to the satisfaction of the Nation, the Nation may then appeal the Board of Equalization and Review's determination to the State Property Tax Commission, and may seek judicial review of the determination of the State Property Tax Commission in the North Carolina Court of Appeals or as otherwise provided by law.

b. Pending the final outcome of any appeal and/or the exhaustion of all rights to appeal, as the case may be, the Nation shall timely remit the PILOT Payment(s) in dispute to the County indicating its disagreement with such Payment(s). If the final determination on the contested PILOT payment(s) is that the Nation owes less than the contested PILOT Payment(s) that the Nation has made to the County, then the County shall, within thirty (30)

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to pay the County the following PILOT Payments (as defined in Section "3(A)" below), fees, service payments, and Sales Taxes:

A. Real and Personal Property. Upon completion of the Project, the Nation agrees to make annual payments to the County in lieu of real and personal property taxes assessable with respect to the Property ("**PILOT Payments**"). *Provided*, that the Project shall be deemed to have been completed upon the opening of a temporary or permanent entertainment and/or gaming facility to the public ("**Project Completion**") and that the Nation, within fifteen (15) days of the occurrence of such completion, shall provide the County Manager with written notice of completion of the Project. Each PILOT Payment shall be equal to the real and personal property tax assessments that could be lawfully imposed in accordance with the methodology that the County would lawfully employ if the Property were subject to County real and personal property taxes. Each PILOT Payment shall be calculated by the County Tax Assessor in the same manner as is used for such calculations for similar commercial real and personal property located within the County, and shall be comprised of an annual assessment multiplied by a rate as from year-to-year lawfully established by the County. The County, by July 15 of each calendar year, shall provide the Nation with written notice of the amount of each PILOT Payment due with respect to that year (and of the methodology whereby the amount due has been calculated), which amount shall be due and payable by no later than January 15 of the following year. (If any such PILOT Payment has not been paid in full by such date, then simple interest on the unpaid balance thereof shall accrue from such date until paid at the annual rate of four percent (4.0%.) The County agrees to receive each PILOT Payment and agrees that PILOT Payments made shall be deemed to compensate the County for the tax liability that would otherwise apply if the Property was subject to taxation. *Provided*, however, if the foregoing method of determining the amount of the PILOT Payments is deemed unlawful by the United States government, then the Parties shall promptly meet and confer in good faith for the purpose of agreeing to an alternative method for determining the amount of the PILOT Payments that is consistent with all applicable law and that results in payment to the County that is substantially similar to the amount of the foregoing PILOT Payments.

1. Annual PILOT Payments. For the purpose of calculating each PILOT Payment, the Nation agrees to permit the County Tax Assessor, or his/her designee, access to the Property as required to assess the value of the Property. However, access to the Property shall not

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days of the exhaustion of all rights of appeal to any court/forum of competent jurisdiction, remit the difference to the Nation.

B. Local Infrastructure Fee. The Nation shall remit to the County a local infrastructure fee in the amount of six percent (6%) of the gross receipts derived from the rental of Accommodations located on or in the Property, which shall include the rental cost of reserving each Accommodation, as well as all fees and charges of any kind that are charged by or on behalf of the Nation with respect to such reservations, including any Complimentary Accommodation Gross Receipt, but not including tribal taxes ("**Local Infrastructure Fee**"). Each complimentary, no charge Accommodation shall be deemed to generate a maximum gross receipt of one hundred dollars (\$100.00) per day ("**Complimentary Accommodation Gross Receipt**"). The maximum Complimentary Accommodation Gross Receipt, as of the first and every subsequent anniversary of the Effective Date of this Agreement, shall be adjusted by a percentage equal to the percentage by which the "Consumer Price Index for All Urban Consumers" for "All Items" (the "CPI") published during the month immediately preceding each such anniversary by the Bureau of Labor Statistics of the U.S. Department of Labor has increased or decreased as compared to the CPI that was published during the month immediately preceding such anniversary of the prior year. (The purpose of such periodic adjustment in the maximum Complimentary Accommodation Gross Receipt is to ensure that such Receipts match the pace of inflation/deflation as measured by increases/decreases in the CPI.)

The Nation shall remit said Local Infrastructure Fee to the County in the same manner and at the same time(s) as provided by law for the remission of occupancy taxes to the County by hotels generally. The Nation may also impose a separate occupancy tax for hotel stays in addition to this Local Infrastructure Fee. *Provided*, that the Nation, by March 1 of each year if so requested by the County, shall provide the County with complete and authentic copies of documents indicating the gross receipts derived from the rental of Accommodations located on the Property during the preceding calendar year so that the County may assess the Nation's compliance with this Section 3(B).

C. Development Fee. In lieu of ordinary development fees, the Nation shall pay permitting and inspection fees and other administrative fees related to the development and construction of the Project (the "**Development Fee**"). Upon submission to the County of detailed building design, architectural plans, and engineering plans, the Development Fee shall be

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calculated in accordance with the County's Unified Development Ordinance, as amended. A minimum payment of One Hundred and Fifty Thousand Dollars (\$150,000.00) toward such Development Fee shall be paid upon submission of the building design, architectural plans, and engineering plans. The balance of the Development Fee, if any, shall be paid within thirty (30) days of Project Completion. The Development Fee is intended to support the costs of administration, plan reviews, and inspections for, among other aspects of building construction and operation, buildings, food and beverage facilities, and water systems, including drinking water, waste water, and pool facilities.

D. Sales Taxes. The Nation shall collect and remit to the County a sales tax in the amount of two percent (2%) of the gross receipts derived from the sale of food and beverages, retail sales, entertainment activities (including but not limited to "cover" and/or admission charges), and other miscellaneous sales of goods and services on the Property (collectively, the "Sales Taxes"). Payment of such Sales Taxes to the County shall be the responsibility of the Nation regardless of whether such Sales Taxes have been collected from customers who make purchases at or in the Project or on or in the Property. Such Sales Taxes, however, shall not apply to the sale of Native arts, crafts, goods, and other materials sold in the Nation's specially run Native gift shop on the Property. The Sales Taxes due hereunder shall be arrived at through the same methodology as if the Nation and transactions occurring on the Property were subject to State and County sales taxes, and shall be due and payable as of the twenty-first (21st) day of each month with respect to Sales Taxes that were collected by the Nation during the preceding month. *Provided*, that the Nation, on or about March 1 of each year, shall provide the County with complete and authentic copies of the necessary records to support the calculation of the gross receipts of the Nation that are derived from Sales Taxes generated on the Property during the preceding calendar year so that the County may assess the Nation's compliance with this Section 3(D).

E. Tax Parity. The Nation agrees that it is not seeking to secure a tax advantage for itself or other entities operating on the Property. Accordingly, the Nation agrees that it shall not permit untaxed sales of any tobacco products, motor fuel, alternative fuel, or alcoholic beverages on the Property. The Nation agrees that the fees assessed and the tax rates on the foregoing shall be no less than those fees and rates that are assessed by any lawful authority, whether by federal, state, tribal, or local government, and otherwise paid by any non-tribal entities or purchasers within the County. If the Nation does not charge or collect such taxes and fees that would otherwise be


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2. Water-quality and safe drinking water standards applicable in North Carolina by operation of State or federal law.
3. Building standards that are no less stringent than applicable building codes, fire codes, plumbing, electrical and related codes applicable in the County by either North Carolina law or County ordinance, as would apply to the construction of any similar buildings or facilities elsewhere in Cleveland County.
4. County ordinance and North Carolina laws dealing with fire safety pertaining to the operation, inspection, and maintenance of the Project.

C. The Nation will allow inspections of the Project by County inspectors, during the Project's hours of operation upon at least twenty-four (24) hours' advance written notice to the Nation by the County Manager or his/her designee(s) to assess compliance with the standards established by this Agreement. Provision of such notice shall be sent via e-mail to the Nation's primary point of contact on the Project and by overnight courier mail to the address of the Nation identified in Section 13. Nothing herein shall be construed as a submission of the Nation to the jurisdiction of such County inspectors; however, any violation of the standards may be treated as a violation of this Agreement.

D. The Parties shall consult and cooperate with one another regarding public health and safety issues of mutual concern. The Parties shall each identify a representative to serve as its respective point of contact for coordinating the handling of events that pose a threat to public health or safety. The Parties' responsibilities under this subsection shall include, at a minimum, timely notification to the other Party's point of contact of any perceived public health or safety concerns, the mutual exchange of ideas on how to respond to the concern(s), timely updates on any action being taken to address the concern(s) by a Party, and a written report summarizing with reasonable detail how the situation was ultimately addressed and what steps, if any, may be necessary or recommended to mitigate or prevent the re-occurrence of the public health or safety concern in the future. The Parties agree that this coordination function is an integral step in mitigating threats to public health and safety that may obviate the need for arbitration. The Parties also agree that such compliance with this subsection is a condition precedent to the expedited arbitration procedure for threats to public health and safety set forth in Section 11.D. of this Agreement in the event that arbitration is deemed necessary.


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levied with respect to tobacco products, motor fuel, alternative fuel or alcoholic beverages, then payment of such taxes to the County shall be the responsibility of the Nation, which shall remit an amount equal to such taxes to the appropriate taxing authority, including the County to the extent provided herein.

F. Equal Protection. The Nation and the County agree that, for purposes of collecting the PILOT payment(s), Local Infrastructure Fee, and Sales Taxes (collectively, the "Fees"), that the Property and all transactions occurring on the Property shall be deemed to be transactions not involving an Indian tribe and shall be deemed to occur on real and personal property that is subject to the County's taxation jurisdiction (regardless of whether such property is held in trust or restricted fee status), subject to the exceptions and limitations set forth herein. The Nation agrees that it shall not contest this characterization in any writing or proceeding for collection of these Fees. Accordingly, should the County, in good faith, amend the rates and methodology for assessment and calculation of any of the Fees with respect to businesses within the County, then such rates and methodology for assessment and calculation shall be applied to the Property and all transactions occurring on the Property; however, any such rates and fees shall not exceed the rates and fees applied generally to businesses in the county.

Section 4. Public Health and Safety. The Nation's operation of the Project on the Property will be subject to the same workplace, public health, safety and fair employment rules as required under North Carolina law. To this end, the Nation agrees to the following:

A. Before opening to the public any business operations on the Property, the Nation shall adopt, by resolution, and comply with standards that are no less stringent than North Carolina and related federal work place, labor, and occupational safety and health (commonly known as "OSHA") standards. The Nation shall provide the County with a meaningful opportunity to review and comment on any such proposed standards before they have been adopted by the Nation.

B. The Nation agrees to adopt and comply with the following health and safety standards of the kind that would apply were the Property and Project owned and operated by a non-tribal commercial enterprise:

1. Public health standards for food and beverage handling that are consistent with standards prescribed by North Carolina statutes, regulations, and related administrative guidance.

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E. If at any time the County has grounds to determine that a public health nuisance exists, the County shall notify the Nation's representative, and if not resolved within five (5) days of provision of such notice, or such additional period as agreed upon by the Parties, then the County may invoke the expedited arbitration procedure under Section 11.D. of this Agreement.

F. Should there be an immediate and imminent threat to public health or safety, as determined by an appropriately designated State public health agency or official or the County Manager, then the County may, upon notifying the Nation's representative, conduct an emergency visit to the Property and take whatever action is necessary, consistent with North Carolina law that would apply were the Property and Project owned and operated by a non-tribal commercial enterprise, including but not limited to seeking immediate injunctive relief in the North Carolina General Court of Justice, to mitigate the immediate and imminent threat. Immediately following the emergency visit, the County shall provide a written explanation to the Nation of the basis for the emergency visit, the actions taken, and identify any additional actions that may be necessary and/or recommended in follow-up to the emergency visit and which must be carried out, if at all, in close coordination and with the approval of the Nation, which may be withheld only on an objectively-reasonable basis.

