



STATE OF NORTH CAROLINA

OFFICE OF INTERNAL AUDIT

February 21, 2014

MEMORANDUM

TO: Ms. Sharon Allred Decker, Secretary, North Carolina Department of Commerce
Dr. Patricia Mitchell, Assistant Secretary for Rural Development
Mr. Craig Honeycutt, County Manager, Alamance County
Mr. Kevin Howard, County Manager, Caswell County
Mr. Alan Carson, City Manager, City of Lexington
Mr. David Cheek, City Manager, City of Mebane
Mr. Cecil Wood, County Manager, Davie County
Mr. Matt Woodard, County Manager, Montgomery County
Mr. Lance Metzler, County Manager, Rockingham County
Mr. Andy Lucas, County Manager, Stanly County
Mr. Christopher Ong, Town Manager, Town of Yadkinville
Mr. Jeffrey Earp, Town Manager, Town of Haw River
Mr. Bob Scott, Town Manager, Town of Madison
Mr. Dwight Smith, Town Administrator, Town of Norwood
Ms. Carolyn Payne, Finance Director, Town of Yanceyville
Mr. Ben York, Town Administrator, Village of Alamance
Mr. Aaron Church, County Manager, Yadkin County

FROM: Barbara Baldwin, Internal Audit Director

RE: CDBG Investigative Report #2013-DOC-INV-28 amendment

This amendment shifts \$22,500 between findings and does not change the total misappropriated amount. Finding 1.1 Duplicate Payments is decreased to \$249,048 and Finding 1.2 Questionable Payments is increased to \$144,689. Details are:

- Town of Madison –
 - 2 Tri County Development lead abatement invoices for \$9,500 - Tri County Development is not a State certified provider.
 - 1 Tri County Development lead abatement invoices \$5,000 – The lead risk assessment stated no lead in these homes.
- Town Haw River – 1 Tri County Development lead abatement invoices \$8,000 – The lead risk assessment stated no lead in the home.

DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT BLOCK GRANT

INVESTIGATIVE REPORT

2013-DOC-INV-28

FEBRUARY 2014



Prepared by:

North Carolina
Office of State Budget and Management
Office of Internal Audit
Interagency Internal Audit Program

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STATE OF NORTH CAROLINA
OFFICE OF INTERNAL AUDIT

AUDITOR'S TRANSMITTAL

February 3, 2014

Ms. Sharon Allred Decker, Secretary, North Carolina Department of Commerce
Dr. Patricia Mitchell, Assistant Secretary for Rural Development
Mr. Craig Honeycutt, County Manager, Alamance County
Mr. Kevin Howard, County Manager, Caswell County
Mr. Alan Carson, City Manager, City of Lexington
Mr. David Cheek, City Manager, City of Mebane
Mr. Cecil Wood, County Manager, Davie County
Mr. Matt Woodard, County Manager, Montgomery County
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Mr. Jeffrey Earp, Town Manager, Town of Haw River
Mr. Bob Scott, Town Manager, Town of Madison
Mr. Dwight Smith, Town Administrator, Town of Norwood
Ms. Carolyn Payne, Finance Director, Town of Yanceyville
Mr. Ben York, Town Administrator, Village of Alamance
Mr. Aaron Church, County Manager, Yadkin County

We have completed our investigative review of allegations concerning the Department of Commerce, Division of Community Assistance, Community Development Block Grant program. The results of our investigation, along with recommendations for corrective action, are contained in this report.

Copies of this report have been provided to the Department of Justice and other appropriate officials.

Respectfully submitted,

Barbara Baldwin, CPA, CIA, CICA

Director of Internal Audit

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* Finding 1.1 decreased by \$22,500 and finding 1.2 increased by \$22,500.

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Executive Summary

Introduction, pages 1–3

The Department of Commerce requested the Office of State Budget and Management’s Internal Audit Section to investigate the activities related to a third party administrator for the Community Development Block Grant (CDBG) program. The primary purpose of the program is to provide grants to local governments to improve housing and economic opportunities primarily for low and moderate income persons. Local governments employ companies to assist with grant administration and construction oversight to fulfill grant requirements.

Conclusions in Brief

Local governments have limited resources and relied heavily on the company’s project administrator for managing the grants. Inadequate oversight, lack of internal controls, and insufficient procedures at local governments provided opportunities for misappropriation of assets, and noncompliance with grant and contract requirements.

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Appendix A provides a summary by Local Government for alleged loss of funds.

¹Finding 1.1 decreased by \$22,500 and finding 1.2 increased by \$22,500.

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Purpose

The Office of State Budget and Management's Office of Internal Audit was requested by the Department of Commerce, Division of Community Assistance (Department) to investigate allegations concerning the Community Development Block Grant (CDBG) program. The allegation asserted that an employee of Hobbs, Upchurch, and Associates that was designated the project administrator for local government grants was:

- Self-awarding contracts thereby creating a conflict of interest;
- Self-approving invoices circumventing internal controls;
- Obtaining funds for services not performed; and
- Sweeping grant accounts to zero out the grant balance.

Scope and Methodology

The scope of this investigative review was limited to local government grants assigned to the same project administrator employed by Hobbs, Upchurch, and Associates. This review covered activities from January 2007 through December 2012 at 26 local governments. The following procedures were performed:

- Reviewed applicable State and Federal laws/regulations;
- Reviewed CDBG grant agreements;
- Reviewed third party administrator contracts;
- Reviewed subcontractor contract agreements;
- Reviewed local government policies and procedures;
- Reviewed local government expenditures;
- Interviewed State and local government employees;
- Interviewed third party administrators and their employees;
- Interviewed contractors; and
- Conducted site visits to homes receiving CDBG grants.

Program Background

The Community Development Block Grant (CDBG) Program was created under Title I and funded through the U.S. Department of Housing and Urban Development. The primary purpose of the program is to provide grants to local governments to develop viable urban communities by improving living conditions, health environments and expanding economic opportunities primarily for low and moderate income persons.

The Department of Commerce, Division of Community Assistance (Department) administers the State of North Carolina's CDBG program through contracts with local governments in non-entitlement areas. Non-entitlement areas are small rural cities and towns with populations of less than 50,000 and counties with populations less than 200,000.

Introduction

The Department created various CDBG program categories designed to meet the needs of North Carolina communities. The programs are:

- **Scattered Site Housing** – addresses the most critical housing needs of very low income families.
- **Infrastructure** – provides public water or sewer to correct severe health or environmental problems.
- **Small Business Entrepreneurial Assistance** – creates and retains jobs for struggling small local businesses.
- **Talent Enhancement Capacity Building** – helps non-profits in partnership with local government’s design and carry-out activities to address the challenge of capacity.
- **Housing** – creates multi-unit rental developments and single family homes.
- **NC Catalyst** – provides improved housing, a suitable living environment, and expands economic opportunities.
- **NC Tomorrow** – a one-time allocation and a subset of NC Catalyst to develop comprehensive economic development strategies.
- **Community Revitalization** – helps revitalize residential areas through improvements, preservation, and development.
- **CDBG-Recovery (CDBG-R)** – a one-time allocation to provide recovery funds under Title XII of the American Recovery and Reinvestment Act of 2009.

Local governments are responsible for submitting applications to the Department for funding. Normally, a company (i.e. Hobbs, Upchurch and Associates) will identify eligible projects and complete the application on behalf of the local government. Local governments do not solicit companies to perform application work; instead companies will perform the work free of charge in anticipation of gaining the third party administration contract.

Once local governments are awarded a CDBG grant, the local government issues a solicitation to hire a company to be the third party administrator. This is a bid process and the company awarded the contract will be responsible for overseeing all aspects of the project². Typically, 10% to 15% of the total grant amount is allotted for the third party administrator and these contracts are fixed price contracts. The contract is divided into two parts, administration of the grant and rehabilitation of the properties. The company will assign one employee to function as the project administrator. The responsibility of the project administrator includes, but is not limited to:

- Grant Administration:
 - Preparing environmental review records, requisitions, disbursement documents, quarterly/annual/final performance report, and response to monitoring visits;
 - Establish and maintain a filing system in accordance with grant requirements;
 - Preliminary approval of invoices;
 - Assist with procuring professional services (appraiser/legal), and participation during formal audits;
 - Coordinate all third party professional contracts;

² In this review Hobbs, Upchurch, and Associates were awarded the third party administrator contract.

Introduction

- Monitor payrolls for compliance with Davis Bacon Act; and
- Assume all administrative responsibility for program compliance and completion.
- Rehabilitation Administration:
 - Prepare policy documents, work write-ups, bid packages, rehabilitation contracts, payment requests, and security agreements;
 - Oversee execution of rehabilitation contracts;
 - Conduct pre-construction conferences/notice to proceed, and inspection/construction management twice a week at residences;
 - Coordinate purchase of building permits by contractors, and change orders; and
 - Record security agreements and memorandum of contract and lien.

The local government is responsible for ensuring work is performed properly and grant requirements are met. Responsibilities include:

- Review and approve requisitions and disbursements;
- Ensure accuracy/necessity of disbursements, accuracy/timeliness of reports, and rehabilitation work is necessary and conforms to contract requirements;
- Request transfer of funds from the Department;
- Issue checks directly to the third party administrator, and rehabilitation contractors;
- Comply with procurement laws/rules/requirements/policies/procedures, and State and Federal grant requirements;
- Oversight of the third party administrator; and
- Maintain original documents at the local government office.

The Department has 16 employees to fulfill CDBG program responsibilities which include:

- Review and approve local government applications and transfer funds request;
- Monitor local government grant compliance; and
- File required federal reports.

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1. Misappropriation of \$397,171 of CDBG Funds

The Community Development Block Grant (CDBG) program is State administered and local government operated. The local government hired a Third Party Administrator to assist with oversight of the grant. Hobbs, Upchurch, and Associates was awarded the Third Party Administrator contract for all CDBG grants reviewed by the investigative team. The Third Party Administrator assigned an employee as the Project Administrator, who worked directly with the local government. Hobbs, Upchurch, and Associates assigned the same employee as Project Administrator for all grants reviewed by the investigative team.

In conversations with Hobbs, Upchurch, and Associate, the Project Administrator worked out of his home city of Lexington³, along with two other employees, the grant administrator and rehabilitation specialist. These individuals worked as a team to fulfill the third party administrator contract requirements. The Project Administrator appeared to work independently of the home office and was not required to submit any of the local government grant documents to the home office⁴. All three employees left Hobbs, Upchurch, and Associates employment due to alleged financial difficulty causing payroll delays and slow reimbursement of business expenses⁵.

Our review included 26 local governments of which 10 local governments issued payments to Tri-County Development and Carolina Governmental Services. The businesses are owned by the employee assigned as Project Administrator by Hobbs, Upchurch, and Associates. The employees of Tri-County Development and Carolina Governmental Services are the same employees of Hobbs, Upchurch, and Associates that worked with the Project Administrator out of Lexington (see finding #2.2 for more details on conflict of interest).

It appears the 10 local governments relied heavily on the Project Administrator for most, if not all, aspects of completion of and compliance with the CDBG grants including hiring contractors and approving invoices. Also, it appeared some local governments had a partnership rather than a contractor relationship with the Project Administrator. These two items, contributed to local governments lack of monitoring and oversight of the Project Administrator and circumstances of internal control break down. Nevertheless, the local governments are the grant recipient and ultimately are responsible for oversight and compliance with grant requirements.

The failure to provide adequate monitoring and oversight of the Project Administrator's activities increased the opportunity for misappropriation of funds. Details of the methods used related to misappropriated funds follow.

³ Hobbs, Upchurch, and Associates are located in Southern Pines.

⁴ Per Hobbs, Upchurch, and Associates, copies of all grant documents maintain at the Southern Pines office as backup.

⁵ Per statements made by the Project Administrator and Grant Administrator.

Findings and Recommendations

1.1. Duplicate Payments of ~~\$271,547~~ \$249,048⁶ Paid to a Company Owned by the Project Administrator

The investigative team identified ~~52~~ 48⁶ invoices totaling ~~\$271,547~~ \$249,048⁶ in duplicate payments. These invoices were paid to Tri-County Development, as well as to other contractors for lead based paint inspections, lead abatement, and/or rehabilitation services for homes in various counties from May 2007 through December 2012.

It appears the Project Administrator was creating Tri-County Development invoices for services rendered by other contractors, approving the invoices and submitting the invoices to the local government for payment. Table 1 quantifies duplicate payments to Tri-County Development by local governments. Duplicate invoices included:

- The Town of Madison paid Tri-County Development \$43,720 for rehabilitation services⁷ at two homes. Building permits recorded with the Town of Madison for these homes were not in the name of Tri-County Development. The companies named on the permits stated they provided rehabilitation services for these homes and were paid by Rockingham County⁸. A homeowner verified Tri-County Development did not provide rehabilitation services at their homes. The same Hobbs, Upchurch, and Associates employee was the Project Administrator for the CDBG grants awarded to the Town of Madison and Rockingham County.
- The Town of Haw River, Town of Yanceyville, Town of Madison, Town of Norwood, Town of Yadkinville, City of Lexington, and Montgomery County paid Tri-County Development for lead abatement services totaling ~~\$213,577~~ \$191,078⁶. Local government files had signed contracts and payments made to other companies for lead abatement services at these homes.
- The Town of Madison, Town of Yanceyville, Town of Yadkinville and Caswell County paid \$14,250 to Tri-County Development for “lead based paint evaluations”. Local government files had lead paint evaluation/risk assessment reports⁹ for each residence from a certified lead inspection company. There were no Tri-County Development lead paint evaluation/risk assessment reports on file at any of the local government.

