STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF WATER QUALITY

OFFER AND ACCEPTANCE FOR STATE LOAN FOR WASTEWATER TREATMENT WORKS PROJECTS UNDER THE NORTH CAROLINA CLEAN WATER REVOLVING LOAN & GRANT ACT OF 1987 AND THE FEDERAL CLEAN WATER ACT AMENDMENTS OF 1987 and AMERICAN RECOVERY AND REINVENSTMENT ACT OF 2009

SECTION I - OFFER

Legal Name & Address of Applicant	Federal Project No.
Buncombe County of Board of Commissioners **205 College St. Suite 200** **Asheville, North Carolina 28801**	**2W370919-01** State Project No. **E-SRF-T-09-230**

Total Estimated Project Cost	**$ 3,554,100**
Total ARRA Assistance Amount Offered	**$ 3,000,000**

Description of Project: **Buncombe County Landfill Wastewater Pre-Treatment System: Landfill Wastewater Pre-Treatment System: Landfill Gas to Energy Project**

Consideration having been given by the Department of Environment and Natural Resources to (a) the application submitted by the applicant in accordance with the Rules Governing State Loans for Wastewater Treatment Works Projects Pursuant to the North Carolina Clean Water Revolving Loan & Grant Act of 1987, the Federal Clean Water Act Amendments of 1987 and the American Recovery and Reinvestment Act of 2009, (b) the public benefits to be derived by the construction of this project, (c) the relation of public necessity for the system, and (d) the adequacy of the provisions made or proposed by the applicant for assuring proper and efficient operation and maintenance of the system after completion of the construction thereof, and it having been determined that (1) the applicant is an eligible unit of government, (2) the project meets the eligibility criteria for State loans, and (3) the project has been approved and certified by the Department of Environment and Natural Resources as being entitled to priority for State loan funds made available by the Federal Clean Water Act Amendments of 1987 and the American Recovery and Reinvestment Act of 2009.

The Department of Environment and Natural Resources, acting on behalf of the State of North Carolina, hereby offers:

To make an ARRA loan to the above named applicant subject to the conditions and assurances included in this document to aid in financing the construction of the project pursuant to the Rules Governing State Loans for Wastewater Treatment Works Projects. The amount of the State loan will not exceed the appropriate percentage, as established by the Act, of such dollar limitation as established herein.

In addition, this Offer is made subject to the following conditions:

1. **The maximum term of this loan shall not exceed 20 years at an interest rate of zero percent (0 %) per annum. The total loan to be repaid shall be ½ of the total project costs reimbursed. Principal forgiven shall be ½ of the total project costs reimbursed.**

2. **The closing fee for this loan is $30,000 which is <u>not</u> included in the total loan amount of $3,000,000**

3. **This Offer must be accepted, if at all, within forty-five (45) days of receipt.**

4. **In addition to the assurances in Section II, the attached Standard Conditions for Federal SRF Loans are incorporated into this Loan Offer upon execution.**

For The State of North Carolina:

Dee Freeman, Secretary
North Carolina Department of Environment and Natural Resources

Signature	Date 8/12/09

SECTION II - ASSURANCES

The Applicant hereby gives assurance to the Department of Environment and Natural Resources:

A. The final plans and specifications have or will be approved by the Division of Water Quality and the applicant so notified, prior to the project being advertised or placed on the market for bids.

B. The construction contract(s) requires the contractor to furnish performance and payment bonds, each of which is in an amount of not less than one hundred percentum (100%) of the contract price; and to maintain during the life of the contract(s) adequate fire, extended coverage, workmen's compensation, public liability, and property damage insurance.

C. The construction of the project, including the letting of contracts in connection therewith, conforms to the applicable requirements of State and local laws and ordinances.

D. Any change or changes in the approved plans and specifications or contract(s) which (has/have) made or will make any major alteration in the work required by the plans and specifications, or which increases the cost of the project above the latest estimate approved by the Department of Environment and Natural Resources, was or will be submitted to the Division of Water Quality for approval.

E. The construction contract(s) provides that any duly authorized representative of the State will have access to the work whenever it is in preparation or progress, and that the contractor will provide proper facilities for such access and inspection.

F. The applicant will provide and maintain competent and adequate engineering supervision and inspection of the project to insure that the construction conforms with the approved plans and specifications. Proof of adequate inspection is required as part of the Project Bid Information package.