G. Upon completion of the final building design and development plans for the Project, as approved by the Nation, and before the commencement of any construction activity, the Parties agree to meet and confer for the purpose of negotiating and entering into a separate memorandum of agreement to set forth in greater detail how the Parties will coordinate on the public health safety concerns addressed in this Section 4.

Section 5. Public Safety.

A. **Emergency Medical Services.** The Nation acknowledges the importance of having adequate emergency medical services for any persons on the Property. The County, through its Emergency Medical Services Department and volunteer rescue squads, provides emergency medical services to the entire County. The County shall provide emergency medical services to the Property and the Project as requested. The Nation shall reimburse the County for the reasonable charges incurred in providing emergency medical services to or on the Property and/or the Project on the same terms and conditions as those that would be charged and could be enforced by the County were the Property and Project owned and operated by a non-tribal commercial enterprise.

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B. Law Enforcement. The Parties recognize the Nation has responsibility for maintaining order and security on the Property. The Parties recognize the increase in traffic and attendance connected with the Project will create added burdens on the Sheriff in terms of patrolling and responding to calls for assistance. Because some of that activity will take place on the Property, it is expected that cross training in the mutual roles and respective authorities of both the Nation (and any Nation-owned entities) and the Sheriff will be necessary. To the greatest extent possible, the County Sheriff's Office will seek to hire a qualified member of the Nation as a civilian employee to facilitate communication between the Parties. The Nation agrees to reimburse the County for the reasonable added costs to its law enforcement resources for the Project and the Property to the same extent as would reasonably be expected were the Project and Property owned and operated by a non-tribal commercial enterprise. Additional reasonable costs for training for the Sheriff to provide law enforcement to the Project will be borne by the Nation.

C. Fire Services. The Nation acknowledges the importance of having adequate fire services for any persons on the Property. The County, through its County Emergency Management Department and County Volunteer Fire District, provides fire services to the entire County. The Parties agree that the County will provide fire services to the Property as and when requested. The Nation shall reimburse the County for the reasonable charges incurred in the provision of fire-protection services to the Property and/or the Project on the same terms and conditions as those that would be charged and could be enforced by the County were the Property and Project owned and operated by a non-tribal commercial enterprise.

D. Upon completion of the final building design and development plans for the Project, as approved by the Nation, and prior to the commencement of any construction activity, the Parties agree to enter into a separate memorandum of agreement, or alternatively to renegotiate this Section 5 pursuant to Section 15.1.3, to address specific services, standards, support, mitigation, coordination, reporting, and funding requirements for emergency services, law enforcement services, fire services, and fire safety. Failure to enter into a separate memorandum of agreement or to renegotiate this Section 5 in good faith and to the mutual agreement of the Parties shall be grounds for default under this Agreement, and subject to the dispute resolution provisions set forth in Section 11.

Section 6. Civil and Criminal Jurisdiction. The County, notwithstanding this Agreement, shall retain the right to invoke and seek enforcement of all civil and criminal laws with respect to


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Health Partnership ("CCHP") or the County Health Department in the amount of fifty thousand dollars (\$50,000.00) for the treatment of compulsive behavior, including problem gambling or alcoholism. Thereafter, the Nation will make annual contributions to the CCHP or the County in the amount of twenty thousand dollars (\$20,000.00) for the same purpose, which shall be due and payable as of each anniversary of the Effective Date that occurs after the commencement of Gaming Activities on the Property. **Provided**, that the annual contributions to CCHP or the County prescribed by this Section 8 shall increase after the first annual contribution, on a year-over-year basis, at the annual rate of two percent (2%).

Section 9. Prohibited Activities. The Nation shall use its best efforts to prohibit and prevent the occurrence of the following activities on the Property and shall adopt an ordinance, ordinances, and/or regulations prohibiting them and providing for their enforcement:

A. Persons under the age of twenty-one (21) years shall not be allowed to gamble or remain in any room or area in which Gaming Activities are being conducted. Individuals under the age of twenty-one (21) years may pass through gaming rooms or areas only if they are in route to a non-gaming room or area of the Property.

B. Persons under the age of twenty-one (21) years shall not be allowed to purchase, consume, or otherwise possess alcoholic beverages. All alcoholic beverage service shall be in accordance with State law, and subject to the Nation's liquor control laws, as may be enacted in the future and amended from time to time; **provided** that the Nation's Liquor Ordinance has been duly approved by the Secretary of the Interior; **and provided** further that the Nation will not offer alcoholic beverages at no charge or as a complimentary service to its patrons unless other similarly situated business establishments in the State are legally authorized to offer alcoholic beverages at no charge or as a complimentary service to their patrons.

Section 10. County Support for Project. In consideration of the obligations undertaken by the Nation herein, and specifically of provision to the County of the "General Council Resolution" prescribed by Section 15(C) below, the County shall provide written correspondence in support of the Project to the United States Department of the Interior, Bureau of Indian Affairs ("BIA"), the State of North Carolina and any other governmental agencies or officials whose approval or cooperation must be obtained, as reasonably requested by the Nation, and the County shall promptly respond to any inquiries from these and other such governmental agencies related to the Project and Property. **Provided, however**, that the County may withdraw such "support" for


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any person, not a member of the Nation, in a manner consistent with applicable federal and State law as of the Effective Date, and as from time to time may be amended, except to the extent explicitly provided otherwise by this Agreement. The County shall promptly notify the Nation of any suspected, alleged, or confirmed violation(s) of civil and/or criminal laws carried out by a tribal member. This provision shall not be construed so as to create criminal or civil jurisdiction over any person except as it presently exists under federal and State law. As a sovereign Indian tribe exercising inherent powers of self-governance, the Nation shall exercise exclusively jurisdiction over its tribal members, subject to applicable federal law. Notwithstanding the foregoing, if the Nation so designates, the County may exercise civil and criminal jurisdiction over members of the Nation, to the extent permitted by applicable federal law. **Provided**, notwithstanding this Section 6, that law enforcement officers employed by the Nation, the County or the Cleveland County Sheriff are authorized to arrest and detain, on an emergent basis, any person, citizen or non-citizen of the Nation, in accordance with the U.S. Constitution and all other applicable law that apply to arrest and detention of persons without first having to obtain the consent of the other Party or determine which Party has jurisdiction to arrest and detain in accordance with this Agreement, to the extent permitted by applicable federal law.

In order to administer and enforce State laws as set forth above, the County may investigate the activities of non-tribal employees, vendors, or guests who may be in violation of State criminal or civil laws, and the County shall report suspected violations of State laws to the appropriate State prosecution authorities and the Nation. Pursuant to such investigation, the County may seek subpoenas, in accordance with State law, to compel production of any books, papers, correspondence, memoranda, agreements, or other documents or records that are relevant or material to the investigation.

The County shall have jurisdiction to commence prosecutions of non-tribal members for violation of any applicable State civil or criminal law or regulatory requirement to the extent authorized under applicable law.

Section 7. Public Utilities. The Nation shall obtain utility services, including but not limited to electric services, water, wastewater, and solid waste disposal, consistent with State law and in accordance with County ordinances and/or franchise agreements.

Section 8. Compulsive Behavior. Within ninety (90) days of commencement of Gaming Activities on the Property, the Nation shall make a one-time payment to the Carolina Community


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the Project if the Secretary of the United States Department of the Interior disapproves of this Agreement or determines that it is unacceptable or unenforceable; but, in the event of such disapproval or determination, the Parties shall promptly meet and confer in good faith for the purpose of agreeing to an amendment of this Agreement that renders it valid and enforceable in accordance with all applicable law.

Section 11. Dispute Resolution. All disputes arising under this Agreement, except as prescribed by Section 3(A)(3) and Section 4.F. above, shall be resolved solely in accordance with this Section 11, and subject to the following:

A. Meet and Confer; Non-Binding Mediation. If the County or the Nation believes that the other Party has committed a possible violation of this Agreement, then it may request in writing of the other Party that the Parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the possible violation within fifteen (15) days of the date of service of said request; **provided that** if the complaining Party believes that the possible violation creates a threat to public health or safety, then the complaining Party may proceed directly to arbitration as provided in Section 11.D. **Provided**, if one Party believes that the other Party has breached this Agreement, that the former may also ask the latter to engage in non-binding mediation in good faith in accordance with the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions, the reasonable costs of which shall be borne equally by the Parties. The Party asked to engage in such mediation will do so in good faith in accordance with such Rules.

B. Notice of Disagreement. Within thirty (30) days of holding the conference prescribed by Section 11.A., subject to any agreed extension of that deadline to accommodate the completion of non-binding mediation in accordance with Section 11.A., if the complaining Party is not satisfied with the result of the conference, then the complaining Party shall provide written notice to the other Party identifying and describing any alleged violation of the Agreement ("Notice of Disagreement"), with reasonable particularity, and proposing the action(s) that it believes are required to remedy the alleged violation.

C. Response to Notice of Disagreement. Within fifteen (15) days of service of a Notice of Disagreement, the recipient Party shall provide a written response denying or admitting the allegations made in the Notice of Disagreement, and, if the truth of the allegations is admitted, then setting forth in detail the steps it has taken and/or will take to cure the violations. Failure to


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serve a timely response shall entitle the complaining party to proceed directly to arbitration, as provided in Section 11(D), below.

D. Binding Arbitration Procedure. Subject to prior compliance with Section 11.A. above, and the requirements of Sections 11.B. and 11.C, except as provided in Section 11.E., either Party has the right to initiate binding arbitration as the sole mechanism by which to initiate enforcement of the terms of this Agreement. Such arbitration shall be conducted in accordance with the following procedures (the "Arbitration"):

1. **Selection of the Arbitration Panel.**
 - (a) **Disputes Involving Recovery or Liability of Less Than \$250,000.** The Arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (collectively, the "AAA Rules") and shall, except as set forth below, be conducted by one (1) arbitrator who shall have been selected pursuant to the AAA Rules; **provided**, that he/she must be a licensed attorney who has been actively engaged in the practice of law for at least the last ten (10) years, and during such ten years has been a member in good standing of the bar of the State, and who has served as an arbitrator and rendered a written opinion in at least one (1) completed arbitral proceeding within the last five (5) years and has demonstrated expertise in federal Indian law generally and in federal Indian gaming law specifically if the issue in dispute involves federal Indian gaming law. The Parties and the arbitrator shall maintain strict confidentiality with respect to the Arbitration so as to protect the proceedings and any matters, materials, or information disclosed therein from disclosure to any third party, except to the extent required by law.
 - (b) **Disputes Involving Recovery or Liability of \$250,000 or More.** If either Party advises the other Party that it reasonably believes that the issue in dispute to be submitted to Arbitration involves potential recovery by a Party, or potential liability of a Party, in an amount exceeding two hundred and fifty thousand dollars (\$250,000.00), exclusive of costs of arbitration/litigation and reasonable attorneys' fees, then the Arbitration shall be conducted by a panel of three (3) arbitrators (the "Panel"). Each

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Section 11.D.1.a. or the majority of the Panel under Section 11.D.1.b. All discovery shall be completed within forty-five (45) days following the appointment of the arbitrator(s), unless the Parties agree in writing to an extension.