Local Government	Invoices	Homes	Amount
Town of Madison ⁶	9	7	\$69,870
Town of Haw River ⁶	7	6	\$53,682
Town of Yanceyville	12	7	\$50,750
Town of Norwood	5	5	\$24,500
Town of Yadkinville	5	4	\$20,500
City of Lexington	4	4	\$14,000
Montgomery County	1	1	\$11,996
Caswell County	5	5	\$3,750
Total	48	39	\$249,048

Source: Local Government records

Tri-County Development is not certified to perform lead paint inspections or abatement work. (see finding #2.1 for details on lead paint certification). The only explanation provided by the owner of

⁶ Four Tri-County Development invoices (3 Madison \$14,500 & 1 Haw River \$8,000) deleted from finding 1.1 & added to finding 1.2.

⁷ The construction type work performed at residences.

⁸ Rockingham County received a CDBG grant for these homes.

⁹ Outcome of lead based paint inspection/evaluations.

Findings and Recommendations

Tri-County Development (Owner) was for the lead paint invoices, explaining these services were not actually lead-based paint evaluations or abatement work. The Owner described the scope of work as: coordination of lead-based paint testing and occupant notification; development of bid specifications for lead-based paint abatement; and oversight of the lead-based paint abatement process by a rehabilitation contractor. However, Tri-County Development invoices state “Invoice for Lead-Base Paint Evaluations” or “Invoice for Lead Abatement Services”. See Appendix B for examples of Tri-County Development invoices.

The scope of activities described by the Owner is also included as the responsibility in the contract with Hobbs, Upchurch, and Associates. The Hobbs, Upchurch, and Associates contacts were fixed price contracts and these responsibilities should not have been subcontracted. See Appendix C for a Hobbs, Upchurch and Associates contract¹⁰.

Only Montgomery County had a Tri-County Development contract on file. Upon request, the owner produced contracts for six other local governments. No contract was provided for the Town of Yadkinville. All seven contracts had the identical scope of work as described above. However, local government staff were unaware that the owner of Tri-County Development was the Hobbs, Upchurch, and Associates employee assigned as their Project Administrator and some did not remember executing a contract with Tri-County Development (see finding #2.2. for more details on conflict of interest). These contracts were a per hour rate while the invoices were lump sum amounts. See Appendix D for an example of a Tri-County Development contract and Appendix B for a Tri-County Development invoice.

1.2. Questionable Cost of ~~\$122,190~~ \$144,689¹¹ Paid to Companies Owned by the Project Administrator

The investigative team identified ~~24~~ 28¹¹ invoices totaling ~~\$122,190~~ \$144,689¹¹ of questionable costs. There were 27¹¹ Tri-County Development invoices totaling ~~\$114,103~~ \$136,602¹¹ and one Carolina Governmental Services invoice totaling \$8,087. It appears the Project Administrator was creating Tri-County Development or Carolina Governmental Services invoices for services they were not qualified to perform, work which was unnecessary or services which were disallowed by the Department. Table 2 quantifies the questionable payments by local governments.

Table 2 Questionable Payments			
Local Government	Invoices	Homes	Amount
Caswell County	7	6	\$60,432
Town of Madison ¹¹	10	16	\$43,400
Yadkin County	2	2	\$9,090
City of Mebane	1	0	\$8,087
Town of Yadkinville	2	10	\$7,620
Town of Yanceyville	4	4	\$7,250
Town of Haw River ¹¹	2	2	\$8,810
Total	28	40	\$144,689
Source: Local Government records			

Carolina Governmental Services received \$8,087 from the Town of Mebane for grant administration and Davis Bacon Act compliance. These activities are the responsibility of the third party

¹⁰ Hobbs, Upchurch and Associates use a contract template.

¹¹ Four Tri-County Development invoices (3 Madison \$14,500 & 1 Haw River \$8,000) deleted from finding 1.1 & added to finding 1.2.

Findings and Recommendations

administrator, Hobbs, Upchurch and Associates. See Appendix C for a Hobbs, Upchurch, and Associates contract.

Tri-County Development questionable cost included:

- Caswell County, Town of Haw River, Town of Madison, and Town of Yanceyville, paid ~~\$38,240~~ \$51,241¹² for alleged lead abatement services at five residences where the lead based paint evaluation/risk assessment report stated no lead abatement was necessary.
- Town of Madison paid \$10,400 for alleged lead abatement services performed at two fictitious addresses.
- Yadkin County paid \$8,590 for alleged lead abatement services. In a letter from Department, this same home was disallowed services. Also, resident filed an affidavit with the county sheriff's office claiming no lead remediation had been performed at her residence.
- Caswell County, Town of Madison and Town of Haw River paid ~~\$30,501~~ \$40,001¹² for alleged lead abatement at three residences. Tri-County Development is not licensed by the State to remediate lead paint.
- Caswell County, Town of Madison, Town of Yanceyville, and Town of Yadkinville paid \$17,370 for alleged lead paint inspection. Tri-County Development is not licensed by the State to perform lead paint inspection services.
- Town of Madison paid \$8,500 for lead paint inspection or lead abatement at four homes that had no lead paint issues or lead paint was previously remediated.
- Yadkin County paid \$500 for pressure diagnostics which, per the Project Administrator, is not necessary for CDBG grant but necessary for Housing Finance Agency grants.

Tri-County Development is not certified to perform lead paint inspections or abatement work. (see finding #2.1 for details on lead paint certification). The only explanation provided by the owner of Tri-County Development (Owner) was for the lead paint invoices, explaining these services were not actually lead-based paint evaluations or abatement work. The Owner described the scope of work as: coordination of lead-based paint testing and occupant notification; development of bid specifications for lead-based paint abatement; and oversight of the lead-based paint abatement process by a rehabilitation contractor. However, Tri-County Development invoices state "Invoice for Lead-Base Paint Evaluations" or "Invoice for Lead Abatement Services". See Appendix B for examples of Tri-County Development invoices.

The scope of activities described by the Owner is also included as the responsibility in the contract with Hobbs, Upchurch, and Associates. The Hobbs, Upchurch, and Associates contracts are fixed price contracts and these responsibilities should not be subcontracted. See Appendix C for a Hobbs, Upchurch and Associates contract⁸.

There were no Tri-County Development contracts on file at the local government offices. Upon request, the Owner provided contracts for three local governments. No contracts were provided for

¹² Four Tri-County Development invoices (3 Madison \$14,500 & 1 Haw River \$8,000) deleted from finding 1.1 & added to finding 1.2.

Findings and Recommendations

Yadkin County and the Towns of Mebane and Yadkinville. All three contracts had the identical scope of work as described above. However, local government staff were unaware that the owner of Tri-County Development was the Hobbs, Upchurch, and Associates employee assigned as their Project Administrator and some did not remember executing a contract with Tri-County Development (see finding #2.2. for more details on conflict of interest). These contracts were a per hour rate while the invoices were lump sum amounts. See Appendix D for an example of a Tri-County Development contract and Appendix B for a Tri-County Development invoice.

1.3. Project Administrator Sweeps Grant Balance of \$3,434

The investigative team found one instance where it appears the CDBG grant account was zeroed out by issuing a check to Tri-County Development for the remaining grant balance. Yadkin County was awarded \$75,000 for a CDBG infrastructure hook-up grant. The third party administration was a fixed award for \$11,000. The third party administrator received the \$11,000 in partial payments throughout the project's life. The remaining funds (\$64,000) were used to rehabilitate residences (hook up sewer and water lines) which were based on estimates in the Yadkin County application. As work was completed the rehabilitation contractor was reimbursed for actual costs.

Based on the Yadkin County general ledger, three final payments were issued on April 30, 2010. The third party administrator received a final payment of \$3,110 bringing the total payments to the contracted to \$11,000. The rehabilitation contractor received \$19,525 leaving a balance of \$3,434. Tri-County Development received a check for \$3,434 for sewer and water hook-up.

2. Noncompliance with Grant or Contract Requirements

Local governments were the recipient of the Department's CDBG awards. Although local governments contract with a third party administrator to assist with grant administration and rehabilitation oversight, local government management is ultimately responsible for oversight and compliance with the grant requirements.

The Department performs desk reviews and on-site monitoring to provide an additional level of assurance that local governments comply with CDBG grant requirements. The Department has two monitors to perform on-site visits for more than 430 active grants.

The investigative team identified noncompliance with laws and grant requirements. It appeared local governments relied heavily on the Project Administrator for most, if not all, aspects of compliance with and performance of the CDBG grant requirements. Also, it appeared some local governments have a partnership rather than a contractor relationship with the Project Administrator. These two items, contributed to local governments' internal control break down.

Findings and Recommendations

2.1. Tri-County Development Was Not Certified to Perform Lead Abatement Work

The investigative team identified 74 Tri-County Development invoices totaling \$341,430 for lead paint inspection/abatement services. North Carolina General Statute §130A-453.03 requires all individuals and/or companies to be certified prior to performing lead paint inspections, risk assessments, or abatement. The North Carolina Department of Health and Human Services, Division of Public Health is responsible for compliance with this law and administers programs for obtaining certifications.

The investigative team reviewed the Division of Public Health’s website and contacted the Division of Public Health to obtain the most recent list of certified lead professionals. Tri-County Development, its owner, or employees were not listed as certified lead professionals with the Division of Public Health. Therefore, no lead inspection or abatement work should have been performed by nor issued to this company.

The owner of Tri-County Development (Owner) explained these services were not actually lead-based paint evaluations or abatement work. The Owner described the scope of work as: coordination of lead-based paint testing and occupant notification; development of bid specifications for lead-based paint abatement; and oversight of the lead-based paint abatement process by a rehabilitation contractor. The Owner further explained how employees of Tri-County Development performed this work, not him, and how these employees were trained to perform these activities and that these activities were not part of the administrative service contract with Hobbs, Upchurch, and Associates but instead fell under the rehabilitation line item.

As mentioned earlier in this report, all employees of Tri-County Development were the same Hobbs, Upchurch, and Associate employees that worked with the Project Administrator out of Lexington. Also mentioned early, there are two parts to the third party administrator contract, grant administration and rehabilitation services. The rehabilitation service does include these types of activities and should not have been subcontracted since the third party contract is a fixed price contract. Finally, Tri-County Development’s invoices state “Invoice for Lead-Based Paint Evaluations” or “Invoice for Lead Abatement Services. See Appendix B for examples of Tri-County Development invoices.

Failure to perform licensed lead abatement work could cause citizens to be at risk for safety, liability, and health issues.

2.2. Noncompliance with CDBG Conflict of Interest Requirement

The Project Administrator submitted 78 invoices totaling \$397,171 to 10 local governments on behalf of Tri-County Development and Carolina Governmental Services and the Project Administrator had a financial interest in these businesses.

Findings and Recommendations

Tri-County Development is a limited partnership¹³ owned by the Project Administrator and registered as a DBA¹⁴ with Davidson County Register of Deeds. In addition, the Project Administrator and Grant Administrator¹⁵ are co-owners of Carolina Governmental Services which is a limited liability company with article of organization filed at the North Carolina Secretary of State on April 24, 2012. The Project Administrator, Grant Administrator along with the Rehabilitation Specialist¹¹ worked together as a team while employed at Hobbs, Upchurch and Associates. The Project Administrator was employed with Hobbs, Upchurch, and Associates from September 2003 through December 2012 and worked out of a residence located in Lexington, North Carolina, along with the Grant Administrator and Rehabilitation Specialist. All three employees left Hobbs, Upchurch, and Associates at the same time and work for Carolina Governmental Services as a competitor of Hobbs, Upchurch, and Associates.

The grant agreements between the Department and local governments state “no member, officer, or employee of the recipient, or its *agents*...who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, or work to be performed in connection with the program assisted under this agreement as stated in the contract agreement *between the county and the third party administrator*.” Emphasis added.

Similar language is also included in the administrative contract between the third party administrator and the local governments.

The Project Administrator and Grant Administrator stated “I never signed a conflict of interest statement” and “the manual I signed for did not include a policy for conflict of interest”¹⁶. The Project Administrator explained that he did not contract with Tri-County Development, the local governments contracted with Tri-County Development and therefore it was not a conflict of interest.

No documentation was on file showing Tri-County Development services were procured in a competitive or transparent process. Conflict of interest can result in favoritism, unfair competitive advantage, and possible misappropriation of grant funds.

2.3. Adequate Records Were Not Maintained by Local Governments

The investigative team requested 75 project (residence) files from 10 local governments. Of the 75 projects, 21 (28%) of the files either lacked documentation or contained no documentation. Results by local governments are:

- Town of Yanceyville – 2 of 12 project files had no documentation on file.
- Caswell County – 4 of 8 project files were missing documents.
- Town of Madison – 15 of 15 project files were missing documents.

¹³ Tri-County Development dissolved the limited partnership in June 12, 2013.

¹⁴ Doing Business As.

¹⁵ A Hobbs, Upchurch, and Associates employee that works with the Project Administrator in Lexington.

¹⁶ Employees at Hobbs, Upchurch, and Associates sign a statement when they receive the employee handbook.

Findings and Recommendations

In addition, the Town of Norwood stated the Project Administrator possessed all the project files and must deliver them prior to our site visit.

