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**AGENDA**  
**CUMBERLAND COUNTY BOARD OF COMMISSIONERS**  
**REGULAR AGENDA SESSION**  
**JUDGE E. MAURICE BRASWELL**  
**CUMBERLAND COUNTY COURTHOUSE - ROOM 564**  
**DECEMBER 12, 2019**  
**1:00 PM**

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APPROVAL OF AGENDA

1. APPROVAL OF MINUTES

- A. November 14, 2019 Agenda Session Regular Meeting Minutes

2. PRESENTATIONS

- A. Tax Administration Software System Implementation by Joe Utle
- B. Spectra Venue Management Feasibility Study Request for Proposal
- C. Fiscal Year 2019 Audit Results by Vicki Evans
- D. Summary of Proposed Changes to the Cumberland County Animal Control Ordinance by Elaine Smith

3. CONSIDERATION OF AGENDA ITEMS

- A. North Carolina Office of Recovery and Resiliency Community Development Block Grant - Disaster Recovery Replacement Subrecipient Agreement from Hurricane Matthew
- B. Requests for Reappointments to the Parks & Recreation Advisory Commission
- C. Contract for Second Chiller and Cooling Tower Replacement at Department of Social Services

4. MONTHLY REPORTS

- A. Community Development Block Grant - Disaster Recovery (CDBG-DR) Monthly Update
- B. Financial Report
- C. Project Updates
- D. Health Insurance Update

5. CLOSED SESSION: If Needed

6. OTHER ITEMS

**ADJOURN**

**AGENDA SESSION MEETINGS:**

**January 9, 2020 (Thursday) 1:00 P.M.**  
**February 13, 2020 (Thursday) 1:00 P.M.**



## **OFFICE OF THE TAX ADMINISTRATOR**

### **MEMORANDUM FOR THE AGENDA OF THE DECEMBER 12, 2019** **AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: JOSEPH R. UTLEY, JR., TAX ADMINISTRATOR**

**DATE: 12/12/2019**

**SUBJECT: TAX ADMINISTRATION SOFTWARE SYSTEM IMPLEMENTATION BY JOE UTLEY**

**Requested by: AMY H. CANNON, COUNTY MANAGER**

**Presenter(s): JOSEPH R. UTLEY, JR., TAX ADMINISTRATOR**

#### **BACKGROUND**

Cumberland County Tax Administration is in the final stages of implementing a new tax software system. The ongoing project began in August 2018 with the selection of Farragut Systems as the vendor. The Tax Office is in the second week of parallel data entry in both systems and we are scheduled to go-live on Monday, December 16, 2019.

The completion of the software implementation will benefit both the Tax Office and the public. The Tax Office will see an increase in automated workflows that significantly reduce the number of manual processes and paper usage. Public Web Access (PWA) will increase customer service satisfaction through a Windows based website, which provides increased transparency. The public website will have easy to use navigational tabs and a visual display that increases clarity. The public will be able to see expanded building characteristics, sketches, a list of qualified sales in the parcel's neighborhood and the comparable sales used to arrive at the parcel's value.

Phase II of the project will include Mobile Assessor, an on-line appeals module and an on-line business auditing module. Mobile Assessor involves the use of iPads by the appraisal staff to sketch structures, take property photographs and list property characteristics on electronic property record cards. Phase II is scheduled to be completed during the first 6 months of 2020.

#### **RECOMMENDATION / PROPOSED ACTION**

This item is for information only. No action is being requested.





**ASSISTANT COUNTY MANAGER GENERAL GOVERNMENT AND STEWARDSHIP**

**MEMORANDUM FOR THE AGENDA OF THE DECEMBER 12, 2019**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: MELISSA C. CARDINALI, ASSISTANT COUNTY MANAGER**

**DATE: 12/10/2019**

**SUBJECT: SPECTRA VENUE MANAGEMENT FEASIBILITY STUDY REQUEST  
FOR PROPOSAL**

**Requested by: AMY H. CANNON, COUNTY MANAGER**

**Presenter(s):**

**BACKGROUND**

Mr. Jim Grafstrom and Mr. Trent Merritt from Spectra Venue Management will provide an update on the feasibility study request for proposal recently issued by Spectra on behalf of the County.

**RECOMMENDATION / PROPOSED ACTION**

This item is for information only. No action is needed.



**FINANCE OFFICE**

**MEMORANDUM FOR THE AGENDA OF THE DECEMBER 12, 2019  
AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: VICKI EVANS, FINANCE DIRECTOR**

**DATE: 12/2/2019**

**SUBJECT: FISCAL YEAR 2019 AUDIT RESULTS BY VICKI EVANS**

**Requested by: AMY CANNON, COUNTY MANAGER**

**Presenter(s): VICKI EVANS, FINANCE DIRECTOR**

**BACKGROUND**

The fiscal year 2019 audit results will be presented. A presentation to the full Board of Commissioners is planned for the Monday, December 16, 2019 Board of Commissioners' meeting.

**RECOMMENDATION / PROPOSED ACTION**

No action needed - for discussion and information purposes only.



## **ANIMAL CONTROL OFFICE**

### **MEMORANDUM FOR THE AGENDA OF THE DECEMBER 12, 2019 AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: ELAINE SMITH, ANIMAL CONTROL DIRECTOR**

**DATE: 12/3/2019**

**SUBJECT: SUMMARY OF PROPOSED CHANGES TO THE CUMBERLAND  
COUNTY ANIMAL CONTROL ORDINANCE BY ELAINE SMITH**

**Requested by: AMY H. CANNON, COUNTY MANAGER**

**Presenter(s): ELAINE SMITH, ANIMAL CONTROL DIRECTOR**

#### **BACKGROUND**

Chapter 3 of the Cumberland County Ordinances has not undergone significant revisions since 2013. During that time, many policies and procedures at Animal Control have changed. We are proposing several significant changes to the ordinance to promote more responsible pet ownership, increase adoptions, and achieve other goals. We are also requesting several revisions to the Department Fee Schedule that are intended to address specific issues encountered by the shelter and our officers. Staff will also provide options that address issues with pet licensing. Please refer to the attached documents for specific details regarding each of these matters.

#### **RECOMMENDATION / PROPOSED ACTION**

This summary is for information only and to gather feedback. Staff will bring this item back to the January Agenda Session for further consideration.

#### **ATTACHMENTS:**

Description	Type
Proposed Ordinance Changes	Backup Material
Summary of Proposed Ordinance Changes	Backup Material
Proposed Fee Changes Overview	Backup Material
Proposed Fee Changes Summary Chart	Backup Material



## Chapter 3 - ANIMALS<sup>[1]</sup>

### Footnotes:

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**Editor's note**— An ordinance adopted June 17, 2013, amended ch. 3 in its entirety to read as herein set out, removing in their entirety articles pertaining to kennel licensing/permits and public hazard dogs. Former ch. 3, §§ 3-1—3-23, 3-25—3-47, 3-58—3-65, 3-70—3-75, 3-78, 3-83—3-88, and 3-97—3-99, pertained to animals, and derived from § 1 of an ordinance adopted Aug. 21, 2000; § 1 of a resolution adopted Oct. 16, 2000; § 1 of a resolution adopted Apr. 22, 2003; and § 1 of an ordinance adopted Nov. 21, 2005.

### ARTICLE I. - ADMINISTRATION

#### Sec. 3-1. - Animal Services department established.

There is hereby established in the government of the county an Animal Services department.

(Ord. of 6-17-2013(1))

#### Sec. 3-2. - Animal Services Director.

The Animal Services department shall be supervised by the Animal Services Director, who shall be the Director of that department, appointed by the county manager.

(Ord. of 6-17-2013(1))

#### Sec. 3-3. - Functions of Animal Services department.

The Animal Services department shall have and perform the duties and responsibilities set forth herein, shall enforce the provisions of this chapter and of state law relating to Animal Services and animal welfare, shall administer and enforce an Animal Services program within such municipalities within the county as by interlocal agreement may contract with the county for such services and apply this chapter in their municipal jurisdictions, and shall maintain and operate the county animal shelter.

(Ord. of 6-17-2013(1))

#### Sec. 3-4. - Animal Services board established.

- (a) There is established the Cumberland County Animal Services Board.
- (b) The Animal Services board shall be composed of seven members to be appointed by the board of commissioners. Of the seven members, two shall be residents of the City of Fayetteville appointed by the board of commissioners from among the names of four persons nominated by the Fayetteville City Council, that is, two nominations for each seat. At least one member shall be a person with knowledge and experience in dog behavior and/or handling, one member shall be ex officio the veterinarian employed by the Animal Services department, one member shall have an interest in promoting the goals of the Animal Protection Society or the Humane Society or another such broadly-based and representative organization interested in the care and protection of animals, and the other members shall represent the public at large. The members shall serve staggered two-year terms; four members shall have terms that expire on June 30 in even-numbered years following the

year of their initial appointment and three members shall have terms that expire on June 30 of odd-numbered years.

- (c) The powers and duties of the Animal Services board shall include:
  - (1) Appointing three of its members to sit on the dangerous dog appeal board;
  - (2) Hearing any appeals provided for in this chapter other than appeals of the Director's determinations of potentially dangerous dogs;
  - (3) Providing advice and information to the Animal Services department;
  - (4) Upon coordination with the Animal Services Director, making recommendations to the board of commissioners or the Fayetteville City Council, as appropriate, for the betterment of the county's Animal Services program;
  - (5) In conjunction with the Animal Services department and the county's public information Director, providing for a program of public education, information and outreach concerning responsible pet ownership, animal cruelty, and the county's Animal Services program; and
  - (6) Selecting officers of the board, including a chairperson, and adopting rules of procedure.
- (d) A majority of the members shall constitute a quorum for the Animal Services board to conduct its meetings. The Animal Services board shall adopt a schedule of regular meetings and post and file it with the clerk to the board of commissioners and otherwise as required by the open meetings law. The Animal Services board shall schedule at least four regular quarterly meetings, at which meetings the Animal Services Director or his designee shall appear and participate. In addition, the Animal Services board may hold such special or emergency meetings, upon the call of the chairperson or any three members, as may be appropriate in the circumstances, subject to compliance with the open meetings law.

(Ord. of 6-17-2013(1))

Sec. 3-5. - Dangerous dog appeal board established.

- (a) There is established the dangerous dog appeal board.
- (b) The dangerous dog appeal board shall consist of three members to be appointed by the Animal Services board from among its members. The members shall serve staggered two-year terms. Any two members of the dangerous dog appeal board shall constitute a quorum for conducting a meeting.
- (c) The powers and duties of the dangerous dog appeal board shall include:
  - (1) Selecting a chairperson to preside over its appeal hearings;
  - (2) Hearing the appeals of the determinations of potentially dangerous dogs by the Animal Services Director (or his designee) pursuant to article III of this chapter or Chapter 67 of the General Statutes.
- (d) The Administrative Supervisor of Animal Services Animal Services Director shall be the clerk to the Animal Services board and the dangerous dog appeal board.

(Ord. of 6-17-2013(1))

Secs. 3-6—3-9. - Reserved.

## ARTICLE II. - GENERAL PROVISIONS

Sec. 3-10. - Definitions.

- (a) As used in this chapter, the following terms shall have the meanings respectively ascribed to them in this section:

*Abandon* means to cease providing for the care, control or maintenance of an animal without the transfer of ownership of such animal.

*Animal Services department* means the Cumberland County Animal Services Department.

*Animal Services Director* means the Director of the Animal Services department, or his/her designee.

*Animal Services officer* means a person employed by the Animal Services department as its enforcement officer in the impoundment of animals, controlling of animals running at large, and as otherwise provided or required in this chapter.

*Animal shelter* or *department's shelter* means the premises operated by the Animal Services department for the purposes of impounding, sheltering or caring for animals or any other premises operated by another entity with which the county contracts for such purposes.

*At large* or *running at large* means any animal which is not confined on the property of its owner, the leased premises of the animal's owner, or under the actual physical control of a competent person, other than a licensed, currently privilege tax paid, hunting dog under supervision while engaged in a lawful actual or simulated hunt.

*Breeding dog* means any dog that the owner has bred or intends to breed, that has been examined for general health by a licensed veterinarian within the previous 12 months and for which the owner possesses a registration certificate from the American Kennel Club, the Canadian Kennel Club, or the United Kennel Club. *Chapter* means the provisions of this Animal Services chapter as may be in effect in Cumberland County or any municipal jurisdiction located therein.

*Confinement* means to secure an animal in a locked house, run, enclosure or fenced yard within the boundaries of the owner's, leaseholder's, or keeper's property (i.e., house, fenced yard).

*County manager* means the duly appointed county manager of the county or his/her designee.

*Cruelty* means to endanger by any act of omission or commission the life, health or safety of an animal.

*Director* means the Director of the Animal Services department.

*Domestic animals* means any animals that depend on humans for food, water and shelter to include but not be limited to: Dogs, cats, horses, cows, pigs, sheep, goats and fowl.

*Exposed to rabies* means any animal that has been bitten by or exposed in a manner proven to be able to transmit rabies, to any other animal known to have been infected with rabies or any other animal reasonably suspected of being infected with rabies that is not available for laboratory diagnosis.

*Fee schedule* means any schedule of fees related to the administration of this chapter which may be adopted by the board of commissioners.

*Fowl* means chickens, guineas, geese, ducks, pigeons, and other avian animals.

*Harboring* means regularly feeding, sheltering or caring for an animal.

*Hunting dog* means a dog that is owned by an individual possessing a valid license to hunt animals appropriate to the breed of dog.

*Impoundment* means placing an animal in an Animal Services vehicle or unit, or holding an animal at the animal shelter, or holding an animal at any other location at the direction of the Director of Animal Services.

*Keeper* means any person, acting in the capacity of the owner, or at the owner's request, who is responsible for the care, welfare and maintenance of the animal.

*Livestock* includes, but is not limited to, equine animals, bovine animals, sheep, goats, llamas and swine.

*Memorandum of understanding (MOU)* means an agreement by an owner and the Animal Services department signed by the owner who agrees to certain limitations and/or conditions contained therein.

*Neuter* means to render a male dog or cat unable to reproduce.

*Nuisance/reckless owner* means an owner who has received a violation under this chapter and has outstanding fees owed to Cumberland County Animal Services for previous violation(s) or who has not complied with the requirements for ownership of a nuisance animal, dangerous or potentially dangerous dog, anyone who has signed an MOU with the Animal Services department and has failed to adhere to the MOU, or anyone convicted of misdemeanor or felony animal cruelty.

*Owner* means anyone taking care of or having custody of an animal, such as by providing food, water, shelter or medical care, but shall not include taking care or having custody of the animal for compensation.

*Permit* means a permit issued by the Animal Services department or similar agency of any applicable governmental unit having jurisdiction.

*Potentially dangerous dog* and *dangerous dog* shall have the meanings set forth in section 3-30 hereof.

*Restraint* means the physical control of an animal by leash or tether held by a competent person or within any vehicle, trailer or other conveyance being driven, pulled or parked on the street or confined within the property limits of its owner or keeper.

*Run* means an area used to confine a dog or dogs of a size that complies with any of the requirements of this chapter.

*Sanitary* means a condition of good odor and cleanliness, which precludes the probability of disease transmission and insect breeding and which preserves the health of the public.

*Show dog* means a dog that the owner has shown or intends to show that has been examined for general health by a licensed veterinarian within the previous 12 months and for which the owner possesses a registration certificate from the American Kennel Club, the Canadian Kennel Club or the United Kennel Club.

*Spay* means to remove the ovaries of a female dog or cat in order to render the animal unable to reproduce.

*State law* means the General Statutes of North Carolina.

*Stray* means any animal reasonably presumed not to have any owner, including but not limited to an animal running at large or not under restraint.

*Tethered* or *tethering* means attaching an animal to a stationary object by means of a chain, cable, rope or similar device.

*Transfer* means to convey or change ownership from one person to another with or without the exchange of money or other consideration.

*Vaccination* means an injection of United States Department of Agriculture-approved rabies vaccine administered by a licensed veterinarian or certified rabies vaccinator as defined in G.S. 130A-186.

(b) All other words or phrases used herein shall be defined and interpreted according to their common usage.

(Ord. of 6-17-2013(1); Ord. of 5-4-2015(1))



Sec. 3-11. - Applicability of state laws to custody of animals.

No person owning or having in his custody any animal shall violate any laws, rules, or regulations of the state applicable thereto. The provisions of this chapter shall govern where the provisions of the laws, rules and regulations of the state are less restrictive than the provisions of this chapter.

(Ord. of 6-17-2013(1))

Sec. 3-12. - Injuring, poisoning or trapping animals prohibited.

- (a) A person who accidentally or otherwise strikes an animal with an automobile and injures it shall promptly notify the Animal Services department or any law enforcement agency having jurisdiction.
- (b) No person shall knowingly expose or give to any animal any poisonous substance, whether mixed with food or not. This provision, however, does not apply to the eradication or population control of certain species of rodents.
- (c) No person shall set or expose an open jaw type trap, leg hold trap, or any type trap which would likely cause physical harm or injury to any animal. This provision shall not apply to persons who are licensed by the state to trap animals, to Animal Services officers or to persons using humane live capture traps.

(Ord. of 6-17-2013(1))

Sec. 3-13. - Diseased animals; injured or sick animals.