4. **Request for Hearing and/or Trial.** The arbitrators shall set the matter for a hearing and/or trial upon the written request of a Party. The requesting Party must also provide three (3) days' written notice to the other Party prior to making said request. The arbitrators may also independently recommend that the Parties set the matter for a hearing and/or trial, which recommendation shall be non-binding and left to the Parties' discretion.

5. **Arbitration Decision.** The resulting decision shall be in writing and explain the reason(s) for the decision. Judgment on the decision of the arbitrator or Panel, may be entered in the United States District Court for the Western District of North Carolina, the Superior Court Division of the North Carolina General Court of Justice sitting in Cleveland County, North Carolina (or in any other venue of the North Carolina General Court of Justice prescribed by the North Carolina General Statutes), or in the Catawba Indian Nation Tribal Court, if the Nation has established one with jurisdiction over the matter(s) and subject to the provisions set forth in Section 11.F set forth below. The costs and expenses of the Arbitration shall be shared equally by and between the Parties.

6. **Enforcement.** An action to compel Arbitration or to enforce any award or specific performance ordered in an Arbitration may be brought in the United States District Court for the Western District of North Carolina, the Superior Court Division of the North Carolina General Court of Justice sitting in Cleveland County, North Carolina (or in any other venue of the North Carolina General Court of Justice prescribed by the North Carolina General Statutes) or in the Catawba Indian Nation Tribal Court, if the Nation has established one with jurisdiction authority over the matter(s) and subject to the provisions set forth in Section 11.F set forth below, and in all appellate courts to which appeals lie as provided by law.

E. Emergency Arbitration for Public Health or Safety Nuisances or Threats. If either Party reasonably believes that, in violation of this Agreement, the other's conduct has caused or will cause a nuisance or threat to public health or safety, the resolution of which cannot be

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Party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten (10) days of their appointment. If the arbitrators selected by the Parties are unable or fail to agree upon a third arbitrator, the third arbitrator shall be selected by the AAA. Each arbitrator shall satisfy the qualifications of the arbitrator in accordance with Section 11.D.1.a. The Parties and Panel shall maintain strict confidentiality with respect to the Arbitration so as to protect the proceedings and any matters, materials, or information disclosed therein from disclosure to any third party, except to the extent required by law. The written decision of the Panel in which two or three members of the Panel join in writing shall control the Arbitration.

2. **Arbitration Award.** The Arbitration shall be held in Cleveland County, North Carolina, unless otherwise agreed to by the Parties in writing. The arbitrator(s) shall be empowered to grant all legal and equitable remedies and relief that could be secured in a State court of law, including injunctive relief; **provided**, that the arbitrator(s) shall not have the power to award punitive damages or damages of a kind that cannot be obtained for breach of contract in accordance with North Carolina law. The award shall be made within nine (9) months of the filing of the notice of intent to arbitrate, and the arbitrators shall agree to comply with the schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the majority of the arbitrators, if necessary. Any award rendered in Arbitration shall be final and binding on the Parties.

3. **Discovery.** Consistent with the expedited nature of arbitration, each Party will, upon the written request of the other Party, promptly provide the other with copies of documents, provided such documents are directly relevant to the issues raised by any claim or counterclaim, and which may be redacted as necessary to protect confidential and/or sensitive information. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator(s), who shall decide to grant leave based on the need of the requesting Party and the burden of such discovery in light of the nature and complexity of the dispute, and such determination shall be conclusive when rendered by a single arbitrator under

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delayed for the time periods otherwise specified in this Section 11, then the complaining Party may proceed directly to arbitration under this Section 11.E, without regard to the requirements set forth in Sections 11.A–D, which shall be referred to as "Emergency Arbitration" and administered by the American Arbitration Association in accordance with the AAA Rules on Emergency Measures of Protection and conducted in accordance with the following procedures:

1. **Notice of Demand for Emergency Arbitration.** A Party in need of emergency relief under this Section 11.E shall notify the AAA and other Party in writing of the nature of the relief sought, the reasons why such relief is required on an emergency basis, and the basis for the complaining Party's entitlement to emergency relief. Such notice shall be sent via email with read receipt to the other Party's primary point of contact on the Project and by overnight mail to the Party's address identified in Section 13.
2. **Appointment of Emergency Arbitrator.** Within one (1) business day of receipt of notice as provided in Section 11.E.1, the AAA shall appoint a single emergency arbitrator designated to rule on emergency actions. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed by the acting Party, to affect the arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one (1) business day of the communication by the AAA to the Parties of the appointment.
3. **Schedule of Emergency Arbitration.** The emergency arbitrator shall as soon as possible, but no later than two (2) business days of appointment, establish a schedule for consideration of the request for emergency relief, as well as the provision of any limited, expedited discovery or document production. Such a schedule shall provide a reasonable opportunity to all parties to be heard and may provide for alternative proceedings than a formal hearing, such as via tele- or video-conference or on written submissions.
4. **Emergency Arbitration Award.** If after consideration the emergency arbitrator is satisfied that the Party seeking the emergency relief has shown that the other's conduct has caused or will cause a nuisance or threat to public health or safety that requires emergency relief, and that the seeking

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Party is entitled to such relief, then the emergency arbitrator may enter an order or award granting said relief and stating the reason(s) therefore. The Emergency Arbitration award shall be binding on the Parties.

5. Appeal of Emergency Arbitration Award. Any application to modify or appeal an award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator so long as the Emergency Arbitration is active, which shall not exceed a period of thirty (30) days following the appointment of the emergency arbitrator. If after such thirty (30) days the emergency dispute has not been resolved or an application to modify an award of emergency relief is still pending, then the Parties shall initiate binding Arbitration procedures in accordance with Section 11.D to resolve the dispute. The emergency arbitrator shall have no further power to act after the selection of an Arbitration panel pursuant to Section 11.D.1, *provided* that the Parties may agree to name the emergency arbitrator as the Arbitration arbitrator or a member of the Panel, depending on the amount of recovery or liability involved in the dispute.
6. Emergency Arbitration Costs. The costs associated with an Emergency Arbitration shall be equally borne by the Parties unless it is determined by the emergency arbitrator or by an arbitrator or Panel in directly resulting subsequent Arbitration that the complaining Party acted unreasonably and without justification in requesting the Emergency Arbitration, in which case the complaining Party shall be solely responsible for the costs of the Emergency Arbitration.
7. Emergency Award Enforcement. An action to enforce any order or emergency relief ordered in an Emergency Arbitration shall be brought in the Superior Court Division of the North Carolina General Court of Justice sitting in Cleveland County, North Carolina (or in any other venue of the North Carolina General Court of Justice prescribed by the North Carolina General Statutes) or in the Catawba Indian Nation Tribal Court, if the Nation establishes one with jurisdiction authority over the matter(s) and subject to the provisions set forth in Section 11.F.

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established one in accordance with this Agreement. The Nation further waives any Tribal Court exhaustion requirements, regardless of when such requirements may have arisen or may arise in the future. This limited waiver of immunity shall not extend to or be used for or to the benefit of any other person or entity of any kind or description whatsoever, including any successor or assign of the County. Nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Nation with respect to any party other than the County. Except as expressly provided herein, nothing in this limited waiver of immunity shall be construed as a waiver or consent to the levy of any judgment, lien, or attachment upon any property or interest in property of the Nation other than as set forth in this Section 11(G). Pursuant to this limited waiver of sovereign immunity, a judgment or award against the Nation may be satisfied only from the Property, the Project and the revenues of the Project, and in no instance shall any enforcement of any kind whatsoever be allowed against any other assets of the Nation

Section 12. Indemnification.

A. The Nation agrees to and shall indemnify, defend, protect, and hold harmless the County, its elected officials, officers and employees acting in their official capacities from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by any act, omission, or negligence of the Nation or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with any obligations on the Nation's part to be performed under the terms of this Agreement or any such claim or any action or proceeding brought thereon or any action or proceeding filed against the County which challenges the County's approval, execution, or delivery of this Agreement; and in any case, any action or proceeding brought against the County by reason of any such claim, the Nation upon notice from the County shall have the option to defend the same at the Nation's expense by counsel reasonably satisfactory to the County. However, in the event that the Nation does not elect to defend the action or proceeding, the County shall defend the same at the Nation's expense, and shall consult with the Nation during the pendency of the action or proceeding. In any case, offers of settlement must be approved by the County and the Nation, which approval shall not be unreasonably withheld.

B. The County agrees to and shall indemnify, defend, protect, and hold harmless the Nation, its elected officials, officers, and employees acting in their official capacities from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, and

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F. Periodic Review of Tribal Court Status and Extension of Tribal Court

Jurisdiction; Comity. The Parties hereby agree that, five (5) years from the Effective Date of this Agreement, there shall be a meeting between the Nation and the County to discuss whether the Nation has established a "Tribal Court" of competent jurisdiction that shall be added as a forum for the enforcement of the terms of this Agreement. The establishment of such Tribal Court shall be evidenced by the adoption of a Catawba Indian Nation Judicial Code that shall include, at a minimum, chapters on Tribal Court Structure (including jurisdiction), Judicial Qualifications and Appointments (including that each judge must be a member in good standing of a state bar who shall have engaged in the practice of law or served as a judge on a regular and full-time basis during the ten (10) years next-preceding appointment as a judge of the Tribal Court, and Court Procedures (including appeals)). No such Tribal Court shall be recognized as a forum for the enforcement of the terms of this Agreement unless the courts of North Carolina have extended comity to tribal courts or the State of North Carolina, by statute duly adopted or another method recognized by law, has recognized the validity of the judgments and decrees of such Tribal Court and deemed them to be as enforceable as those of the district courts of the United States within the State of North Carolina as set forth in Section 1-237 of the North Carolina General Statutes as in effect as of the Effective Date, as from time to time amended. If such Tribal Court is found to have been so established and if its judgments and decrees have been so recognized and declared so enforceable, then the extension of Tribal Court jurisdiction over disputes arising from the terms of this Agreement shall not be unreasonably denied by the Parties. However, if the Parties find that no such Tribal Court has been established by the fifth (5th) anniversary of the Effective Date of this Agreement, then the Parties agree to meet every five (5) years after such fifth (5th) anniversary to assess the status of the Tribal Court, if any, until such time as a Tribal Court has been established or this Agreement is no longer in effect, whichever shall come first.

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G. Limited Waiver of Sovereign Immunity. The Nation hereby expressly, unequivocally, and irrevocably waives its sovereign immunity for the limited purpose of enabling the County to enforce the terms of this Agreement, including but not limited to doing so by seeking appropriate injunctive relief and/or judicial enforcement of any award and/or specific performance ordered in Arbitration in the United States District Court for the Western District of North Carolina, the Superior Court Division of the North Carolina General Court of Justice sitting in Cleveland County, North Carolina, or in Catawba Indian Nation Tribal Court, if the Nation has

expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by any act, omission, or negligence of the County or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with any obligations on the County's part to be performed under the terms of this Agreement or any such claim or any action or proceeding brought thereon or any action or proceeding filed against the Nation which challenges the Nation's approval, execution, or delivery of this Agreement; and in any case, any action or proceeding brought against the Nation by reason of any such claim, the Nation upon notice from the County shall have the option to defend the same at the County's expense by counsel reasonably satisfactory to the Nation. However, in the event that the County does not elect to defend the action or proceeding, the Nation shall defend the same at the County's expense, and shall consult with the County during the pendency of the action or proceeding. In any case, offers of settlement must be approved by the Nation and the County, which approval shall not be unreasonably withheld.

Section 13. Notices.