The contracts between the Department and local governments states; “Access to Records-The recipient shall provide any duly authorized representative of DOC, the federal Department of Housing and Urban Development (HUD), and the Comptroller General at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the grant for a period of five years following the completion of all close-out procedures. **All original files shall be maintained at the Local Government offices** for access purposes.” Emphasis added.

According to local government staff, original project documents were not maintained at the local government office instead the Project Administrator kept the project files in their possession and the local government would request the files when necessary. However, the Project Administrator explained how all files were returned to the local governments and the local governments must have misplaced the files. By not having the original files, local governments are noncompliant with grant requirements and at increased risk of potential misappropriation of assets.

2.4. Payments Issued Directly to Third Party Administrator’s Employees

The investigative team identified \$12,153 paid directly to the Project Administrator or Rehabilitation Specialist for the cost of recording deeds. These costs should not have been paid to the employees but instead to the third party administrator, Hobbs, Upchurch, and Associates. Table 3 quantifies the amounts paid directly to employees of Hobbs, Upchurch, and Associates by each local government.

The third party administrator’s contract required Hobbs, Upchurch, and Associates to bill the local governments for service rendered. Hobbs, Upchurch, and Associates explained the Project Administrator should have submitted the receipts for deed recording to Hobbs, Upchurch, and Associates for reimbursement. These costs would have been billed to the local government and Hobbs, Upchurch, and Associates would have reimbursed its employees.

The Project Administrator informed the investigative team that Hobbs, Upchurch, and Associates were slow to reimburse employees, the county courthouses would not accept credit cards, the local governments preferred to pay the project administrator directly, therefore he chose to direct bill the local governments for recording fees.

Table 3 Deed Recording Fees	
County	Amount
Alamance County	\$2,067
Town of Yanceyville	\$1,587
Davie County	\$1,448
Town of Norwood	\$1,342
Stanly County	\$1,216
Caswell County	\$1,148
Town of Haw River	\$1,008
City of Lexington	\$890
Yadkin County	\$543
Montgomery County	\$346
Town of Madison	\$168
Village of Alamance	\$188
Rockingham County	\$119
Town of Yadkinville	\$83
Total	\$12,153
Source: Local Government records	

Recommendation

1. The Department should:
 - a. Seek restitution from the local government for misappropriated funds.
 - b. Report misappropriated amounts to the U.S. Department of Housing and Urban Development.
 - c. Improve the monitoring program over the local governments which may include, but is not limited to:
 - a. Enhance the risk based monitoring approach;
 - b. Enhance desk reviews and on-site processes; and
 - c. Increasing the number of on-site monitors.
2. The local governments should:
 - a. Seek restitution from the third party administrator and/or the project administrator.
 - b. Improve third party administrator monitoring by retaining a portion of the administrative funds to adequately staff the oversight of CDGB grants.
 - c. Enhance internal controls or employee's conformance with internal control procedures to ensure payments are issued for valid services which conform to contract and grant requirements.

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Appendix A

Summary of Findings by Local Government

Summary of Findings by Local Government ¹⁷				
Local Government	Finding 1.1 Duplicate Payments	Finding 1.2 Questionable Payments	Finding 1.3 Sweeping Account	Grand Total
Town of Madison	\$69,870	\$43,400		\$113,270
Caswell County	\$3,750	\$60,432		\$64,182
Town of Haw River	\$53,682	\$8,810		\$62,492
Town of Yanceyville	\$50,750	\$7,250		\$58,000
Town of Yadkinville	\$20,500	\$7,620		\$28,120
City of Lexington	\$14,000	0		\$14,000
Town of Norwood	\$24,500	0		\$24,500
Yadkin County		\$9,090	\$3,434	\$12,524
Montgomery County	\$11,996	0		\$11,996
City of Mebane		\$8,087		\$8,087
Total	\$249,048	\$144,689	\$3,434	\$397,171

¹⁷ Appendix A amended to reflect four Tri-County Development invoices (3 Madison \$14,500 & 1 Haw River \$8,000) deleted from finding 1.1 & added to finding 1.2.

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Appendix B
Tri-County Development Invoices



Tri-County Development

PO Box 1541
Lexington, NC 27293-1541

Phone: 1-800-614-6831

December 20, 2010

Invoice for Lead-Base Paint Evaluations:

Town of Yanceyville
PO Box 727
Yanceyville, NC 27379

Evaluations Requested By:



Hobbs, Upchurch & Associates, PA

Inspection Locations:

- First Avenue
- W. Church Street
- W. Church Street
- First Avenue
- First Avenue
- First Avenue
- W. Church Street
- W. Church Street

Inspection Fee:

\$750.00 per unit

8 units

Total: \$6,000

Total Invoice: \$6,000

Appendix B
Tri-County Development Invoices



Tri-County Development

PO Box 1541
Lexington, NC 27293-1541

Phone: 1-800-614-6831

October 13, 2010

Invoice for Lead Abatement Services:

Town of Haw River
PO Box 103
Haw River, NC 27258

Owner's Name: [REDACTED]
Address: [REDACTED] Short Street

Abatement Treatment Areas:
Exterior Wall
Exterior Fascia and Soffit
Windows
Doors
Lead Treatment

Total Invoice: \$8,500

Appendix C
Example of Hobbs, Upchurch, & Associates, P.A.
Third Party Administrator Contract

CONTRACT FOR ADMINISTRATIVE SERVICES

This AGREEMENT made this [REDACTED] day of [REDACTED], [REDACTED] by and between the [REDACTED], hereinafter called the OWNER and HOBBS, UPCHURCH & ASSOCIATES, P.A., hereinafter called the ADMINISTRATOR.

WHEREAS, the OWNER intends to implement the proposed project activities as described in Town of [REDACTED] Community Development Block Grant Application for Concentrated Needs particularly described as Grant No. [REDACTED], hereinafter called the PROJECT.

NOW, THEREFORE, the OWNER and ADMINISTRATOR, for the consideration hereinafter named, agree as follows:

The ADMINISTRATOR agrees to perform for the above named PROJECT professional services as hereinafter set forth.

The OWNER agrees to compensate the ADMINISTRATOR for services as hereinafter provided.

The ADMINISTRATOR's services shall include:

GENERAL ADMINISTRATION - SECTION I

1. Prepare Environmental Review Record and assist the Owner in achieving release of all conditions and funds.
2. Establish and maintain a filing system for the project in accordance with the Department of Commerce, Division of Community Assistance Model Filing System.
3. Assist the Owner in establishing a project financial management system. The consultant will be responsible for the preparation of all requisitions, disbursement documentation, and preliminary approval of disbursements. The Owner will review, approve, and sign all requisitions and disbursement checks. All posting of checks will be performed by the Owner.
4. Draft, for Board approval, general policy documents to insure that the Owner is in compliance with all aspects of the Certification submitted with the Grant Application. This compliance to include citizen participation, anti-displacement, Section 504, etc.
5. Assist the Owner in procuring other professional services such as legal, appraisal, etc. to meet the program guidelines. This will include the development of advertisements, RFP's and contract documents meeting all Federal requirements.
6. Provide coordination for all third party professional contracts to insure the timely implementation of the project and provide assistance as needed to carry out the project.
7. Provide the Engineer with contract administration on the infrastructure installation. Upon receipt of survey maps, procure appraisal services and initiate easement acquisition (to be in conformance with Uniform Act of Real Property Acquisition and Relocation). Coordinate negotiations up to the point of condemnation. If condemnation becomes necessary, work with Project Attorney to carry out this process. Review bid advertisement, bid procedures, and contract documents prepared by the Engineer to insure conformance with all Federal and State laws. Assist in bidding the project. Attend pre-construction conference to advise Contractor of all labor regulations. Request appropriate wage decision, monitor payrolls for compliance with applicable wage rates and labor regulations. Review Requests for Payment approved by the Engineer.
8. Should project implementation mandate the submission of an amendment, prepare the amendment for submission in accordance with guidelines established by the Department of Commerce, Division of Community Assistance.

Appendix C
Example of Hobbs, Upchurch, & Associates, P.A.
Third Party Administrator Contract

9. Prepare all Annual Performance Reports required by the Department of Commerce, Division of Community Assistance.
10. Represent the Owner on all monitoring visits by the Department of Commerce, Division of Community Assistance and prepare necessary responses to monitoring reports.
11. Provide assistance, if requested, during formal audits to the program.
12. Handle all aspects of Program Close-out including Advertisement of Public Hearings, preparation of Final Performance Report, and Certificate of Completion.
13. Prepare quarterly status reports on accomplishments and expenditures of the project.
14. Assume all administrative responsibility for the Department of Commerce, Division of Community Assistance program compliance and completion of all activities defined in the [REDACTED] CDBG Concentrated Needs Grant Application.

REHABILITATION ADMINISTRATION - SECTION II

1. Prepare all policy documents, including program forms and grant agreements, processing of applications, ownership verification, and income verification.
2. Prepare work write-ups to provide for rehabilitation of dwellings to Minimum Section 8 Standards.
3. Prepare bid packages to include work write-ups and Contractors Handbook. Advertise, receive and evaluate bids resulting in a Recommendation of Award.
4. Prepare rehabilitation contracts and oversee their execution.
5. Conduct pre-construction conferences and issue Notices to Proceed.
6. Coordinate with local inspections department for the purchase of building permits by Contractor and for inspections required by the department.
7. Provide inspection and construction management of active rehabilitations at least twice weekly.
8. Process pay requests based on work satisfactorily completed and coordinate necessary change orders in accordance with County policy.
9. Develop and provide Homeowner's Handbook.
10. Document Owner acceptance of completed housing rehabilitation/relocation.
11. Prepare and record security agreements and document warranty period.
12. Provide form for Memorandum of Contract and Lien, and insure its proper recordation.
13. If necessary, recommend enforcement of the Minimum Housing Code within the project area. This will include Owner verification, inspection for compliance conducting the required hearing and the preparation of required ordinances.

The ADMINISTRATOR's services shall not include (1) Appraisals; (2) Legal Services; and (3) Preparation of Audit Reports and/or any other financial documents relating to the project. These services, as required, may be furnished by the ADMINISTRATOR and separately paid for by the OWNER, for a price to be subsequently agreed upon as the need for these services arises, or in the absence of such separate agreement, as specified hereinafter as "additional services", excepting those cases where the OWNER chooses to make direct payments for same.

Payment: The OWNER agrees to pay the ADMINISTRATOR for services noted as follows:

Appendix C
Example of Hobbs, Upchurch, & Associates, P.A.
Third Party Administrator Contract

I)	General Administration	A lump sum fee of SIXTY-FOUR THOUSAND DOLLARS (\$64,000.00)
II)	Rehabilitation Service Delivery	A lump sum fee of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)

It is agreed by the parties hereto that the appropriate adjustments in any fixed and/or lump sum payments shall be made in the event that the physical scope of the PROJECT, time for completion, or services required are materially increased or decreased beyond that contemplated at this time.

The ADMINISTRATOR shall receive progress payments based on the amount of work performed and documented as submitted to the OWNER by the ADMINISTRATOR.

Should the ADMINISTRATOR be required to render "additional services" in connection with related work upon which the work scope does not apply, the ADMINISTRATOR shall receive additional compensation for such additional services at the hourly rates as specified on the fee schedule attached hereto as Exhibit "A" for the hours actually worked by the appropriate classification of employee.

The following contract provisions shall be referenced in Exhibit "B" and become a part of this Agreement:

- Conflict of Interest
- Legal Remedies
- Termination
- Nondiscrimination
- Age Discrimination
- Section 504 - Nondiscrimination on the Basis of Handicap
- Executive Order 11246
- Section 3
- Copeland Act Davis-Bacon Act
- Contract Work Hours and Safety Standards
- Access to Records and Record Retainage
- Clean Water
- Clean Air
- E.O. 11738
- EPA Regulations Provisions
- Lead-Based Paint
- Lobbying

The OWNER and ADMINISTRATOR hereby agree to the full performance of the covenants contained herein.

Appendix C
Example of Hobbs, Upchurch, & Associates, P.A.
Third Party Administrator Contract

IN WITNESS HEREOF, they have executed this Agreement, the day and the year first above written, which is the effective date of this Agreement.

HOBBS, UPCHURCH & ASSOCIATES, P.A.

[REDACTED]

By:

By:

Witness:

Witness:

(SEAL)

(SEAL)

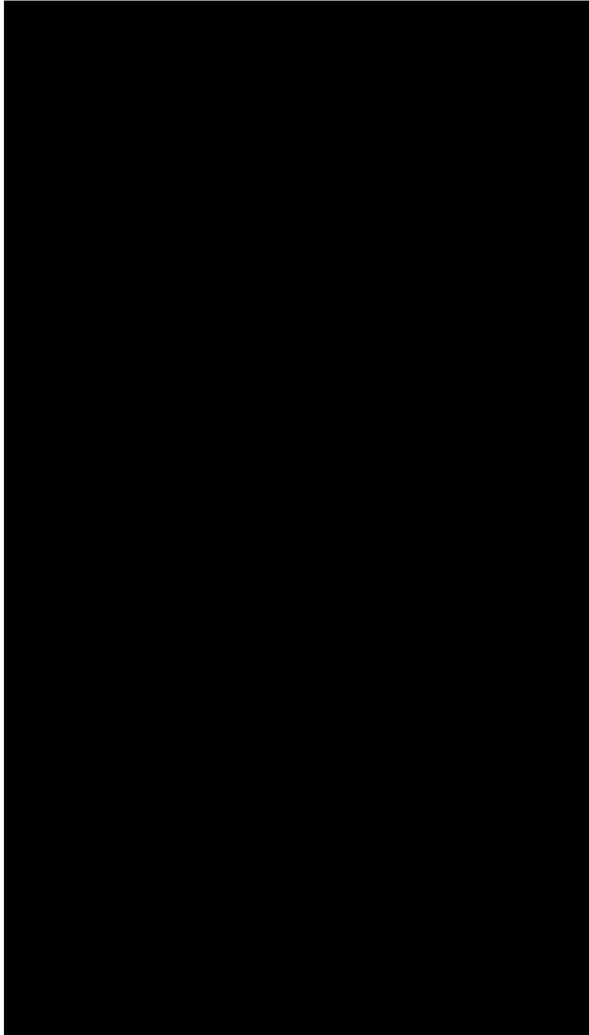


Appendix C
Example of Hobbs, Upchurch, & Associates, P.A.
Third Party Administrator Contract

EXHIBIT "A"

HOBBS, UPCHURCH & ASSOCIATES, P.A.
FEE SCHEDULE

Hobbs, Upchurch & Associates is pleased to offer our clients a competitive rate structure. Our firm aggressively pursues the control of overhead and quality in an effort to maintain the highest level of professional service at the most reasonable project costs.