- (a) Every person owning or having any animal under his charge which he knows or suspects to be sick or injured shall isolate the animal from other animals, shall obtain or provide appropriate treatment for such animal within two days, surrender the animal to Animal Services within two days, or may have the animal humanely euthanized.
- (b) Any animal which comes into possession of the department's shelter which is seriously injured, sick or exhibiting symptoms of contagious disease may be humanely euthanized by the shelter personnel without waiting for the expiration of the period in which such animal may be placed for adoption. Provided, however, that before such sick, diseased or injured animal is euthanized, the shelter personnel shall contact the animal's owner, if known, to determine the disposition of such animal. If the owner indicates that the animal will be reclaimed but fails to reclaim the animal within two days of such notification, or if the owner of such animal is not known, the sick or injured animal may be euthanized by the shelter personnel. The Shelter Manager shall keep a record of such animal, to include breed and sex of the animal, when the animal came into possession of the shelter, the type of injury, disease or sickness of such animal, the date the animal was euthanized, and any other information relevant to the health, condition and description of such animal.

(Ord. of 6-17-2013(1))

Sec. 3-14. - Property owner may impound animal.

- (a) Any person who finds a domesticated animal or fowl on his property to his injury or annoyance may:
  - (1) Take such animal to the Animal Services shelter; or
  - (2) Retain possession of such animal or fowl and, within one business day, notify the Animal Services department of this custody, giving a description of the animal and any information regarding the owner, if known.

- (b) No person shall knowingly and intentionally harbor, feed or keep in possession by confinement or otherwise any stray animal which does not belong to him, unless he shall have within one business day from the time such animal came into his possession notified the Animal Services department of the possession of the animal and a full description of the animal, including at least one photograph.  
Animal ServicesAnimal Services
- (c) Any animal reported as found to Animal Services shall be considered the legal property of the finder if no verified owner has reclaimed the animal within 10 business days of the reporting.
- (d) Failure to release a found animal to either the Animal Services Department or an owner verified as such by the Animal Services Department, upon the request of the Animal Services Department, shall be reported to the appropriate law enforcement agency.

(Ord. of 6-17-2013(1))

Sec. 3-15. - Nuisance animals; animals posing a threat to the public.

(a) [ *Definitions.* ]

- (1) For the purposes of this section, "nuisance" means, but is not limited to, the conduct or behavior resulting from any act of omission or commission by the owner or keeper of any domestic animal , which damages private or public property(2) For the purposes of this section, "nuisance animal" means any animal that commits any of the acts, conduct or behaviors defined as constituting a nuisance in this section.
- (b) [ *Keeping of nuisance animal prohibited.* ] No person shall keep any animal which is a nuisance animal or which causes a nuisance as defined in this section.
- (c) *Notice of violation.* When an Animal Services officer or law enforcement officer determines that a violation of this section has occurred, he may issue a written warning of violation and notice of public nuisance, which shall be served on the owner or keeper of the animal. The owner or keeper shall be responsible for abating the nuisance within 24 hours by making sure his animal does not engage in any further act or acts which may constitute a nuisance under this section.
- (d) *Failure to abate the nuisance.* If the Animal Services officer or law enforcement officer determines that the animal has engaged in any further act(s) constituting a nuisance, or if the owner or keeper of the animal fails to abate the condition which constitutes the nuisance within 24 hours after issuance of the written warning of violation, the Animal Services officer may issue a notice of violation and civil penalty for the first offense and additional penalties for each subsequent offense. If the owner fails to abate the nuisance after the first civil penalty, the Animal Services officer may seize and impound the animal. If the animal is seized, the Animal Services officer must post a notice of seizure and impoundment with the owner or keeper of the animal. The owner or keeper may reclaim the animal upon payment of any civil penalties and shelter fees or charges for the impoundment. If the animal is not reclaimed within three business days, it shall become the property of the Animal Services department and shall be disposed of according to the department's policies.
- (e) *Owner unknown.* In situations where the owner of a nuisance animal is unknown, the Animal Services officer shall impound the animal without posting notice of the impoundment. If the owner does not redeem the animal within three business days, the animal shall become the property of the Animal Services department and shall be disposed of according the department's policies.
- (f) *Animal housed or restrained less than 15 feet from public way.* When an Animal Services officer has determined that an animal is being housed or restrained within 15 feet of a public street, road or sidewalk, and the animal poses a threat or nuisance to the public, but the animal is not in the street, road or on the sidewalk, the Animal Services officer shall issue a warning to the owner or keeper of the animal directing that the animal be moved to a distance greater than 15 feet from the public street, road or sidewalk. If the owner or keeper refuses to move the animal, the Animal Services

officer shall issue a notice of violation and civil penalty for the first offense and additional penalties for each subsequent offense. After the first civil penalty the Animal Services officer may impound the animal. The Animal Services officer must leave a notice of impoundment with the owner/keeper or affix the notice to the premises from which the animal has been seized. The owner shall have three business days to redeem the animal. If the animal is redeemed, the owner must pay all civil penalties and shelter fees for the impoundment. If the owner fails to redeem the animal within three business days, the animal shall become the property of the Animal Services department and shall be disposed of according to the department's policies.

- (g) *Animal found in the public way.* If an animal is housed or restrained within 15 feet of a public street, road or sidewalk and the animal poses a threat to the public, and the Animal Services officer finds it to be in the public street, road or on the sidewalk and the owner or keeper is not at home or refuses to remove the animal from the public street, road or sidewalk, the Animal Services officer may impound the animal. The Animal Services officer must leave a notice of impoundment with the owner or keeper or affix the notice to the premises from which the animal was housed or restrained. The animal services officer may issue a notice of violation and civil penalty for a first offense and additional penalties for each subsequent offense. The owner shall have five days to redeem the animal. If the animal is redeemed, the owner or keeper must pay all civil penalties and shelter fees for the impoundment. If the owner or keeper fails to redeem the animal within five days, the animal shall become the property of the Animal Services department and shall be disposed of according to the department's policies.
- (h) *Private remedies.* This section shall not be construed to prevent a private citizen from pursuing a private cause of action for damages against the owner or keeper of any animal that has caused injury to said private citizen or his property for damages or any other loss resulting from an animal being a nuisance as defined by this section or otherwise.

(Ord. of 6-17-2013(1); Ord. of 5-4-2015(1))

Sec. 3-16. - Animal fighting and animal fighting paraphernalia prohibited.

- (a) No person shall permit or conduct any dog fights, cock fights, or other combat between animals, or between animal and human.
- (b) It shall be unlawful for any owner or person to keep, own, possess, maintain, control, or use materials used or intended to be used in dog fighting or cock fighting. Such items shall include but are not limited to treadmills; fighting or fight training pit; wooden sticks or handles used or capable of being used to pry open jaws; magazines, photographs, film, or videotapes depicting animal fighting or animal fight training; breeding stands; jaw strengthening devices; spurs; gaffs or slasher cases; gaff or knife gauges; mounting blocks; leather wraps; scabbards and leg or wing bands; training, conditioning, or fight contracts or records; veterinary drugs; suture kits, needles; and syringes and other veterinary supplies used for the administration of veterinary treatment for wounds or injuries from animal fighting or animal fight training.
- (c) Upon criminal charges being brought for violations of this section, the Animal Services Director may petition the court for the confiscation of any animals kept or involved, or materials used or intended to be used in such fighting.

(Ord. of 6-17-2013(1))

Sec. 3-17. - Keeping of wild or exotic animals.

- (a) For the purpose of this section, a "wild or exotic animal" means an animal which is usually not a domestic animal and which can normally be found in the wild state, including, but not limited to, alligators, apes, bats, bears, crocodiles, deer, elephants, foxes, leopards, lions, lynxes, monkeys, panthers, raccoons, rhinoceroses, wolves, poisonous snakes, skunks, tigers, and like animals.

Hybrids or cross-breeds of any wild or exotic animals shall also be considered as wild or exotic animals.

- (b) It is unlawful to keep, harbor, breed, sell or trade any wild or exotic animal for any purpose, except as may be licensed by the state wildlife resources commission under its regulations pertaining to wildlife rehabilitators.
- (c) This section shall not apply to zoological parks, zoos, educational or medical institutions, or circuses that perform in Cumberland County for not more than seven days. If a circus is scheduled to be in Cumberland County for more than seven days, then the circus may apply to the Animal Services Director for an extension permit for a period not to exceed an additional seven days, on such terms as the Animal Services Director shall determine will protect the public health, safety and welfare.

(Ord. of 6-17-2013(1))

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(Ord. of 6-17-2013(1))

Sec. 3-19. - Control of animals required; at large; strays; impoundment; confinement in season.

- (a) It is unlawful for any owner or person to permit or negligently allow any domestic animal to run at large, with the exceptions listed below. Any domestic animal that is outside the legal boundaries of the owner or keeper's private property, and not under the actual physical control of its owner or keeper, shall be deemed to be running at large. Any such animal found running at large shall be either:
  - (1) Impounded by an Animal Services officer at the department's shelter subject to being reclaimed by its owner or keeper in accordance with the department's policies; or
  - (2) In the discretion of the Animal Services officer, a dog or cat found at large which is licensed by the county and vaccinated for rabies, except a "potentially dangerous or dangerous dog," as that term is defined in article III of this chapter, may be released to its owner, upon such terms and conditions as the Animal Services officer deems appropriate.
- (b) No impounded animal shall be returned to its owner until any applicable impoundment and boarding, vaccination, other fees or costs and any penalties are paid.
- (c) Any impounded animal not claimed by its owner after a three-day holding period, exclusive of Sundays and county-observed holidays, shall become the property of the county and shall be adopted or disposed of in accordance with the department's policies.
- (d) Domestic cats found off of the owner's property that are spayed/neutered, bearing a microchip or collar with current identification, and currently vaccinated for rabies will not be considered to be running at large unless they are determined to be causing a nuisance as defined in Sec 3-15.
- (e) Any domestic cats that are part of a trap/neuter/release (TNR) program, as designated by removal of the left ear tip, are also exempt from running at large unless they are determined to be nuisance animals as defined in Sec 3-15.

(Ord. of 6-17-2013(1); Ord. of 5-4-2015(1))

Sec. 3-20. - Records; disposition of animals; adoption.

- (a) An Animal Services officer, upon receiving any animal for impoundment, shall record the description, breed, color and sex of the animal and whether or not it is licensed and the date and time of impoundment. If the animal is licensed or if the owner is known, the officer shall enter the name and address of the owner or the county license on the impoundment records. If the owner is known, the Animal Services department shall telephone the owner or, if unsuccessful in attempting to telephone such owner, shall mail notice at the address shown on the department's records to notify the owner, that unless reclaimed within 72 hours after mailing of notice, Sundays and county-observed holidays excluded, the animal may be adopted or humanely disposed of by the department's shelter. Attempts to contact the owner will be recorded on the impoundment record.
- (b) After the 72 hours of impoundment as prescribed above, animals that have not been reclaimed by the owner thereof shall be adopted or otherwise disposed of in a humane manner and as required by law. Provided, however, in the discretion of the Animal Services Director, a healthy animal may be retained for an additional period for the purpose of adoption or transferred to an approved local animal adoption or rescue agency.
- (c) Before any dog or cat is released for adoption from the department's shelter, the adopter shall pay such fee(s) as may be prescribed therefore in any fee schedule adopted by the board of commissioners. The Animal Services Director may reduce or waive adoption fees as allowed by the County Manager when needed to reduce overcrowding and euthanasia at the shelter. Adopted animals also shall be issued any required rabies vaccination and county license.

(Ord. of 6-17-2013(1))

Sec. 3-21. - Redemption of impounded animals; impoundment where no one is present to care for an animal.

- (a) An owner shall be entitled to resume possession of his domestic animal, upon compliance with the provisions of this chapter and payment of any applicable impoundment, boarding, vaccination or other fees. Animals four months old and older will be vaccinated for rabies and microchipped. New owners of adopted animals less than four months old shall have three business days from the time that the animal reaches the age of four months, in which to have the animal vaccinated against rabies and return the proof to the department's shelter. Failure to obtain the required rabies vaccination shall constitute a violation of this section.
- (b) When a law enforcement officer takes a person into custody who is in possession of an animal, and no other competent person is immediately present at the scene to take care of the animal, the animal will be impounded for its welfare. The animal will be impounded at the department's shelter until contact can be made with the animal's owner and an appropriate disposition of the animal determined. Once an Animal Services officer makes contact with the owner, the owner will have three business days to arrange for the appropriate disposition of the animal. On the fourth business day,, the animal shall become the property of the county and shall be disposed of as provided in this chapter.

(Ord. of 6-17-2013(1))

Sec. 3-22. - Spaying or neutering as condition for adoption or reclaiming by owner of dogs and cats; violations.

- (a) No dog or cat may be adopted from the animal shelter unless the animal has been surgically spayed or neutered, or the adopting owner agrees to do have the animal surgically spayed or neutered in accordance with any time limit imposed by the Animal Services Director.

- (b) The failure of any person adopting an impounded animal to comply with this section shall constitute a violation of this section and shall constitute the forfeiture of the animal to the Animal Services department.
- (c) Any animal found running at large as defined in Sec 3-19 (a) shall be spayed or neutered prior to being returned to its owner.
- (d) The Animal Services Director when dealing with dogs picked up for running at large may at his/her discretion make a one-time exception for breeding, show, or hunting dogs that meet the definitions of those categories within this chapter and that are currently vaccinated for rabies with proof of same.
- (e) The Animal Services Director may at his/her discretion require spay or neuter as a condition of reclaiming any animal if he/she determines that it is in the best interest of the community as a measure to reduce pet overpopulation.
- (f) An owner or animal determined to be running at large who can provide a written statement from a licensed veterinarian that a spay or neuter procedure would be detrimental to the animal's health or wellbeing may be allowed a one-time exception by the Director.

(Ord. of 6-17-2013(1))

Sec. 3-23. - Keeping of animals; mistreatment, abandonment prohibited; care; restraining of dogs; exercise area for dogs; security bond/cash for costs of impounded animals.

- (a) All companion animals shall be housed, fed and protected from the weather in such a manner as not to create a nuisance.
- (b) No person shall willfully or negligently:
  - (1) Torture, cruelly beat, injure, maim, mutilate or without good cause destroy or kill any animal, whether wild or tame, belonging to himself or to another;
  - (2) Deprive any animal of appropriate food, water or shelter; or
  - (3) Perform or carry out any inhumane or cruel treatment against any animal; or
  - (4) Keep, possess, own, control, maintain, use or otherwise exercise dominion over any animal or animals which by reason of noise, odor or sanitary conditions become offensive to a reasonable and prudent person of ordinary tastes and sensibilities or which constitute or become a health hazard as determined by the Animal Services Director, the Cumberland County Inspections Director or the Cumberland County Environmental Health Supervisor, as appropriate.
  - (5) Cause any other person to do any of the above acts
- (c) If an animal is found by any Animal Services officer to be in one of the above described conditions in subsection 3-23(a) or (b), the officer shall take appropriate measures, including civil or criminal enforcement, to protect the welfare of the animal. If the Animal Services officer determines that a confined animal's life is in immediate danger or the animal has been abandoned, the Animal Services officer shall seize such animal if such seizure is not prohibited by applicable law and shall report the conditions to an appropriate law enforcement agency if seizure is not permitted. The Animal Services officer shall leave a notice for the owner or keeper advising why the animal has been taken.

- (d) No dog, cat or other small animal shall be confined within or on a motor vehicle under such conditions as may endanger the health or well-being of the animal, including, but not limited to, dangerous temperature or lack of appropriate shade or protection from the elements. (e) No person shall abandon or cause to be abandoned any dog, cat or any other type of animal.
- (f) Owners and keepers of dogs, cats and other small animals shall provide food, shelter and medical attention to such animals, including, but not limited to, the following:
- (1) Sufficient wholesome food that is nutritious for the species;
  - (2) Fresh, potable drinking water;
  - (3) Medical attention to relieve such animals from suffering;
  - (4) Shade from the sun. adequate ventilation; and
  - (5) Shelter to allow the animal to remain warm, dry and protected from the elements. Such shelter shall be fully enclosed on three sides, roofed and have a solid floor.. The shelter shall be small enough to retain the animal's body heat and large enough to allow the animal to stand and turn comfortably. The enclosure shall be structurally sound and in good repair.
- (6) Any animals kept in conditions that are determined by [an Animal Services](#) Officer to be insufficient to maintain their general health and wellbeing may be impounded for the animal's protection at the owner's expense.
- (g) It shall be unlawful to tether a dog except in accordance with this subsection.
- (1) No dog shall be tethered outdoors unless the keeper or owner of the dog is outside and within sight of the animal at all times..
  - (2) It shall be an affirmative defense to a violation of this subsection that the tethering is required to protect the safety or welfare of a person or the dog, provided that the keeper or owner of the dog acquires a permit from the Animal Services Director.
  - (3) The provisions of this subsection (g) shall not apply to a temporary tether:
    - a. During a lawful animal event, veterinary treatment, grooming, training, or law enforcement activity; or
    - b. To a keeper or owner walking a dog with a hand-held leash, or during lawful hunting activities if reasonably necessary for the safety of the dog, or while a dog is actively engaged in shepherding or herding livestock; or
    - c. When meeting the requirements of a camping or recreation facility; or
    - d. After taking possession of a dog that appears to be a stray dog and after having advised the Animal Services department of the stray.
  - (4) The provisions of subsections (g)(2) and (3) above shall apply only if:
    - a. The tether is not placed directly round the dog's neck and is attached to a properly fitting collar or harness of nylon or leather worn by the dog; and
    - b. The weight of the tether does not exceed more than one-tenth of the dog's body weight; and
    - c. The tether is unlikely to become tangled or twisted and is attached with a swivel that will prevent tangling or twisting.
    - d. The tether is arranged to be free of any obstacles which may limit the movement of the dog and the tether is at least 12 feet long; and
    - e. The dog is tethered in a manner that permits access to necessary shelter and water.
    - f. The dog has been spayed or neutered.