G. Adequate accounting and fiscal records will be maintained during the construction of the project and these records will be retained and made available for a period of at least three (3) years following completion of the project.

H. Each Loan recipient will be required to submit an annual audit, prepared by an independent external auditor, to Construction Grants & Loans Section within six months after the end of the recipient's fiscal year.

I. All funds loaned pursuant to the Clean Water Revolving Loan & Grant Act of 1987 and the American Recovery and Reinvestment Act of 2009, shall be expended solely for carrying out the approved project and an audit shall be performed in accordance with G.S. 159-34, as amended. **The applicant will expend all of the requisitioned funds for the purpose of paying the costs of the project within three (3) banking days following the receipt of the funds from the State.**

J. Any duly authorized representative of the Division of Water Quality shall have access, for the purpose of audit and examination, to any books, documents, papers and records of the applicant that are pertinent to funds received under the Act; and the applicant shall submit to the Division of Water Quality such documents and information as it may require in connection with the project.

K. The applicant shall demonstrate to the satisfaction of the Department of Environment and Natural Resources its ability to pay the remaining or ineligible cost of the project.

L. The applicant shall demonstrate to the satisfaction of the Department of Environment and Natural Resources that it has or will have a fee simple or such other estate or interest in the site of the project, including necessary easements and rights-of-way, to assure undisturbed use and possession for the purpose of construction and operation for the estimated life of the project prior to the authorization to award construction contracts.

M. The declarations, assurances, representations, and statements made by the applicant in the application; and all documents, amendments, and communications filed with the Department of Environment and Natural Resources by the applicant in support of its request for a loan will be fulfilled.

N. The applicant agrees to construct the project or cause it to be constructed to final completion in accordance with the application and plans and specifications approved by the Division of Water Quality.

O. The completed Project Bid Information form and supporting documentation must be delivered to the Division of Water Quality by June 10th 2009 for Round 1 ARRA Awards.

P. The Local Government Commission will forward the debt instrument after total project costs are established. The applicant must execute the debt instrument a minimum of ten (10) days prior to the request of disbursement of loan funds.

Q. **By accepting this loan offer, the applicant agrees to the payment of a one percent (1%) closing fee if the Median Household Income threshold was neither met or exceeded. The payment of this fee is due within six months of the date of this loan offer. An invoice will be sent to the applicant when the Department of Environment and Natural Resources receives the executed offer.**

R. Within thirty (30) days of the date of completion of the project, the applicant will make available to the Construction Grants Section staff all project costs, for the purpose of making final adjustments to the Revolving Loan and debt instrument. The final debt instrument for ARRA projects will reflect repayment of ½ of the total project's reimbursed costs.

S. All principal payments will be made annually on or before May 1st. The first principal payment is due not earlier than six months after the original date of completion of the project.

T. In accordance with G.S. 159-26(b)(6), a capital project fund is required to account for all debt instrument proceeds used to finance capital projects. It is required that a capital project ordinance, in accordance with G.S. 159-13.2, be adopted by the governing board authorizing all appropriations necessary for the completion of the project. A copy of the approved ordinance must be submitted to this office before submitting the first reimbursement request.

U. The applicant will comply with all applicable Sections of the American Recovery and Reinvestment Act of 2009. Special attention is brought to Section 1605, Buy American provisions, and Section 1606, Davis-Bacon requirements, which must be incorporated into the contract documents for the project.

Certification required by Section 1511 of the American Recovery and Reinvestment Act of 2009

By signing this Loan Offer the Authorized Representative certifies that the project as described in this Loan Offer and in the approved Engineering Report and Plans and Specifications has received the full review and vetting required by law. Further, the Authorized Representative certifies that this project is an appropriate use of taxpayer dollars. The project will have an estimated total cost and receive ARRA funds estimated in the amount shown in Section I of this Loan Offer.

SECTION III - ACCEPTANCE

On Behalf of:

Buncombe County Board of Commissioners

I, the undersigned, being duly authorized to take such action, as evidenced by the attached CERTIFIED COPY OF AUTHORIZATION BY THE APPLICANT'S GOVERNING BODY, do hereby accept this Offer and make the assurances and accept the conditions contained therein.

David Gantt	09/01/09
Signature	Date

David Gantt, Chairman, Buncombe Co. Board of Commissioners

Name of Representative in Resolution, Title (Type or Print)