Appendix C
Example of Hobbs, Upchurch, & Associates, P.A.
Third Party Administrator Contract

EXHIBIT "B"

CONTRACT PROVISIONS

CONFLICT OF INTEREST:

Interest of Members, Officers, or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials. No member, officer, or employee of the recipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, or work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The recipient shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.

LEGAL REMEDIES:

As stated in 24 CFR Part 85.36:

Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

TERMINATION PROVISION:

As stated in 24 CFR Part 85.36:

All contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

NONDISCRIMINATION CLAUSE:

Section 109, Housing and Community Development Act of 1974:

No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part which funds available under this title.

AGE DISCRIMINATION CLAUSE:

Age Discrimination Act of 1975, as Amended Nondiscrimination of the Basis of Age:

No qualified person shall on the basis of age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal Financial assistance.

SECTION 504 - NONDISCRIMINATION ON THE BASIS OF HANDICAP:

Section 504 of the Rehabilitation Act of 1973, as Amended Nondiscrimination on the Basis of Handicap:

No qualified handicapped person shall, on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal Financial assistance.

EXECUTIVE ORDER 11246:

During the performance of this contract, the contractor agrees as follows:

Appendix C
Example of Hobbs, Upchurch, & Associates, P.A.
Third Party Administrator Contract

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions in this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contract becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 3:

- a. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S. C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or

Appendix C
Example of Hobbs, Upchurch, & Associates, P.A.
Third Party Administrator Contract

workers representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

- d. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors or assigns to those sanctions specified by the grant or loan agreement of contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

COPELAND “ANTI-KICKBACK” ACT PROVISION:

As stated in 24 CFR Part 85.36:

All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

DAVIS-BACON ACT PROVISION:

As stated in 24 CFR Part 85.36:

When required by the Federal grant program legislation, all construction contracts in excess of \$2,000 awarded by grantees and subgrantees shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:

Contracts awarded by grantees and subgrantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations contained in 29 CFR Pars 3, 5 and 5a.

Under Section 103 of the Act, the Contractor and any of his subcontractors shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of forty hours. Work in excess of the standard work week is permissible, provided the worker is compensated at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any work week. Section 5 of the Federal Labor Standards Provisions, HUD Form 4010 sets forth in detail the Section 103 requirements.

Section 107 of the Act provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety, as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market.

Appendix C
Example of Hobbs, Upchurch, & Associates, P.A.
Third Party Administrator Contract

ACCESS TO RECORDS AND RECORD RETAINAGE CLAUSE:

In general, all official project records and documents must be maintained during the operation of this project and for a period of three years following close out in compliance with 4 NCAC 19L Rule .0911, Recordkeeping.

The North Carolina Department of Economic and Community Development, the North Carolina Department of Treasurer, U.S. Department of Housing and Urban Development, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Administering Agency which are pertinent to the execution of this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions in compliance with the above Rule.

CLEAN WATER, CLEAN AIR, EXECUTIVE ORDER 11738 & EPA REGULATIONS PROVISION:

Compliance with Air and Water Acts:

This agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, amended from time to time.

The contractor and any of its subcontractors for work funded under this Agreement which is in excess of \$100,000, agree to the following requirements:

- 1) A stipulation by the contractor or subcontractors that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- 2) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- 3) A stipulation that as a condition for the award of the contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA list of Violating Facilities.
- 4) Agreement by the Contractor that he will include or cause to be included the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the contractor will take such action as the Government may direct as a means of enforcing such provisions.

In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113c (1) of the Clean Air Act or Section 309c of the Federal Water Pollution Control Act.

LEAD-BASED PAINT CLAUSE:

The Contractor is hereby specifically made aware of the ECD lead-based paint regulations, 4 NCAC 19L, rule .1011, which are applicable to the construction or rehabilitation or residential structures. The extent that the subject matters of this contract involves residential structures; the Contractor will comply with the lead-based paint regulations.

LOBBYING CLAUSES:

Required by Section 1352, Title 31, U.S. Code:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative, agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agent.

If any funds other than Federal appropriated funds have been paid or will be paid any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative

Appendix C
Example of Hobbs, Upchurch, & Associates, P.A.
Third Party Administrator Contract

agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instruction.

This is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Appendix D
Tri County Development Contract

STATE OF NORTH CAROLINA)

)

████████████████████)

)

SERVICES CONTRACT

THIS CONTRACT is made and entered into this the █ day of █, 2011, by and between the █, a public body corporate of the State of North Carolina (“Town”), and Tri County Development, a duly incorporated entity organized and incorporated under the laws of the State of North Carolina (“Contractor”).

1. SERVICES:

Contractor agrees to provide the following services for the Town. All services shall be according to all Federal, State, Grant and Town’s specifications. The services to be provided for the .CDBG █ Community Revitalization project and NC CDBG Scattered Site Housing Economic Recovery project. are as follows:

- a. Coordination of Lead-Based Paint Testing and Occupant Notification
- b. Development of bid specifications for lead-based paint abatement
- c. Oversight of lead-based paint abatement process by rehabilitation contractor

2. **TERM:** The Term of this contract shall be from August 3, 2011 to September 14, 2013. The Contract may be terminated by either party for cause without notice. Either party may cancel the contract without cause with thirty (30) days written notice to the other party.

3. PAYMENT:

The fee for these services will be \$100.00 per hour

Contractors shall submit an itemized invoice at the end of the month services were performed. Payment will be processed within 30 days of the month service was performed.

4. INDEPENDENT CONTRACTOR:

Both the Town and Contractor agree that the Contractor shall act as an independent contractor and shall not represent itself as an agent or employee of the Town for any purpose in the performance of the Contractor’s duties under this Contract.

Accordingly, the Contractor shall be responsible for payment of all federal, state, and local taxes arising out of the Contract towards activities in accordance with this Contract. In performing the services, the Contractor is acting as an independent contractor and shall perform services in accordance with currently approved methods and practices.

5. INSURANCE AND INDEMNIFICATION:

Appendix D
Tri County Development Contract

The contractor shall indemnify and save harmless the Town, it's agents and employees, from and against any actions, liability, claims, suits, damages, costs or expenses of any kind which may be brought or made against the Town for which the Town must pay and incur by reason or, or in any manner resulting from, injury, loss or damage to persons or property, because of negligent performance of or failure to perform any of the Contractor's obligations under the terms of this Contract.

In addition, the Contractor shall comply with the North Carolina Worker's Compensation Act and shall provide for payment of Worker's Compensation to its employees in the manner and to the extent required by such act. In the event the Contractor is excluded from the requirements of such act and does not voluntarily carry Worker's Compensation coverage, the Contractor shall carry or cause its employees to carry adequate medical/accidental insurance to cover any injury sustained by its employees or agents during the performance of services. The Contractor agrees to furnish the Town with proof of compliance with said act or adequate medical/accidental insurance coverage upon request.

6. **OTHER:**

This Contract is subject to such additional provisions as are set forth in the addendum "A" and "B" attached hereto and any additional addendums executed separately by each party. This contract may only be modified by a written, mutual agreement by the parties, and represents the entire agreement of the parties.

The Contractor agrees to comply with all applicable local, state and federal laws and all Grant requirements and regulations, including anti-discrimination laws.

This Contract or any interest therein shall not be assigned or transferred by the Contractor. This Contract shall not be used for any advertising by the Contractor.

The Contractor hereby acknowledges by the execution of this Contract that it is a corporation in good standings duly organized and licensed by the State of North Carolina to do business within this State and has the authority to perform the services listed above according to its Corporate Charter.

TOWN OF [REDACTED]

By:

[REDACTED]
Town Manager
Town of [REDACTED]

Attest:

[REDACTED]
Town of [REDACTED]

CONTRACTOR

By: [REDACTED]

Appendix D
Tri County Development Contract

EXHIBIT "A"

**TRI COUNTY DEVELOPMENT
FEE SCHEDULE**

Tri County Development shall offer the County a competitive rate structure. As follows:

COMMUNITY/ECONOMIC DEVELOPMENT ADMINISTRATION & TESTING	\$100 PER HOUR
---	----------------

Tri County Development hourly rates include all expenses and reflect competitive pricing.

Appendix D

Tri County Development Contract

EXHIBIT "B"

CONTRACT PROVISIONS

CONFLICT OF INTEREST:

Interest of Members, Officers, or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials. No member, officer, or employee of the recipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, or work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The recipient shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.

LEGAL REMEDIES:

As stated in 24 CFR Part 85.36

Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

TERMINATION PROVISION:

As stated in 24 CFR Part 85.36

All contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

NONDISCRIMINATION CLAUSE:

Section 109, Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part which funds available under this title.

AGE DISCRIMINATION CLAUSE:

Age Discrimination Act of 1975, as Amended Nondiscrimination of the Basis of Age

No qualified person shall on the basis of age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal Financial assistance.

SECTION 504 - NONDISCRIMINATION ON THE BASIS OF HANDICAP:

Section 504 of the Rehabilitation Act of 1973, as Amended Nondiscrimination on the Basis of Handicap

No qualified handicapped person shall, on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal Financial assistance.

Appendix D

Tri County Development Contract

EXECUTIVE ORDER 11246:

During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions in this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contract becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 3:

- a. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S. C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and

Appendix D Tri County Development Contract

orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

- c. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.
- d. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors or assigns to those sanctions specified by the grant or loan agreement of contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

COPELAND “ANTI-KICKBACK” ACT PROVISION:

As stated in 24 CFR Part 85.36:

All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

DAVIS-BACON ACT PROVISION:

As stated in 24 CFR Part 85.36:

When required by the Federal grant program legislation, all construction contracts in excess of \$2,000 awarded by grantees and subgrantees shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:

Contracts awarded by grantees and subgrantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations contained in 29 CFR Pars 3, 5 and 5a.

Under Section 103 of the Act, the Contractor and any of his subcontractors, shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty hours. Work in excess of the standard work week is permissible, provided the worker is compensated at a rate not less than one and one-half times the basic rate of

Appendix D

Tri County Development Contract

pay for all hours worked in excess of forty hours in any work week. Section 5 of the Federal Labor Standards Provisions, HUD Form 4010 sets forth in detail the Section 103 requirements.

Section 107 of the Act provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety, as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market.

ACCESS TO RECORDS AND RECORD RETAINAGE CLAUSE:

In general, all official project records and documents must be maintained during the operation of this project and for a period of five years following close out in compliance with 4 NCAC 19L Rule .0911, Recordkeeping.

The North Carolina Department of Economic and Community Development, the North Carolina Department of Treasurer, U.S. Department of Housing and Urban Development, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Administering Agency which are pertinent to the execution of this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions in compliance with the above Rule.

CLEAN WATER, CLEAN AIR, EXECUTIVE ORDER 11738 & EPA REGULATIONS PROVISION:

Compliance with Air and Water Acts

This agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, amended from time to time.

The contractor and any of its subcontractors for work funded under this Agreement which is in excess of \$100,000, agree to the following requirements:

- 1) A stipulation by the contractor or subcontractors that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- 2) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- 3) A stipulation that as a condition for the award of the contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA list of Violating Facilities.
- 4) Agreement by the Contractor that he will include or cause to be included the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the contractor will take such action as the Government may direct as a means of enforcing such provisions.

In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113c (1) of the Clean Air Act or Section 309c of the Federal Water Pollution Control Act.

LEAD-BASED PAINT CLAUSE:

The Contractor is hereby specifically made aware of the ECD lead-based paint regulations, 4 NCAC 19L, rule .1011, which are applicable to the construction or rehabilitation of residential structures. To the extent that the subject matter of this contract involves residential structures, the Contractor will comply with the lead-based paint regulations.

Appendix D

Tri County Development Contract

LOBBYING CLAUSES:

Required by Section 1352, Title 31, U.S. Code

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative, agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agent.

If any funds other than Federal appropriated funds have been paid or will be paid any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instruction.

This is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ADDITIONAL REQUIREMENTS:

In addition to the above, this Contract hereby requires that the Contractor is required to comply with all provisions of 24CFR85, (Uniform Administrative Requirements and Other Program Requirements), 24CFR92.251, (Property Standards required by the SFR), 24CFR92.254 (Affordable Housing), 24CFR92.257 (Program Regulations), 24CFR92.504 (HOME rules).