- (5) Any dog that remains tethered in violation of this subsection for more than 14 days after the owner receives a notice of violation may be seized by an Animal Services officer or law enforcement officer and impounded at the department's shelter. If the dog's owner does not show that an adequate confinement enclosure complying with the requirements of this chapter has been installed on the owner's property within 3 business days of the impoundment, exclusive of Sundays and county government holidays, the dog shall be deemed to have been forfeited to the county and shall be disposed of in accordance with the department's policy.
- (h) Any domestic animal confined within a fenced yard or outdoor run must have an adequate space for exercise. Provided, however, that where animals are kept or housed on property without a fenced yard and such animals are kept in an enclosure or run, such enclosure or run shall provide adequate space for exercise. Such an enclosure or run shall be constructed of chain link or similar type of materials with all four sides enclosed. The enclosure shall be of sufficient height to prevent the animal from escaping from such enclosure. The top of such enclosure shall be sufficiently covered to provide the animal with adequate shade and protection from the elements. The enclosure shall be maintained so that it shall remain sanitary and preclude injury to the animal.
- (i) Security of costs for impounded animals. Any person claiming an ownership interest in any animal confined pursuant to this chapter may prevent the disposition of the animal after the 3 day hold period set forth in section 3-19(d) by posting a security bond or cash with the Animal Services department prior to the animal being adopted or euthanized in an amount sufficient to guarantee payment of all of the reasonable expenses expected to be incurred in caring and providing for the animal, including the estimated cost of medical care, for at least thirty (30) days; however, such security shall not prevent the Animal Services department from disposing of the animal at the end of the thirty-day period covered by the posted bond/cash, unless the person claiming an ownership interest in the animal posts an additional security bond or cash with the Animal Services department to secure payment of the animal's reasonable expenses for an additional thirty (30) days, and does so prior to the expiration of the first thirty day period. The amount of the bond/cash shall be determined by the Animal Services Director based on the current fee schedule and on the condition of the animal after examination by the shelter veterinarian or shelter manager. Failure to timely post the security shall result in the animal being immediately forfeited to the Animal Services department for disposition. If the fees, costs and penalties owed for the animal are not paid in full by the end of each security period, the security already posted shall be forfeited to the county on said date and used to pay the remaining unpaid fees, costs and penalties owing for the animal. The animal's owner shall remain responsible for all remaining unpaid fees, costs and penalties. Any security bond/cash remaining after the payment of all fees, costs and penalties shall be remitted to the person who posted the bond/cash.

(Ord. of 6-17-2013(1))

Sec. 3-24. - Dead animal pickup; relinquishing animals to the shelter.

- (a) Dead animals may be picked up from residences by waste/sanitation haulers as provided by the Cumberland County Solid Waste Department's policies as in effect from time to time.
- (b) Owners may relinquish their animals to the department's shelter provided the owner signs an impoundment card releasing possession of the animal to the shelter. Once the animal is released to the shelter, the animal shall become the property of the county and may be adopted or humanely disposed of in accordance with the department's policies.

(Ord. of 6-17-2013(1))

(Ord. of 6-17-2013(1))

Sec. 3-26. - Regulation of the number of dogs which may be kept on certain premises.



- (a) No more than three dogs more than five months of age shall be owned, possessed, kept, harbored, or maintained at any premises located in any area with a zoning classification for single-family, residential lots of 20,000 square feet (0.459 acres) or less (R20 or less), if the Animal Services Department has verified a legitimate violation of any cruelty, nuisance, leash law or sanitation requirements
- (b) No more than two dogs more than five months of age shall be owned, possessed, kept, harbored, or maintained at any premises located in any area with a zoning classification for multifamily residential housing, if the Animal Services Department has verified a legitimate violation of any cruelty, nuisance, leash law or sanitation requirements.
- (c) In any area in which the applicable zoning regulations are more restrictive as to the keeping of dogs than the requirements of this section, the zoning regulations shall control.
- (d) This section shall not be construed to limit the right of any landlord to impose more restrictive limits on the number of pets which may be possessed at any leased premises.
- (e)

(Ord. of 6-17-2013(1))

#### Sec. 3-27. - Sanitation.

No keeper of any animal shall cause or allow such animal to soil, defile or defecate on any public property or upon any street, sidewalk, public way, play area or common grounds owned jointly by the members of a homeowners or condominium association, or upon private property without permission of the occupant of said property, unless such keeper immediately removes and disposes of all feces deposited by such animal by the following methods:

- (1) Collection of the feces by appropriate implement and placement in a paper or plastic bag or other appropriate container; and
- (2) Removal of such bag or container and disposition thereafter in a manner as otherwise permitted by law.

(Ord. of 6-17-2013(1))

#### Sec. 3-28. Litter permit.

Anyone owning or harboring a dog or cat shall not intentionally or unintentionally allow their animal(s) to produce a litter of one or more puppies or kittens without purchasing a litter permit from Animal Services prior to the birth of the litter.

- (3) Any person convicted of violating the provisions of this section shall be punished by a fine of not less than \$300.00 or by imprisonment in the county jail for not more than 30 days, and will be required to have all of their dogs and/or cats spayed or neutered.

(Ord. of 6-17-2013(1))

#### Sec. 3-29. - Nuisance/reckless owner.

A person cited as a nuisance/reckless owner shall be ordered to surrender all of his/her dogs/cats/domestic animals to Animal Services and shall refrain from owning, keeping, or harboring those dogs/cats/domestic animals, or any dogs/cats/domestic animals for a period of three years.

(Ord. of 6-17-2013(1); Ord. of 5-4-2015(1))

### ARTICLE III. - DANGEROUS DOGS

#### Sec. 3-30. - Definitions.

For the purposes of this article, the following words and phrases shall have the following meanings:

*Attack by a dog* means any behavior or action by a dog which could reasonably be expected to cause physical injury to a person or domestic animal, to include biting, felling or toppling, tearing of clothing, or provoking flight to escape attack.

*Bite by a dog* means any seizing, gripping or grasping, no matter how slight or momentary, by a dog between its jaws of the body parts of a person or domestic animal, so as to cause physical injury to such person or domestic animal.

*Dangerous dog* means any of the following dogs:

- (1) A dog that without provocation has killed or inflicted severe injury on a person; or
- (2) A dog that has been determined as provided herein to be potentially dangerous; or
- (3) A dog that is owned or harbored primarily, or in part, for the purpose of dog fighting or a dog trained for dog fighting.

*Dog* means a domesticated animal ( *Canis familiaris* ) of the Canidae family; provided that no wild specie of the Canidae family, such as a wolf, fox or coyote, shall be considered a domesticated animal, even though raised by humans in domestic surroundings.

*Guard dog* means a dog trained by a skilled trainer to recognized security industry or other reasonable standards and presently used under the control of trained handlers to protect persons and property.

*Law enforcement dog* means a dog, trained for police work to recognized law enforcement standards and presently used by and under the control of a law enforcement officer to carry out the law enforcement officer's official duties.

*Lawful hunt* means a hunt for lawful game conducted on private or public property with the consent of the owner or custodian of the property by a person with a valid license (if required) during the lawful season for the game concerned using dogs customarily employed and suitable for such game.

*Owner of a dog* or *owning a dog* means any person or legal entity that has a possessory property right in a dog, including the harbinger or keeper of a dog with the consent of the owner or of a dog that has been abandoned by or escaped the custody of its owner.

*Owner or keeper's real property* means any real property owned or leased by the owner or keeper of the dog, not including any public right-of-way or a common area of a condominium, apartment complex, or townhouse development.

*Potentially dangerous dog* means a dog that had been determined, as provided herein, to have:

- (1) Inflicted a bite on a person that required medical care more than first aid;
- (2) Killed or inflicted injury upon a domestic animal when not on the real property of the owner of the dog; or
- (3) Attacked a person or approached a person in an area of the keeper's property open and accessible to invitees, or when not on the owner's property, in a vicious or terrorizing manner in an apparent attitude of attack.

*Severe injury* means any physical injury that results in broken bones or disfiguring lacerations or requires cosmetic surgery or hospitalization.

*Territorial jurisdiction of Cumberland County* means all territory within the boundaries of the County of Cumberland, North Carolina, except the incorporated area of a municipality, unless such municipality has consented to the application and enforcement of this chapter in its jurisdiction.

(Ord. of 6-17-2013(1))

Sec. 3-31. - Application of article; exceptions.

The provisions of this article do not apply to:

- (1) A law enforcement dog or guard dog being used by a law enforcement officer or a bona fide professional security guard while in the performance of official duties or professional responsibilities;
- (2) A dog being used in a lawful hunt;
- (3) A dog where the injury or damage inflicted by the dog was sustained by a domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under control of its owner, and the damage or injury was to a species or a type domestic animal appropriate to the work of the dog; or
- (4) A dog where the injury inflicted by the dog was sustained by a person who at the time of the injury, was tormenting, abusing, or cruelly treating the dog, or had tormented, abused, or cruelly treated the dog, or was committing or attempting to commit a crime.

(Ord. of 6-17-2013(1))

Sec. 3-32. - Reporting requirements.

- (a) *Reporting required.* An owner of a dog that has attacked or bitten a person or domestic animal, a victim of an attack or biting by a dog, the owner of any domestic animal that has been attacked or bitten by a dog, any person witnessing such an attack or biting, a veterinarian treating a domestic animal for such an attack or biting, or a health care professional treating a person for such an attack or biting, shall report the following events to the Animal Services department within three business days after the event has occurred:
  - (1) Any attack or biting by a dog upon any person or domestic animal; or
  - (2) The transfer, gift, sale or other conveyance of ownership or possession of a dangerous or potentially dangerous dog, its confinement in a veterinary facility, its removal from the territorial jurisdiction of the county, or its death.
- (b) *Report data required.* The data required in the report and the format thereof shall be as set forth in administrative procedures established by the Animal Services Director.

(Ord. of 6-17-2013(1))

Sec. 3-33. - Determination that a dog is potentially dangerous; appeals.

- (a) *Generally.* Upon receipt of a report submitted in accordance with section 3-32, or upon the receipt of any other complaint, or when he has reasonable suspicion that a dog is potentially dangerous, the Director or his designee shall make a determination whether or not such dog is a potentially dangerous dog. Any determination that a dog is potentially dangerous shall be made in a writing stating the facts relied upon by the Director to make his determination. The written declaration shall be personally delivered to the owner of the subject dog or shall be mailed by certified mail, return receipt requested, to the owner. If the determination is made that the subject dog is potentially dangerous, the written determination shall order compliance with the appropriate provisions of this

article and the Director may impose reasonable conditions to maintain the public health and safety. The Director may pursue such other civil or criminal penalties and remedies as authorized by this chapter or state law.

- (b) [ *Determination by Director.* ] If, at any time after the receipt of any report or complaint made pursuant to section 3-32, the Director determines that the conditions under which the subject dog is being kept or confined do not adequately protect the public health or safety, the Director shall require that the subject dog be impounded at the department's shelter until completion of the investigation and any appeal of the decision of the Director.
- (c) *Appeals from determinations.*
  - (1) The owner of any dog determined by the Director to be potentially dangerous may appeal the decision of the Director to the appeal board within three business days of receiving notice of the determination. Appeal to the appeal board may be taken by filing written objections to the Director's determination with the clerk for the appeal board. Animal Services Director
  - (2) The appeal board shall schedule and hear such appeal within ten days of the filing of the written objections or at such later time as the appellant consents.
  - (3) The vote of the appeal board shall be taken, and the announcement of its decision shall be made, in an open public meeting. A written statement of the decision of the appeal board shall be delivered to the Director and the appellant. The notice shall be sent by certified mail, return receipt requested, and filed concurrently with the Director and the Cumberland County Attorney.
- (d) [ *Conduct of appeal.* ] An appeal hearing before the appeal board shall be conducted as follows:
  - (1) The hearing shall be subject to the open meetings law, and the required notice shall be posted and given as applicable;
  - (2) The chairperson of the appeal board shall preside at the hearing;
  - (3) The Director shall be represented by the county attorney;
  - (4) The county attorney shall present the Director's case;
  - (5) The appellant may be represented by an attorney;
  - (6) The Director and the appellant may make any statements, present any evidence, or offer any witnesses on their behalf, on any relevant issue;
  - (7) The chairperson of the appeal board shall rule on the admissibility of any evidence and on any procedural issues that might arise;
  - (8) The Director and the appellant shall be entitled to cross-examine any witnesses;
  - (9) The hearing shall be quasi-judicial in nature and all testimony shall be under oath;
  - (10) The appellant shall be entitled to obtain a transcript of the proceeding at his own cost;
  - (11) The appeal board shall announce its decision at an open meeting and render it in writing as expeditiously as possible at or following the hearing. Its decision shall contain findings of fact and conclusions in support of its decision.
- (e) [ *Purpose of appeal.* ] The purpose of the hearing before the appeal board shall be to determine whether or not the determination of the Director is in the best interests of the public health, safety and welfare.
- (f) [ *Function of appeal board.* ] The function of the appeal board shall be to affirm, reverse, or modify the determination of the Director which has been appealed. Any conditions imposed by the appeal board shall be reasonable, relevant to the issues in the matter, and have the effect of promoting the public health, safety and welfare.
- (g) [ *Hearing.* ] The hearing shall be administrative in nature and the decision of the appeal board shall be final.

(Ord. of 6-17-2013(1))

Sec. 3-34. - Registration required.

- (a) *Generally.* Any person owning a dangerous dog as defined by this chapter or Chapter 67 of the General Statutes shall register such dog with the Animal Services department within five days of such event which established the dog to be dangerous or may, in lieu of any hearing, register such dog voluntarily, which shall constitute an admission and final determination that the dog is dangerous.
- (b) *Permanent identification mark required.* Each dog registered pursuant to this section shall be assigned a registration number by the Animal Services department, which shall be affixed to the dog by permanent chip implant, at the expense of its owner. No person shall remove such identification once it is assigned and affixed.

(Ord. of 6-17-2013(1))

Sec. 3-35. - Permit required.

- (a) *Generally.* After registration of a dangerous dog or after a final determination that such dog is potentially dangerous in accordance with this chapter or Chapter 67 of the General Statutes, no person shall own such dog thereafter within the territorial jurisdiction of this chapter without applying for and obtaining a permit from the Animal Services department.
- (b) *Issuance of permit.* The Animal Services department shall issue a permit for a dangerous dog only upon submission of a complete, verified application, payment of the permit fee and a finding by the Director or his designee that:
  - (1) The required conditions for keeping and housing the dog and other public health and safety protective measures are in effect; and
  - (2) The dog for which a permit is issued does not pose an unreasonable threat to the public health, safety and general welfare if the owner shall comply with the provisions of this article and the conditions of the permit.
- (c) [ *Condition of issuance.* ] Issuance of a permit shall be conditioned on continued compliance with the provisions of this article and other provisions of state law, on continued compliance with and maintenance of the conditions for housing the dog and public safety set forth in the permit, and any special conditions the Director may deem reasonably necessary to protect the public health, safety and welfare in view of the particular circumstances and history of the dog for which the permit is issued.
- (d) *Temporary permits.* Following the registration of a dangerous dog or the impoundment of a dog declared to be potentially dangerous, upon application therefor and for good cause, the Director may issue a temporary permit allowing the owner of a registered dangerous dog or a dog declared to be potentially dangerous to retain possession of such dog or to confine such dog at a veterinary facility or kennel approved by the Director. The Director may also issue a temporary permit to allow the transport of a dangerous or potentially dangerous dog from the territorial jurisdiction of this chapter. A temporary permit shall be issued subject to the same conditions to which a regular permit is subject and to any other conditions the Director may deem necessary to protect the public health, safety and welfare consistent with the provisions of this article. A temporary permit shall be valid only until the earlier of its expiration, revocation or the issuance or denial of a permit under the provisions of this section.
- (e) *Term of permits and renewal thereof.* No permit shall be issued under this section for a term of more than three years but may, in the Director's discretion, be issued for a shorter period. Permits must be renewed, subject to the same terms and conditions required for initial permits.

- (f) *Revocation of permits.* The Director may, upon notice and hearing and for good cause shown, revoke any permit or modify any terms, conditions or provisions thereof. If the Director deems it necessary to protect the public health or safety from any imminent threat or danger thereto, he may, without hearing, revoke any permit or any portion thereof. Good cause for revocation or modification of a permit shall include, without limitation, violation of or failure to comply with any provision of this article or with any term, condition or provision of a permit.
- (g) *Inspections.* The Director shall cause periodic inspections to be made of the premises of the owner of a permitted dangerous or potentially dangerous dog to assure compliance with the provisions of this article and the applicable permit.
- (h) *Insurance.* Every person owning a dangerous dog, as determined in accordance with this article or Chapter 67 of the General Statutes, shall purchase and maintain a policy of liability insurance covering any injury or property damage caused by the dog. Minimum policy limits shall be \$50,000.00 for personal injury or property damage, per occurrence. Such owner shall cause a certificate or declaration of insurance to be furnished to the Director annually. Every day that the required insurance is not in full force and effect shall constitute a violation of this article.