Any notice required under this Agreement shall be sent to the following:

Cleveland County
Attn: County Manager
P. O. Box 1210
Shelby, North Carolina 28151-1210

Catawba Indian Nation
Attn: Chief William Harris
996 Avenue of the Nations
Rock Hill, South Carolina 29730

Copy to:
Ward and Smith, P.A.
Attn: Grant B. Osborne, Esq.
Suite 300
82 Patton Avenue
Asheville, North Carolina 28801

Copy to:
Gregory A. Smith, Esq.
Hobbs Straus Dean & Walker, LLP
2120 L Street NW, Suite 700
Washington, DC 20037

Copy to:
Jeffrey C. Harris, Esq.
Tribal Attorney, Catawba Indian Nation
996 Avenue of the Nations
Rock Hill, South Carolina 29730

and/or to such other respective addresses as may be designated by notice given in accordance with this Section 13.

Section 14. Insurance.

The Parties understand that it is the Nation's practice to maintain appropriate insurance coverage for itself and all entities of the Nation. Consistent with that practice, the Nation agrees to

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obtain and maintain, with responsible insurance carriers licensed to do business in the State of North Carolina, insurance (including coverage of public liability and property loss damage) satisfactory to the County covering the Property and all structures constructed thereon naming the Nation and all Nation-entities as insured parties. The tort liability insurance coverage shall be at least two million dollars (\$2,000,000.00) per occurrence and twenty million dollars (\$20,000,000.00) annual aggregate. In addition, the Nation will maintain liquor liability coverage of at least two million dollars (\$2,000,000.00) per occurrence. Certificates evidencing such coverage shall be delivered to the County annually.

Section 15. Miscellaneous Provisions.

A. Effective Date and Term.

This Agreement shall become effective on the Effective Date and shall remain in effect through and including the earlier of (a) the date that is twenty (20) years after the date on which "Gaming Activities" were first made available to the public on the Property or (b) December 31, 2049, unless otherwise terminated by the mutual written consent of the Parties or for cause as provided in and subject to Section 15.B.

B. Termination.

This Agreement shall immediately terminate upon issuance of a legally binding "Indian Land Opinion" by the National Indian Gaming Commission ("NIGC") or the U.S. Department of the Interior concluding that the Property does not qualify for lawful gaming under federal law, except to the extent that such determination is stayed pending any appeal. *Provided, however*, in the event of such a termination, that all fees payable to the County as of or before the date of such termination shall remain payable and be paid in full within ninety (90) days of such termination.

No breach or violation of any of the terms of this Agreement by either Party shall operate to void or terminate or provide grounds for termination hereof, it being the intent of the Parties that the provisions of this Agreement shall be subject to specific performance, and injunctive relief shall be provided to cure anticipatory breaches prospectively, and damages shall be awarded to redress any harm occasioned by a breach; *provided, however*, that if a Party cannot or will not conform to the requirements of this Agreement as evidenced by a pattern of documented violations of the terms set forth herein and/or a series of documented violations that pose a serious threat to public health, safety or welfare, then this restriction on termination shall not apply.

C. Authorization.


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support, the Executive Committee, at the next regular meeting of the General Council to be held in **July of 2019**, or at a "special meeting" of the General Council called and held by no later than **December 31, 2019** (the "General Council Resolution Deadline"), in accordance with Section 4 of Article III of the "Constitution and By-Laws of the Catawba Nation of South Carolina" adopted by the Nation on or about August 30, 1975 (the "**Constitution**"), shall brief the General Council on this Agreement and secure the General Council's written resolution of support in accordance with Articles III and IV of the Constitution (the "**General Council Resolution**"). Although not required as a matter of Catawba law, for the sake of completeness, this resolution will expressly affirm all of the terms of this Agreement and the authority of the Executive Council to have negotiated and authorized the Chief to sign it. The Executive Committee shall use its best efforts, before any such regular or special meeting, to recommend and promote this Agreement to the General Council and encourage members thereof to appear and vote at such meeting to approve such a General Council Resolution, for the purpose of securing the General Council Resolution. If the Nation has failed to secure the General Council Resolution by December 31, 2019 (unless that date has been extended in writing by agreement of the County), then such failure shall not void this Agreement or render it voidable by the Nation, but shall render it voidable by the County alone if the County advises the Nation in writing by no later than February 15, 2020 (or such later date as may be agreed by the Parties), that the County has elected to void this Agreement. The County shall agree to at least one (1) extension of the General Council Resolution Deadline through and including July 31, 2020, at the request of the Nation. Notwithstanding the foregoing, if the General Council expresses concerns regarding the Agreement, at the request of the Executive Committee, the Parties shall work in good faith to address those concerns and questions including if necessary renegotiating the terms of this Agreement.

D. Interpretation.

This Agreement shall be interpreted as though jointly drafted by the Parties.

E. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina and applicable federal law.

F. Severability.

Any term of this Agreement ruled by the arbitrator(s) or a court of competent jurisdiction to be invalid or unenforceable will be severed, and the remainder of this Agreement will be


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The County and the Nation each represent and warrant that each has performed all acts required by its own laws for the validity of adoption of this Agreement, including, but not limited to, matters of procedure and notice, and each has the full power and authority to execute this Agreement and to perform its obligations in accordance with the terms and conditions thereof, and that the representative executing this Agreement on behalf of such Party is duly and fully authorized to so execute and deliver this Agreement. A copy of the Resolution of the Executive Committee of the Catawba Indian Nation authorizing this Agreement on behalf of the Nation is attached as Exhibit "B". Said resolution shall (1) expressly approve and authorize this Agreement by the Executive Committee on behalf of the Nation, (2) direct the execution, delivery and performance of this Agreement by the Chief on behalf of the Nation, (3) independently grant and approve an express, unequivocal and irrevocable limited waiver of the Nation's sovereign immunity to suit, (4) consent to the jurisdiction of the courts specified in the Agreement, (5) consent to the application of the laws of the State of North Carolina to govern the Agreement, (6) consent to arbitration, (7) waive the Nation's right to exhaustion of tribal remedies, and (8) waive venue and jury trial (items (3) – (7) set forth in this Section 15(C) are referred to herein as the "**Dispute Resolution Provisions**"). The Executive Committee's resolution also will recite the Constitutional provisions authorizing the Executive Committee's actions in enacting the Executive Committee resolution, authorizing this Agreement and granting the Nation's limited waiver of sovereign immunity and consenting to the Dispute Resolution provisions, including (a) that the Executive Committee is authorized pursuant to the authority granted the Executive Committee in the Catawba Constitution and Bylaws, which provides that it "shall be the duty of the Executive Committee ... to act on behalf of the General Tribal Council at such times as said Council is not in possession and to have charge of all routine matters which shall arise during such recess, including ... such other matters as may be delegated to it by the General Council [Bylaws, Article II, Section 3]" and (b) the authority of the Chief pursuant to the Catawba Constitution and Bylaws which provides that the Chief "shall at all times have general supervision of the affairs of the General Council and Executive Committee and such matters as naturally pertain to the general welfare of the community [Bylaws, Article I.1.(a)]". *Provided, further*, that although the Executive Committee has the authority to enter into this agreement, it is the Executive Committee's practice to brief the General Council on major matters and to seek an expression of support. Whereas the County has also requested that the General Council provide a resolution of

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enforced. The Parties agree to enter into good faith negotiations to replace the invalid provision(s) with a valid provision(s), the economic effect of which comes as close as possible to that of the invalid provision(s). If the Fees in Section 3 or any other provision are held invalid or unlawful in a way that results in the diminution of any payment or financial obligation of the Nation to the County, then the Parties agree to negotiate in good faith to try to replace the invalid Fees provision(s). If the Parties are unable to successfully renegotiate the invalid Fees provision(s), then, notwithstanding Section 11, but still subject to the limited waiver of sovereign immunity in Section 11(G), then the Parties agree that the arbitrator shall determine how to proceed with arbitration to address the conflict.

G. Good Faith and Fair Dealing.

This Agreement includes an implied covenant of good faith and fair dealing in accordance with North Carolina common law.

H. Captions.

The captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provisions hereof.

I. Amendment or Modifications; Reopener.

1. This Agreement may not be amended or modified except by a writing signed by the County Manager and the Chief of the Nation pursuant to such authority as may be required by law and the Nation's governing constitution and bylaws. However, either Party may request that the other Party renegotiate one or more of the terms of this Agreement if, but not limited to, the following circumstances apply:

- a. There is a significant change in applicable circumstances, including but not limited to a change in federal or State law that directly or indirectly relates to the Party's expectations under this Agreement and/or the application of the federal Indian Gaming Regulatory Act to the Nation as provided by law;
- b. That change materially impacts that Party; and
- c. That change could not have been reasonably anticipated at the time of entering into this Agreement.

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Provided, however, if the United States Government identifies an environmental concern, the Parties will then promptly negotiate a separate "environmental matters agreement", to address mitigation of related environmental issues, if any; and that the County reserves the right to negotiate with the Nation for the purpose of reaching agreement with the Nation regarding terms and conditions pertaining to mitigation of environmental impacts that may be identified in the future as a result of environmental review processes required by law.

2. A request to renegotiate one or more of the terms of this Agreement will be made in writing, delivered to the other Party. The request will specify the basis for the request. If the request is determined to meet the requirements for renegotiation pursuant to this subsection, the Party will commence to renegotiate in good faith. However, except for the obligations to renegotiate as is set forth in this subsection, neither Party is obligated to agree to a new Agreement or to any new terms or conditions as a result of the renegotiation process.

3. Notwithstanding subsections I.1 and I.2, upon completion of the final building designs and development plans for the Project, and prior to the commencement of any construction activity, if the Parties do not enter into a separate memorandum of agreement under Section 5.D, then the Parties shall renegotiate Section 5 in good faith and to the mutual agreement of the Parties. Failure to renegotiate under this provision shall result in an automatic default of this Agreement, subject to the dispute resolution provisions set forth in Section 11.

4. Notwithstanding subsection I.1 and I.2, if there is a material change in federal or State law, or if the Nation enters into a compact with the State of North Carolina that is inconsistent with this Agreement, then the Parties, within thirty (30) days of receipt by either Party of a written demand therefor, shall meet and confer for the purpose of engaging in good-faith negotiations for the purpose of revising this Agreement to the extent needed to accommodate such material change and/or inconsistency. If a Party refuses to engage in such negotiations, then that Party shall be deemed in violation of this Agreement, which shall automatically trigger the dispute resolution provisions set forth in Section 11.

J. Complete Agreement.

This Agreement represents the entire integrated agreement between the Parties and supersedes all past agreements and all negotiations, representations, promises or agreements, either written or oral, made during the course of negotiations leading to this Agreement.

Section 16. Section 81 Review by the Department of the Interior.

If it is determined by the United States government that a Section 81 review is necessary, then within one hundred twenty (120) days of execution of this Agreement, or within three (3) days of receipt by the Nation of a written Indian Lands determination by the National Indian Gaming Commission, whichever is sooner, the Nation will submit this Agreement to the United States Department of the Interior for either (a) approval of the Agreement pursuant to 25 U.S.C. §81, or (b) a written response that this Agreement does not require approval under 25 U.S.C. §81 to be enforceable. If the Department of the Interior determines that Section 81 approval is necessary and denies approval of this Agreement, then this Agreement shall be subject to review and appropriate action by the Department of the Interior, including possible termination and the possible recovery of payments made hereunder.

Section 17. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

Section 18. Miscellaneous. If after the Effective Date of this Agreement, the Nation and State of North Carolina enter into a Compact for Gaming on the property (a "Compact"), to the extent that that Compact requires payments to the County that address the PILOT, services and other payments required under this Agreement, such Compact payments shall be used to offset the Nation's obligations herein, to enable the Nation to avoid having to make duplicative payments under such Compact and this Agreement. Furthermore, any inconsistent terms between this Agreement and any future Compact will, to the extent required by law, be construed in favor of the Compact.