Appendix E

Auditor's Note

The response to this report from the Town of Norwood (Town) included numerous misleading and unrelated statements. The town is inferring the Department of Commerce, Division of Community Assistance (DCA) is to blame for the inappropriate payments made to Tri-County Development by the Town. The Town also discusses Carolina Governmental Service's involvement which the investigative team found no inappropriate payments to Carolina Governmental Service from the Town of Norwood.

On page 2, the Town stated, "Our refutation of this allegation is based on two facts. First, Get the Lead Out was employed to remove lead paint. Secondly, Tri-County Development was paid to inspect the job, and this was done by Michael Kepley of Carolina Governmental Services." The investigative team determined that Get the Lead Out did not remove lead paint. Get the Lead Out performed the lead paint inspection to identify lead paint risk within the homes. Then other contractors completed the lead abatement. As the final step, Get the Lead Out performed a final inspection and issued a clearance report verifying lead was abated. The Town asserts hiring Tri-County Development was a necessary step to insure the houses were lead free. However, Get the lead Out (a State certified lead paint company) performed the final inspection to certify lead hazards were removed. In addition, all five of the Tri-County Development invoices stated: "Invoice for Lead Abatement" not invoice of oversight of lead removal.

Page 2, #1, the Town states "files for the contract were on hand...". The investigative team did not find any contracts for Tri-County Development on file during our visit.

Page 3 #2, the Town is confusing the Department of Commerce, Division of Community Assistance's routine monitoring visit that identified \$21,000 of disallowed cost with this OSBM investigative review which identified \$24,500 paid to Tri-County Development for lead abatement service.

Page 3 #3, the Town feels discriminated against because they could not have their grant administrator present during the investigation. The OSBM investigation is an independent review and individual named in the allegation should not be participating with the fact finding process.

Page 3 #4, the Town alludes the DCA was negligent in their duties. However, until allegations are substantiated, DCA had no evidence of wrong doing.

The attached certificates are misleading. Michael Kepley obtained training related to lead-based paint but is not State certified to perform lead inspections, project designs, risk assessments, lead abatements, or supervision. Neither Tri-County Development nor Carolina Governmental Services are State Certified for lead abatement or renovation.

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Appendix F Management Responses



North Carolina Department of Commerce

Pat McCrory, Governor

Sharon Allred Decker, Secretary

February 12, 2014

Ms. Barbara Baldwin, Director
N.C. Office of State Budget and Management
Office of Internal Audit
20320 Mail Service Center
Raleigh, NC 27699-0320

Re: Investigative Report 2013-DOC-INV-28

On behalf of the North Carolina Department of Commerce (the "Department"), I thank you for your detailed work in conducting this audit of various acts occurring between 2007 and 2012. These findings will allow the Department to take appropriate remedial action as directed by the United States Department of Housing and Urban Development ("HUD"), the federal agency governing the administration of the grant funds at issue here. The Department is currently in consultation with HUD regarding the substance of this report and appropriate next steps, and will proceed accordingly. Additionally, the Department has reported the allegations contained in your report to the State Bureau of Investigation, as required by law.

In your report, you recommended that the Department take the following actions:

1. Seek restitution from the local government for misappropriated funds.
2. Report misappropriated amounts to HUD.
3. Improve the monitoring program over the local governments which may include, but is not limited to:
 - a. Enhance the risk based monitoring approach;
 - b. Enhance desk reviews and on-site processes; and
 - c. Increasing the number of on-site monitors.

Thrive NC

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www.nccommerce.com

Appendix F Management Responses

Ms. Barbara Baldwin, Director
N.C. Office of State Budget and Management
Office of Internal Audit
February 12, 2014
Page 2 of 2

First, with regard to seeking restitution from local governments for the alleged misappropriated funds. The Department agrees with your statement that “the local governments are the grant recipient[s] and ultimately are responsible for oversight and compliance with grant requirements.” *See also* 4 N.C.A.C. 19L.1102 (“Recipients shall constantly monitor the performance under grant-supported activities...”). When Community Development Block Grant (“CDBG”) funds are awarded to a local government, the local government assumes responsibility for the proper expenditure of those funds and remains liable to the Department for inappropriate expenditures or disallowed costs. We will work with the affected local governments, and in consultation with HUD, determine the most appropriate manner for recovering the misappropriated funds.

Next, with regard to reporting the alleged misappropriated funds to HUD. As noted above, we have already communicated your findings to HUD, and have are in continued discussions with HUD as to how to proceed with the recovery of funds.

Finally, you suggested that the Department improve its monitoring program over local governments that receive funding from the Department. Under the new leadership of the current administration, the Department has already taken the following proactive steps to increase both the local governments’ and its own monitoring activities of CDBG projects:

- The Department completes a risk assessment for each grantee at the time of award. Grantees with higher risk factors receive additional monitoring and technical assistance.
- Beginning in 2013, the Department requires that 100% of rehabilitation activities are monitored for compliance, previously, only a percentage of rehabilitation activities were monitored.
- If problems are identified with a grantee, the Department requires the grantee provide additional supporting documentation for each funding requisition, and additional desk review and monitoring visits are completed by Department staff.

Additionally, in light of your report, the Department plans to develop a best practice document highlighting the need for and importance of following proper internal controls when administering CDBG and other grants. The Department will distribute the document at monitoring visits, workshops and other events targeting local government officials.

I hope that this letter finds you well, and I appreciate all the hard work you and your team put forth in this audit. If you have further questions, or need additional information from me, please do not hesitate to contact me or any member of my staff.

Sincerely,



Sharon Allred Decker
Secretary, N.C. Department of Commerce

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Appendix F
Management Responses
Alamance County

OFFICE OF THE COUNTY MANAGER
124 West Elm Street
Graham, North Carolina 27253-2865
www.alamance-nc.com

CRAIG F. HONEYCUTT
County Manager

Telephone: (336) 570-4041
Facsimile: (336) 570-6360
craig.honeycutt@alamance-nc.com

February 11, 2014

Barbara Baldwin
Assistant State Budget Officer/Internal Audit Director
Office of State Budget and Management
116 West Jones St.
Raleigh, NC 27699-0320

Re: Alamance County Response to 2013-DOC-INV-28

Dear Ms. Baldwin:

Alamance County has received and reviewed the February 2014 Community Development Block Grant Investigative Report conducted by the NC Office of State Budget and Management. Per the report, the following finding was made regarding Alamance County:

2.4 Payments Issued Directly to Third Party Administrator's Employees

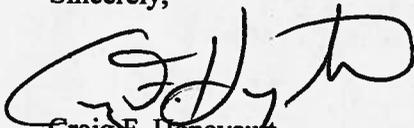
Specifically the finding states that costs for Register of Deeds recording "*should not have been paid to the employees but instead to the third party administrator, Hobbs, Upchurch, and Associates*"; and that "*the third party administrator contract required Hobbs, Upchurch, and Associates to bill the local governments for service rendered*".

Alamance County has taken (or will take) the following steps to ensure strict compliance:

1. County Planning Staff will record all documents necessary at the Register of Deeds and bill for reimbursement under the grant at the time of a requisition of funds.
2. Strengthen and clarify within the third party contract the role of the administrator in recording documents (should it be necessary) and for reimbursement of recording fees.

Please feel free to contact myself or our Planning Manager, Jason Martin, should you have any further questions or need additional information. Mr. Martin may be reached at (336) 570-4052.

Sincerely,



Craig F. Honeycutt
County Manager

cc: Jason Martin, Planning Manager

**Appendix F
Management Responses**



CASWELL COUNTY
Office of the County Manager

February 17, 2014

Barbara Baldwin, CPA, CIA, CICA
Director of Internal Audit
North Carolina Department of Commerce
20320 Mail Service Center
Raleigh, North Carolina 27699-0320

RE: Caswell County Response to Draft Audit 2013-DOC-INV-28

Dear Ms. Baldwin:

Caswell County (the "County") is in receipt of the draft Department of Commerce Community development Block Grant Investigative Report 2013-DOC-INC-28 dated February 2014 (the "Report"). The County understands the Report is the result of an audit of the Community Development Block Grant ("CDBG") program requested by the Department of Commerce, Division of Community Assistance (the "Department"). The County, along with the other fourteen local governments named in the Report, has been asked to respond to the draft Report. This letter contains the County's initial response to the Report and the County specifically reserves the right to supplement and amend its response based on further investigation of the facts and conclusions contained in the Report and subject to further review of the final Report once it is published.

Introduction

The County is extremely concerned that the Report implicates its long-time CDBG program administrator, Hobbs, Upchurch and Associates, P.A., its project administrators, affiliates and employees (collectively referred to herein as "HUA") in, at a minimum, an extensive series of financial irregularities pertaining to HUA's administration of the CDBG funds across numerous fifteen (15) North Carolina local governments resulting in an alleged misappropriation of \$397,171, including approximately \$64,182 from the County. The County takes the Findings and Recommendation of the Report very seriously. The County desires to work cooperatively with the Department and the other local governments impacted

Appendix F Management Responses

by these significant financial irregularities. For the reasons stated below, the County requests the assistance of the Department and similarly situated local governments in seeking restitution in this matter.

Response to Particular Items in the Report

- 1) There is no allegation or finding in the Report that the County undertook any affirmative action or knowingly participated in any way in the activities that lead to the alleged misappropriation of CDBG funds by HUA and its employees. The County notes that the "Purpose" of the Report clearly states that the scope is limited to investigating allegations that "an employee of Hobbs, Upchurch, and Associates that was designated the project administrator for local government grants was" engaged in self awarding contracts, self-approving invoices, obtaining funds for services not performed and sweeping grant accounts to zero.¹
- 2) The County denies it had a financial relationship with HUA, its Project Administrator, its employees or any entity affiliated with HUA employees other than the contractual agreement for services.
- 3) The County had no knowledge that Tri-County Development was owned by the employee assigned as Project Administrator by HUA.
- 4) The County had no knowledge that the employees of Tri-County Development are the same employees of HUA that worked with the Project Administrator out of Lexington.
- 5) Caswell County maintains original CDBG project files at its offices in Yanceyville, NC. The County relied on HUA to provide complete and proper documentation on each file in accordance with grant requirements.²
- 6) For the reasons stated below, the County does not agree that the Department should seek restitution from the County for misappropriated funds without assisting the County with recovery efforts from the third party administrator/and or the project administrator.

Request for Assistance from the Department

The Report details a series of findings that allege HUA, HUA project administrators and employees, Tri-County Development, and potentially Carolina Governmental Services engaged in activities that resulted in the misappropriation of CDBG grant funds. The Report recommends that the local governments seek restitution from "the third party administrator and/or the project administrator."³ Implementation of Recommendation 2.a. as written would result in duplicative and expensive litigation that would further reduce the limited resources of a collection of some of the smallest local governments in the State. The County requests that the Department, with the assistance of the office of the North Carolina Attorney General, institute appropriate legal action against all appropriate parties on behalf of the State, the Department and the numerous local governments impacted by the Report rather than seeking direct

¹ Grant Investigative Report 2013-DOC-INV-28, p. 1

² Section 3 of the County's "Contract for Administrative Services" with HUA for the 2009 CDBG Recovery Scattered Site grant requires HUA to "Establish and maintain a filing system in accordance with Department of Commerce Division of Community Assistance standards."

³ Grant Investigative Report 2013-DOC-INV-28, Recommendation 2.a., p. 13

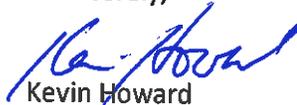
Appendix F Management Responses

restitution from small local governments whose residents can ill afford to bear the loss. The local governments themselves could join in a collective action of the type suggested in this paragraph without State assistance. However, in our view, the financial, logistic and organizational barriers associated with the collective action of a dozen or more local governments would be highly burdensome and less effective than concerted State action. The implementation of Recommendation 2.a. by each local government listed the report independently may also create a "rush to the courthouse" in order to be the first to file a lawsuit. Such a posture may result in uneven recoveries by local governments and could severely limit the ability of local governments to work together to address the wide-spread issues detailed in the Report.

Conclusion

Thank you for the opportunity to offer a response to the Report. We look forward to working with the Department and our local government colleagues in an open and cooperative manner to address the Findings and Recommendations of the Report.

Sincerely,



Kevin Howard
Caswell County Manager

cc: Roy Cooper, North Carolina Attorney General

Caswell County Board of Commissioners

Kenneth D. Travis, Chair
Larry G. Hamlett, Vice Chair
William Carter
Nathaniel Hall
Jeremiah Jefferies
Cathy Lucas
N. Kent Williamson

Brian M. Ferrell, Caswell County Attorney

Appendix F
Management Responses



OFFICE OF THE CITY MANAGER
VISION FIRST

February 17, 2014

Ms. Barbara Baldwin,
Director of Internal Audit
20320 Mail Service Center
Raleigh, NC 27699-0320

Dear Ms. Baldwin:

In response to the Investigative Report issued by the North Carolina Office of State Budget and Management concerning findings in CDBG programs related to the City of Lexington's and other local government's contracted with Hobbs Upchurch and Associates and more specifically Michael Walser for grant administration services, I offer the following points of consideration for the North Carolina Department of Commerce.