(Ord. of 6-17-2013(1); Ord. of 5-4-2015(1))

Sec. 3-36. - Regulation of dangerous dogs; security and restraint requirements.

No person shall own a dangerous dog except in compliance with all provisions of this article, including the following regulations:

- (1) While on the real property of its owner, such dog shall be kept, secured and restrained as follows:
  - a. In a building with doors, windows and other exits securely fastened shut and under the supervision and control of a responsible, capable adult person; or
  - b. Securely kept in a locked enclosure which has secure sides, top and bottom and is constructed out of materials and in a manner which will preclude escape by the dog and prevent entry by small children; or
  - c. While outside a building or enclosure described above, securely leashed with a leash no longer than four feet in length in the hands of and under the control of a responsible competent person capable of such control and muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals.
- (2) Such dog shall only be removed from the real property of its owner as follows:
  - a. For transportation to and from a veterinarian or the department's shelter; or
  - b. For its permanent removal from the territorial jurisdiction of this chapter; or
  - c. To provide bona fide exercise necessary for its continued good health.
- (3) While off its owner's real property, such dog shall be securely leashed with a leash no longer than four feet in length in the hands of and under the control of a responsible competent person capable of such control and muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals.
- (4) Notwithstanding the foregoing, no person shall own a dangerous dog that has killed a person, except in the care and custody of a veterinarian for the purposes of treatment or quarantine; or in the custody of the department's shelter pending disposition in accordance with the provisions of this chapter, the department's policies, or the order of any court.
- (5) Signage. The owner of a dangerous dog shall erect a sign with dimensions of at least two feet x two feet on the enclosure housing such dog which shall read:

BEWARE OF DOG  
THIS DOG IS DANGEROUS  
STAY AWAY!

(Ord. of 6-17-2013(1))

Sec. 3-37. - Impoundment of dangerous dogs.

- (a) *Apprehension and surrender.* Upon an initial determination of a dog as potentially dangerous or upon registration of a dog to be dangerous, or if the Director has reasonable suspicion to believe that a dangerous, or potentially dangerous dog is being kept or harbored within the territorial jurisdiction of this chapter in violation of it or of a permit issued hereunder, Animal Services officers and law enforcement officers of Cumberland County and of any municipality subject to this chapter shall impound such dog. It shall be a violation of this article to fail or refuse to surrender such dog to such officers upon their lawful demand. The officer impounding such a dog shall deliver the same to the department's shelter.
- (b) *Surrender.* Hiding, removing or failing to surrender a dangerous or potentially dangerous dog, or impeding any investigation concerning the same, shall be a violation of this article.
- (c) *Confinement.* A dog impounded by or surrendered to an Animal Services officer or law enforcement officer as provided herein shall be confined in the department's shelter or, upon request of the owner hereunder, and at such person's expense, at a private veterinary facility or kennel approved by the Director, subject to the following conditions:
  - (1) *Costs of impoundment.* Impoundment shall be at the expense of the owner of the dog. Costs of impoundment at the department's shelter shall be paid by the person liable therefore at the daily rate. The costs of impoundment at a veterinary facility or kennel shall be paid by the person liable therefore pursuant to the terms of the agreement between such person and the proprietor of such facility or kennel. In no event shall Cumberland County or any municipality subject to this chapter be liable for or pay for impoundment at such private facility or kennel.
  - (2) *Release from impoundment.* No such dog shall be released from impoundment as provided herein except upon registration of such dog and issuance of a permit or temporary permit allowing such release. No such dog shall be released from the department's shelter until costs of confinement of such dog, any registration and permit fees for such dog, and any civil penalties assessed in connection with such dog violations, have been paid in full.
  - (3) *Disposition of unclaimed or abandoned dogs.* The following dogs impounded at the department's shelter pursuant to this article shall be deemed abandoned and shall be disposed of in accordance with the provisions of this chapter and the rules and regulations of the department:
    - a. Any dog which remains unclaimed by its owner for a period more than ten days or a period of lawful quarantine, whichever is longer; and
    - b. Any dog claimed by its owner which is confined for a period in excess of ten days, or a period or lawful quarantine, whichever is longer, during which no application has been made for a permit or temporary permit; provided, however, the Director shall extend such time upon a showing of justifiable delay in such action by the owner.

(Ord. of 6-17-2013(1))

Sec. 3-38. - Violations, penalties and other remedies.

- (a) *Violations.* Each act or conduct prohibited by this article and each failure to comply with a mandatory provision hereby and each day's continuing failure to comply shall constitute a separate and distinct offense.
- (b) *State law violations.*
  - (1) Nothing in this chapter shall be constructed to prevent an Animal Services officer or any other person from pursuing remedies under Chapter 67, Article 1A, of the North Carolina General Statutes.
  - (2) The Director or his designee is designated as the person responsible for making the determination required under G.S. 67-4.1(c). In making such determinations, the Director or his designee shall follow the procedure set forth in this article.
  - (3) The dangerous dog appeal board is designated as the appellate board to hear appeals of determinations made pursuant to G.S. 67-4.1(c).

(Ord. of 6-17-2013(1))

Sec. 3-39. - Administrative provisions.

- (a) *Responsibility.* The Director shall administer and enforce this article and shall promulgate rules and regulations for such administration and enforcement as may be necessary or desirable to such end.
- (b) *Authority to enter upon premises.* Animal Services officers shall have authority to enter into and inspect any premises, dwellings, rooming units, barns and other outbuildings, any part of the curtilage thereof, or any yard or other enclosure to:
  - (1) Conduct any investigation of a dog alleged or suspected of being potentially dangerous or dangerous; or
  - (2) Apprehend a dog determined to be potentially dangerous or dangerous or as to which there is reasonable suspicion to believe is potentially dangerous or dangerous; or
  - (3) Investigate any violation of this article; or
  - (4) Serve a citation upon a person for violation of this article.
- (c) Notwithstanding the foregoing, an Animal Services officer shall only make such entry upon consent, pursuant to an administrative search warrant under G.S. 15-27.2, or otherwise as authorized by law.
- (d) *Authority to immobilize or kill a dangerous or potentially dangerous dog.*
  - (1) If in the course of investigating, apprehending or otherwise taking custody of a potentially dangerous or dangerous dog, or a dog as to which there is reasonable suspicion to believe is potentially dangerous or dangerous, such dog is not securely restrained and an Animal Services officer or a law enforcement officer has reasonable cause to believe the dog poses an imminent risk of serious physical injury or death to any person or domestic animal, said officer shall have authority to render such dog immobile by means of tranquilizers or other safe drugs or, if that is not safely or timely possible under the circumstances, then the officer may humanely dispose of said dog.
  - (2) If a potentially dangerous or dangerous dog impounded in the department's shelter cannot be cared for or handled without risk of serious physical injury or death to persons caring for or handling such dog or to other animals, the department shall render such dog immobile by means of tranquilizers or other safe drugs or, if that is not safely or timely possible under the circumstances, then the department may humanely dispose of said dog.
  - (3) The Animal Services department may humanely dispose of any dog being investigated under the provisions of this article at the request of or with the consent of its owner.



(Ord. of 6-17-2013(1))

ARTICLE IV. - RABIES CONTROL AND ANIMAL BITES

Sec. 3-40. - Rabies control.

- (a) *Enforcement authority.* The Animal Services Director and the Cumberland County Health Director are authorized to enforce the rabies control provisions in Part 6 of Chapter 130A of the North Carolina General Statutes and are further authorized to implement any reasonable administrative procedures necessary to enforce this state law locally.
- (b) *Impoundment term.* The impoundment period for animals held pursuant to this section shall be 72 hours, excluding Sundays and legal holidays.
- (c) *Compliance with rabies law.* It shall be unlawful for any animal owner or other person to fail to comply with the state laws relating to the control of rabies.
- (d) *Provisions supplementary to state law.* It is the purpose of this section to supplement the state laws by providing a procedure for the enforcement of state laws relating to rabies control, in addition to the criminal penalties provided by the state law.
- (e) *Vaccination required.* It shall be unlawful for an owner or keeper to fail to provide proof of current vaccination against rabies for any dog, cat or ferret four months of age or older. Should the county health Director deem it necessary that other pets be vaccinated in order to prevent a threatened rabies epidemic or control an existing rabies epidemic, it shall be unlawful for an owner or keeper to fail to provide vaccination for that pet.
- (f) *Vaccination schedule.* A rabies vaccination shall be deemed current for a dog, cat or ferret if the first two doses of vaccine are administered 12 months apart and each subsequent booster dose of vaccine is administered according to the manufacturer's recommended schedule.
- (g) *Persons to administer; issuance of a certificate.* All rabies vaccines shall be administered by a licensed veterinarian, a registered veterinary technician under the direct supervision of a licensed veterinarian, or a certified rabies vaccinator. A person who administers a rabies vaccine shall complete a rabies vaccination certificate in such form as is approved by the Animal Services Director pursuant to the regulations of the Commission for Public Health. An original rabies vaccination certificate shall be given to the owner of the animal that receives the rabies vaccine. A copy of the rabies vaccination certificate shall be retained by the licensed veterinarian or the certified rabies vaccinator..
- (h) *Owner or keeper to be issued rabies tag.* Upon vaccination pursuant to this section, the owner or keeper of the dog, cat or ferret that has been vaccinated shall be issued a rabies tag stamped with a number and the year for which issued and a rabies vaccination certificate.
- (k) *Unlawful to switch rabies tag.* It shall be unlawful for any person to use for any animal a rabies vaccination tag or certificate issued for an animal other than the one assigned the tag.
- (l) *Dogs, cats or ferrets brought into county.* All dogs, cats or ferrets shipped or otherwise brought into the territorial jurisdiction of this chapter, except for exhibition purposes where the dogs, cats or ferrets are confined and not permitted to run at large, shall be securely confined and vaccinated within one week after entry, and shall remain confined for two additional weeks after vaccination, unless accompanied by a certificate issued by a licensed veterinarian showing the dog, cat or ferret is apparently free from rabies and has not been exposed to rabies and that the dog or cat has received a proper dose of rabies vaccine not more than six months prior to the date of issuing the certificate.
- (m) *Animals exposed to rabies.*
  - (1) If the Animal Services Director determines that an animal has not ever been vaccinated against rabies or received its only rabies vaccine less than 28 days prior to being exposed to rabies from

a suspected rabid animal, the animal shall be immediately euthanized unless the owner or keeper agrees to strict isolation of the animal at a veterinary hospital for a period of four months at the owner's or keeper's expense.

- (2) If the Animal Services Director determines that an animal with a current rabies vaccination or proof of previous rabies vaccination that has since expired has been exposed to rabies from a suspected rabid animal, it shall be revaccinated and returned to the owner or keeper who shall be responsible for the cost of the rabies vaccination. The owner or keeper is required to monitor the health of the animal for 45 days and report any illness to Animal Services.
- (n) *Health Director may declare quarantine.* When reports indicate a positive diagnosis of rabies, to the extent that the lives of persons are endangered, the county health Director may declare a county-wide quarantine for such period of time as he deems necessary. Once such emergency quarantine is declared, no dog, cat or ferret may be taken or shipped from the county without written permission of the county health Director. During such quarantine, the county health Director, the Animal Services Director, law enforcement officers, or other persons duly authorized by the county health Director or Animal Services Director may seize and impound any dog, cat or ferret running at large in the county. During the quarantine period, the county health Director shall be empowered to provide for a program of mass immunization by the establishment of temporary emergency rabies vaccination facilities strategically located throughout the county. If additional confirmed cases of rabies occur during the quarantine period, the county health Director in his discretion may extend the quarantine period.
- (o) *Carcass to be surrendered to Animal Services department.* The carcass of any animal suspected of dying of rabies, or dying while under observation for rabies, shall be submitted to the Animal Services department for the implementation of appropriate diagnostic procedures as advised by the N.C. Department of Health and Human Services Public Health Veterinarians .
- (p) *Unlawful to kill or release animal under observation.* It shall be unlawful for any person to kill or release any animal under observation for rabies, any animal under observation for biting a human, or to remove such animal from the county without written permission from the county health Director, provided that a licensed veterinarian or the county health Director or other person duly authorized by the county health Director may authorize any animal to be killed for rabies diagnosis.
- (q) *Unlawful to fail to surrender animal.* It shall be unlawful for any person to fail or refuse to surrender any animal for confinement or destruction as required in this article, when demand is made therefore by the county health Director, the Animal Services Director or any law enforcement officer.
- (r) *Unlawful to fail to provide proof of vaccination.* It shall be unlawful for any person to fail or refuse to provide proof of rabies vaccination for any animal that they own or control when request is made therefore by the Animal Services Director or his designee, the county health Director or his designee, or any sworn law enforcement officer.
- (s) *Animals subject to impoundment.* Any animal which appears to be lost, stray, unwanted, or not under restraint in violation of this chapter, may be seized, impounded and confined in a humane manner in the department's shelter. Any dog or cat that has bitten or scratched a human must be quarantined for ten days from the date of the bite or scratch, either at the home of its owner or keeper, if an Animal Services officer determines that the public health and safety shall be reasonably maintained by such quarantine, or otherwise in the department's shelter or in a veterinary hospital at such owner's or keeper's expense. If such dog, cat or ferret is quarantined at the home of its owner or keeper and escapes, any Animal Services officer shall impound such dog, cat or ferret at the department's shelter for ten days from the date of the bite or scratch.
- (t) *Owner liable.* Impoundment of such animal shall not relieve the owner/keeper thereof from any penalty which may be imposed for violation of this section.
- (u) *[ Disposition of infected animals. ]* The County Health Director shall direct the disposition of any animal found to be infected with rabies.

(Ord. of 6-17-2013(1))

Sec. 3-41. - Reports of bite cases; report by veterinarian.

- (a) Every physician, veterinarian or health care provider shall report to the Animal Services Director the names and addresses of persons treated for bites and scratches inflicted by animals that break the skin, together with such other information as will be helpful in rabies control.
- (b) Every licensed veterinarian shall report to the Animal Services Director his diagnosis of any animal observed by him to be a suspect rabid animal.

(Ord. of 6-17-2013(1))

Sec. 3-42. - Records.

The Animal Services Director shall keep or cause to be kept:

- (1) An accurate and detailed record of the licensing, impounding and disposition of all live animals, fowl and domestic birds coming into his custody and any dead dogs or cats picked up that possess rabies tags or county license; and
- (2) An accurate and detailed record of all bite cases reported to him, with a complete report of the investigation or disposition of each case.

(Ord. of 6-17-2013(1))

Sec. 3-43. - Interference.

No person shall interfere with, hinder, delay or obstruct any Animal Services officer or authorized representative of the county in the performance of any duty under this article or seek to release any animal in the custody of the Animal Services department or its shelter impounded pursuant to this article, except as provided by law.

(Ord. of 6-17-2013(1))

Secs. 3-44—3-49. - Reserved.

Sec. 3-53. - Fastening of tags to collar or harness.

Each person who owns or maintains a dog or cat that is primarily kept, kenneled or otherwise located in the county shall affix to such dog or cat the following identification:

- (1) A durable tag securely affixed to a collar or harness which is securely buckled or otherwise securely joined so that it cannot be removed unless unbuckled; the tag shall contain the name and address of the owner of the dog or cat or a number registered with the Animal Services department; or
- (2) An implanted microchip capable of being scanned by a universal chip reader.

(Ord. of 6-17-2013(1))

(Ord. of 6-17-2013(1))

Sec. 3-55. - Use of revenues collected from permit fees.

The revenues collected for the adoption of dogs and cats and purchase of permits shall be specifically expended for physical improvements to the animal shelter or the equipment of the Animal Services department, for the support of a spay/neuter program within the county, and for costs associated with public education programs and activities.

(Ord. of 6-17-2013(1))

Sec. 3-56. - Transfer of cats and dogs.

- (b) When ownership of a dog which has been declared dangerous or potentially dangerous under article III of this chapter is transferred within the county's jurisdiction, the previous owner shall within three business days notify the Animal Services department and provide the name and address of the new owner. The new owner shall:
  - (1) Immediately register the dog with the Animal Services department; and
  - (2) Ensure that the requirements of this chapter for maintaining a dangerous or potentially dangerous dog are complied with prior to the dog being relocated to the new owner's property.

(Ord. of 6-17-2013(1))

Sec. 3-57. - Non-applicability of article.

The provisions of this article shall not apply to cats or dogs in the custody of a veterinarian, or whose owners are nonresidents visiting in the county for a period not exceeding 30 consecutive days.

(Ord. of 6-17-2013(1))

Secs. 3-58, 3-59. - Reserved.

ARTICLE VI. - INJURED ANIMAL STABILIZATION FUND

Sec. 3-60. - Control of injured animals; stabilization fund.