IN WITNESS WHEREOF, officers of the County and the Nation, pursuant to authority duly given by the governing bodies of each in accordance with applicable State law, ordinances and Tribal law, have executed this Agreement as of the Effective Date.

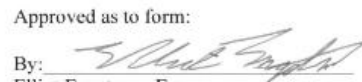
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**CLEVELAND COUNTY,
NORTH CAROLINA**

By: 
John Hutchins, Commissioner
Cleveland County Board of Commissioners

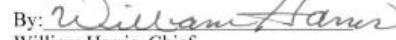
Approved as to form:
By: 
Elliot Engstrom, Esq.
Deputy County Attorney
Cleveland County

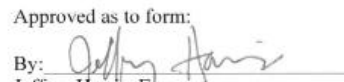
Attest: 
Phyllis Nowlen,
Cleveland County Clerk

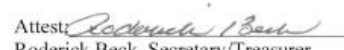
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THE CATAWBA INDIAN NATION

By: 
William Harris, Chief
Catawba Indian Nation

Approved as to form:
By: 
Jeffrey Harris, Esq.
Tribal Governance Attorney
Catawba Indian Nation

Attest: 
Roderick Beck, Secretary/Treasurer
Catawba Indian Nation

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PUBLIC HEARING

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT FOR PROJECT FIX

Chairman Allen called on Kristin Reese to present an Economic Development Incentive Agreement for Project Fix. Mrs. Reese stated Project Fix currently has two existing manufacturing operations in a neighboring county that will be maintained, but additionally has interest in expanding their operations in Cleveland County to

support future growth of their business line. The project considered expanding at other locations in other states. The company is interested in purchasing an existing and vacant building in Cleveland County and anticipate that they will create **25** new full-time jobs within three years, with the projected average wages being approximately **\$40,000**; which, exceeds the County's current average wage. The company proposes to invest approximately **\$3,000,000** in machinery and equipment, as well as improvements to the building. Ms. Reese requested that the Board of Commissioners approve a 50% County Incentive Grant (0.0057% tax rate) for three years for this project.

Chairman Allen opened the Public Hearing at 6:34 pm for anyone wanting to speak for or against the Economic Development Incentive Agreement for Project fix. (*Legal Notice was published in the Shelby Star on January 10, 2020*).

Hearing no comments, Chairman Allen closed the Public Hearing at 6:34 pm.

Chairman Allen opened the floor to the Board for questions and discussion. Vice-Chair Whetstine stated Project Fix is a great opportunity for a currently unoccupied building to be updated and will be great for the community as a whole.

ACTION: Commissioner Bridges made a motion, seconded by Commissioner Hardin, and unanimously adopted by the Board to, ***approve the Incentive Agreement for Project Fix.***

STATE OF NORTH CAROLINA

INCENTIVE AGREEMENT

COUNTY OF CLEVELAND

This incentive agreement (the "Agreement") is made and entered into as of the ____ day of _____, 2020, by and between CLEVELAND COUNTY, NORTH CAROLINA, a political subdivision of the State of North Carolina, hereinafter referred to as the "County," and PROJECT FIX (the "Grantee"). The location for the creation of the new jobs and investment is in Cleveland County, North Carolina, and is hereinafter referred to as the "Project."

WITNESSETH

WHEREAS, the Local Development Act of 1925, as amended (Article I of Chapter 158 of the North Carolina General Statutes) grants counties the authority to make appropriations for the purposes of aiding and encouraging the location or expansion of certain business enterprises in the County or for other purposes which the County's governing body finds in its discretion will increase the population, taxable property base, and business prospects of the County; and

WHEREAS, the Cleveland County Board of Commissioners (the "Board"), pursuant to North Carolina law, has adopted the Cleveland County Industrial Incentive Program (the "Program"), and which Program was in force at the time of this Agreement, in order to induce existing industry to expand in the County and target new industries to located in the County, through the provision of various incentives including the payment of a stipulated grant amount from the County's General Fund, as determined in accordance with the provisions of the Program; and

WHEREAS, it has been determined by the Board, following a public hearing on January 21, 2020, that Grantee meets the criteria for participation in the Program due to Grantee's intention to create over the next four years at least 25 new, permanent, full-time jobs with an anticipated annual average wage of \$40,000, and make a net new investment of at least \$3,000,000 in real property, personal property, and other assets of the business (the "Project"), which will increase the population, taxable property base, and business prospects for the County, and that certain incentives for the Project (the "Incentives") will encourage the Grantee to locate its operations in the County, and that it is in the public interest to provide assistance as authorized by N.C.G.S. § 158-7.1; and

WHEREAS, Grantee acknowledges that the Incentives and Property provided pursuant to this Agreement have served as inducement for Grantee to make the above-described investment in the County, and the County acknowledges that the investment to be made by Grantee is good and valuable consideration as described in N.C.G.S. § 158-7.1(d2).

NOW, THEREFORE, for good and valuable consideration as hereinabove recited, and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do each contract and agree with the other as follows:

1. **Grant Criteria.** Grantee shall comply with the following conditions in order to qualify for initial and continuing grant payments pursuant to this Agreement. These conditions shall hereinafter be referred to as the "Grant Criteria."
 - a. The Grantee shall begin its investment in the Project within twelve (12) months of the execution of this Agreement.
 - b. The Grantee shall maintain its net new investment of at least \$3,000,000 described above (subject to normal depreciation) and its 25 new, permanent, full-time positions as described above in the County for the duration of the Grant Term (hereinafter defined in Section 3). The Grantee further agrees that failure to maintain the minimum level of direct investment shall entitle the County to make pro rata reductions in the incentives paid to the Grantee as set out in Section 3 below, and that failure to meet the minimum level of new employment shall entitle the County to make reductions in incentive payments paid to the Grantee in the amount of Five Hundred Dollars (\$500.00) per new, permanent, full-time position less than the 25 positions described above.
 - c. The Grantee shall operate the Project substantially in compliance with all laws, rules, regulations, ordinances, and orders of all governmental bodies, agencies, authorities, and courts with applicable jurisdiction over the Project.
 - d. The County shall not be responsible for any aspect of the design or construction of the Project.
 - e. The Grantee shall be current in the payment of all ad valorem taxes and fees imposed on the Grantee by the County and any municipality in the County.
 - f. The Grantee shall, as of January 1 of each year during the Grant Term, submit to the County Tax Assessor a timely listing of its buildings, machinery, equipment, and all personal property associated with the Project. Grantee shall provide additional information as needed to enable the County to identify incentivized versus non-incentivized investment.
2. **Certification of Grant Criteria by the Grantee.**
 - a. In each year of the Grant Term, the Grantee shall request payment of an Incentive Grant (hereinafter defined) from the County (the "Payment Request"). In

connection with each Payment Request, the Grantee shall deliver to the County's Chief Financial Officer a performance letter certifying that, in the prior year, the Grantee:

- i. Satisfied all the Grant Criteria;
- ii. Agreed to the Assessed Value (hereinafter defined) of the Project as determined by the County Tax Assessor (subject to the County's standard challenging policy); and
- iii. Paid all applicable local taxes on the Assessed Value of the Project ("Performance Certification").

Such Payment Requests shall be made to:

Lucas Jackson, Cleveland County Finance Director, or his successor
Cleveland County Administration Building
311 E. Marion Street
Shelby, NC 28150

- b. The County Tax Assessor shall determine, as of January 1 for each year of this Agreement following the effective date herein, the total investment in the Project that is subject to ad valorem taxes in the County (the "Taxable Investment") and the assessed value of the Taxable Investment (the "Assessed Value").
- c. The Grantee acknowledges that it has been informed by the County that the County is required by law, upon request by any person, to disclose "public records" as that term is defined by N.C.G.S. § 132-1(a). Notwithstanding the immediately preceding sentence, the County acknowledges that some or all of the information made available by the Grantee to the County pursuant to this Agreement may be exempt from disclosure as public records pursuant to N.C.G.S. § 132-1.2 or N.C.G.S. § 132-6(d), and that all such information is proprietary. Some or all of the information made available to the County pursuant to this Agreement may be designated by the Grantee as confidential and as a trade secret at the time of disclosure to the County. The County, to the fullest extent allowed by law, will hold such designated information as confidential. The County, if it receives a request for disclosure of any such information, shall promptly notify the Grantee of such request so that the Grantee may defend any claims or disputes arising from efforts of others to cause such trade secrets to be disclosed as public records, and the County shall refrain from making any such disclosures unless or until it:
 - i. Receives the Grantee's written permission to do so; or

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to \$.0057) which amount shall then be multiplied by fifty percent (50%), and the resulting figure shall be the amount of the Incentive Grant payment to the Grantee for that fiscal year. It is the express intent of the parties that no grant funds shall be paid by the County pursuant to this Agreement until Grantee has first paid all applicable taxes due the County.

If at any time during the Grant Term the Grantee's net new investment in the Project drops below the \$3,000,000 amount discussed in Section 1(b), and this occurs for any other reason than normal depreciation, the County shall reduce the amount of the Incentive Grant payment to the Grantee on a pro rata basis. By way of illustration, if in a particular year the Grantee's investment in the Project were to drop to \$1,500,000, or half of \$3,000,000, the multiplier used to calculate the amount of the Incentive Grant payment would drop to twenty-five percent (25%), or half of the default multiplier of fifty percent (50%). The County shall factor normal depreciation into the amount of the pro rata reduction.

- c. **Grant Criteria Compliance.** Incentive Grant payments shall continue throughout the Grant Term only so long as Grantee continues to satisfy the Grant Criteria and submits a Payment Request and Performance Certification to the County Chief Financial Officer no later than June 30 of the year following the year in which Grantee's ad valorem property taxes are paid. Failure to submit a Payment Request and Performance Certification by December 1 of the year following the year in which Grantee's ad valorem property taxes are paid shall result in forfeiture of the Incentive Grant payment for the applicable year. Only one incentive grant will be paid to Grantee per fiscal year for this project. The County's fiscal year runs from July 1 through June 30. Grantee agrees to cooperate with the County by providing such information and such access to Grantee's records as may be necessary to verify and substantiate initial and ongoing compliance with the Grant Criteria.
4. **Tax Payments.** If the Grantee at any time during the Grant Term fails to pay all applicable local taxes on the full value of its assets when due, then the County may terminate this Agreement and have no further obligation to Grantee for the payment of any grant award or the provision of any other incentive. Notwithstanding the foregoing, the County shall not terminate this Agreement due to the Grantee challenging the applicable taxes owed under Article 19 Chapter 105 of the North Carolina General Statutes. Prior to termination on the basis of Grantee's failure to pay applicable taxes when due, the County shall provide ninety (90) days written notice to Grantee stating that taxes are delinquent. If the taxes have not been paid upon the expiration of this ninety (90) day period following Grantee's receipt of notice, then the County may terminate this Agreement.
 5. **Notice.** Formal notices, demands, and communications between the County and the Grantee shall be sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested, or by a nationally-recognized

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- ii. Agrees to disclose such information as public records following a mediation conducted pursuant to N.C.G.S. § 7A-38.3E; or
- iii. Is compelled to do so by the final order of a court of competent jurisdiction.

The Grantee shall have the right to direct any litigation of such dispute and shall indemnify the County for any legal fees and expenses incurred by the County in opposing such request for disclosure. The Grantee hereby acknowledges that the County has met the disclosure requirements set forth in N.C.G.S. § 132-1.11(b).

