MINUTES
BURKE COUNTY BOARD OF COMMISSIONERS
RECESSED MEETING

The Burke County Board of Commissioners held a recessed meeting on Tuesday, May 7, 2019 at 4:00 p.m. The meeting was held at the Commissioners' Meeting Room, Burke County Services Building, 110 N. Green Street, Entrance E., in Morganton, N.C. Those present were:

COMMISSIONERS:
- Johnnie W. Carswell, Chairman
- Scott Mulwee, Vice Chairman
- Wayne F. Abele, Sr.

COMMISSIONERS ABSENT:
- Jeffrey C. Brittain (Unable to attend.)
- Maynard M. Taylor (Unable to attend.)

STAFF PRESENT:
- Bryan Steen, County Manager
- Margaret Pierce, Deputy County Manager/Finance Director
- J.R. Simpson, County Attorney
- Kay Honeycutt Draughn, Clerk to the Board

CALL TO ORDER
Chairman Carswell called the meeting to order at 4:00 p.m.

APPROVAL OF THE AGENDA
Motion: To approve the agenda.
RESULT: APPROVED [UNANIMOUS]
MOVER: Scott Mulwee, Vice Chairman
AYES: Johnnie W. Carswell, Scott Mulwee and Wayne F. Abele, Sr.
ABSENT: Jeffrey C. Brittain and Maynard M. Taylor

ITEMS FOR DECISION

BDI / CO. ATTY. - PROJECT RAMPART/CRITICAL RESOURCES / ZRODELTA GRANT AGREEMENT AMENDMENT
James Reid Simpson, II, County Attorney, presented information regarding the Project Rampart/Critical Resources/Zrodelta grant agreement amendment as follows:

In November 2017, the Board approved an incentive package for Project Rampart (Critical Resources).

BDI has realized that the grant should have started one year later than what was written in the agreement. BDI is asking the Commissioners to amend the grant agreement to make January 2020 the first year of the grant cycle instead of 2019. Once the property taxes are paid, the first grant payment will be made to the company by March 31 of 2020 and for a maximum of seven (7) consecutive years, as previously approved. There are no other changes to the agreement.
The amended grant agreement reads as follows:

NORTH CAROLINA
AMENDED GRANT AGREEMENT
BURKE COUNTY

THIS AMENDED GRANT AGREEMENT is made and entered into this ____ day of April, 2019, by and between BURKE COUNTY, a body politic and corporate of the State of North Carolina (the “County”), as Grantor; and CRITICAL RESOURCES, LLC, a North Carolina limited liability company with an office and place of business at 100 Beiersdorf Drive, Rutherford College, North Carolina (the “Company”), as Grantee;

W I T N E S S E T H:

The parties hereto entered into this Agreement on February 16, 2018. Since that time, circumstances have changed, so that the years for which such grants will be made have been modified. With such modifications entered herein, the Grant Agreement dated February 16, 2018, shall now read as follows:

The Company has acquired a manufacturing facility and office located in the Town of Rutherford College, Burke County, North Carolina (the “Present Facility”). The Present Facility is located on two tracts of real property containing approximately 76 acres, acquired from TKC CCXV, LLC by Critical Properties, LLC, a North Carolina limited liability company, by a Warranty Deed recorded in Book 2323, at Page 799 in the Burke County Registry (the “Real Property”).

The Company proposes to, and will shortly begin to, set up the Present Facility to manufacture arms and ammunition, including installation of machinery and equipment (the “Project”), which the Company indicates will require the Company to make a new capital investment of approximately $34,000,000 within sixty (60) months after the date of this Agreement; and

The Company indicates that with the completion of the Project and production, it will create and maintain 151 new permanent jobs over that time period, including 82 new jobs over the initial two (2) year period, all of which will pay at or above $34,700 per year in addition to covering at least one-half of an employee’s health insurance cost; and

To encourage the new capital investment by the Company and the creation of new jobs, the County is prepared to extend certain economic development incentives to the Company based on the increase in taxable value which will result from the Project.

WHEREAS, the County, having considered the economic benefits that will accrue to the community at large, including increased tax revenues from additional investments and taxable capital property; the increase in prospective sales tax revenues; the stabilization and stimulation of the local economy; the benefits realized by creation of a substantial number of jobs; and other economic benefits, has decided and determined to provide a certain Grant to the Company based on and in reliance upon the investment and jobs proposed by the Company for the Project; and
WHEREAS, this Grant Agreement is approved only after a noticed public hearing by the County under the authority granted by N.C.G.S. § 158-7.1, and by this Grant Agreement the County sets forth the terms and conditions of the Grants authorized herein.