By its definition, the State's CDBG program administered by the Division of Community Assistance, exists in order to benefit small communities that are not large enough to be considered entitlement by the US Department of Housing and Urban Development. Small communities typically lack the in-house staff required to administer programs such as this. To that end, they rely heavily on the expertise and guidance offered by professional administrators. Michael Walser was hired based on recommendations from several directors and key staff at the Division of Community Assistance. Though the City does have a vendor registration process for contractors, it is not practical to conduct an investigation into the ownership of each company. Therefore, based on the City's trust of its administrator, the ownership of Tri-County Development company for lead assessment was not something that would normally be questioned. Mr. Walser processed lead assessment as an eligible service delivery fee comparable to work write-ups and led staff to believe that this was within grant regulations. Even with the Community Development education programs offered to supplement the local government capacity, staying current and proficient with the CDBG program requires full time effort. Because small communities are in the precarious position of needing to rely so heavily on grant administrators for guidance on regulations and procedures, the City of Lexington requests that the State consider beginning a grant administrator certification program; whereby the State would work closely with administrators, provide ethics and continuing education programs, and monitor their methods and companies in exchange for receiving a State certification. In addition, the City recommends that the State require that all grant administrators hired by local governments be certified through said program.

Without any acknowledged shared responsibility from the State, the report recommends that local governments provide restitution for the funds that were considered misappropriated. The fact that CDBG funds are awarded to small communities through a competitive process indicates that the communities with the greatest needs receive assistance. To that end, to require the subject communities to return those much needed funds is contrary to HUD objectives cited on page 1 of the

Appendix F Management Responses



OFFICE OF THE CITY MANAGER
VISION FIRST

report. The severity of restitution for relatively small communities could have the result of causing many communities to be leery of participating in the CDBG program. Instead, the City of Lexington recommends at the very least that funds identified as misappropriated, be used in said communities consistent with a plan submitted and approved by the State (i.e. to apply funds to open CDBG programs within the community or to spend the funds on eligible CDBG activities).

Factors that supported the City's continued use of Hobbs, Upchurch, and Associates include recommendations by Division of Community Assistance staff, as well as many successful monitoring visits conducted by their department. Several of the files reviewed by auditors and called into question had previously been reviewed during monitoring visits. No guidance was provided by the State regarding this issue when it first came to light despite our repeated attempts. When an article appeared in the local newspaper outlining the allegations, the City moved expeditiously to end its contract with Hobbs, Upchurch, and Associates and made a conscientious decision not to transition those contracts to a newly formed grant administration firm Michael Walser had created, until the allegations were resolved. In the meantime via a RFP process, Staff has sought grant administration services with Steve Austin and Piedmont Triad Regional Council and now spends additional time in reviewing documents and reports provided by current grant administrators and has become more hands-on; though the unfortunate result is a reduction in the overall number of grants sought to benefit our community.

It is my hope that in moving forward, a mutually beneficial relationship be established between local government, State, and administrator, to ensure transparency and successful grant programs. The CDBG program has served to improve the living conditions, health environments and expand economic opportunities for low and moderate income persons within the City of Lexington. With a shared awareness of what has occurred and a willingness to use this as a learning experience solidified by positive change going forward, the program can continue to be successful.

Sincerely,

J. Alan Carson
City Manager
City of Lexington, NC

Appendix F
Management Responses



David S. Cheek
City Manager

Glendel Stephenson
Mayor

Council
Ed Hooks, *Mayor Pro Tem*
Tim Bradley
Everette Greene
Patty Philipps
Jill Auditori

106 East Washington Street
Mebane, North Carolina 27302
(919) 563-5901

February 18, 2014

Regina Hill, CFE, CGFM
IS Auditor
Office of the Governor
Management and Evaluation Section
NC Office of State Budget and Management
Administration Building
116 West Jones Street
Raleigh, NC 27699

Re: RESPONSE TO INVESTIGATIVE REPORT PREPARED BY THE
OFFICE OF STATE BUDGET AND MANAGEMENT
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Dear Ms. Hill:

As requested by the North Carolina Department of Commerce, the City of Mebane offers the following comments and response to the report of the Office of State Budget and Management dated Feb.3, 2014, copy provided to the City of Mebane by fax transmission on Feb. 5, 2014.

The City of Mebane is named in Section 1.2 of the Report in the following comment:
"Table 2 quantifies the questionable payments by local governments. Carolina Governmental Services received \$8,087 from the Town of Mebane for grant administration and Davis Bacon Act compliance. These activities are the responsibility of the third party administrator, Hobbs, Upchurch and Associates."

This amount was paid by the City on June 15, 2012 after the invoice, copy attached, was submitted through the third party administrator. This particular invoice was included with a number of other legitimate invoices and on its face did not attract attention. Please note that this contractor has a long history with the Department of Commerce and with multiple North Carolina local governments and that, at least with regards to the City of Mebane contract, there was no easily discernable indication of impropriety. The City Attorney has been directed to review this matter to determine whether or not the City has a claim against Hobbs Upchurch if in fact this constitutes an overpayment.

As to the other issues noted in the report, the City of Mebane is not a respondent.

Sincerely,

Charles Bateman
City Attorney

Enclosure

**Appendix F
Management Responses**

Carolina Governmental Services LLC

Invoice # 0001

Remit Payment:
1580 Yadkin College Road
Lexington, NC 27295

Date: June 8, 2012

Invoice For: Professional Services: Administrative Services for Grant Amendment
and Davis Bacon Compliance

Attention: Robert Wilson
City Manager

Amount: \$8,086.00

Total Due \$8,086.00⁹⁰

1580 Yadkin College Road Lexington, North Carolina 27295

Telephone: 336-787-4932 Fax: 336-787-5876

Appendix F
Management Responses

Davie County
Board of Commissioners



Robert Wisecarver, Chairman
Mark Jones, Vice Chairman
Carl Humphrey
Richard Poindexter
Terry Renegar
Cecil Wood, Interim County Manager

123 SOUTH MAIN STREET
ADMINISTRATION BUILDING
MOCKSVILLE, NORTH CAROLINA 27028

Phone: (336) 753-6001
Fax: (336) 751-7408

February 17, 2014

North Carolina Office of State Budget and Management
Office of Internal Audit
Ms. Barbara Baldwin
20320 Mail Service Center
116 West Jones Street
Raleigh, NC 27699-0320

Response to Finding 2.4 Payments Issued Directly to Third Party Administrator's
Employees in Investigative Report 2013-DOC-INV-28

Dear Ms. Baldwin,

In your audit finding, there was \$1,448 of costs of recording of deeds paid directly to Hobbs, Upchurch, and Associates employees identified during the audit paid by Davie County that should have been paid to the third party administrator. The contract between Hobbs, Upchurch, and Associates was mutually terminated on October 19, 2012. There were \$130 of costs paid on January 24, 2013 included in the \$1,448 that were paid directly to Michael Walser after the date when he was no longer an employee of Hobbs, Upchurch, and Associates.

The contract between Hobbs, Upchurch, and Associates and Davie County does not detail that the costs of recording of deeds was included in the grant administration contract. Since the third party administrator was recording the deeds on behalf of the County, the County did not question the validity of the costs. The County was not aware that these costs would be reimbursed by the third party administrator to their employees. The finding states that the Project Administrator said that the local government preferred to pay him directly, but the County never made that request. In the future, the County will not reimburse any individuals employed by companies it has contracted. Also, the County will revise its procedures and retain a portion of the administrative funds to adequately staff the oversight of CDBG grants.

Appendix F
Management Responses

If you should need additional information, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin M. West". The signature is written in a cursive style with a large initial "R" and "W".

Robin M. West
Finance Director

Cc: Mr. Cecil Wood, Interim County Manager
Mr. E. Edward Vogler, Jr., County Attorney

Appendix F
Management Responses
Appendix F

Montgomery County did not provide responses to this report.

Appendix F Management Responses



Rockingham County
Governmental Center
371 NC 65
PO Box 101
Wentworth, NC 27375
Telephone: (336) 342-8101 • Fax: (336) 342-8105

Lance L. Metzler
County Manager

February 10th, 2014

N.C. Office of State Budget & Mgmt. Office of Internal Audit
Attn: Barbara Baldwin, Director of Internal Audit
20320 Mail Service Center
Raleigh, N.C. 27699-0320

Dear Ms. Baldwin,

In response to the Department of Commerce Community Development Block Grant Investigative Report of February, 2014, Rockingham County provides the following comments:

Rockingham County believes that the current procedures that the County has in place to approve and process payment on invoices related to Community Development Block Grant (CDBG) projects are sufficient to discover all of the errors mentioned in the Investigative Report. Our current procedures are:

1. Consultant submits invoices that are ready for payment to the County.
2. The County Director of Engineering and Public Utilities reviews the invoice, verifies that all required permits and inspections are complete and physically inspects the work when appropriate. Once he has deemed that the work is complete and has met all local requirements, he approves the invoice for payment and submits to the County Finance Department.
3. County Finance verifies that invoices received on CDBG projects have been approved by the Director of Engineering and Public Utilities.
4. Consultant submits the CDBG Reimbursement Request Forms to the County Finance Department. Finance verifies that expenditures being claimed tie to the General Ledger transactions and have not been claimed on a previous reimbursement requests. Once verified, the appropriate signatures are obtained and report filed with granting agency.
5. All original CDBG grant files are required to be kept in the offices of Rockingham County. The consultant travels to the County Offices when he needs access to those files.

Appendix F Management Responses

Rockingham County will consider the areas of concern that have come to light in this Investigative Report when reviewing future invoices submitted for payment to ensure that the recently discovered issues do not apply to subsequent costs.

In addition, Rockingham County will review invoices that have been paid subsequent to the time period audited by the NC Office of State Budget and Management and review for the issues reported in the Investigative Report.

Rockingham County will ensure that staff who monitor and review activity related to CDBG projects review the program documentation, contracts and agreements and are able to detect non-allowable program costs.

I feel confident that we are addressing all issues to make sure that we are cognizant of every transaction that is made particularly in respect to Tri-County Development.

If you have any questions then please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Lance L. Metzler". The signature is written in a cursive style with a large initial "L" and "M".

Lance L. Metzler
County Manager

Appendix F Management Responses



County of Stanly
1000 North First Street
Suite 10
ALBEMARLE, NORTH CAROLINA 28001

February 17, 2014

Ms. Barbara Baldwin
Director of Internal Audit
116 W. Jones Street
Mail Service Center 20320
Raleigh, NC 27699-0320

Subject: Investigative Report - CDBG Audit 2013-DOC-INV-28

Dear Ms. Baldwin:

Please allow this correspondence to serve as Stanly County's formal response to the internal audit referenced above.

Stanly County appreciates the Office of Internal Audit bringing this issue to our attention. Stanly County acknowledges the employees of Hobbs Upchurch should not have been reimbursed directly for expenses they incurred as part of one of the County's CDBG projects. The County did not reimburse Hobbs Upchurch for these same expenses; however, from an internal control perspective employees of a contractor should not be paid directly.

Moving forward, the County will address this internal control issue and make sure all future expenses incurred by a contractor or an employee of a contractor are sufficiently documented and all accounts payable transactions are solely paid to the contractor of record, not an employee.

Again, thank you for the opportunity to respond to this finding. If you have questions or additional concerns please let me know. Your time and attention to this matter is greatly appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew M. Lucas".

Andrew M. Lucas
County Manager

Cc: Stanly County Board of Commissioners

Appendix F
Management Responses
TOWN OF HAW RIVER



Office of the Town Manager
Jeffrey H. Earp

February 11, 2014

Ms. Barbara Baldwin
North Carolina Office of State Budget and Management
Office of Internal Audit
Interagency Internal Audit Program
20320 Mail Service Center
Raleigh, NC 27699-0320

Re: Response to Department of Commerce Community Development Block Grant
Investigative Report – 2013-DOC-INV-28

Dear Ms. Baldwin,

I am writing to you regarding the above captioned matter. The Town of Haw River Management has reviewed the Investigative Report provided to us by your office and would respectfully make the following response to said Report.

The Town of Haw River did receive from the Department of Commerce Community Revitalization Grants in the years 2007 – 2012. The Town of Haw River has limited resources and does not employ grant administration staff. Therefore, The Town of Haw River contracted with Hobbs, Upchurch, and Associates of Southern Pines, a company used by many governmental bodies, to be the third party administrator for the administration of these grants. Hobbs, Upchurch, and Associates assigned three employees to act as the Project Administrator, Grant Administrator and Rehabilitation Specialist. The Town hired Hobbs, Upchurch, and Associates believing the firm was reputable and its employees experienced in performing the needed services for the administration of these grants as per their proposal.

In response to Finding 1 it is agreed that the Town of Haw River relied heavily on the Project Administrator for most aspects of completion and compliance with the CDBG grants and that reliance may have increased the opportunity for misappropriation of funds. As previously stated, the Town of Haw River has limited resources and does not employ grant administration staff. Unfortunately the Town must rely on many third party firms to provide services such as grant

P.O. Box 103 · 403 East Main Street · Haw River, NC 27258
Phone 336-578-0784 · Fax 336-578-0010 · email jearp@townofhawriver.com

Appendix F

Management Responses

administration, engineering, sanitation and legal representation. It is also apparent that the Town must improve its monitoring and oversight of grant administration contractual arrangements.

In response to Finding 1.1 which states The Town of Haw River paid Tri-County Development for lead abatement services that were actually provided by other companies, it is agreed that the Town of Haw River paid Tri-County Development \$61,682 for those services. It should also be noted that no Town of Haw River employee was aware of Tri-County Development's ownership structure. The Town's Contract with Hobbs, Upchurch, and Associates specifically addresses conflicts of interest in Exhibit "B" of their Third Party Administrator Contract. Therefore the Town reasonably had a contractual expectation that Hobbs, Upchurch, and Associates and its employees would adhere to this requirement of said contract.