3. Grant Term and Payment.

- a. **Grant Term.** The term "Grant Term" refers to the consecutive three-year period beginning as set forth in this section and during which the Company is entitled to receive the Incentive Grant as set forth in this Agreement. Subject to the provisions below, the Grant Term will begin in the first year in which a Performance Certification is submitted by the Grantee and approved by the County, and will continue for three years (ending on June 30 of the third year) as long as the Grant Criteria remain satisfied. Notwithstanding the foregoing, unless Grantee directs otherwise, the first year of the Grant Term shall not commence any earlier than July 1, 2020 (the date upon which the first invoice for payment of ad valorem taxes in connection with the Taxable Investment for the Project is anticipated to be sent to the Grantee, such Taxable Investment having an assessed valuation on January 1, 2020 and the payment of which would be due by January 5, 2021). In the event of the above, the first Incentive Grant payment would be payable to Grantee between January 1 and March 31, 2021, subject to the County's approval of Grantee's Performance Certification as set forth in this section. In order to provide the Grantee with sufficient time to acquire and install a substantial part of the Taxable Investment and, accordingly, receive a full three consecutive years of Incentive Grants, Grantee can elect a later date for the three-year Grant Term to begin. Between January 1 and March 31 of each year of the three year Grant Term, the County shall make an incentive grant payment to the Grantee pursuant to the calculation provided in Section 3(b) herein ("Calculation of Grant Amount").
- b. **Calculation of Grant Amount.** Upon the County's approval of Grantee's Performance Certification, the County Tax Assessor, as of January 1 of each of the three calendar years of this Agreement, shall determine the net new taxable investment of the Project ("Net New Investment") by subtracting the assessed value of the Grantee's property as of January 1, 2020 (such 2020 value is referred to herein as "Based Assessed Value") from the Assessed Value (as defined herein) for the applicable year. For each year of the Grant Term, the Net New Investment, as calculated by the Tax Assessor, shall be multiplied by the County tax rate then in effect (which, as of the date of this Agreement, the County acknowledges is equal

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overnight courier, to the principal offices of the County and the Grantee. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by formal notice hereunder.

If to the County:

Cleveland County
County Administration Building
Second Floor
311 E. Marion Street
Shelby, NC 28150
Attn: County Manager

With a copy that shall not constitute notice to:

Elliot M. Engstrom, or his successor
Deputy County Attorney
Cleveland County Government
P.O. Box 1210
Shelby, NC 28151

If to the Grantee:

PROJECT FIX
TBA _____
TBA _____

With a copy that shall not constitute notice to:

6. **Agreement Terms.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors in interest. This Agreement contains the total agreement between the parties and may only be altered or amended by the parties hereto in writing. If this Agreement, or any provision thereof, is determined to be invalid, unlawful, or otherwise null and void by any court of competent jurisdiction, then the remainder of this Agreement will remain valid and enforceable.
7. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. Exclusive venue for any disputes arising hereunder is conferred upon the General Courts of Justice of the State of North Carolina sitting in Cleveland County, North Carolina.
8. **Paragraph Headings.** Any paragraph headings contained in this Agreement are for convenience only and in no way enlarge or limit the scope or meaning of the various and several paragraphs contained herein.
9. **Assignments, etc.** Grantee shall not assign, sublet, or transfer any rights under or interest in this Agreement (including, but without limitation, monies that may become due or monies that are due) without the written consent of the County, which consent shall not be unreasonably withheld. Unless specifically stated to the contrary in any written consent to

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assignment, no assignment shall release or discharge the assignor from any duty or responsibility under this Agreement.

10. **Default.** It shall be an Event of Default, after which the County shall no longer be bound by this Agreement, if any one or more of the following events shall occur for any reason whatsoever (and regardless of whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule, or regulation of any administrative or governmental body):

- a. If Grantee, except in the event of force majeure, shall fail to observe and perform any material provision of this Agreement, and such failure shall continue for a period of thirty (30) or more days after the giving by the County of written notice of such failure to Grantee; or
- b. If any material representation, warranty, or other statement of fact contained in this Agreement or in any writing, certificate, report, or statement furnished by Grantee to the County in connection with the transaction described in this Agreement shall be false or misleading in any material respect when given; or
- c. If Grantee shall be unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of a receiver, trustee, liquidator, or conservator of itself or of the whole or any substantial part of its property; files a petition or answer seeking reorganization or arrangement or similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of American or any state; or
- d. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of Grantee or of the whole or any substantial part of its properties, or approves a petition filed against Grantee seeking reorganization or arrangement or similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of Grantee or of the whole or any substantial part of its properties.

11. **Statutory Authority for Incentive Grant.** Both Grantee and the County acknowledge that any and all monies appropriated and expended by the County for economic development incentives as provided in this Agreement are for a bona fide public purpose and are expended in good faith reliance on N.C.G.S. § 158-7.1. The County represents and warrants to Grantee that the County has made all findings and determinations required by law and has taken all action necessary to authorize the approval of the incentives described herein

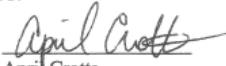
and the execution, delivery, and performance of this Agreement, and that this Agreement is a valid, legal, and binding obligation of the County, enforceable against it in accordance with its terms. In the event a court of competent jurisdiction, after final appeal, rules in a lawsuit to which either Grantee or the County is a party, that the monies expended by the County pursuant to this Agreement were not offered and accepted in good faith and pursuant to and in compliance with N.C.G.S. § 158-7.1 and, further, that such monies must be repaid, Grantee will make such repayment. If any incentives provided hereunder, including the Incentive Grants, or any portion thereof, are deemed by a court of competent jurisdiction to be ultra vires or not authorized by the laws or Constitution of the State of North Carolina, then the County will use reasonable efforts to provide to Grantee equivalent incentives (support having a similar financial net present value) as allowed by law. Further, if any elected officials of the County are found by a court of competent jurisdiction, after final appeal, to be personally liable for any of the monies so expended, and such liability is not covered by the County's public officials' liability insurance, then Grantee will indemnify such elected officials individually to the extent of the monies expended by the County pursuant to this Agreement. But exclusive of court costs and attorney's fees. The County agrees to maintain adequate public official liability coverage, consistent with that maintained by other similarly situated counties in North Carolina. The County agrees to require that its insurer(s) providing such coverage waive any subrogation rights it or they may have against Grantee in connection with such coverage, and the County waives (on behalf of itself and its insurer(s)) any claim or subrogation rights against Grantee to the extent covered by such insurance coverage. In the event one or more lawsuits are brought against the County or any County elected official challenging the legality of this Agreement, then (a) the County shall exercise its best efforts to defend against any and all such lawsuits, including appealing any adverse judgment to the appropriate court, and (b) the County will promptly notify Grantee in writing and allow Grantee to participate in the defense of any challenge, at Grantee's expense and with counsel of Grantee's choosing. The indemnification by the Grantee shall not apply if neither the Grantee nor any of its representatives participated in the improper acts of the County officials.

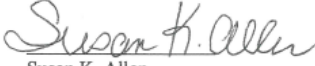
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto, acting under the authority of their respective governing bodies, have caused this contract to be duly executed, this the day and year first above written.

CLEVELAND COUNTY,
NORTH CAROLINA

ATTEST:


By: 
April Crofts
Cleveland County Deputy Clerk

By: 
Susan K. Allen
Chairman, Board of Commissioners

By: 
Lucas Jackson
Finance Director
Cleveland County

This instrument has been pre-audited in the manner required by, and complies with, Article 3 of Chapter 159 of the NC General Statutes, also cited as "The Local Government Budget and Fiscal Control Act"

PROJECT FIX

By: 
Printed Name: Terry Alan Riddler
Title: President

By: _____
Printed Name: _____
Title: _____

REGULAR AGENDA

AUDIT PRESENTATION

Chairman Allen called on Finance Director Lucas Jackson for the Audit Presentation. Mr. Jackson reviewed the following presentation for the fiscal year ending June 30, 2019.

Audit Presentation June 30, 2019



Lucas Jackson
Finance Director

JANUARY 21, 2020

Audit Presentation

Why? And Audit Background

- **Why have an audit?**
 - NC G.S. 159-34 - Requires all local governments in NC to contract with an external independent audit firm to conduct a full audit annually and submit results to LGC prior to Dec. 1st.
- **Cleveland County by statute must produce all books and records requested by the external auditor including all documents requested including compliance requirements**
- **Cleveland County contracted with Thompson, Price, Scott and Adams, Co. CPA's of Whiteville to conduct June 30, 2019 Audit – LGC Approved**

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Audit Presentation

Timeline of Audit Process

- February 2019 – BOC Approves Audit Contract (TPSA)
- April 2019 – Preliminary meetings and scheduling
- May 2019 – Interim work – Transaction testing, Compliance testing at DSS, Internal Control walk-throughs
- August 2019 – Cont. Interim work – Transaction testing, Payroll testing, cash counts
- September 2019 – Final work – Balance Sheet work and Compliance final

3


Audit Presentation

Audit Work Performed June 30, 2019

- 3 – visits on-site
- Over 500 invoices and 150 deposits selected and tested
- 5 Major DSS & Grant programs selected and tested
- CAFR submitted on time to LGC – with no comments or suggested changes
- CAFR also submitted for the Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting for the sixth consecutive year. This prestigious award is recognized across all local government.


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Audit Results June 30, 2019

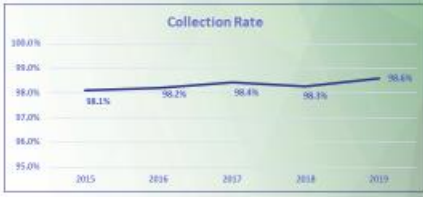


Audit Presentation

Audit Results – Property Taxes – General Fund



Year	Revenue
2015	\$46,072,485
2016	\$46,651,793
2017	\$47,672,024
2018	\$48,827,435
2019	\$50,841,256



Year	Collection Rate
2015	98.1%
2016	98.2%
2017	98.4%
2018	98.5%
2019	98.6%

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Audit Presentation

Audit Results – Local Option Sales Tax – General Fund



Year	Revenue
2017	\$10,925,664
2018	\$11,838,174
2019	\$11,459,606

7

Audit Presentation

Audit Results – Investment Income – General Fund



Year	Revenue
2015	\$158,983
2016	\$255,735
2017	\$481,347
2018	\$629,461
2019	\$1,026,978

8

Audit Presentation

Audit Results – Employee Compensation



9

Audit Presentation

Audit Results – Employee Health Fund - Monthly



10

Audit Presentation

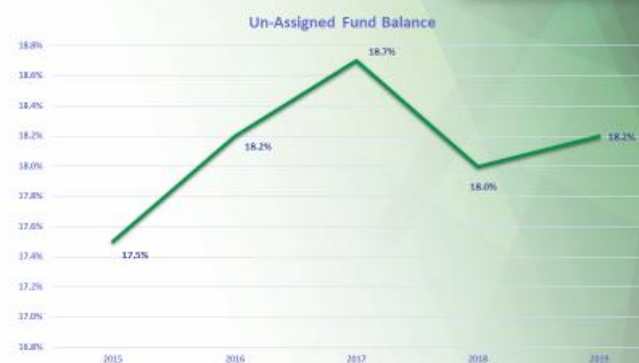
Audit Results – Total Fund Balance



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Audit Presentation

Audit Results – Unassigned Fund Balance



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Audit Presentation



QUESTIONS??