NOW, THEREFORE, in consideration of the premises set out above and the mutual covenants herein contained, the Company and the County agree as follows:

1. Definitions. In administering and construing this Grant Agreement, the following definitions shall apply:

a. Agreement. This Grant Agreement, together with any attachments, exhibits or other documents specifically referenced and/or incorporated herein.

b. Base Capital Investment. The real and personal property currently located or installed at the facility and taxable under the Machinery Act. Base Capital Investment is valued at the tax value assigned by the Burke County Tax Office, and the parties agree that under this Agreement the Base Capital Investment is $3,010,440 in real estate value and $0 in personal property value, for a total of $3,010,440. For purposes of administering this Agreement, the Base Capital Investment will not be increased or decreased because of tax discoveries, adjustments to the tax value ordered by any administrative appeals, or administrative adjustments or technical corrections of errors made by the Burke County Tax Office, and all determinations under this Agreement shall be based upon a base capital investment of $3,010,440.

c. Grant. The local funds awarded by the County to the Company under this Agreement to be used for authorized new economic development activities at the facility.


e. New Capital Investment. The tax value of machinery, equipment and other tangible property acquired, purchased or installed, and improvements to real property made, by the Company at the facility, which for property tax purposes can be assigned a tax value under the Machinery Act, but excluding Base Capital Investment.

f. Tax or Taxes. Those taxes assessed against a property owner (in this case the Company or the entity owning the facility) under the Machinery Act, including the principal amount as well as any costs, penalties and interest, calculated by multiplying the tax value of taxable property by the tax rate established by the County, and then adding any costs, penalties and interest, if any, allowed under the Machinery Act. The taxes may vary from year to year based upon the tax rate set by the County at the time it adopts its annual fiscal year budget. If the County provides that payment of property taxes by a certain date entitles the payor to a discount, and the Company pays such discounted tax amount, then all calculations of Grants hereunder for such year shall utilize the discounted amount as the Tax Rate.
g. **Taxable Property.** Any property, real or personal, that is subject to taxation by the County under the Machinery Act.

h. **Tax Value.** The value, expressed in dollars, placed on taxable property by the Burke County Tax Department. For purposes of this Agreement, tax values shall be used to determine the value of both the Base Capital Investment (which has been established and agreed upon) and New Capital Investment at the facility.

2. **Grant.** Subject to the additional requirements set out in this Agreement, the County has awarded and will pay to the Company an annual cash Grant to assist and/or partially reimburse the Company for eligible expenses incurred by the Company in the building, improving and equipping of the facility (i.e., New Capital Investment). Provided the Company has fully complied with the terms of this Agreement, the Grants based on the New Capital Investment and Tax Rate for each year beginning with 2019 shall be paid to the Company by the County no later than March 31 of the next succeeding calendar year, so that the Grants will be paid to the Company for seven (7) consecutive years beginning in the 2020 calendar year. The amount of the Grant by the County for the first year is estimated to be $165,410, based upon the current (fiscal year 2017/2018) tax rate and upon the representations by the Company of its estimate of New Capital Investment. The actual amount of the Grant will be calculated each year using the method set out below, and will be based upon the New Capital Investment, the tax rate for the particular year as set by the County and its budget ordinance, and the incentive rate of 70% of the New Capital Investment for each of the seven (7) years, all provided that the Company otherwise qualifies for the Grant for each of those years.

The amount of each annual County Grant will be calculated as follows:

\[
\text{New Capital Investment} \times \text{Tax Rate} \times 70\% \text{ (Incentive Rate)} = \text{Grant Amount}
\]

Assuming the New Capital Investment is the projected $34,000,000.00 and applying the County's current tax rate of 0.695/$100 of value, the amount of the Grant from the County for the year would be $165,410.00.

The calculation can be expressed as:

\[
$34,000,000 \times 0.00695 \times 0.70 = $165,410
\]

Therefore, based upon the above illustration, the Grant payable by the County will be separately calculated for each of the seven (7) years in the manner specified above, but using tax values for each of those seven (7) years as assigned by the Burke County Tax Office, and the respective tax rates levied by the Burke County Board of County Commissioners for each of the seven (7) separate years, including any applicable discounts for early payment. The incentive rate will remain the same for each of the seven (7) years. Tax values assigned by the Burke County Tax Office using standard appraisal methods required under the Machinery Act, shall be binding upon the parties in determining the amounts of the Grant.
3. **Appropriation.** To carry out the terms of this Agreement, the County will appropriate and pay over to the Company an amount equal to the Grant as stated above for each calendar year that the Company qualifies for the Grant.