- (a) Any Animal Services officer or law enforcement officer is authorized to take possession of any seriously injured dog, cat, wildlife, livestock, bird or other animal which has suffered a painful and potentially mortal injury and which is found in any location open or accessible to the public, any public or private vehicular right of way, or apparently off the property of its owner (b) Any Animal Services officer or law enforcement officer finding any such animal shall make reasonable efforts to locate the owner of any such animal. If the owner is promptly located, the owner shall immediately seek veterinary care of the animal or shall authorize such officer to humanely euthanize such animal. If the owner cannot be promptly located or contacted, the Animal Services officer or law enforcement officer is authorized, in his or her discretion, to humanely euthanize such animal in an emergency situation where safe, humane transport of the animal is not possible, or promptly transport such animal to a veterinarian for stabilization of such animal's injuries. Every owner of any animal so found shall conclusively be presumed to have irrevocably appointed any such officer, or veterinarian, his or her authorized agent for any purposes under this article. Every such owner also shall be deemed to have released any officer, or veterinarian, from any cause of action or claim arising out of or related to any action such officer or veterinarian may take under this article, except for actions which constitute gross negligence.

- (c) Each Animal Services officer or law enforcement officer acting under this article shall within a reasonable time report to their supervisor or the shelter veterinarian Animal Services Director the nature and extent of the injuries of each such animal and the disposition thereof. The Animal Services department shall maintain a record of the nature and extent of each such animal's injuries and of the disposition thereof.
- (d) There is hereby established the Cumberland County Injured Animal Stabilization Fund, to which contributions, grants, donations, or restitution may be made for the purpose of reimbursing veterinarians for care provided under this article. The Director may solicit or raise funds for the fund. The fund shall be administered by a committee which shall include the Cumberland County Finance Officer or his or her designee and the veterinarian employed by Cumberland County Animal Services. Funds shall be disbursed from the fund by the finance officer under guidelines established by the committee.
- (e) Any Animal Services officer or law enforcement officer, or any veterinarian to which an injured animal may be transported under this article for stabilization of injuries, shall be deemed to be an authorized agent of and acting on behalf of Cumberland County and its Animal Services department pursuant to the authority of this article. Any such officer or veterinarian acting pursuant to this article shall be entitled to all the defenses, immunities and rights afforded by law or available to Cumberland County and its officers, employees or agents.
- (f) If any owner of an animal transported under this section to a veterinarian shall subsequently be identified by the Animal Services department, he or she shall make restitution to the fund of the amount disbursed by it to the veterinarian.

(Ord. of 6-17-2013(1))

Secs. 3-61—3-69. - Reserved.

#### ARTICLE VII. - MISCELLANEOUS

Sec. 3-70. - Keeping chickens or rabbits; sanitation requirements.

It shall be unlawful to keep, house or pen chickens or rabbits on premises which fail to meet sanitary standards established by the Cumberland County Board of Health.

(Ord. of 6-17-2013(1))

Sec. 3-71. - Stables to be kept clean.

Every stable or other place where cattle, horses or animals are kept shall be maintained at all times in a clean and healthful condition.

(Ord. of 6-17-2013(1))

Sec. 3-72. - Grazing animals.

It shall be unlawful for any owner or keeper to stake or graze any cow, horse or other animal in any park, cemetery or other public place or near any public sidewalk. This section shall not apply to horses used by any law enforcement agency for mounted patrol.

(Ord. of 6-17-2013(1))

Sec. 3-73. - Disposition of dead animals.

The owner of any animal dying from any cause within the jurisdiction of the county shall cause the same to promptly be buried in a sanitary manner within 24 hours after such owner has knowledge of such death.

(Ord. of 6-17-2013(1))

Sec. 3-74. - Selling live animals in public rights of way and other public property prohibited.

It is unlawful to sell, auction, trade, barter, and display for commercial purposes or give away any live animal within the right of way of any public highway, commercial parking lot, garage sale, flea market, festival, park, community center, public vehicular area, public sidewalk, public property or street within Cumberland County. The Animal Services department may immediately take custody of and impound any live animals found in violation of this section. This section shall not apply to any animal welfare organization or humane society qualified under section 501(c)(3) of the Internal Revenue Code and approved to remove animals from the Cumberland County Animal Shelter through their standard approval process..

(Ord. of 6-17-2013(1))

Sec. 3-75. - Provisions only applicable within the corporate limits of any municipality in which this chapter is applied.

- (a) No hogs, pigs, swine, or animals of the porcine family shall be kept within the corporate limits of any municipality in which this chapter is applied.
- (b) No horse, mule, pony, cow, or goat shall be stabled or housed within 100 feet of any dwelling house, school, church, or eating establishment within the corporate limits of any municipality in which this chapter is applied.
- (c) No more than ten chickens or rabbits shall be kept, housed, or penned at a dwelling or on the lot on which such dwelling is located within the corporate limits of any municipality in which this chapter is applied.
- (e) No cow, horse, or other animal shall be tethered or permitted to graze or stand within 30 feet of any wall, or within 50 feet of the front door, of any residence within the corporate limits of any municipality in which this chapter is applied. This subsection shall not apply to horses used by any law enforcement agency for mounted patrol.
- (f) For the purpose of section 3-15 of this chapter, [the term] "nuisance" also includes the habitual accumulation of animal feces on the owner's property in locations or amounts that produce odors that can be perceived from adjoining properties, within the corporate limits of any municipality in which this chapter is applied.
- (g) For the purpose of section 3-36(5) of this chapter, the owner of a dangerous dog shall erect a sign with the dimensions provided in that section, unless municipal sign regulations provide more stringent requirements for such warning signs in terms of size, height, and placement, within the corporate limits of any municipality in which this chapter is applied.
- (h) For the purpose of section 3-70 of this chapter, it shall be unlawful to keep, house, or pen chickens or rabbits on premises which fail to meet sanitary standards established by the Cumberland County Board of Health or the code enforcement department of any municipality within the corporate limits in which this chapter is applied.

(Ord. of 6-17-2013(1))

Secs. 3-76—3-79. - Reserved.

## ARTICLE VIII. - ENFORCEMENT

### Sec. 3-80. - Enforcement generally.

- (a) The primary responsibility for the enforcement of this chapter shall be vested in the Animal Services department.
- (b) Any person authorized to enforce this chapter may do so by issuing a notice of violation or civil penalty citation, or by applying to the General Court of Justice for a temporary restraining order, a preliminary injunction, a permanent injunction or an order to abate a nuisance, as may be appropriate in the circumstances.
- (c) Any decision of the Animal Services Director or his designee to seize or impound any animal, other than a decision made pursuant to the provisions of article III, may be appealed to the Animal Services board for review and final decision upon the owner or keeper of such seized or impounded animal giving written notice of appeal within three business days of receiving notice of the Director's decision. The Animal Services board shall afford the opportunity for a hearing to any person giving notice of appeal and shall conduct the hearing for the purpose of either affirming, reversing, or modifying the decision of the Director.

(Ord. of 6-17-2013(1))

### Sec. 3-81. - Penalties for violations.

- (a) Any violation of this chapter shall subject the offender to a civil penalty to be recovered by the Animal Services department in a civil action in the nature of a debt, to include the cost of abating a public nuisance. Any costs of abatement and civil penalties shall be paid within seven days of issuance of a notice of violation. Each day's continuing violation shall be a separate and distinct offense.
- (b) A notice of violation shall specify the nature of the violation and the sections of this chapter violated, and further notify the offender that the civil penalty specified therein shall be paid to the Animal Services Director at the animal shelter within seven days.
- (c) Unless otherwise provided in this chapter, the civil penalty for a violation of this chapter shall be \$100.00 for a first violation or for a violation more than 12 months after a previous violation. For subsequent violations within 12 months of a previous violation, the penalty shall be \$200.00 for a second violation and \$300.00 for a third or subsequent violation within a 12-month period of the first violation.
- (d) In addition to the civil penalties prescribed in this section, any violation of this chapter, also designated as chapter 3 of the Cumberland County Code, shall also constitute a Class 3 misdemeanor punishable by a fine or not more than \$200.00 and imprisonment of not more than 20 days.

(Ord. of 6-17-2013(1); Ord. of 5-4-2015(1))

## **Summary of Proposed Changes to Cumberland County Ordinance, Ch. 3 Animals**

- 1) Name Change from Animal Control to Animal Services (Sec 3-1, pg 1 and throughout)**
  - a. Signage already states “services”
  - b. Majority of top 15 counties use services
  - c. More positive image for Department
- 2) Define “breeding”, “show”, “hunting” dogs for spay/neuter exception (Sec 3-10, page 3 and 4)**
  - a. Provides clarity to the public
- 3) Add misdemeanor or felony conviction for animal cruelty to NRO designation (Section 3-10, pg 4)**
- 4) Update found animal policy (Sec 3-14, pg 6)**
  - a. 9 counties have “notify animal services”, 5 have no applicable ordinance, 1 has same as our current ordinance
- 5) Remove noise issues from nuisance animal definition (Sec 3-15, pg 6)**
  - a. Covered under other county and city ordinances, therefore can be handled by Law Enforcement
  - b. Extremely difficult to enforce with civil means by Animal Control, primarily “neighbor disputes”
  - c. See Durham, Forsyth, Iredell. See Wake for duties of complainant.
- 6) Move Sec 3-18 under 3-23 (pg 8 to pg 11)**
- 7) Remove cats from “leash law” (Sec 3-19, pg 9)**
  - a. Buncombe, Cabarrus, Char/Meck, Durham, Guilford, Moore (feral only), Orange, Pitt, Wake (feral only), and Union Counties all exempt cats from leash law.
  - b. Many cats are euthanized at the shelter because they were picked up as a “stray”, but instead are owned cats allowed outside. Owners do not check shelter for cats that are missing. Return to owner rate for cats is 2%.
  - c. Cats causing a nuisance may still be impounded under that provision.
- 8) Feral cats (Sec 3-19, pg 9)**
  - a. Make Trap Neuter Vaccinate and Release (TNVR) program “official” in the ordinance
- 9) Authority to Director to reduce or waive adoption fees (Sec 3-20, pg 9)**
  - a. Almost all area shelters have times that they reduce or waive fees to reduce euthanasia
  - b. More convenient for events like Clear the Shelter to not require BOC approval
- 10) More authority to Director to require Spay/Neuter (Sec 3-22, pg 11)**
  - a. Cases where animals were seized, but not Running at Large
- 11) ACOs given specific authority to impound under conditions they feel are detrimental, but meet minimum standards (Sec 3-23, pg 12)**
- 12) Remove “tethering permit” fees. Add spay/neuter to requirements to tethering permit (Sec 3-23, pg 12)**
- 13) Security bond for animals impounded due to cruelty, other criminal charges (Sec 3-23, pg 13)**
  - a. See New Hanover, Forsyth, Cabarrus, and Buncombe county ordinances
- 14) Remove “wild dog” section (Sec 3-25, pg 13 and 14)**
- 15) Dog Limit (Sec 3-26, pg 14)**
  - a. No stated limit on pets in the following counties: Cabarrus, Durham, Forsyth, Iredell, Johnston, Moore, Onslow, Pitt, Union, Wake (and city of Raleigh)
  - b. New Hanover requires a “kennel permit” if someone produces over 4 litters a year
  - c. Charlotte/Mecklenburg county requires a permit to have 3 or more dogs or cats that reside outside frequently
  - d. Guilford requires a “high volume breeder” permit if someone has over 7 intact female dogs



- e. Buncombe has a “hoarding” ordinance, which does not allow over 5 animals kept in substandard conditions
- f. Orange has a “kennel permit” for over 6 animals.
- g. The limit requires us to force people to give up animals that aren’t causing a problem.
- h. The limit is very difficult to enforce, as animals are personal property
- i. Use the nuisance ordinance to stop problem owners. If there is no nuisance, why are we enforcing a limit?
- j. See statements from AKC, APDT, San Francisco SPCA

**16) Breeding permit change to “litter permit” (Sec 3-28, pg 15)**

- a. More clarity, easier to enforce

**17) Rabies exposure (Sec 3-40 m, pg 25)**

- a. Match state law

**18) Pet Licensing (Sec 3-50 -3-52 and 3-54, pages 26 and 27)**

- a. Decline in revenues
- b. Decrease in pet rabies vaccinations
- c. Labor intensive for Department
- d. Public image
- e. Wake, Guilford, Durham, Buncombe, Union, Cabarrus, Onslow, Johnston, Pitt, Iredell, Davidson, Alamance, Catawba, Randolph counties have no pet license.

**19) Removal of “misc” ordinances (Sec 3-80, pages 30 and 31)**

- a. These appear to be outdated or covered in other sections

**20) Remove fine for bite (Sec 3-81, pg 32)**

- a. The qualifications for this fine are vague and do not have a benefit to public safety.
- b. No other similar ordinances in surveyed counties

**21) Adjust Department Fee Schedule**

- a. Changes to fees for adoptions, medical tests, rabies vaccines, microchipping, euthanasia, permits

### Proposed Fee Changes for Animal Control

1. **Euthanasia request:** Raise fee from \$20 to \$25. We performed 65 of these procedures in CY2018. Average charge for this service from a private veterinarian is \$50, so we are still well below that, while still providing a valuable service to those whose pet is suffering. If a client isn't able to afford the fee we will continue to waive it for the good of the pet.
2. **Microchip:** Current fee is \$11. Our cost for the microchip is \$4.50. I would propose lowering the fee for this to \$10, in order to promote responsible pet ownership and pet identification. Lowering the total cost of reclaiming a pet by a responsible owner is a goal of our department, so that fewer owners surrender a pet that they would otherwise take home due to financial constraints. We issued 4,000 microchips in CY2018, both to owned animals and to adopted animals.
3. **Rabies vaccine:** Current fee is \$10. Our cost for the vaccine is \$1.05. I would propose lowering the fee to \$5 in order to promote responsible pet ownership and public health. Removing barriers to rabies vaccination will ensure that more pet owners comply with the state laws and county ordinances. We issued 4,275 rabies vaccinations at the shelter in CY2018, both to owned animals and to adopted animals. Wake, Forsyth and Guilford counties all offer \$5 rabies vaccines. Harnett offers them for \$8. Mecklenburg offers them for free.
4. **Heartworm Test and FeLV/FIV test:** Current fee is \$10 for these. I would propose we eliminate this fee, as we do not perform this test for owned pets (not allowed by NCDA) only adoptable dogs or cats. Our cost for the heartworm test is \$2.75 and performing this test on all dogs as they become available for adoption will allow us to start treatment on dogs that are positive, allow potential owners to know the heartworm status of a dog prior to adoption, and allow us to make informed decisions if we are having to euthanize for space. We performed 1,100 heartworm tests in FY19. Our cost for the FeLV/FIV test is \$12.20. We do not perform this test on all cats, just those at high risk for these 2 diseases, such as older cats that have spent most of their lives outdoors. It also allows us to make informed decisions if we are having to euthanize for space. We performed 327 of these tests in FY19. Eliminating these fees will also assist local animal rescue groups by reducing the cost they have in pulling animals from our shelter.
5. **Adoption Fees:** Currently we have 6 different "prices" for adoptable pets (male cats are \$68, female cats are \$83, male dogs <50# are \$86, male dogs >50# are \$93, female dogs <50# are \$103, female dogs >50# are \$117). This causes confusion with adopters and staff and exists only due to the variations in cost of spay/neuter surgery. I would propose lowering our adoption fees to \$50 for a cat and \$75 for a dog. This will promote adoption while covering a majority of our costs for services provided to the pet (microchip, rabies vaccine, spay or neuter, heartworm testing for dogs, Feline Leukemia/FIV testing for cats). This also follows the recommendations from the Best Friends Animal Society during our shelter assessment. This change in fees will reduce our revenue (\$83,000 to \$55,000 for cat adoptions and \$210,000 to \$165,000 for dogs using CY2018 numbers) but I feel that promoting adoption is a far more important goal than

collecting revenue which will never recoup our actual costs. Below is a listing of adoption fees for other NC counties:

**Guilford** - \$50 for dogs, \$25 for cats (kittens and puppies are \$75, senior pets discounted)

**Forsyth** - \$85 for dogs and cats

**New Hanover** - \$60 for dogs and cats

**Harnett** - \$55 for dogs, \$45 for cats (does not include spay or neuter)

**Wake** - \$95 for dogs, \$45 for cats

**Orange** – \$120 for dogs, puppies \$150, cats \$100, kittens \$110

**Durham** – \$100 for dogs, cats \$95 (county shelter is run by 501c3 non-profit, not county)

**Onslow** – \$140 for dogs, cats \$100

**Other local shelters:**

**Fayetteville Animal Protection Society** – Dogs \$200, cats \$100

6. **Licensing Fees:** There are 3 options going forward with pet licensing. Option A is to continue with our current processes. Option B is to contract with an outside company to provide licensing services. Option C is to eliminate licensing altogether. Each option has its advantages and disadvantages.
  - a. **Option A:** With the responsibility of pet licensing moving from the Tax Department to Animal Control in 2012, a steady decline in revenue from pet licensing has occurred. FY2013 revenue was \$372,925, FY2018 revenue was \$165,152. This is due to several factors, including a lack of compliance among local veterinarians in submitting data to Animal Control, issues with the software used to track licenses and issue renewals, and the transient population of Cumberland County. Choosing this option will result in a steady decline in revenue, while continuing to encumber the staff at Animal Control and reduce the level of customer service offered to the community. Administrative staff at Animal Control spend a significant portion of their time (20-40%) handling licensing issues and procedures. Direct costs of our current licensing program are substantial (\$1,600 per year for software support and maintenance fees, \$1,326.15 in online transaction fees, over \$7,000 a year in print and mailing costs) and the indirect costs of staff time are very high. Counties that continue to run their own pet licensing program include: New Hanover, Forsyth, Gaston, and Orange.
  - b. **Option B:** Private companies, such as Pet Data, provide “turnkey” licensing services for a portion of the fees collected. For a \$1,000 start up fee and ongoing fee of \$4.20 per one-year license, they will handle all aspects of licensing, including mailing notices, processing license applications, customer service, data collection from veterinary clinics, online searchable database of licenses. This system is currently in use in Charlotte/Mecklenburg County, City of Asheville, City of Monroe and 75 other cities, counties and states outside North Carolina. The Director of Char/Meck Animal Care and Control has informed me that they are “very happy” with their relationship with Pet Data. They report From January 2018 to June 2018 Pet Data collected \$356,818 in license revenues and they paid out to Pet Data \$104,114.36 for the service. This option would ensure a continuing revenue stream for licensing but would reduce the direct costs involved and eliminate almost all the indirect costs. Pet Data reports that on

average a 42% increase in compliance is achieved with their program versus in-house licensing. Disadvantages would include a slight increase in license costs to the citizen (estimated at \$3/year for altered pets, \$10/year for unaltered pets), continued negative public perception of pet licensing in general, and any potential issues that may arise working with a private vendor.