13

Following his presentation, Mr. Jackson called on Alan Thompson from Thompson, Price, Scott, Adams & Co. Audit Firm to review the Letter to Governance. Mr. Thompson stated Cleveland County has received an unmodified report with no significant audit findings, he praised the Finance staff for their gathering of information. Minor findings were discussed with management recently. Mr. Thompson informed Commissioners he would be happy to discuss anything with the board tonight and explained his phone number is in the report and would be willing to speak with you at any time.

LATE APPLICATIONS FOR EXEMPTION

Chairman Allen called upon Chris Green, Tax Administrator to present the Late Applications for Exemption. Mr. Green stated per N.C.G.S. 105-282.1 every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled to it.

Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the Board of Equalization and Review, the Board of County Commissioners, or the governing body of a municipality, as appropriate.

Mr. Green explained, applications appearing on the below roster would be eligible for 2019.

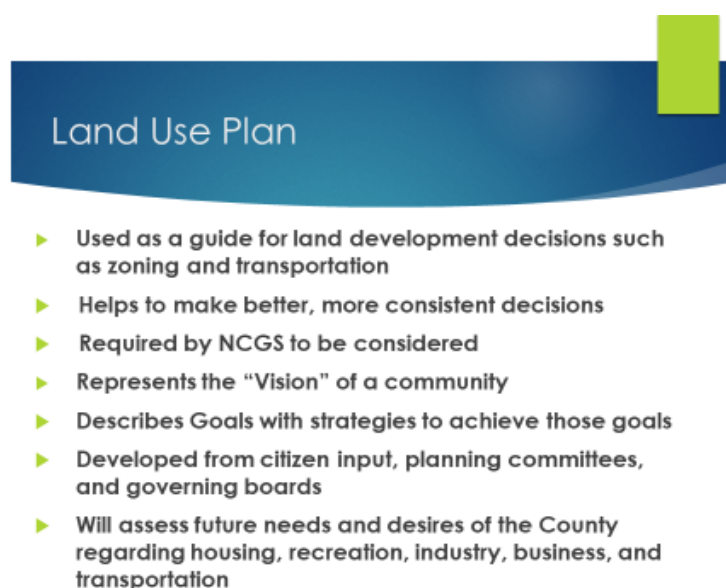
2019 LATE APPLICATIONS FOR EXEMPTION / EXCLUSION / DEFERRAL				
January 21, 2020				
Name	Parcel	Type	Value Exempt/Deferred	Fiscal Impact (Co. Only)
Friends of The Foothills Shooting Complex	16239	Charitable/Educational	\$ 161,621.00	\$ 921.24
Michael Ernest Putnam	17646	DAV	\$ 45,000.00	\$ 256.50
Brent W. Turner	49583	DAV	\$ 45,000.00	\$ 256.50
Martin Luther Austin	21214	DAV	\$ 45,000.00	\$ 256.50
Vicky Dorn Cook	53603	Eld/Dis	\$ 25,000.00	\$ 142.50
Sheila Earl Humphries	46455	Eld/Dis	\$ 38,456.00	\$ 219.20
David G. Shelton	39044	Eld/Dis	\$ 20,690.00	\$ 117.93
Brenda Louise Adams	13974	Eld/Dis	\$ 25,087.00	\$ 143.00
Harold D. Terry	33027	Eld/Dis	\$ 25,000.00	\$ 142.50
Paulette K. Bridges	9222	Eld/Dis	\$ 19,173.00	\$ 109.29
Macie L. Brackett	38374	Eld/Dis	\$ 33,040.00	\$ 188.33
Dean Davis Jr.	18332	Eld/Dis	\$ 33,763.00	\$ 192.45
Shirley W. Drewery	34444	Eld/Dis	\$ 25,000.00	\$ 142.50
Charles Ivan Swink	34015	Eld/Dis	\$ 15,769.00	\$ 89.88
Jimmy Lee Terry	49333	Eld/Dis	\$ 44,859.00	\$ 255.70
Pearlie M. Jenkins	20991	Eld/Dis	\$ 36,083.00	\$ 205.67
Joshua Scott Skinner	52277	PUV	\$ 22,875.00	\$ 130.39
TOTAL			\$ 661,416.00	\$ 3,770.07
2019 TOTAL LATE (YTD)			\$ 2,821,276.00	\$ 16,081.27

Vice-Chairman Whetstine stated he didn't believe these citizens should be penalized for being late, most of these citizens are Veterans or Elderly/ Disabled and he doesn't want to put a burden on them.

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Whetstine, and unanimously adopted by the Board to, *approve the Late Applications for Exemption.*

LAND USE PLAN CONSULTANT

Chairman Allen Called on Chris Martin Senior Planner to present on the Land Use Plan Consultant. Mr. Martin reviewed the following PowerPoint.



Process

- ▶ 12 -18 Month Process
- ▶ Includes
- ▶ Research, Interviews, and Review
- ▶ Workshops and Public Input
- ▶ Vision and Goals development
- ▶ Draft and Review
- ▶ Public Input
- ▶ Recommendation by Planning Board
- ▶ Adoption by Board of Commissioners

History

- ▶ 2005 Land Use Plan
 - ▶ 14 months and approximately 30 meetings of various types across the County
 - ▶ Drafted to be a 10 year plan
- ▶ Significant events since 2005 Plan
 - ▶ Recession
 - ▶ Progressive Economic Development
 - ▶ New 74 By-Pass construction
 - ▶ Future widening of I-85
 - ▶ Residential Housing shortage

2020 Land Use Plan

- ▶ October 2019 – Request for Proposals
- ▶ November 2019 – 3 Proposals received
 - ▶ Benchmark Planning
 - ▶ N Focus
 - ▶ Withers Ravenel

2020 Land Use Plan

- ▶ Why choose Benchmark?
 - ▶ Experience
 - ▶ Location – Familiar with our region
 - ▶ Competitive price
 - ▶ Positive client references
 - ▶ Organized approach
 - ▶ Implementable

▶ QUESTIONS?

Action

- ▶ Planning Staff recommends approval of contract with Benchmark Planning in the amount of \$98,000.

A Land Use Plan is designed to guide the future actions of a community. It is developed through many public meetings and represents the “vision” of a community with long range goals and strategies to achieve those goals.

Mr. Martin stated planning staff would like to recommend Benchmark Planning be awarded the bid to develop the new Cleveland County Land Use Plan. Bids were received through the Request for Proposal process from the following three companies: Benchmark Planning \$98,000, N Focus \$93,000 - \$102,300 and Withers Ravenel \$95,000 - \$125,000.

After careful evaluation of the three proposals, Planning Staff’s opinion is that Benchmark Planning is the most responsible bid. Staff identified the following pros of selecting Benchmark:

- **Experience:** More Land Use Plan development experience
- **References:** Positive client references

- **Organization:** Proposal and samples submitted were well organized
- **Location:** Familiar with our region and the impacts that regional development will have on Cleveland County
- **Cost:** Competitive price

A Land Use Plan is designed to guide the future actions of a community. It is developed through many public meetings and represents the “vision” of a community with long range goals and strategies to achieve those goals.

Chairman Allen opened the floor to the Board for questions and discussion. Commissioner Hutchins asked if this plan would include the municipalities. Mr. Martin state that if a municipality has adopted the county Unified Development Ordinance they will be included in the plan and the county would pay for that.

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Whetstine, and unanimously adopted by the Board to, *approve the Cleveland County Land Use Plan bid to Benchmark Planning.*

SHERIFF’S OFFICE PAY PLAN

Allison Mauney, Human Resources Director presented the following PowerPoint.

Ms. Mauney made a recommendation to the Cleveland County Board of Commissioners to approve revised Appendix E of the Cleveland County Ordinance. This change will provide levelled classifications for Maintenance Techs located in the Sheriff’s Office. These classifications offer opportunities for increases with years of service

and an accelerated process for those employees obtaining certificates of completion in plumbing, heating/HVAC or electrical training from an accredited 2 or 4-year educational institution. This accelerated process also allows for increases for completion of an associates' or bachelors' degree. See recommended changes below:

- (b) *Maintenance Tech.* The following applies to all employees in the sheriff's office employed as "Maintenance Tech I":
 - (1) *Level 1:* Employment before attainment of Levels 2.
 - (2) *Level 2:* Four (4) years of service a maintenance position for a governmental law enforcement agency in North Carolina; or three (3) years of such service and a certificate of completion from an accredited two year or four year educational institution in plumbing, heating/air/HVAC, or electrical; or any such service and a bachelor's degree.
 - (3) *Level 3:* Seven (7) years of service in a maintenance position for a governmental law enforcement agency in North Carolina; or four (4) years of such service and an associate's degree; or two (2) years of such service and a bachelor's degree.

These revisions will improve the County's ability to provide consistency and equity in classification and compensation within the Sheriff's Office as well as provide continued competitiveness with peer organizations.

Chairman Allen opened the floor to the Board for questions and discussion. Commissioner Hutchins asked if we could make these recommendations for County General Maintenance Employees. Mrs. Mauney reminded Commissioner Hutchins these additions were specifically for the Sheriff's Office.

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Hardin, and unanimously adopted by the Board to, *approve the changes to Appendix E- Sheriffs Office Pay Plan. (Appendix E Attached below)*

- (1) *Level 1:* Employment before attainment of Levels 2 or 3.
- (2) *Level 2:* Four (4) years of service in an administrative position for a governmental law enforcement agency in North Carolina; or three (3) years of such service and an associate's degree; or any such service and a bachelor's degree.
- (3) *Level 3:* Seven (7) years of service in an administrative position for a governmental law enforcement agency; or four (4) years of such service and an associate's degree; or two (2) years of such service and a bachelor's degree.
- (b) *Maintenance Tech.* The following applies to all employees in the sheriff's office employed as "Maintenance Tech I":
 - (1) *Level 1:* Employment before attainment of Levels 2.
 - (2) *Level 2:* Four (4) years of service in a maintenance position for a governmental law enforcement agency in North Carolina; or three (3) years of such service and a certificate of completion from an accredited two year or four year educational institution in plumbing, heating/air/HVAC, or electrical, or any such service and a bachelor's degree.
 - (3) *Level 3:* Seven (7) years of service in a maintenance position for a governmental law enforcement agency in North Carolina; or four (4) years of such service and an associate's degree; or two (2) years of such service and a bachelor's degree.
- (c.) *Detention officer.* The following applies to all employees in the sheriff's office employed as "detention officer":
 - (1) *Level 1:* Employment before attainment of Levels 2 or 3.
 - (2) *Level 2:* Four (4) years of service for a governmental law enforcement agency position for a governmental law enforcement agency in North Carolina; or two (2) years of such service and an associate's degree; or any such service and a bachelor's degree or any qualifying military service.
 - (3) *Level 3:* Seven (7) years of such service; or six (6) years of such service and an associate's degree; or two (2) years of such service and a bachelor's degree or any qualifying military service.
- (d) *Detention corporal.* The following applies to all employees in the sheriff's office employed as "detention corporal ":
 - (1) *Level 1:* Employment before attainment of Levels 2 or 3.
 - (2) *Level 2:* Three (3) years of service in a detention corporal position for a Cleveland County Sheriff's Office or one (1) year of such service and an associate's degree, or any such service and a bachelor's degree or any qualifying military service.
 - (3) *Level 3:* Seven (7) years of service in the role of detention corporal; or five (5) years of service in the role of detention corporal and an associate's degree; or two (2) years of service in the role of detention corporal and a bachelor's degree or any qualifying military service.
- (e) *Deputy.* The following applies to all employees in the sheriff's office employed as "deputy":
 - (1) *Level 1:* Employment before attainment of Levels 2 or 3.