In response to Finding 1.2 which states The Town of Haw River paid Tri-County Development for alleged lead abatement services they were not licensed by the State to perform, it is agreed that the Town of Haw River paid Tri-County Development \$810 for those services. Staff also agrees that there was no contract on file between the Town of Haw River and Tri-County Development. The Town of Haw River was supplied a copy of a signed contract by investigators with the Office of Internal Audit that they received from the owner of Tri-County Development. It should be noted that the Town of Haw River staff was unaware that the ownership of Tri-County Development was the Hobbs, Upchurch, and Associates employee assigned as the Town's grant project administrator and that staff does not remember execution of this contract.

In response to Finding 1.3, this Finding does not apply to the Town of Haw River.

In response to Finding 2 the Town of Haw River agrees that they are ultimately responsible for oversight and compliance with the grant requirements and that there was an internal control breakdown due to the lack of qualified Town of Haw River staff to oversee third party grant administrators. The Town of Haw River does not feel that that relationship with the third party administrator was a partnership as opposed to a typical contractor relationship, but did have an expectation that the third party administrator would provide open and honest grant administration and rehabilitation services. The third party administrator was hired as a subject matter expert on this project.

In response to Finding 2.1 which states that Tri-County Development was not certified to perform lead abatement work, it is agreed that the Town paid for services that Tri-County Development was not certified by the state to perform. The Town's Contract with Hobbs, Upchurch, and Associates has a Lead-Based Paint Clause which specifically addresses lead-based paint regulations in their Third Party Administrator Contract. Therefore the Town had a contractual expectation that Hobbs, Upchurch, and Associates and its employees would adhere to this requirement of the contract.

In response to Finding 2.2 the Town of Haw River agrees that the grant agreement signed between the Department of Commerce and the local government states there should be no conflict of interest and that Hobbs, Upchurch, and Associates was working as an agent of the Town of Haw River. The conflict of interest requirements are also stated in the contract between the Town of Haw River and Hobbs, Upchurch, and Associates.

Appendix F Management Responses

In response to Finding 2.3, this Finding does not apply to the Town of Haw River.

In response to Finding 2.4 the Town of Haw River agrees that it issued payment directly to Michael Walser as a representative of Hobbs, Upchurch, and Associates for recordation expenses.

Concerning the recommendations to local governments provided by the Office of Internal Audit, the Town of Haw River does plan to seek restitution from the third party administrator, Hobbs, Upchurch, and Associates and/or the project administrator. The Town of Haw River will improve third party administrator monitoring by developing policies and procedures that will allow its staff to more adequately supervise such contractors. The Town will seek to identify funds (Town or grant) that will allow the Town to adequately employ grant supervisory personnel. The Town of Haw River will also enhance its internal control procedures to ensure payments are issued for valid services which conform to grant contract requirements.

The grant awarded to the Town of Haw River was extremely beneficial to the Town as the Town of Haw River is a small community with limited resources. Each and every year the Town of Haw River faces challenges of how to maintain and provide services to its citizens with its limited budget. There never seems to be enough funds to do all that is needed for the citizens of the Town of Haw River. There are no extra funds in the Town's budget to repay the sum of \$62,492.00. It would definitely be a burden to and potentially adversely affect the citizens of the Town of Haw River if the Town was required to repay the said sum of \$62,492.00.

The Town of Haw River is committed to working with the North Carolina Department of Commerce to resolve all issues regarding the audit findings. The Town of Haw River will seek direction from the NCDOC in developing a timeline and correction action plan for these issues.

Sincerely,

Jeffrey H. Earp
Town Manager
Town of Haw River

cc: Regina Hill, IS Auditor, NC Office of State Budget and Management (Via Email)
File

Appendix F
Management Responses



TOWN OF MADISON

120 North Market Street
Madison, North Carolina 27025
(336) 427-0221 • FAX: (336) 427-2565

OFFICE OF
THE MANAGER

February 12, 2014

State of North Carolina
Office of Internal Audit
Administration Building
116 West Jones Street
Raleigh, North Carolina 27699-0320

Dear Sirs,

Thank you very much for the opportunity to visit your office and learn in detail of the recent audit of CDBG funds. We regret the nature of this issue but pledge to make the necessary corrections within our organization and system to insure such an issue does not occur again in future grants.

The Town of Madison has a very small staff and lacks the total expertise to administer such complicated projects that are associated with Community Development Block Grants. Therefore, it is imperative to employ a specialist in this field to guide us throughout the process. It is reasonable that you would expect such a person to know more about the law and procedures which must be followed than our Town staff. Therefore, we must place some trust in a consultant to lead us through the process. Your audit does show that we can do other things to limit opportunities for issues to arise.

Therefore, the Town of Madison expects to initiate the following steps:

- 1- The Town would make members of our staff available for any training offered by the Department to assist our associates in better understanding the expectations from our office. We would also be interested in any additional training outside of your office that you might recognize to be beneficial to us.
- 2- The Town Manager will convene a meeting with appropriate staff to review our in-house requirements and responsibilities. Town staff will be assured that they will have the support of management to require that each employee and the Project Administrator abide by all agreements and policies.

Appendix F Management Responses

- 3- The Town will convene a meeting between appropriate Town staff and the Project Administrator before the grant begins to understand and agree on how such things as permits, reports, invoices, project files, reimbursement requests, and other items shall be handled and filed.
- 4- The Town will require that the Project Administrator sign a Conflict of Interest Statement to insure that the Project Administrator will not have financial gain in such project or any ownership in any contracting entity.
- 5- The Town will expect Project Administrator to have ample contact with Town staff to provide information as to when a permit is to be required and the name of the contractor who will secure the permit. A copy of such permit will be forwarded to the Finance Office and attached to the invoice submitted for payment.
- 6- The Town will make known to the Project Administrator that we should expect maximum documentation for every invoice. This will include not only an invoice but sufficient information to state specifically what work was done.
- 7- The Town will maintain permanent files for the project. Files will contain all contracts, certificates, or agreements associated with the project. Should the project include housing rehabilitation, a separate file will be kept on each specific location. Other items within the project, such as utility improvements, street repair, curb and guttering, drainage issues, etc., will have a file within the project file. The Town shall designate the location of this file and assign a staff member to be responsible for filing and working with the Project Administrator to assure that all necessary documentation is included.
- 8- The Town will require an understanding from the Project Administrator that under no circumstances shall a check be prepared without a proper invoice and supporting documentation. It will further be understood that no check will be issued in the name of the Project Administrator. All checks presented for payment shall be payable to a contractor, vendor, or a third party source.
- 9- The Project Administer must provide information and documentation acceptable to the Town Finance Director before an invoice is paid. The Project Administrator shall provide documentation to equal any reimbursement request.

If you are aware of any additional steps that we should initiate, please let us know and we will be happy to incorporate them into our procedures.

Appendix F
Management Responses

Sincerely,

Robert F. Scott

Robert F. Scott
Town of Madison
Town Manager

Appendix F
Management Responses

TOWN OF NORWOOD

P. O. Box 697, 116 South Main Street
Norwood, NC 28128
(704) 474-3416; FAX (704) 474-3201
E-mail: townofnorwood@carolina.rr.com

TOWN ADMINISTRATOR

Dwight Smith

TOWN CLERK

Virgil Hinson

TOWN FINANCE OFFICER

Virgil Hinson

MAYOR

Beverly Johnson

MAYOR PRO TEM

Larry McMahan

COMMISSIONERS

Robert Allen

Darrell Almond

Stephen Bradley

Linda Campbell

February 14, 2014

Barbara Baldwin, CPA, CIA, CICA
Director of Internal Audit
State of North Carolina
20320 Mail Service Center
Raleigh, NC 27699-0320

Dear Ms. Baldwin,

The administrative staff of the Town of Norwood consists of one full time assistant clerk and the town administrator. Needless to say, Norwood does not have the personnel or the knowledge to administer grants such as the CDBG or the scattered housing grants. Therefore, Norwood contracted with Hobbs Upchurch to be the Grant Administrator for the 09-C-2072 grant and then the 10-C-2154 grant that they were awarded.

Norwood had received four such grants in the past and had no problems with the contracted grant administrators. Michael Walser was an employee of Hobbs Upchurch and was administering the grant for the Hobbs Upchurch firm.

The Hobbs Upchurch company lost most of its employees and Norwood had to obtain another grant administrator. Norwood contracted with Carolina Governmental Services to administer both grants.

Susan Nolan, Norwood's Grant Advisor, was made aware of Norwood's choice to contract with Carolina Governmental Services to administer the grants. In fact, the grant advisor said, "You have every right to change grant administrators under the circumstances."

Our point here is that if the Division of Community Assistance knew there was a problem with the company we contracted with, why were we not advised by the grant advisor?

While we are addressing that point, it should be made known that during our grant process, Norwood had four grant advisors: Brian (we forgot his last name), Susan Nolan, Mary Smith, and Valerie Moore. Was there a breakdown in communication due to the frequent changes in

Appendix F Management Responses

Letter to Barbara Baldwin
Page 2 of 3

grant advisors? Were there problems within DCA to cause the frequent changes in grant advisors?

When Norwood was told that its Grant Advisor was coming to do an audit, we were told and discouraged from having our grant administrator present, without any explanation as to why he was not allowed to be present. His contract specified that he would be present at all audits of the grant.

The DCA reports say that Norwood said that it did not have the grant records on hand. That is not true. We had records on hand. What was said was that we would have to get our grant administrator to show us what records would be needed. We do admit we had trouble finding some of the records we needed, but they were in the Norwood Town Hall. It would have been much easier for the information to be presented properly to our grant advisor had our grant administrator been present.

After the audit, which lasted four days, and with an employee of the Budget and Management Department present, our grant advisor told us things looked good and had just one or two questions. Six weeks later, we received a letter with six findings. That again raises the question, if DCA knew there were some problems, why weren't we told up front?

The report, dated May 13, 2013, implies that Norwood paid for some services twice. We do not agree with that assessment, and we were told by some investigators that they agreed with us.

Early on in our contract period, we requested credentials from Carolina Governmental Services for the person involved in lead paint removal and repainting. We were provided with the attached credentials for Michael Kepley who was an employee of Carolina Governmental Services. In reviewing the attached certificates and forms, we assumed he was qualified to meet the requirements of the contract. We do not agree with the finding that we paid for the same service twice. We do plan to seek restitution.

Our refutation of this allegation is based on two facts. First, Get the Lead Out was employed to remove lead paint. Secondly, Tri-County Development was paid to inspect the job, and this was done by Michael Kepley of Carolina Governmental Services. We believe that our contract with Carolina Governmental Services was a valid contract and was a necessary step to insure the houses were lead free and the occupants would be protected from lead hazards. We have attempted to explain this situation to our Grant Advisor several times, but our efforts appear to be futile. Do you not believe that someone needs to inspect the work of something as critical as removal of the potential for lead poisoning?

We want to repeat the following concerning the accusation of negligence by the Town of Norwood:

1. Files for the contract were on hand, but due to a small staff, we were concerned with sufficient familiarity with them to provide adequate information to the grant advisor during the review.

Appendix F
Management Responses

Letter to Barbara Baldwin
Page 3 of 3

2. We do not concede that we paid for the same services twice as alluded to earlier in this correspondence, but agreed to pay the \$21,000 because DCA was holding approximately \$51,000 that went to revitalized homes that DCA had given us this okay to revitalize, and DCA would not agree to release the \$51,000 unless Norwood paid the \$21,000. It didn't take us long to figure out that paying the \$21,000 was a good trade, but we planned all along to try to get Norwood's money returned.
3. We feel discriminated against because we were not allowed to have our Grant Administrator present during the audit. Even when you are in court, you are allowed to have your attorney and witnesses on your behalf.
4. If DCA was aware there was a problem with our Grant Administrator, we contend they were negligent in their duties to advise us of potential problems which would lead to the Town having to repay a huge portion of the monies provided to them to improve our community.

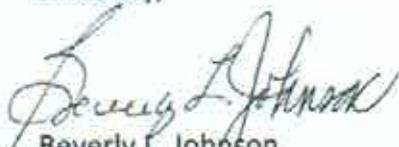
In closing, Norwood realizes that it might have made some mistakes. Maybe we trusted someone that we should not have, but we tried to do the right thing.

When we called the DCA office and asked for advice, most of the time we were told, "That's between you and your grant administrator. Norwood is responsible for the grant." Then what are the purposes of grant advisors and chief grant administrators, if not to help towns with issues that arise?

Norwood Administrator Dwight Smith has been in local government for a long time, serving as a town mayor, chairman of a county commission, a county manager, and a town administrator. Never has he seen or heard of a unit of local government being treated with the disrespect and arrogance as the staff at DCA did.

Norwood does appreciate the concern shown by those in charge at the present time in their effort to bring this situation to an amicable close that should benefit town citizens who are awaiting housing needs.