- c. **Option C:** Eliminating licensing would eliminate all direct and indirect costs but would also eliminate all revenue. Positives include an improvement in public perception of Animal Control, higher level of customer service in other aspects of Animal Control due to eliminating time spent on licensing issues, and better morale in Animal Control personnel due to eliminating an aspect of their job that is seen as being “tax collecting”. In CY2018 Animal Control Officers issued over 1,600 citations for failure to purchase a pet license. Of those cited, less than 40% complied. We have no effective measures to enforce licensure – taking over 600 pet owners to court each year for failure to comply is not a feasible solution. Counties such as Wake, Guilford, Durham, Onslow, Buncombe, and Moore currently have no pet license for their citizens.
- 7. Tethering Permit:** Currently we charge \$50 for a 3-year tethering permit, and \$10 for a “temporary” permit. We issued 6 of the 3-year permits in CY2018, and 13 of the temporary. This is a negligible revenue for our department, and in no way offsets the cost of the staff time spent on tethering issues. I feel that the current image of “tethering is not humane, but if you pay a fee we’ll allow it” implies that we find the money more important than the welfare of the dog. I would propose eliminating tethering permit fees altogether. If someone has a valid need to tether as a public safety concern, and is providing adequate care for the dog, then a permit from the Director can be acquired, but at no cost. This would also allow our Animal Control Officers to focus on owners who are tethering inhumanely (and taking them to court if needed) versus citing and following up on owners who are providing necessary care for their animals but cannot afford a fence.

Fee Type	Fee	Current	Proposed	Change	Notes
Impound	First day	\$ 30.00	\$ 30.00	\$ -	No change
	additional day	\$ 10.00	\$ 10.00	\$ -	No change
	Euthanasia request	\$ 20.00	\$ 25.00	\$ 5.00	This is still well below what local veterinarians charge.
Procedure	Microchip	\$ 11.00	\$ 20.00	\$ 9.00	Increase will still keep this well below what local veterinarians charge.
	Rabies Vaccination	\$ 10.00	\$ 5.00	\$ (5.00)	Our cost for vaccine and syringe is \$1.06
	Heartworm Test	\$ 10.00	\$ -	\$ (10.00)	Would like to provide testing of all dogs available for adoption at no extra \$
	FelV/FIV Test	\$ 10.00	\$ -	\$ (10.00)	Would like to provide testing of all cats available for adoption at no extra \$
	Dog spay <50#	\$ 75.00	\$ 75.00	\$ -	No change
	Dog neuter <50#	\$ 58.00	\$ 58.00	\$ -	No change
	Dog spay >50#	\$ 89.00	\$ 89.00	\$ -	No change
	Dog neuter >50#	\$ 65.00	\$ 65.00	\$ -	No change
	Cat spay	\$ 55.00	\$ 55.00	\$ -	Would like to have stipulation that Director can temporarily adjust adoption fees (with prior approval from CM) for animals to promote adoption.
	Cat neuter	\$ 40.00	\$ 40.00	\$ -	
Adoption	Dog adoption	varies	\$ 100.00		Consolidate "line item" fees on adoption to single flat rate. Adopters will often ask us why they have to pay for a spay if the dog is already spayed, etc.
	Cat adoption	varies	\$ 75.00		
Licensing	Altered animal	\$ 7.00	\$ -	\$ (7.00)	eliminate licensing process altogether
	Unaltered animal	\$ 25.00	\$ -	\$ (25.00)	see above
Permits	Breeding Permit	\$ 50.00	\$ 100.00	\$ 50.00	Change to "litter" permit. Eliminates debate over where breeding occurred, costs owner money only if they actually breed their dog/cat and produce a litter.
	Hunting (up to 14 dogs)	\$ 100.00	\$ 150.00	\$ 50.00	Change to "hunting pack permit" \$150 for any size
	Hunting (>15 dogs)	\$ 150.00	\$ 150.00	\$ -	see above
	Temp tethering	\$ 10.00	\$ -	\$ (10.00)	Eliminate tethering permit fees. We are telling owners it is cruel/unsafe to tether their dogs, but it's OK if they pay a fee. Leave it up to Enforcement Division to allow tethering under very specific restrictions if needed for safety of the public.
	3 year tethering	\$ 50.00	\$ -	\$ (50.00)	
	Dangerous Dog	\$ 100.00	\$ 100.00	\$ -	No change
	Exotic permit	\$ 100.00	\$ -	\$ (100.00)	Eliminate this. We don't use it.
Violations	Breeding without permit	\$ 300.00	\$ 300.00	\$ -	Change name to "unpermitted litter"
	Abandonment	\$ 100.00	\$ 100.00	\$ -	No change

					Eliminate this. We don't use it. If a dog is vicious, it is euthanized. If it is a minor/moderate bite, then they have to pay RAL fine and Dangerous Dog fees
	Bite off property	\$ 500.00	\$ -	\$ (500.00)	
<i>all 1st</i>	cruelty	\$ 100.00	\$ 100.00	\$ -	No change
<i>are \$100</i>	running at large	\$ 100.00	\$ 100.00	\$ -	No change
<i>2nd are</i>	no rabies vaccination	\$ 100.00	\$ 100.00	\$ -	No change
<i>\$200, 3rd</i>	failure to wear rabies tag	\$ 100.00	\$ -	\$ (100.00)	Eliminate this. Tags are often lost. Paperwork is sufficient w/out tag
<i>are \$300</i>	no county license	\$ 100.00	\$ 100.00	\$ -	Eliminate with licensing
	tethering	\$ 100.00	\$ 100.00	\$ -	No change
	nuisance	\$ 100.00	\$ 100.00	\$ -	No change



**ASSISTANT COUNTY MANAGER - ENVIRONMENTAL/ COMMUNITY SAFETY**

**MEMORANDUM FOR THE AGENDA OF THE DECEMBER 12, 2019**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: TRACY JACKSON, ASSISTANT COUNTY MANAGER FOR ENVIRONMENTAL & COMMUNITY SAFETY**

**DATE: 12/2/2019**

**SUBJECT: NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY COMMUNITY DEVELOPMENT BLOCK GRANT - DISASTER RECOVERY REPLACEMENT SUBRECIPIENT AGREEMENT FROM HURRICANE MATTHEW**

**Requested by: AMY H. CANNON, COUNTY MANAGER**

**Presenter(s): TRACY JACKSON, ASSISTANT COUNTY MANAGER FOR ENVIRONMENTAL & COMMUNITY SAFETY**

**BACKGROUND**

Now that the State of North Carolina has firmly established the Office of Recovery and Resiliency (NCORR), Cumberland County is being asked to approve a new Subrecipient Agreement (SRA) for Community Development Block Grant - Disaster Recovery funding. The SRA between the State and Cumberland County is specifically for the Robin's Meadow Transitional Housing project (\$2,625,000) and Homeowner Recovery Program activities (\$100,000) totaling \$2,725,000. This change will involve a reduction-in-force of the County's temporary staff as the State's contractor assumes full responsibility for the local applicant intake center.

Cumberland County's original CDBG-DR award was an amount up to \$34,945,328. Based upon the amount in the new SRA, it appears that \$29,330,328 of the original grant award will be shifted to NCORR to administer. Laura Hogshead, NCORR Chief Operating Officer, has stated that the reason the total dollar figure has changed is that the new SRA is for infrastructure projects only. All other programs funded by CDBG-DR (Housing, Buyout, Small Rental, Multifamily, etc) will be handled by the State, which means that Cumberland County residents will be served, but the State will handle the procurements, compliance, and cash flow of the program, and not have to burden the County with those items. This forms the basis for a State-centric housing

program – the County residents will get the assistance, but the County itself does not run the program. NCORR anticipates spending more than the original amount in the initial 2017 SRA. To date, according to the State, it has committed the following funds to Cumberland County and its residents:

- Housing awards to individuals - \$6,741,739 (individuals physically have an award letter in their hands for this amount and construction/reimbursement/repair is happening)
- Infrastructure - \$6,300,000, as noted, to the County project (Robins Meadow at \$2.5m) and the Fayetteville project (Community Resource Center at \$3.8m)
- Multifamily - \$9,821,518 for new development, funded through the NC Housing Finance Agency (McArthur Park II)
- Small Business Loans - \$600,000 - Project Delivery costs disbursed thus far - \$250,326
- Total to Date: \$23,713,583

Staff have been advised that as the State rolls out new programs, including the Buyout Program and the Small Rental Program, it will continue to serve applicants in Cumberland County and the list of committed funds will grow. The State will serve all eligible applicants within Cumberland County and will not be constrained by the dollar figure put into the first SRA, and the County will not have to outlay the funds and wait for reimbursement. Signing the new SRA means that the County's responsibility is to run the Infrastructure Program and the State will run the other programs for the benefit of Cumberland County residents.

#### **RECOMMENDATION / PROPOSED ACTION**

Staff requests this item be moved forward to the December 16, 2019 Board of Commissioners' Meeting as an Item of Business.

#### **ATTACHMENTS:**

Description

2019 NCORR CDBG-DR SRA

Type

Backup Material



**COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY GRANT  
SUBRECIPIENT AGREEMENT BETWEEN THE NC DEPARTMENT OF PUBLIC  
SAFETY, OFFICE OF RECOVERY AND RESILIENCY; AND CUMBERLAND  
COUNTY**

This Subrecipient Agreement (“Agreement”) between the NC Department of Public Safety, Office of Recovery and Resiliency (“NCORR” or “Grantee”); and Cumberland County (“Subrecipient”), is intended to support the Subrecipient’s efforts to promote the recovery of the county and its residents in the aftermath of Hurricane Matthew. The Agreement is made effective July 1, 2019.

**RECITALS**

WHEREAS, on October 8-9, 2016, Hurricane Matthew hit central and eastern North Carolina, including Cumberland County, with record-breaking rainfall that created 1,000-year flood events that devastated the people, infrastructure, businesses, and schools of entire communities; and

WHEREAS, certain buildings, facilities, personal items, and equipment owned or rented by residents in the county and city were damaged by floodwaters associated with Hurricane Matthew; and

WHEREAS, on October 9, 2016, an expedited major disaster declaration from the President of the United States was requested and was granted on October 10, 2016 as FEMA-4285-DR-NC, allowing North Carolina to receive federal aid in the form of individual and public assistance for citizens and local governments; and

WHEREAS, the U.S. Department of Housing and Urban Development (“HUD”) has allocated Community Development Block Grant -- Disaster Recovery funds (“CDBG-DR”) to NCORR under the Further Continuing and Security Assistance Appropriations Act of 2017 (Public Law 114-254) and the Consolidated Appropriations Act of 2017 (Public Law 115-31) for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster due to Hurricane Matthew; and

WHEREAS, pursuant to 82 Fed. Reg. 5591 (Jan. 18, 2017) and 82 Fed. Reg. 36812 (Aug. 7, 2017), the State has received an allocation of CDBG-DR funds from HUD in the amount of \$236,529,000; and

WHEREAS, on November 20, 2017, the North Carolina Department of Public Safety, Division of Emergency Management (“NCEM”), and North Carolina Department of Commerce (“DOC”) finalized an award and grant agreement with the Subrecipient to implement the State’s Community Development Block Grant for Disaster Recovery (“CDBG-DR”) Action Plan that was approved by HUD on August 7, 2017; and

WHEREAS, that agreement included an allocation for a CDBG-DR–funded housing program and infrastructure program that would be administered by the Subrecipient; and

WHEREAS, the Subrecipient now has agreed to allow the State to administer that housing program allocation; and

WHEREAS, on January 2, 2019, NCORR assumed from NCEM the duty of managing the State's CDBG-DR program; and

WHEREAS, on July 1, 2019 NCORR was officially named grantee for the State's CDBG-DR program; and

WHEREAS, NCORR is executing this Agreement with the Subrecipient to implement the infrastructure program within Subrecipient's county according to the State's CDBG-DR Action Plan that was approved by HUD; and

WHEREAS, the Parties desire to enter into this Agreement and intend to be bound by its terms; and

WHEREAS, this Agreement constitutes the entire agreement between the Parties, superseding all prior oral and written statements or agreements for the provision of CDBG-DR funds between the State and the Subrecipient.

NOW, THEREFORE, and in consideration of the Grant, the mutual promises each to the other made, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

## **Article I. GENERAL TERMS AND CONDITIONS OF AGREEMENT**

**1.1 Grant Documents.** The documents described below are hereinafter collectively referred to as the "Grant Documents." In the case of conflict between any of these documents, the terms of this Agreement will control. Upon execution and delivery of this Agreement, it and the other Grant Documents and items required hereunder will constitute a valid and binding agreement between the Parties, enforceable in accordance with the terms thereof. The Agreement constitutes the entire agreement between the Parties, superseding all prior oral and written statements or agreements.

The Grant Documents consist of:

- (1) This Agreement
- (2) Exhibit A – Project Specific Award Letter(s)
- (3) Exhibit B – Project Budget & Budgetary Provisions

Upon execution and delivery of this Agreement, and the Subrecipient has received its counterpart original of this Agreement, fully executed and with all dates inserted where indicated, then the Agreement will constitute a valid and binding agreement between the Parties, enforceable with the terms thereof.

Exhibit A and Exhibit B of this document are incorporated by reference and identify project description(s) and project budget(s). Project budgets are based on estimated project costs. Project scope and budget may be revised depending on final project approval and contract award prices. Changes to project scope and budget occurring after contract award shall be memorialized in updated versions of Exhibit A and Exhibit B. Revisions to those documents, should they become necessary, are incorporated herein by reference. Updated versions of Exhibit A and Exhibit B shall become binding on this Agreement when they are signed by NCORR and the Subrecipient.

**1.2 Award Identification Information.** The following information applies to this Agreement.

Federal Award Identification Number: B-16-DL-37-0001

CFDA Number and Name: 14.228

Federal Award Date: 8/14/2017

Federal award project description: To provide disaster recovery to communities served by the Subrecipient, consistent with the State's HUD-approved CDBG-DR Action Plan.

Is this award for research and development? No

Subrecipient's unique entity identifier: DUNS: 098235539; Federal ID No.: 56-60000291

Subrecipient's Award Period of Performance: July 1, 2019 – August 15, 2023

Amount of Federal funds obligated by this Agreement:

Community Recovery Infrastructure activities (up to a maximum of ): \$2,625,000

Homeowner Recovery Program activities (up to a maximum of): \$100,000

**1.3 Purpose.** Consistent with 2 C.F.R. § 200, Subpart D § 331, this grant to the Subrecipient will carry out projects as shown in the HUD-approved State CDBG-DR Action Plan, as permitted by this Agreement. To that end, subject to the appropriation, allocation, and availability of funds for the activities described in this agreement and consistent with the State Action Plan, NCORR hereby agrees to reimburse Grant funds to the Subrecipient in accordance with the payment procedures set forth herein. The obligation of NCORR to pay any amounts under this Agreement are contingent upon the availability and continuation of funds for such purpose. NCORR's obligation to pay Grant funds shall not exceed the total amount budgeted for Subrecipient, as shown in Exhibit B.

**1.4 Scope of Work.** Funds provided by this Agreement will support infrastructure projects identified in Exhibit A consistent with project budget amounts identified in Exhibit B. Funds provided by this Agreement may also support homeowner recovery program activities for the period from July 1, 2019 to November 30, 2019.

**1.5 CDBG National Objectives.** Activities funded by this Agreement must benefit low-and-moderate-income persons; aid in the prevention or elimination of slum or blight; or meet community development needs having a particular urgency. The criteria for meeting these national objectives are found in 24 C.F.R. § 570.208, as amended by 81 Fed. Reg. 83254 (Nov. 21, 2016) (made applicable to the funds provided by this Agreement through 82 Fed. Reg. 5591 (Jan. 18, 2017)). The State's CDBG-DR Action Plan outlines the ways that the program activities funded by this grant will accomplish the national objectives.

Pursuant to 24 C.F.R. § 570.506, both NCORR and the Subrecipient are required to maintain records sufficient to demonstrate compliance with the criteria for accomplishing the national objectives of CDBG-DR.