APPENDIX E. - PAY PLAN OF OFFICE OF CLEVELAND COUNTY SHERIFF |

The following pay plan applies to all full-time employees of the Cleveland County Sheriff's Office.

Section 1. - Definitions for purposes of this pay plan only (listed alphabetically).

- (1) *Advanced certificate.* An "advanced certificate" acquired from the North Carolina Department of Justice.
- (2) *Associates degree.* For the purposes of this policy, an associate's degree is a two-year degree from an accredited educational institution, consisting of sixty (60) or more hours of credit from a technical school, community college, college, or university. The degree document must state that it is an associate's degree.
- (3) *Bachelor's degree.* For the purposes of this policy, a bachelor's degree is any four-year degree from an accredited educational institution, consisting of one hundred twenty (120) or more hours from a college or university. The degree document must state that it is a bachelor's degree.
- (4) *Intermediate certificate.* An "intermediate certificate" acquired from the North Carolina Department of Justice.
- (5) *Military service:* Service in any branch of the U.S. Armed Forces. In order for military service to entitle an employee to credit for such service in accordance with this pay plan, the following criteria must be met:
 - (a) The employee must have completed/fulfilled all obligations of his/her enlistment in any of the U.S. Armed Forces; and
 - (b) The employee must have received an honorable discharge after completion of all military contracts, or, in some rare cases, a medical discharge. In cases of medical discharge, a departmentally independent panel will review and determine eligibility for credit for such service based on employee's length of time served, and circumstances surrounding his or her discharge.
- (6) *Years employed by Cleveland County Sheriff's Office.* The total years (i.e., total completed months of employment by Cleveland County Sheriff's Office divided by twelve (12)), during which an employee has worked for the Cleveland County Sheriff's Office. Only completed years of service will be considered.
- (7) *Years of service.* The total years (i.e., total completed months of employment divided by twelve (12)) during which an employee has worked for any governmental law enforcement agency in North Carolina, including job experience elsewhere than for Cleveland County. These years do not need to be consecutive. Only complete years of service will be considered.

(Ord. of 9-18-18(2))

Section 2. - Classifications.

Employees will be subject to the following classifications, based on job title, certifications, years of employment by a governmental law enforcement agency in North Carolina, and educational attainment. Based on these criteria, employees will be classified into the "levels" set forth below:

- (a) *Administrative personnel.* The following applies to all employees in the sheriff's office employed as "administrative support assistant" or "administrative assistant":

- (2) *Level 2:* Four (4) years of service in the role of deputy for a governmental law enforcement agency; or two (2) years of such service and an associate's degree; or any such service and a bachelor's degree or any qualifying military service.
 - (3) *Level 3:* Two (2) years employed by the Cleveland County Sheriff's Office and any of the following: Seven (7) years of service; or six (6) years of service and an associate's degree; or two (2) years of service and a bachelor's degree or any qualifying military service.
 - (4) *Level 4:* Two (2) years employed by the Cleveland County Sheriff's Office and an advanced certificate and any of the following: Thirteen (13) years of service; or ten (10) years of service and an associate's degree; or six (6) years of service and a bachelor's degree or any qualifying military service.
- (f) *Investigator.* The following applies to all employees in the sheriff's office employed as "investigator":
- (1) *Level 1:* Employment before attainment of Levels 2 or 3.
 - (2) *Level 2:* (Four) 4 years of service with Cleveland County in the role of investigator; or three (3) years of service with Cleveland County in the role of investigator and an associate's degree; or any such service and a bachelor's degree or any qualifying military service.
 - (3) *Level 3:* Intermediate certificate and: Seven (7) years of service with Cleveland County in the role of investigator; or four (4) years of service with Cleveland County in the role of investigator and an associate's degree; or two (2) years of service with Cleveland County in the role of investigator and a bachelor's degree or any qualifying military service.
- (g) *Detention Master Corporal.* The following applies to all employees in the sheriff's office employed as "detention Master Corporal":
- (1) *Level 1:* Employment before attainment of Levels 2 or 3.
 - (2) *Level 2:* Four (4) years of service with Cleveland County in the role of detention master corporal; or two (2) years of such service and an associate's degree, or any such service and a bachelor's degree or any qualifying military service.
 - (3) *Level 3:* Seven (7) years of service with Cleveland County in the role of detention master corporal; or five (5) years of service with Cleveland County in the role of detention master corporal and an associate's degree; or two (2) years of service with Cleveland County in the role of detention master corporal and a bachelor's degree or any qualifying military service.
- (h) *Sergeant.* The following applies to all employees in the sheriff's department employed as "sergeant":
- (1) *Level 1:* Employment before attainment of Levels 2 or 3.
 - (2) *Level 2:* Four (4) years of service with Cleveland County in the role of sergeant; or three (3) years of service with Cleveland County in the role of sergeant and an associate's degree; or such service and a bachelor's degree or any qualifying military service.
 - (3) *Level 3:* Advanced certificate and any of the following: Eight (8) years of service with Cleveland County in the role of sergeant; or six (6) years of service with Cleveland County in the role of sergeant and an associate's degree; or three (3) years of service with Cleveland County in the role of sergeant and a bachelor's degree or any qualifying military service.

- (i) *Lieutenant.* The following applies to all employees in the sheriff's office employed as "lieutenant":
 - (1) *Level 1:* Employment before attainment of Levels 2 or 3.
 - (2) *Level 2:* Four (4) years of service with Cleveland County in the role of lieutenant; or three (3) years of service with Cleveland County in the role of lieutenant and an associate's degree; or any such service with a bachelor's degree or any qualifying military service.
 - (3) *Level 3:* Advanced certificate and any of the following: Eight (8) years of service with Cleveland County in the role of lieutenant; or six (6) years of service with Cleveland County in the role of lieutenant and an associate's degree; or three (3) years of service with Cleveland County in the role of lieutenant and a bachelor's degree or any qualifying military service.
- (j) *Captain.* The following applies to all employees in the sheriff's office employed as "captain":
 - (1) *Level 1:* Employment before attainment of Levels 2 or 3.
 - (2) *Level 2:* Advanced certificate and any of the following: Four (4) years of service with Cleveland County in the role of captain; or three (3) years of service with Cleveland County in the role of captain and an associate's degree; or any such service and a bachelor's degree or any qualifying military service.
- (k) *Major.* The following applies to all employees in the sheriff's office employed as "major":
 - (1) *Level 1:* Employment before attainment of Level 2.
 - (2) *Level 2:* Advanced certificate and any of the following: Four (4) years of service with Cleveland County in the role of major; or three (3) years of service with Cleveland County in the role of major and an associate's degree; or any such service and a bachelor's degree or any qualifying military service.

(Ord. of 9-18-18(2))

Section 3. - Promotional increases in compensation.

Employees will be classified according to their positions and fulfillment of the foregoing criteria. When an employee has fulfilled the requirements of any "level" beyond "level 1" of his/her position, then he/she will be given a promotional increase in compensation based on the chart below. Each employee shall inform the sheriff in writing of attainment of the certificate or degree on the basis of which the employee wishes a new classification to be based, and shall provide the sheriff with a complete copy of such certificate and/or evidence of award of the degree. (The department may require as much as thirty (30) days from compliance with this provision to implement the new classification.) The percentages set forth in the "promotional increase chart" below will be applied to the annual compensation that the employee is being paid in accordance with the "Cleveland County Pay Scale" that is in effect as of the date(s) of implementation of such promotional increases.

Promotional Increase Chart

Position	Grade	Level 2 Increase	Level 3 Increase	Level 4 Increase
Administration	6, 8, 12	4% of current compensation	2% of current compensation	None
Maintenance Tech	8	4% of current compensation	2% of current compensation	None
Detention officer	9	4% of current compensation	2% of current compensation	None
Deputy	11	4% of current compensation	2% of current compensation	6% of current compensation
Investigator	12	4% of current compensation	2% of current compensation	None
Detention Master Corporal	13	4% of current compensation	2% of current compensation	None
Sergeant	14	4% of current compensation	2% of current compensation	None
Investigator Sergeant	15	4% of current compensation	2% of current compensation	None
Lieutenant	16	4% of current compensation	2% of current compensation	None
Investigator Lieutenant	17	4% of current compensation	2% of current compensation	None
Captain	18	6% of current compensation	None	None
Major	21	6% of current compensation	None	None

(Ord. of 9-18-18(2))

Section 4. - Position incentives.

In addition to the promotional increases in compensation that will be awarded based on the criteria set forth above, selected sheriff's department employees will be paid additional monetary incentives to reward the performance of specified duties. These incentives will be awarded and paid on a semi-annual basis, and will be paid only as set forth below. Such incentives will be based on the "salary low" compensation that pertains to an employee's position that is set forth in the "Cleveland County Pay Scale" that is in effect as of the date(s) of payment of such incentives (regardless of the annual compensation that the employee is then actually being paid).

Employees employed in the following divisions will be paid a non-discretionary incentive payment ("incentive payment") of one and one-half (1.50) percent on a semi-annual basis (which amounts to three (3) percent annually): The Narcotics Division and the Criminal Investigative Division.

Employees employed in the following divisions or jobs will be paid an incentive payment of seventy-five hundredths of one (0.75) percent on a semi-annual basis (which amounts to one and one-half (1.50) percent annually): Community Interdiction Team Division, K-9 Division, and Field Training Officers.

No incentive payment shall be paid to an employee whose employment, regardless of reason, has come to an end as of the date of an incentive payment.

Employees employed in the Special Emergency Response Team ("SERT"), as defined by a roster maintained by the office of the sheriff, will be paid an incentive payment of one-half of one (0.5) percent on a semi-annual basis (which amounts to one (1) percent annually).

Provided, however, that any employee who has worked in one (1) of the foregoing positions or divisions for fewer than three (3) complete consecutive months shall be ineligible for such an incentive payment. If an employee has worked in one (1) of the foregoing positions for more than three (3) but fewer than twelve (12) complete consecutive months, then he/she is eligible for a pro-rated incentive payment based on the number of complete consecutive months worked in his/her role. For example, if an employee has worked in the narcotics division for eight (8) such months, then he/she is eligible for an incentive payment equal to (8 months/12 months) x 3% = (66.66) x 3% = two percent (2%).

With the exception of employees employed in the SERT, employees may qualify for only one (1) an incentive payment at any given time, and will be paid whichever potential incentive payment is greater. (For example, if an employee is a field training officer in the narcotics division, then he/she would qualify for the [one and] one-half (1.5) percent an incentive payment on a semi-annual basis (which will amount to three (3) percent if payable over two (2) consecutive semi-annual payments.) Employees employed in the SERT will be eligible for the SERT an incentive payment regardless of eligibility for any other incentive payments.

(Ord. of 9-18-18(2))

COMMISSIONER REPORTS

Commissioner Bridges – reminded everyone to make sure they are counted in the 2020 Census. April 1st is Census Day.

Commissioner Whetstine – attended several events in the community including several celebrations in observance of Martin Luther King Jr. Day.

Chairman Allen- Thanked everyone for being here tonight.

ADJOURN

There being no further business to come before the Board at this time, Commissioner Hardin made a motion, seconded by Commissioner Hutchins, and unanimously adopted by the Board, ***to adjourn the meeting***. The next meeting of the Commission is the Commissioners Strategic Planning Work Session scheduled for ***Thursday, January 30, 2020 at 12:30 p.m. at the Cleveland County Public Health Center***.

*Susan Allen, Chairman
Cleveland County Board of Commissioners*

*April Crotts, Deputy Clerk to the Board
Cleveland County Board of Commissioners*