4. **Effective Date and Term.** This Agreement shall become effective and binding upon the parties upon approval and execution by all the parties. The term of this Agreement shall extend until December 2026. The payment of the Grant for each of the calendar years 2019, 2020, 2021, 2022, 2023, 2024 and 2025 shall become due and shall be paid by the County on the 31st day of March 2020, 2021, 2022, 2023, 2024, 2025 and 2026. The Company shall not be eligible for any Grant beyond seven (7) consecutive calendar years ending on December 31, 2026.

5. **Advancement of Grant Proceeds.** Up to $500,000 of the Grant amount may be advanced by the County to the Company upon execution of this Agreement and execution of the security documents set forth in Section 6, below, and upon presentation of invoices satisfactory to the County.

6. **Security for Advancement.** As security for the Grant sums advanced, the Company and its real estate affiliate, Critical Properties, LLC, shall issue to the County a Promissory Note and Deed of Trust securing $500,000 in advances, which Deed of Trust shall be a second lien on the Real Property, second only to the lien of Providence Bank of Rocky Mount, North Carolina recorded in Book 2323 at Page 804 in the Burke County Registry, in an amount not to exceed $3,750,000.

   The Note shall bear no interest, so long as all terms are complied with. Repayment shall be made by crediting and offsetting Grant Amounts otherwise payable to the Company hereunder against sums previously advanced by the County, beginning with the first such payment in 2020. If the Company should become ineligible for Grants hereunder, or should violate the conditions set forth herein, before such time as the Note is completely paid off and the Deed of Trust cancelled, then such shall constitute a default under the Note and Deed of Trust causing any amount still outstanding to become immediately due and payable.

   By way of illustration of offsetting, should the County advance to the Company $500,000 in Grant Amounts, and the Company should be otherwise entitled to a Grant Amount of $165,410 on March 31, 2020, this amount will be credited against the Note balance. The Company would receive no payment at that time, but the balance of the Note would be reduced by $165,410, leaving a balance due of $334,590.

   If the Company should be otherwise be entitled to a Grant Amount of $165,410 on March 31, 2021, the Company again would receive no payment, but the balance of the Note would be reduced by $165,410, leaving a balance due of $169,180.

   If the Company should be otherwise be entitled to a Grant Amount of $165,410 on March 31, 2022, the Company again would receive no payment, but the balance of the Note would be reduced by $165,410, leaving a balance due of $3,770.

   If the Company should be otherwise be entitled to a Grant Amount of $165,410 on March 31, 2023, the Company again would receive payment of $161,640, and the balance of the Note would be reduced by $3,770, leaving a balance due of $0, and the Deed of Trust would be cancelled.
7. **Eligibility.** To be eligible for the Grants, the Company will be required to maintain its Base Capital Investment at the facility at the current combined level, and to make a privately funded New Capital Investment estimated at $34,000,000 by January 1, 2023. The tax value of the construction, improvements and equipping project can be appraised by the Burke County Tax Office as of January 1, 2019 and each year thereafter. However, there is no limit on the New Capital Investment, and the New Capital Investment may in fact be less than or greater than the estimated amount set out above. All the parties acknowledge that the New Capital Investment will be determined by appraised values assigned by the Burke County Tax Office, and therefore those tax values may not equal the amount of money actually spent by the Company for the improvement of the facility. The determination of New Capital Investment may vary from year to year because of depreciation, additional capital investment, obsolescence and other similar factors.

The Company shall create 82 full time new jobs within two (2) years of the date of this Agreement and maintain those jobs at or above this level for six (6) consecutive months. The creation and maintenance of these jobs shall be verified by the Company’s NCUI 101 records, which the Company shall submit to the County (using the guidelines required of it to comply with the terms of the Building Reuse Grant between the Company and the North Carolina Department of Commerce). If the Company fails to create 82 full time new jobs within two (2) years as aforesaid, or maintain them for six (6) months, the Company shall repay to the County a pro-rata share of the Grant proceeds advanced pursuant to Section 5, above.

By way of illustration, should the Company only create 80 jobs within two (2) years and maintain them for six (6) months, it will only be entitled to 80/82 of the $500,000 Grant advancement, or $487,804, and would repay the County the difference, or $12,196, before the County would release its Note and Deed of Trust.

8. **Sole Obligation.** The County’s sole responsibility under this Grant Agreement is to pay its Grant to the Company, upon the Company’s compliance with the terms herein; it has no obligation concerning any grants that may be promised or approved from any municipality or from the State of North Carolina.