Sincerely,


Beverly L. Johnson
Mayor


Dwight Smith
Town Administrator


Virgil Hinson
Finance Officer

cc: Regina Hill, IS Auditor (by mail and email)
Dr. Pat Mitchell, CECD, Asst. Secretary, Rural Development (by email)
Sharon Decker, Secretary, NC Department of Commerce (by email)
Melody Adams, Director, Rural Development (by email)

Craven County Health Department Lead Poisoning Prevention Program



Craven-Jones-Pamlico-Lenoir
Lead Poisoning Prevention Partnership

Awards a Notice of Completion to

Michael Kepley

Who has successfully taken and completed the course

Lead Safety for Renovation, Repair, and Painting Initial



Michael Kepley
200 Kerney Kepley Drive
Lexington, NC 27292

Date Completed: 03/30/2010
Expiration Date: 03/30/2015
Course Language: English

Certificate Number:
CCHD R-I-18365-10-00177

Debra B. Yarbrough R.E.S.

Division of Environmental Health
PO Drawer 12610 2818 Neuse Blvd.
New Bern, NC 28561 252 636-4936

Debra B Yarbrough, RS
Environmental Health Program Specialist
Training Manager / Principle Instructor

This is to certify that

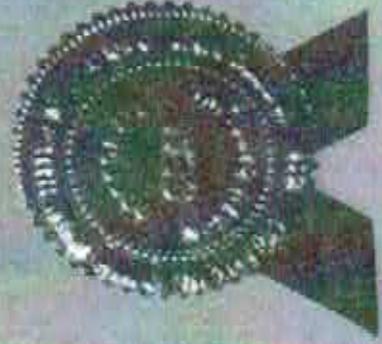
Michael C. Kepley

*has demonstrated by written examination
the broad-based technical and legal knowledge
essential to perform the duties of the trade, and is hereby designated a*

Certified Rehabilitation Specialist

by the Board of Directors of the

**Professional Housing Rehabilitation
Association of North Carolina**



Carli J. ...
Carli J. ... President

Tom Matthews
Tom Matthews, Vice President

November 14, 2008

QuanTech

Quantitative Technologies for Research and Analysis

AWARDS A

NOTICE OF COMPLETION

TO

MICHAEL KEPLEY

Pursuant to 24 Code of Federal Regulations Part 35 and
In Recognition of Your Attendance and Successful Completion of the 8-hour Course:

ADDRESSING LEAD-BASED PAINT HAZARDS DURING RENOVATION, REMODELING, AND REHABILITATION IN FEDERALLY OWNED AND ASSISTED HOUSING

Sponsored by the U.S. Department of Housing and Urban Development

August 10, 2001

Date of Training

CHARLOTTE, NC

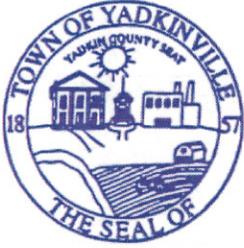
Location of Training

Joy N. Finch
Joy N. Finch, Instructor

John Zilka
John Zilka, Director of Training

1815 Fon Myer Drive, Suite 908, Anniston, VA 22809-1817 Phone (703) 512-1860, Fax (703) 513-5104

Appendix F
Management Responses



TOWN OF YADKINVILLE
"A TOWN IN PROGRESS"

Office of the Town Manager

February 17, 2014

Barbara Baldwin, Director of Internal Audit
North Carolina Office of State Budget and Management
Office of Internal Audit
20320 Mail Service Center
Raleigh, NC 27699-0320

**RE: Department of Commerce Community Development Block Grant Investigative Report.
2013-DOC-INV-28**

Ms. Baldwin,

The Town of Yadkinville appreciates the opportunity to respond to the recommendations to local governments as set out in the Office of Internal Audit in the Community Development Block Grant (CDBG) Investigative Report (hereinafter sometimes called the "Investigative Report") dated February 3, 2014.

The Town of Yadkinville's responses to the CDBG's Investigative Report's recommendations to local governments are as follows:

- 1) Recommendation 2 (a) on page 13 of the report states that *the local governments should seek restitution from the third party administrator and/or the project administrator.*

The Town of Yadkinville takes the allegations set out in the Investigative Report very seriously. The Town of Yadkinville intends to seek restitution from all third parties whom the Courts may find to be liable for any alleged misappropriation of CDBG funds, including the Third Party Administrator and/or the Project Administrator.

- 2) Recommendation 2 (b) on page 13 of the report states that *the local governments should improve third party administrator monitoring by retaining a portion of the administrative funds to adequately staff the oversight of CDBG grants.*

The Town of Yadkinville agrees with this recommendation and will retain a portion of the administrative funds to adequately staff the oversight of CDBG grants.

213 Van Buren Street
Post Office Drawer 816
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Telephone (336) 679-8732
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Appendix F
Management Responses



TOWN OF YADKINVILLE
"A TOWN IN PROGRESS"

- 3) Recommendation 2 (c) on page 13 of the report states that *the local governments should enhance internal controls or employee's conformance with internal control procedures to ensure payments are issued for valid services which conform to contract and grant requirements.*

The Town of Yadkinville agrees with this recommendation and is enhancing internal control procedures to ensure that payments are issued for valid services which conform to contract and grant requirements. The Town Manager will be responsible for project compliance with the performance requirements of the grant as stated in the contract between the state and local government. The Town Finance Officer will be responsible for financial compliance with the grant. The Finance Officer will establish a grant project budget that will be strictly adhered to and any expense not authorized in the project budget will not be approved.

Thank you for allowing the Town of Yadkinville the opportunity to respond to the recommendations in the Investigative Report. Please do not hesitate to contact me at (336) 679-8732 if you have any questions regarding this correspondence.

Sincerely,

Christopher Ong,
Town Manager

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Appendix F
Management Responses



TOWN OF YANCEYVILLE

INCORPORATED
1986

"Tradition with Vision"

February 12, 2014

Barbara Baldwin, CPA, CIA, CICA
Director of Internal Audit
N. C. Office of State Budget & Management
20320 Mail Service Center
Raleigh, North Carolina 27699-0320

Re: N. C. Department of Commerce Community Development Block Grant
Investigative Report Dated February, 2014 (2013-DOC-NIV-28)

Dear Ms. Baldwin:

In accordance with the above captioned report and your inquiry, the Town of Yanceyville is prepared to assist the State in any manner to resolve any and all pending claims under the 2007-2012 CDBG Program. Currently, the Town of Yanceyville has no budgeted or appropriated funds to satisfy any outstanding claims as noted in the above report. Currently, the Town of Yanceyville is exploring the possibility of instituting formal administrative and legal claims against Hobbs-Upchurch and Associates and Michael Walser for professional malpractice and fraud in their administration of our CDBG grant program. We are currently conferring with other affected municipalities and counties in regard to a joint administrative or litigation claim.

The Town of Yanceyville has implemented the following corrective action to prevent further problems involving the administration and supervision of grant programs:

- A) The Town will provide and require additional training and education for the municipal staff concerning the supervision and administration of governmental grant programs.
- B) The Town will require all grant vendors to provide complete and accurate W-9 forms with legible signatures and all information thereon will be independently verified by municipal staff.
- C) The Town will require purchase orders for all purchases made with grant funds.

Appendix F Management Responses

Barbara Baldwin, CPA, CIA, CICA
February 12, 2014
Page Two

D) The Town will review and verify all grant invoices prior to payment.

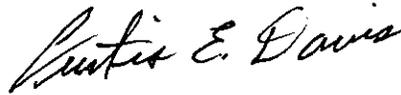
E) The Town will conduct extensive research prior to the employment of any firm for future grant programs. Prior to employment, the Town will independently verify submitted references and prior firm history.

F) The Town will require that all grant documents, invoices, and data be maintained at the municipal facilities of the Town and will be subject to review by municipal staff at any time.

G) The Town will implement a proactive supervision of all future grant programs.

If you should have any questions concerning the position of the Town of Yanceyville in this matter and our corrective action, please do not hesitate to contact me.

Yours very truly,



Curtis E. Davis, Mayor

CED:abs
cc: Regina Hill

Appendix F Management Responses



Village of Alamance

2874 Rob Shepard Drive

P.O. Box 96

Alamance, NC 27201

Phone (336) 226-0033

Fax (336) 226-5523

VILLAGE OF ALAMANCE

RESPONSE TO INVESTIGATIVE REPORT PREPARED BY THE OFFICE OF STATE BUDGET AND MANAGEMENT COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

As requested by the North Carolina Department of Commerce, the Village of Alamance offers the following comments and response to the report of the Office of State Budget and Management dated Feb.3, 2014, copy provided to the Village by fax transmission on Feb. 5, 2014.

The Village of Alamance is named in Section 2.4 of the Report in the following comment:

“Table 3 showing deed recording fees reimbursed fees paid to employees indicates that the Village of Alamance paid \$188.00 in these reimbursements.”

A review of the Village records indicates that these sums were in fact paid to Michael Walser upon tender of register of deeds receipts showing that these sums had been paid by him for the recording of Village instruments. It does not appear that these sums were inappropriate payments. The procedural difficulty in reimbursement between Hobbs and its employees should be a matter between them.

As to any other matters contained in the report, the Village is not a respondent.

Appendix F Management Responses

*Kevin Austin, Chairman of Board
David Moxley, Vice Chairman
Gilbert Hemric, Commissioner
Marion Welborn, Commissioner
Frank Zachary, Commissioner*



*Ed Powell, County Attorney
Aaron Church, County Manager
Tanya Gentry, Deputy Clerk to the Board*

Administrative Offices

February 17, 2014

Barbara Baldwin
Director of Internal Audit
Office of Management and Budget
State of North Carolina
20320 Mail Service Center
Raleigh, NC 27699-0320

Ms. Baldwin:

Thank you for meeting with representatives of local governments involved with the investigative review of allegations concerning the Department of Commerce, Division of Community Assistance, Community Development Block Grant (CDBG) program.

As you are aware, Yadkin County became concerned with information received concerning one of the CDBG grants being implemented and conducted our own internal investigation and forwarded those findings to the Department of Commerce on July 19, 2011. The County cooperated with the Office of Management and Budget while conducting its investigation and the County turned over our findings to local law enforcement. These events prompted current staff to review checks and invoices processed by predecessors.

During these reviews, the County simultaneously conducted a thorough review of its internal controls and processes for all funds, as well grant oversight. The County has implemented a new vendor form that requires approval for all departments who are using new vendors that are not currently in the accounting system. This process includes review of the vendor by the Department Director, Deputy County Manager/Finance Officer and the County Manager. All new vendors are to supply a W-9 and an E-Verify Affidavit confirming their compliance with E-Verify requirements.

The County has implemented an electronic Contracts Management module and purchase order system for all contracts and/or purchases. Generally, invoices should not be approved for payment by the Deputy County Manager/Finance Officer and County Manager without a contract or a purchase order. As part of this process, all contracts have to be pre-audited and approved by either the County Manager (contracts less than \$5,000) or the Board of Commissioners (contracts greater than \$5,000) prior to being entered into the Contracts Management module. Purchase orders are

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(336) 679-4200 Office --- (336) 679-6005 Fax
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PAGE 2

Baldwin, Barbara
February 17, 2014

entered by the Department, approved by the Department Director, County Manager (if above \$1,000) and approved by the Deputy County Manager/Finance Officer.

These changes are part of the County's augmented use of its financial system, as well as enhanced internal controls. Invoices are to be detailed and not simply a statement with an amount listed on it. In 2012, the County decentralized its invoice processing with it originating within the department entering it into the financial system, approval by the Department Director, County Manager (greater than \$1,000) and Deputy County Manager/Finance Officer and lastly the accounts payable clerk preparing the check in the system. There have been more layers added to the process, which allows for segregation of duties as well as more eyes reviewing the submitted documentation for processing.

All of these efforts are to make the County and its operations more transparent, more accountable, more efficient and more responsible for all funds in which we are the custodian. In 2011, Yadkin County was awarded the North Carolina State Treasurer's Honorable Mention for its efforts and consolidating sixteen various checking accounts into one centralized depository.

In Section 1.2, page 7, it states questionable payment of two invoices for three homes, totaling \$9,091. As I understand it there were two invoices for *two* (not three) homes totaling \$9,091 paid to Tri-County Development. On page 8, it states that Yadkin County paid \$8,592 for alleged lead abatement, which is incorrect. The amount of check number 1396 was \$8,591 payable to Tri-County Development for lead abatement services. The invoice does not detail exactly what those services were. The other invoice was in the amount of \$500 was for pressure diagnostic testing that we were not aware of being ineligible for CDBG funding.

In Section 1.4, it states the Project Administrator swept the grant balance on the contract for the CDBG infrastructure hook-up grant (08-C-1947). Per the invoice provided by Tri-County Development stating that the services were requested by Michael Walser, okayed to pay by Michael Walser and approved by the County Finance Officer at that time, Sheron Church, the County paid Tri-County Development \$3,434 for water and sewer line completions at two residences. This amount did balance out the remaining hook-up services or rehabilitative services expenditure line in April 2010.

The County has developed a thorough grant review process that will reduce the likelihood of grant non-compliance with all of the grants the County receives. The review process includes areas mentioned above, such as contract review, vendor selection and invoice review.

Yadkin County is appreciative of the work that the Office of Management and Budget has conducted and agrees that Tri-County Development, Michael Walser and Michael Kepley received payments from Yadkin County they should not have utilizing CDBG funds fraudulently and by misleading the County. It is the intent of the County to seek restitution from the appropriate entities to reimburse the County for its loss, as well as the State.

Sincerely,



Digitally signed by County Manager
DN: cn=County Manager, o=Yadkin
County, ou=Administration,
email=aaronchurch@ymac.com, c=US
Date: 2014.02.17 09:08:20 -0500

Aaron Church
County Manager