

RESOLUTION AUTHORIZING EXECUTION OF NECESSARY DOCUMENTS TO ENGAGE THE ENVIRONMENTAL LEGAL SERVICES OF STEVE BERLIN WITH KILPATRICK TOWNSEND TO COMPLETE THE PROCESS OF REDEVELOPING THE PROPOSED NEW FORSYTH COUNTY COURTHOUSE PROPERTIES UNDER THE NORTH CAROLINA BROWNFIELDS PROGRAM

WHEREAS, Forsyth County proposes to engage the environmental legal services of Steve Berlin with Kilpatrick Townsend to complete the process of redeveloping the proposed new Forsyth County Courthouse properties located at 175 N. Chestnut Street, Winston-Salem, N.C., and another property on the 100 block of N. Chestnut Street, under the North Carolina Brownfields Program; and

WHEREAS, the technical process of redeveloping the proposed Courthouse sites under the North Carolina Brownfields Program will include preparation and submittal of a Brownfields Property Application to the North Carolina Brownfields Program to determine eligibility, engagement of an environmental consultant to prepare a receptor survey, potential additional environmental site assessment, preparation of an Environmental Management Plan, plotting of the entire site on a Brownfields Survey Plat, a Public Notice Process, preparation of ancillary documents, recording of Brownfields documents, and annual Land Use Restriction Updates verifying compliance with the Brownfields Agreement; and

WHEREAS, the costs related to the process of redeveloping the proposed new Courthouse properties under the North Carolina Brownfields Program are estimated to be approximately \$200,000, including fees for legal and technical assistance, and program fees related to the process;

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby authorizes the Chairman or County Manager and Clerk to the Board to execute, on behalf of Forsyth County, an agreement with Steve Berlin with Kilpatrick Townsend to complete the process of redeveloping the proposed new Forsyth County Courthouse properties under the North Carolina Brownfields Program at a cost up to \$200,000, which includes fees for legal and technical assistance, and program fees related to the process, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney.

Adopted this 26th day of October 2017.

RECEIVED

SEP 29 2017

FORSYTH COUNTY
ATTORNEY'S OFFICE

September 28, 2017

direct dial 336 607 7304
direct fax 336 734 2614
sberlin@kilpatricktownsend.com

VIA UPS OVERNIGHT DELIVERY

Mr. B. Gordon Watkins, III
Assistant Forsyth County Attorney
Forsyth County Attorney's Office
201 N. Chestnut Street
5th Floor
Winston-Salem, NC 27103

RE: NC BROWNFIELDS PROGRAM AND NEW COUNTY COURTHOUSE

Dear Gordon:

Thank you for meeting with me to discuss redeveloping the new Forsyth County Courthouse properties under the North Carolina Brownfields Program (NCBP). This letter and its enclosures provide summary information regarding the process and costs associated with such redevelopment.

The NCBP provides two redevelopment options for a Prospective Developer (PD), the "Original" option and the "Redevelopment Now" option. The Redevelopment Now option provides a nearly project-specific NCBP project manager as well as additional NCBP attorney resources for the NCBP to avoid legal bottlenecks in the negotiation and production of a final brownfields agreement. Under the Redevelopment Now option, the NCBP uses a significantly higher fee (\$30,000 vs. \$8,000) to hire project managers that have just three or so projects so that they can respond throughout the brownfields agreement process on a zero-queue basis.

Once a decision is made regarding the redevelopment option, preparation and submittal to the NCBP of a *Brownfields Property Application* (BPA) is required to determine the PD's eligibility for entry into the NCBP. A copy of the BPA Form is enclosed for your review. We will work together to complete the BPA. Also enclosed are copies of two process flow charts prepared by the NCBP,

- the "*Brownfields Agreement Process*" and
- the "*Brownfields Public Notice Process*".

As you can see, this is a somewhat technical process, but one that I have successfully navigated on numerous occasions.

After completing its review of the BPA, the NCBP will issue a determination regarding the PD's eligibility for the NCBP. If the PD is determined eligible, the NCBP issues a *Letter of Eligibility* (LOE) in which it requests

- all available environmental site assessment data,
- a receptor survey, and
- the initial Brownfield Fee which will either be \$2,000 for the Original option or \$30,000 for the Redevelopment Now option.

The expertise of an environmental consultant will be necessary to prepare the receptor survey and may also be necessary if the NCBP requires additional environmental site assessment activities before it makes a determination about environmental risks to human health and the environment on the Brownfields Property. I have worked with several highly qualified environmental consultants with NC Brownfields experience and can offer guidance in this area if needed.

When the NCBP determines that no additional environmental assessment activities are required, it will prepare a draft Brownfields Agreement (BFA) and send it to the PD for review and comments. The draft BFA will include specific *Land Use Restrictions* for the Brownfields Property as well as the preparation of an NCBP approved *Environmental Management Plan* prior to initiating soil disturbing redevelopment activities on the Brownfields Property.

In addition to the BFA, the entire Brownfields Property must be plotted on a *Brownfields Property Survey Plat* (BPSP). The expertise of a surveyor who is experienced in the very technical process of preparing a BPSP is highly recommended. Again, I have worked with several such surveyors and can offer guidance in this area if needed.

Upon completion of and mutual agreement on the draft BFA and draft BPSP, the NCBP will send the PD written approval to proceed with the *Public Notice Process*. If the PD has chosen the Original redevelopment option, the NCBP will also send its invoice for the Final Brownfields Fee of \$6,000. Further, the NCBP will prepare several *ancillary documents* to facilitate the 30-day Public Notice/Comment Process (see enclosed *Brownfields Public Notice Process* flow chart). If the 30-day public comment period ends without the NCBP receiving any comments, the NCBP will sign the final brownfields documents including the BFA and BPSP and return them to the PD for the PD's signature and recording with the Forsyth County Register of Deeds which effectively concludes the process. Annual *Land Use Restrictions Update* reporting to the Brownfields Program verifying compliance with the BFA Land Use Restrictions will be required.

While it is often difficult to predict costs related to NC Brownfields Projects due to unknown conditions that may arise, a good estimate is around \$200,000 for legal, technical, and fees related to the process. I would, of course, alert you if factors were causing a significant deviation, either way, from that estimate.

Please give me a call to discuss.

Sincerely,



Stephen R. Berlin

Enclosures