9. **Other Conditions.** The award and payment of all or any portion of the Grant herein shall be subject to these additional conditions:

   (a) **Taxes.** All ad valorem property taxes owed by the Company to the County shall be paid no later than the penalty date for the payment of taxes as established in accordance with the Machinery Act. The failure of the Company to pay such taxes in a timely manner will disqualify the Company from the Grant for that year. Further, should the Company contest the payment of any such taxes, or appeal the tax value placed on its taxable value by the Burke County Tax Office, then during the period of appeal, the payment of the Grant will likewise be postponed until all issues involved in the amount of the taxes or the value of the taxable property are finally resolved and all such taxes are paid.

   (b) **Investment.** In the event for any of the Grant years, the Company fails to maintain its Base Capital Investment at the Facility (combined), then for that year the Company will not be qualified for the Grant and the Grant will be forever waived.
(c) **Severability of Grants.** The failure of the Company to qualify for a Grant in any one year shall not disqualify the Company for a Grant in the next or succeeding years; however, the Company will not be eligible for any Grant after the expiration of this Agreement, it is being agreed that the failure of the Company to qualify for a Grant in a particular year shall not extend the Agreement beyond the calendar year 2026.

(d) **Use of Current Qualifying Data.** The computation of the Grants for each year is a separate and independent calculation which will be made using tax rates, tax values and other information current for that year.

(e) **Plant Closing.** Should the Company cease to operate, declare bankruptcy, seek protection from its creditors in either state or federal court, or should the Company close its Facility, or suspend or interrupt the operation of the Facility for more than thirty (30) days during any calendar year, then, and in that event, the County may terminate this Agreement without any further liability to the Company, except for Grant payments advanced and documented by the Note and Deed of Trust and not offset as provided in Section 6. In the event this Agreement is terminated by the County, the Company may keep any Grant previously paid to it except as aforesaid; however, no further Grants shall be payable to the Company, even if the Company has qualified for the Grant, and the County shall be released from any liability under this Agreement.

(f) **Other Plants.** Investment by the Company in new machinery and equipment or other personal property installed or primarily used at its plants other than the Facility or real property improvements constructed at its plants other than the Facility shall not qualify for the Company for a grant or grants and shall not be treated as New Capital Investment for purposes of the Grants authorized herein.

10. **Use of Grant Funds.** The Company shall use all Grant funds paid to it by the County under this Agreement only for eligible economic development activities authorized under N.C.G.S. 158-7.2, et seq., or other applicable statutory or case law in North Carolina.

11. **Other Assistance.** The County will cooperate and provide technical and administrative assistance to the Company in applying for and obtaining other economic development grants or funds including the federal and/or state assistance should the Company qualify for such assistance.

12. **Parties to this Agreement and Assignment.** The fact that the title to the Facility is or might become vested in a separate corporate entity related to the Company shall not disqualify the Company from receiving the Grant authorized under this Agreement, so long as the Company continues to exercise direct management and control of all operations at the Facility, and so long as the Company does not divest itself of the Facility or close the Facility or sell the Facility to any entity that is not wholly and legally controlled by the Company. Likewise, any contractual obligation owed by the Company hereunder, but which is the legal obligation of any affiliate of the Company shall be attributed to the Company hereunder, and violations by affiliates shall be deemed violations by the Company. Neither this Agreement nor the Grant under this Agreement shall be assigned to any other party.
13. **Representations and Warranties.** The Company hereby represents and warrants that:

(a) The Company is duly organized and existing, and is duly incorporated under the laws of the State of North Carolina, and authorized to do business in the State of North Carolina.

(b) The execution and delivery of this Agreement has been duly authorized by all necessary action, and are not in contravention of law nor in contravention of any certificate of authority, bylaws, or other applicable organizational documents of such party, nor the provisions of any indenture, agreement, or undertaking to which it is a party, nor the provisions of any indenture, agreement, or undertaking to which it is a party or by which it is bound.

(c) There is no action, suit, proceeding, or investigation at law or in equity for any court, public board, or body pending, or to such party’s knowledge, threatened against or affecting it, that could or might adversely affect the Project, the creation of such jobs, or any of the transactions contemplated by this Agreement, or the validity or enforceability of this Agreement or such party’s ability to discharge its obligations under this Agreement.

(d) The Company shall at all times preserve its legal existence, except that it may merge or consolidate with or into or sell all or substantially all of its assets to any entity that expressly undertakes, assumes for itself, and agrees in writing to be bound by all of the obligations and undertakings of the Company contained in this Agreement. If the Company so merges, consolidates, or sells its assets without such an undertaking being provided, the Company agrees to repay the County the remaining balance owed and not yet repaid under Section 5 of this Agreement. Upon such repayment, the County will release the Note and Deed of Trust.