**1.6 Prohibited Activities.** The Subrecipient may be reimbursed with CDBG-DR funds for carrying out the activities described in this Agreement and for no other activities. The Subrecipient is prohibited from charging to this award the costs of ineligible activities under CDBG-DR, including those described at 24 C.F.R. § 570.207, and from using funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

**1.7 Contract and Reimbursement Period.** The term for this Agreement commences on the effective date of this Agreement and expires on the earlier of: (i) August 15, 2023, or (ii) the date as of which the parties agree in writing that all grant closeout requirements have been satisfied.

The Subrecipient can be reimbursed for costs and activities that are directly linked to the homeowner recovery program for the time period between July 1, 2019 and November 30, 2019 (the period in which Subrecipient was responsible for the activities of the homeowner recovery program in the County of Cumberland). Subrecipient shall seek reimbursement for these homeowner recovery program costs in the same manner as other incurred costs as described in Section 2.5 below.

**1.8 CCR Registration.** The Subrecipient shall provide NCORR with documentation of any contractor or subcontractor's registration in the Central Contractor Registration (CCR) system. The CCR system may be accessed online at [www.sam.gov](http://www.sam.gov).

**1.9 Notice; Contract Administrator.** All notices, requests or other communications permitted or required to be made by the Subrecipient under this Agreement or other documentation relating to this Agreement shall be given to NCORR's Contract Administrator or his/her designee.

The Contract Administrator is:

Laura Hogshead, Chief Operating Officer  
North Carolina Office of Recovery and Resiliency  
PO Box 110465  
Durham, NC 27709  
Phone: (984) 833-5350

Fax: (919) 405-7392

Notice shall be in writing, signed by the Subrecipient. Notice shall be effective upon acknowledged receipt by NCORR.

## **Article II. PERFORMANCE MONITORING, REPORTING, AND BUDGET**

**2.1 Monitoring.** NCORR shall monitor the performance of the Subrecipient as necessary and in accordance with regulations on Subrecipient Monitoring and Management, 2 C.F.R. §§ 200.330–200.332, to ensure Subrecipient compliance with all of the requirements of this Agreement, including the timeframes and performance goals associated with the activities. NCORR’s protocol for monitoring Subrecipient compliance is derived from Chapter 6 of HUD’s *Community Planning and Development Monitoring Guidebook*, which may be accessed at [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/cpd/6509.2](https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2).

Substandard performance, as determined solely by NCORR, will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a time period specified by in writing by NCORR, NCORR may impose additional conditions on the Subrecipient and its use of CDBG-DR funds consistent with 2 C.F.R. § 200.207, suspend or terminate this Agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 C.F.R. § 200.338.

**2.2 Reporting.** The Subrecipient shall report regular performance metrics to NCORR that are necessary to comply with NCORR’s or HUD’s CDBG-DR reporting requirements. NCORR will provide reporting templates and schedules to the Subrecipient. NCORR at its discretion, will conduct technical assistance and monitoring of the Subrecipient on topics relating to the CDBG-DR program.

**2.3 Project Approval and Implementation Schedule.** Within 60 days of execution of this Agreement, the Subrecipient must provide NCORR with a completed Project Scoping Form (“PSF”) for each infrastructure project the Subrecipient proposed to deliver pursuant to this Agreement. Within 90 days of approval of the PSF(s), the Subrecipient must provide NCORR with a completed project information form (“PIF”) for each infrastructure project for which a PSF is approved, including a preliminary cost estimate for the project and a preliminary timeline for completion of the project. For cases in which a Subrecipient has previously submitted an Abbreviated Project Information Form (APIF), and NCORR has accepted the form, the Subrecipient must provide NCORR with a completed project information form (“PIF”) within 90 days of execution of this Agreement. On a quarterly basis, Subrecipient shall work with NCORR on updated estimates and projections as activities progress.

The Subrecipient shall obligate 100% of non-administrative grant funds and provide all documentation to NCORR no later than August 15, 2020, and all funds must be expended by the Subrecipient by August 15, 2022.

The Subrecipient may request extensions of the deadlines in Section 2.3. Any requests for extensions must be made in writing, must be addressed to NCORR, must explain why an extension

is needed and must propose a requested new deadline. NCORR must receive this request at least 60 days before the relevant deadline. NCORR, within its sole discretion, may or may not approve the extension, based on project performance and other contributing factors.

**2.4 Budget, Disbursement, and Repayment.** The Subrecipient's approved budget under this Agreement is attached as Exhibit B. Exhibit B also governs disbursement procedures, allowed administrative costs, program income, refunds, reversion of unexpended funds, and reduction of grant funds based on lesser actual expenses.

**2.5 Termination of Previous Agreements and Reimbursement of Incurred Costs.** This Agreement constitutes the entire agreement between the Parties, superseding all prior oral and written statements or agreements for the provision of CDBG-DR funds between the State and the Subrecipient. NCORR may, at its sole discretion, reimburse Subrecipient for costs reasonably incurred up to November 30, 2019, provided that said costs meet provisions of this Agreement, 2 C.F.R. Part 200, Subpart E, Cost Principles, and any other applicable State or Federal statutes, regulations, or requirements.

NCORR will provide Subrecipient with a guide for reimbursement of costs, the "NCORR Subrecipient Billing Guide." Subrecipient must provide NCORR with documentation of costs previously incurred for which they now seek reimbursement within 90 days of receipt of the NCORR Subrecipient Billing Guide. For guidance on the documentation that Subrecipient must provide for reimbursement of costs incurred prior to this agreement, see the NCORR Subrecipient Billing Guide.

### **Article III. AMENDMENT AND TERMINATION**

**3.1 Amendment.** NCORR, and the Subrecipient may amend this Agreement at any time provided that such amendments are in writing, make specific reference to this Agreement, are approved by all Parties, and are signed by a duly authorized representative of each Party. Such amendments shall not invalidate this Agreement, nor relieve or release NCORR or Subrecipient from their obligations under this Agreement. Amendments will generally be required when any of the following are anticipated: i) revision to the scope or objectives of the Program, including purpose or beneficiaries; ii) need to extend the availability of Grant Funds; iii) revision that would result in the need for additional funding; and iv) expenditures on items for which applicable cost principles require prior approval (see 24 C.F.R. § 570.200(h) for pre-award/pre-agreement costs). Revisions to scope and budget documents as discussed in section 1.1 will be valid upon the signature of both parties and are incorporated herein by reference.

NCORR may, in its sole discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by NCORR and the Subrecipient.

**3.2. Termination by Mutual Consent or Convenience.** The Parties may terminate this Contract by mutual written consent. NCORR may terminate this Agreement, in whole or in part, for convenience, with 30 days written notice to Subrecipient.

**3.3 Termination in the Event of Default.** NCORR may suspend, reduce, or terminate their obligations under this Agreement, in whole or in part, upon 30 days' notice, whenever NCORR determines that the Subrecipient has failed to comply with any term, condition, requirement, or provision of this Agreement. Subrecipient shall be afforded a reasonable period of time to cure any noncompliance. Failure to comply with any terms of this Agreement, include (but are not limited to) the following:

- (a) Default in Performance. The default by the Subrecipient or a subsequent Recipient in the observance or performance of any of the terms, conditions or covenants of this Agreement, as determined by NCORR.
- (b) Misrepresentation. If any representation or warranty made by the Subrecipient in connection with the Grant or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any material respect at the time made, as determined by NCORR.
- (c) Abandonment of the Project. If Subrecipient abandons or otherwise ceases to continue to make reasonable progress towards completion of the Project, as determined by NCORR.
- (d) If Subrecipient fails to complete the required Project Scoping Form, Project Information Form and other required project documentation.

If, after notice of default or non-compliance, Subrecipient has not cured such default within a reasonable time or is not diligently pursuing a cure satisfactory to NCORR, then NCORR shall promptly notify the Subrecipient, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect, along with other notifications required under 2 C.F.R., Part 200, Subpart D. Upon termination, NCORR retains the right to recover any improper expenditures from the Subrecipient and the Subrecipient shall return to NCORR any improper expenditures no later than 30 days after the date of termination. NCORR may, at its sole discretion, allow Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled, provided that said costs meet the provisions of this Agreement, 2 C.F.R., Part 200, Subpart E, Cost Principles, and any other applicable state or federal statutes, regulations or requirements.

**3.4 Additional Remedies.** If Subrecipient defaults, NCORR shall have the power and authority, consistent with their statutory authorities: (a) to prevent any impairment of the Grant activities by any acts which may be unlawful or in violation of this Agreement or any other item or document required hereunder; (b) to compel specific performance of any of Subrecipient's obligations under this Agreement; (c) to obtain return of all Grant Funds, including equipment if applicable; and (d) to seek damages from any appropriate person or entity. NCORR shall be under no obligation to complete the activities funded by this Agreement.

**3.5 Unavailability of Funds.** If funds for the Grant become unavailable, the Subrecipient agrees that NCORR has the right to terminate this Agreement by giving 60 days' written notice specifying the termination date of the Agreement, which NCORR shall determine in its sole discretion. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Subrecipient shall not expend any Grant funds without NCORR's express written authorization and shall return all unspent Grant funds to NCORR upon demand.

**3.6 Nonwaiver.** No delay, forbearance, waiver, or omission by NCORR to exercise any right, power or remedy upon any event of default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such event of default or to constitute acquiescence therein.

#### **Article IV. FEDERAL AND STATE LAW COMPLIANCE.**

The CDBG-DR funds available to the Subrecipient through this Agreement constitute a subaward of NCORR's federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R., Part 200. This Agreement includes terms and conditions of NCORR's Federal award that are imposed on NCORR and the Subrecipient, and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this Agreement.

**4.1 General Compliance.** The Subrecipient shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 C.F.R., Part 570, as modified by the Federal Register notices that govern the use of CDBG-DR funds available under this Agreement. These Federal Register notices include, but are not limited to, 81 Fed. Reg. 83254 (Nov. 21, 2016), 82 Fed. Reg. 5591 (Jan. 18, 2017), 82 Fed. Reg. 36812 (Aug. 7, 2017). The Subrecipient shall also comply with all other applicable federal, state and local laws, regulations, and policies that govern the use of the CDBG-DR funds in complying with its obligations under this Agreement, regardless of whether CDBG-DR funds are made available to the Subrecipient on an advance or reimbursement basis.

Notwithstanding the foregoing, (1) the Subrecipient does not assume the designated responsibilities of Grantee's decision-making authority for environmental review described in 24 CFR part 58 and (2) the Subrecipient does not assume any of the Grantee's responsibilities for initiating the review process under the provisions of 24 CFR Part 52.

**4.2 Duplication of Benefits.** The Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155). In particular, the Subrecipient may not use funds provided by this Agreement to carry out the same activities that were funded by another source, including other federal or state sources or private insurance. The Subrecipient must repay any assistance later received for the same purpose as those awarded or provided by this Agreement.

**4.3 Drug-Free Workplace.** The Subrecipient must comply with drug-free workplace requirements in Subpart B of 2 C.F.R., Part 2429, which adopts the government-wide



implementation (2 C.F.R., Part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. §§ 701 – 707).

**4.4 Insurance and Bonding.** The Subrecipient shall comply with the bonding and insurance requirements of 2 C.F.R. §§ 200.310 and 200.325, as applicable, and must carry sufficient insurance coverage to protect assets acquired with the use of CDBG-DR funds to protect from loss due to theft, fraud, and/or undue physical damage.

**4.5 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.** The Subrecipient shall comply with the applicable provisions in 2 C.F.R., Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, except as modified by 81 Fed. Reg. 83254 (Nov. 21, 2016). These provisions include:

- (a) Financial & Program Management. Because Grantee is subject to 24 CFR 570.489(d), Grantee's own fiscal and administrative requirements are incorporated within this Agreement, and Subrecipient will account for all CDBG-DR funds under this Agreement in accordance therewith. Grantee will submit to Subrecipient the NCORR standards of procedure regarding the financial and program management of CDBG-DR funds ("Financial and Program Management Protocol"). Any amendment to the NCORR Financial and Program Management Protocol for fiscal and administrative procedures is automatically incorporated into this Agreement, and notice of the amendment or changes to that Protocol will be provided to Subrecipient.
- (b) Cost Principles. Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with 2 C.F.R., Part 200, Subpart E. All items of cost listed in Subpart E that require prior federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Subpart E and are otherwise eligible under this Agreement, except for the following:
  - (i) Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency;
  - (ii) Fines penalties, damages, and other settlements are unallowable costs to the CDBG program;
  - (iii) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 C.F.R. § 200.445);
  - (iv) Organization costs (2 C.F.R. § 200.455); and
  - (v) Pre-Award Costs, as limited by this Agreement.

**4.6 Documentation and Record Keeping.**

- (a) Records to be Maintained. The Subrecipient shall establish and maintain records sufficient to enable NCORR to (1) determine whether the Subrecipient has complied with this Agreement, applicable federal and state laws and regulations, and the terms and conditions

of NCORR's Federal award and (2) satisfy recordkeeping requirements applicable to NCORR. These records include the records described in Section 1.5 of this Agreement.

Because Grantee is subject to 24 CFR 570.490, the Subrecipient must maintain records that would allow Grantee to satisfy the requirements of 24 CFR 570.490 and 81 Fed. Reg. 83254 (Nov. 21, 2016), which waives certain aspects of 24 CFR 570.490. Subrecipient shall maintain records that the Grantee is required to maintain as jointly agreed upon by HUD and the Grantee, maintains records sufficient to enable HUD to make the determinations described at 24 CFR 570.493, and maintain any records necessary for fair housing and equal opportunity purposes.

In order to meet the recordkeeping requirements listed above, the Subrecipient must maintain the following, at a minimum:

- (i) Records providing a full description of each activity undertaken;
  - (ii) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG-DR program;
  - (iii) Records required to determine the eligibility of activities;
  - (iv) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
  - (v) Records documenting compliance with the fair housing and equal opportunity requirements of the CDBG program regulations;
  - (vi) Financial records as required by 24 C.F.R. § 570.502, and 2 C.F.R., Part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and
  - (vii) Other records necessary to document compliance with this Agreement, any other applicable federal and state laws and regulations, and the terms and conditions of this federal award.
- (b) Access to Records. The Subrecipient shall provide any duly authorized representative of NCORR, The North Carolina State Auditor, the North Carolina Office of State Budget and Management, HUD, and the Comptroller General, the Inspector General and other authorized parties 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 during the period of performance of this Agreement and for three years following the completion of all closeout procedures. All original files shall be maintained at the Subrecipient's offices for access purposes. Because Grantee is subject to 24 CFR 570.489(m) and 24 CFR 570.490 (except for waivers as stated in 81 Fed. Reg. 83254 (Nov. 21, 2016)), Subrecipient must provide sufficient access to records in compliance with 2 CFR 200.331(a)(5) and 24 CFR 570.490(c). As required by 2 CFR 200.331(a)(5), the Subrecipient shall permit the Grantee and auditors to have access to the Subrecipient's records and financial statements as necessary for the Grantee to meet its audit requirements under the Federal award.
- (c) Record Retention and Transmission of Records to Subrecipient. Prior to closeout of this Agreement, the Subrecipient must transmit to NCORR records sufficient for NCORR to

demonstrate that all costs under this Agreement met the requirements of the federal award. Subrecipient shall retain financial records, supporting documents, statistical records, and all other Subrecipient records pertinent to this Agreement and Subrecipient's award for 5 years after the closeout of the grant to ensure that all applicable record retention requirements are met. The preceding requirement is however, subject to the following exceptions:

- (i) Records for activities subject to the reversion of assets provisions at 24 C.F.R. § 570.503(b)(7) or change of use provisions at 24 C.F.R. § 570.505 must be maintained for as long as those provisions continue to apply to the activity, otherwise, records for real property and equipment acquired under this Agreement must be retained for 5 years after final disposition;
- (ii) Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied, or for 5 years after the closeout of the grant, whichever is longer;
- (iii) If any litigation, claim, or audit is started before the expiration of the required retention period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken, or for 5 years after the closeout of the grant, whichever is longer;
- (iv) When the Subrecipient is notified in writing by HUD, the cognizant agency for audit as defined in 2 C.F.R. § 200.18, the oversight agency for audit as defined in 2 C.F.R. § 200.73, the cognizant agency for indirect costs as defined in 2 C.F.R. § 200.19, or NCORR, the Subrecipient shall extend the retention period consistent with the notification;
- (v) When records are transferred to or maintained by HUD or NCORR, the required retention requirement is not applicable to the Subrecipient;
- (vi) If the Subrecipient is required to report on program income after the period of performance, the retention period for the records pertaining to the earning of the program income (as defined in this Agreement) starts from the end of the Subrecipient's fiscal year in which the program income is earned; and
- (vii) For indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates), and their supporting records:
  - a. If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to NCORR) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
  - b. If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to NCORR) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

- (d) Client Data and Other Sensitive Information. If the Subrecipient is required to maintain data demonstrating client eligibility for activities provided under this Agreement, the Subrecipient must comply with 2 C.F.R. § 200.303(e) and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 C.F.R. § 200.82, and other information HUD or NCORR designates as sensitive or the Subrecipient considers sensitive consistent with applicable federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

**4.7 Closeout.** The Subrecipient shall closeout its use of the CDBG-DR funds and its obligations under this Agreement by complying with the closeout procedures in 2 C.F.R. § 200.343. Activities during this closeout period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to NCORR), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income. The rules governing program income acquired after closeout are modified in the Federal Register notice that applies to this Agreement. *See* 81 Fed. Reg. 83254, sec. VI, no. 17 (Nov. 21, 2016).