(e) No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by the Company or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The Company shall provide the County with evidence or the existence of any such necessary consents or approvals at the time of the execution of this Agreement.

(f) The Company is solvent.

14. **Binding Effect.** This Agreement is binding upon the parties hereto and their respective successors and assigns.

15. **Informalities.** Informalities observed in the administration of this Agreement or the observance of its provisions on one date or occasion shall not be a waiver of the right of the parties to insist upon strict performance of this Agreement on any other date or any subsequent occasion.
16. **Merger.** All prior representations, negotiations and agreements between the parties are hereto merged into this Agreement and this Agreement alone sets forth the full understanding of the parties. Any amendments to this Agreement shall be set forth in writing, shall refer to this Agreement and shall be signed by the parties.

17. **Controlling Law.** This Agreement shall be construed and enforced under the laws of the State of North Carolina.

**Motion:** To approve the amendment to the Grant Agreement between Burke County and Critical Resources, LLC as presented. Further, authorize the County Manager to execute the amendment on behalf of the Board.

| RESULT: | APPROVED [UNANIMOUS] |
| MOVER: | Scott Mulwee, Vice Chairman |
| AYES: | Johnnie W. Carswell, Scott Mulwee and Wayne F. Abele, Sr. |
| ABSENT: | Jeffrey C. Brittain and Maynard M. Taylor |

**CO. MGR. - REQUEST FOR QUALIFICATIONS FOR NEEDS ASSESSMENT & ARCHITECTURAL DESIGN SERVICES FOR ANIMAL SHELTER (TABLED FROM APRIL 16, 2019 MEETING)**

County Manager Steen and Clerk Draughn presented information regarding the request for qualifications for a needs assessment & architectural design services for an animal shelter as follows:

A “Request for Qualifications” was issued for a needs assessment and architectural services for an animal shelter. The notice was posted to the website on March 20th and advertised in the newspaper on March 22, 2019. Further, the notice was published on the State’s procurement website on March 20. Responses were due on April 5th. The submittals were received, reviewed and ranked by a team consisting of Gwen Stephens, Shane Prisby, Lance Riddle and Kay Draughn. Of the nine (9) responses received, the top three (3) firms (PNP Design, McMillan Pazdan Smith and Shelter Planners) were interviewed and re-ranked by the original team members plus Co. Mgr. Bryan Steen, Vice Chairman Scott Mulwee and animal welfare advocate David Coffin. The score sheet is provided for reference. There is no funding in the FY 18-19 budget. An appropriation of General Fund, Fund Balance is necessary to move forward with the needs assessment.

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<th>Burke County Animal Shelter RFQ Short List Ranking</th>
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<td><strong>Ranking Committee Scoring</strong></td>
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<td>Creativity &amp; vision</td>
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<td>Ability to work within a budget and schedule</td>
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<td>Ability to connect with owner</td>
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<td>Understands County &amp; animal needs</td>
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Clerk Draughn reviewed the criteria in which the firms were scored and said while all three (3) finalists were highly competent, PNP Design received the highest score. Vice Chairman Mulwee said he was impressed with all three (3) finalists and thinks PNP Design will do a wonderful job for Burke County.

**Motion**: To authorize the County Manager to negotiate and enter into a contract with the recommended firm for a needs assessment and architectural design services for the animal shelter. If an agreement cannot be reached with the recommended firm, PNP Design, the Manager is authorized to negotiate and execute a contract with the 2nd or 3rd ranked firms. Further, appropriate up to $20,000 of General Fund, Fund Balance for the needs assessment.

**RESULT**: APPROVED [UNANIMOUS]

**MOVER**: Wayne F. Abele, Sr., Commissioner

**AYES**: Johnnie W. Carswell, Scott Mulwee and Wayne F. Abele, Sr.

**ABSENT**: Jeffrey C. Brittain and Maynard M. Taylor

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**ADJOURN**

**Motion**: To adjourn at 4:08 p.m.

**RESULT**: APPROVED [UNANIMOUS]

**MOVER**: Wayne F. Abele, Sr., Commissioner

**AYES**: Johnnie W. Carswell, Scott Mulwee and Wayne F. Abele, Sr.

**ABSENT**: Jeffrey C. Brittain and Maynard M. Taylor

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Approved this 17th day of September 2019.

Johnnie W. Carswell, Chairman
Burke Co. Board of Commissioners

Attest:

Kay Honecutt Draughn, CMC, NCMCC
Clerk to the Board