#### **4.8 Audits, Inspections, and Monitoring**

- (a) Single Audit. The Subrecipient must be audited as required by 2 C.F.R., Part 200, Subpart F when it is expected that the Subrecipient's federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501.
- (b) Inspections and Monitoring. The Subrecipient shall permit NCORR and auditors to have access to the Subrecipient's records and financial statements as necessary for NCORR to meet the requirements of 2 C.F.R., Part 200. The Subrecipient must submit to monitoring of its activities by NCORR as necessary to ensure that the award is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of this Agreement. This review must include: (1) reviewing financial and performance reports required by NCORR; (2) following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award provided to the Subrecipient from NCORR detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this federal award provided to the Subrecipient from NCORR as required by 2 C.F.R. § 200.521.
- (c) Corrective Actions. NCORR may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. NCORR may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the federal award provided to the Subrecipient detected through audits, on-site reviews, and other means. In response to audit deficiencies or other findings of noncompliance with this Agreement, NCORR may impose additional conditions on the use of the CDBG-DR funds to ensure future compliance, or provide training and technical assistance as needed to correct noncompliance.

#### **4.9 Procurement and Contractor Oversight.**

Subrecipient shall comply with the procurement standards in 2 C.F.R. Part 200, Subpart D when procuring property and services under this Agreement. The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law.

The Subrecipient shall impose the Subrecipient's obligations under this Agreement on its contractors, where applicable, specifically or by reference, so that such obligations will be binding upon each of its contractors.

The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities, including 2 C.F.R. § 200, Subpart F. The Subrecipient is responsible to ensure that it has checked the federal System for Awards Management (SAM) (<https://www.sam.gov/portal/SAM>) and the State Debarred Vendors Listing (<http://www.pandc.nc.gov/actions.asp>) to verify that contractors or subsequent recipients have not been suspended or debarred from doing business with the Federal or State government.

Subrecipient shall include in all contracts funded under this Agreement all applicable contract provisions required under state law and 2 C.F.R. Part 200, Appendix II.

The Subrecipient shall maintain oversight of all activities under this Agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this Agreement.

**4.10 Property Standards.** Real property acquired by the Subrecipient under this Agreement shall be subject to 24 C.F.R. § 570.505, 24 C.F.R. § 570.489(j), and 24 C.F.R. § 570.200(j) (imposing 24 C.F.R. § 5.109 requirements regarding disposition and change in use of real property by a faith-based organization).

The Subrecipient shall also comply with the property standards at 2 C.F.R. §§ 200.310 – 200.316, except to the extent they are inconsistent with 24 C.F.R. §§ 570.200(j) and 570.489(j), in which case Subrecipient shall comply with 24 C.F.R. §§ 570.200(j) and 570.489(j), except to the extent that proceeds from the sale of equipment are program income and subject to the program income requirements under this Agreement, pursuant to 24 C.F.R. § 570.489(e)(1)(ii).

If applicable to the scope of work of this agreement the Subrecipient shall abide by the terms as set forth in notice 81 Fed. Reg. 83254 (Nov. 21, 2016) regarding property standards, which include the following:

1. Green Building. To the extent applicable to projects undertaken pursuant to this Agreement, pursuant to 81 Fed. Reg. 83254, sec. VI, no. 28(a) – (d) (Nov. 21, 2016), all new construction of residential buildings and all replacement of substantially damaged residential buildings funded under this Agreement must meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily

High-Rise), (ii) Enterprise Green Communities; (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC–700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite), or (vi) any other equivalent comprehensive green building program acceptable to HUD.

**2. Rehabilitation.** To the extent applicable to projects undertaken pursuant to this Agreement, for rehabilitation work funded by this Agreement, Subrecipients must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available at <https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-buildingchecklist/>. When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances.

**4.11 Federal Funding Accountability and Transparency Act (FFATA).** The Subrecipient shall comply with the requirements of 2 C.F.R., Part 25 Universal Identifier and System for Award Management (SAM). The Subrecipient must have an active registration in SAM in accordance with 2 C.F.R., Part 25, Appendix A, and must have a Data Universal Numbering System (DUNS) number. The Subrecipient must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 C.F.R., Part 170 Reporting Subaward and Executive Compensation Information.

**4.12 Relocation and Real Property Acquisition.** To the extent applicable to projects undertaken pursuant to this Agreement, the Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 U.S.C. §§ 4601 – 4655, 49 C.F.R., part 24, 24 C.F.R., part 42, and 24 C.F.R. § 570.606. In addition to other URA requirements, these regulations implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5181, which provides that “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.” Portions of these regulations have been waived for the funds provided under this Agreement, pursuant to 81 Fed. Reg. 83254, sec. VI, no. 19 (Nov. 21, 2016).

**4.13 Nondiscrimination.**

- (a) **24 C.F.R., Part 6.** The Subrecipient will comply with 24 C.F.R., Part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. § 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, 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 with Federal financial assistance. The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 – 6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part

with CDBG-DR funds. Thus, the Subrecipient shall comply with regulations of 24 C.F.R., Part 8, which implement Section 504 for HUD programs, and the regulations of 24 C.F.R., Part 146, which implement the Age Discrimination Act for HUD programs.

- (b) Architectural Barriers Act and the Americans with Disabilities Act. The Subrecipient shall ensure that its activities funded under this Agreement are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act. The Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151 – 4156) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of “residential structure” as defined in 24 C.F.R. § 40.2 or the definition of “building” as defined in 41 C.F.R. § 101-19.602(a) is subject to the requirements of the Architectural Barriers Act and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 C.F.R., Part 40 for residential structures, and appendix A to 41 C.F.R., Part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

Additionally, for projects funded under this Agreement, the Subrecipient must comply with the North Carolina Building Code’s standards for constructing or altering building and facilities to make them accessible to and useable by the physically handicapped.

- (c) State and Local Nondiscrimination Provisions. Subrecipient agrees to comply with state nondiscrimination provisions found at N.C. Gen. Stat. §§ 143-422.1 – 422.3 (Equal Employment Practices); and § 41A-1–10 (NC Fair Housing Act).
- (d) Title VI of the Civil Rights Act of 1964 (24 CFR part 1).
- (i) *General Compliance:* The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended and 24 C.F.R. §§ 570.601 and 570.602. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this Agreement. The specific nondiscrimination provisions at 24 C.F.R. § 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering

with any right or privilege secured by Title VI of the Civil Rights Act of 1964 or 24 C.F.R., Part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 24 C.F.R., Part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 24 C.F.R., Part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

- (ii) *Assurances and Real Property Covenants:* As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Part 1.

If the Federal financial assistance under this Agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application. This assurance gives the State and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-DR funds and provided to the Subrecipient under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of Part 1 shall extend to any facility located wholly or in part in such space.

(e) Equal Opportunity and Nondiscrimination.

- (i) *Compliance.* The Subrecipient agrees that it shall comply with the provisions of this subsection and shall ensure that its contractors comply with all application



provisions of this subsection, including Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 41 C.F.R., Part 60.

- (ii) *Women- and Minority-Owned Businesses (W/MBE).* Subrecipient shall comply with N.C. Gen. Stat. § 143-128.2 and 2 C.F.R. § 200.321(b)(1) – (6) to ensure minority businesses, women’s business enterprises, and labor surplus area firms are afforded opportunities as required by law to compete for contracts funded pursuant to this Agreement.
- (iii) *Notifications.* The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker’s representative of the Subrecipient’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (iv) *Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement.* The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

**4.14 Labor Standards.** The Subrecipient shall comply with the labor standards in 04 N.C.A.C. 19L.1006, which incorporate the requirements of the Davis-Bacon Act (40 U.S.C. § 276a), the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 through 333), the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*), and federal anti-kickback laws (18 U.S.C. § 874 and 40 U.S.C. § 276a). The Davis-Bacon Act requirements (prevailing wages) apply to residential construction where the property has eight or more units, or to nonresidential construction projects that exceed \$2,000. The Subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to NCORR for review upon request.

**4.15 Section 3 of the Housing and Urban Development Act Notice.** The Subrecipient agrees to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701). Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located. The Subrecipient agrees to impose these requirements on all contractors and subcontractors funded by this Agreement.

All covered contracts under this Agreement shall include the following clause (referred to as the “Section 3 Clause”):

- a) The work to be performed under this contract 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). The purpose of Section 3 is to ensure that employment and other economic opportunities

generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- c) The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

#### **4.16 Conduct.**

- (a) Hatch Act. The Subrecipient shall comply with the Hatch Act, 5 U.S.C. §§ 1501 – 1508, ensuring that no funds provided, nor personnel employed under this Agreement, shall be in any way engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.

(b) Conflict of Interest. In the procurement of supplies, equipment, construction, and services pursuant to this agreement, the Subrecipient shall comply with all applicable conflict of interest laws and regulations, including the provisions in 2 C.F.R. §§ 200.317 and 200.318, N.C. Gen. Stat. § 14-234, N.C. Gen. Stat. § 133-32, and 04 N.C.A.C. 19L.0914. In all cases not governed by 2 C.F.R. §§ 200.317 and 200.318, the Subrecipient shall comply with the conflict of interest provisions in 24 C.F.R. § 570.611. Certain limited exceptions to the conflict of interest rules listed in 24 C.F.R. § 570.489 may be granted in writing by Department of Housing and Urban Development (“HUD”) and/or NCORR upon written request and the provision of information specified in 24 C.F.R. § 570.489(h)(4).

(c) Lobbying Certification. The Subrecipient hereby certifies that:

- (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 agreement;
- (ii) If any funds other than Federal appropriated funds have been paid or will be paid 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 this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions;
- (iii) It shall require that the language of paragraph (i) through (iv) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
- (iv) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is required by section 1352, title 31, U.S.C. 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

**4.17 Religious Activities.** The Subrecipient shall comply with all applicable regulations set forth under 24 C.F.R. § 5.109 concerning the participation of faith-based organizations in HUD programs, including subsection (j) regarding the acquisition, construction, and rehabilitation of structures that may involve religious purposes. Funds provided under this agreement shall not be utilized for inherently religious activities, such as worship, religious instruction, or proselytization.

**4.18 Environmental Conditions.** Recipients of CDBG-DR funds are required to comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) found at 24 C.F.R., Part 58 and complete an Environmental Review Record (ERR). NCORR may also require additional environmental reviews for projects that receive these funds. Technical Assistance is available from NCORR to help with HUD Part 58 Environmental compliance coordination. No funds may be obligated or expended by Subrecipient until the environmental review procedures outlined in Part 58 have been complied with.

If the Subrecipient conducts environmental reviews, the Subrecipient must comply with the limitations in 24 C.F.R. § 58.22, which imposes limitations on activities pending environmental clearance, and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A Request for Release of Funds may be processed after all conditions and compliance requirements have been met. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity. A Certifying Officer for the Responsible Entity will need to be designated for units of general local government (e.g. County Judge or City Mayor/Manager), per §58.13. In the event that a unit of general local government is unable to serve as Responsible Entity, NCORR will function in that capacity and will identify the Certifying Officer.

The Subrecipient shall also comply with the following environmental compliance requirements, insofar as they apply to the performance of this Agreement: (1) The Clean Air Act (42 U.S.C. § 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. §§ 7506(c) and (d)); (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 C.F.R., Parts 6, 51, and 93); and (3) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq., as amended, including the requirements specified in Sections 114 and 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder.

**4.19 Lead-Based Paint.** The Subrecipient agrees that any construction or rehabilitation of residential housing with assistance provided under this Agreement shall be subject to HUD's Lead-Based Paint Regulations at 24 C.F.R. § 570.608, 24 C.F.R. § 35, Subpart B, and Chapter 130A of the North Carolina General Statutes, Article 19A (Lead-Based Paint Hazard Management Program). Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

**4.20 Flood Hazards and Flood Insurance.** To the extent applicable to projects funded pursuant to this agreement, the Subrecipient shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, 42 U.S.C. § 4012a. Additionally, the

Subrecipient shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. § 5154a), which includes a prohibition on the provision of flood disaster assistance, including loan assistance, to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood purchase requirements. More information about these requirements is available in the Federal Register notices governing the CDBG-DR award.

In addition, the following requirements apply to projects in floodplain zones:

- (a) If the project occurs in a Coastal High Hazard Area (V Zone) or a floodway, federal assistance may not be used at this location if the project is a critical action pursuant to 24 C.F.R. §§ 55.1(c) and 55 Subpart B, except as provided therein. For projects allowed under 24 C.F.R. §§ 55.1(c) and 55 Subpart B, the eight-step process shall be followed pursuant to 24 C.F.R. § 55.20.
- (b) If the project occurs in a 100-year floodplain (A Zone), the 8-Step Process is required as provided for in 24 C.F.R. § 55.20 or as reduced to the 5-Step Process pursuant to 24 C.F.R. § 55.12(a), unless an exception is applicable pursuant to 24 C.F.R. § 55.12(b).
- (c) If the project occurs in a 500-year floodplain (B Zone or shaded X Zone), the 8-Step Process is required for critical actions as provided for in 24 C.F.R. § 55.20 or as reduced to the 5-Step Process pursuant to 24 C.F.R. § 55.12(a), unless an exception is applicable pursuant to 24 C.F.R. § 55.12(b).

Additional elevation standards, as set forth in 81 Fed. Reg. 83254, sec. VI, no. 28(e) (Nov. 21, 2016), apply to projects funded by this Agreement. All structures, defined at 44 C.F.R. § 59.1, designed principally for residential use and located in the 1 percent annual (or 100-year) floodplain that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 C.F.R. § 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the 1 percent annual floodplain elevation. Residential structures with no dwelling units and no residents below two feet above the 1 percent annual floodplain, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 C.F.R. § 60.3(c)(3) or successor standard, up to at least two feet above the 1 percent annual floodplain. All Critical Actions, as defined at 24 C.F.R. § 55.2(b)(3), within the 0.2 percent annual floodplain (or 500-year) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 0.2 percent annual floodplain flood elevation or three feet above the 1 percent annual floodplain. If the 0.2 percent annual floodplain or elevation is unavailable for Critical Actions, and the structure is in the 1 percent annual floodplain, then the structure must be elevated or floodproofed at least three feet above the 1 percent annual floodplain level. Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, must be followed.

**4.21 Historic Preservation.** To the extent that environmental review is carried out by the Subrecipient through funds provided under this Agreement, the Subrecipient shall follow the state historic preservation programmatic agreement, which can be found on the RebuildNC website at <https://www.rebuild.nc.gov/reporting-and-compliance/environmental-review>. The programmatic agreement implements the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 C.F.R., Part 800, insofar as they apply to the performance of this agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

**4.22 Policies Concerning Nonviolent Demonstrations.** Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 47.k (Nov. 21, 2016), Subrecipient certifies that it has adopted and is enforcing: (1) a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and (2) a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

**4.23 Housing Counseling.** To the extent that any housing counseling is carried out by the Subrecipient through funds provided under this Agreement, such activities must be carried out in accordance with 24 C.F.R. § 5.111.

**4.24 No Funding to Private Utilities.** Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 46 (Nov. 21, 2016), no funds provided under this Agreement may be used to assist a privately owned utility for any purpose.

**4.25 Broadband Infrastructure in Housing.** Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 28(f) (Nov. 21, 2016), if funds under Agreement are used for any new construction or substantial rehabilitation (as defined by 24 C.F.R. § 5.100) of a building with more than four rental units, those structures must include installation of broadband infrastructure, except where the Subrecipient documents that: (a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (b) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (c) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

**4.26 Iran Divestment Act.** All parties executing this Agreement thereby affirm they shall not utilize any contractor or subcontractor in the performance of the Agreement that is identified upon the Final Divestment List created by the State Treasurer pursuant to NCGS 147-86.60.

**4.27 Companies Boycotting the State of Israel.** All parties executing this Agreement thereby affirm they shall not utilize any contractor or subcontractor in the performance of the Agreement that is identified upon the Final Divestment List created by the State Treasurer pursuant to NCGS 147-86.82.

## **Article V. OTHER MISCELLANEOUS PROVISIONS**

**5.1 Deobligation of Unused Funds.** When project costs are less than the grant award amount, excess award funds shall be deobligated back to NCORR. Administration and project delivery funds shall be deobligated in proportion to the amount of program funds being deobligated to NCORR.

**5.2 Complaints and Grievance procedures for Compliance Plans.** Subrecipient must address complaints to NCORR and/or the Rebuild NC website (<https://www.rebuild.nc.gov/>). Citizen complaints can be filed to NCORR and/or the Rebuild NC website (<https://www.rebuild.nc.gov/>).

**5.3 Benefit.** This Agreement is made and entered into for the sole protection and benefit of NCORR, the State and the Subrecipient, and their respective successors and assigns, subject always to the provisions of the Agreement. Except as herein specifically provided otherwise, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to NCORR, the State and the Subrecipient and their respective successors and assigns. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person, other than as expressly provided in this Agreement. It is the express intention of the Parties and their respective successors and assigns that any such person or entity, other than the State, NCORR, and the Subrecipient, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

**5.4 Further Assurance.** In connection with and after the disbursement of Grant funds under this Agreement, upon the reasonable request of NCORR, the Subrecipient shall execute, acknowledge and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by NCORR or otherwise appropriate to carry out and effectuate the Grant as contemplated by this Agreement. NCORR may require the delivery of documents in hard copy or electronic media.

**5.5 Independent Status of the Parties.** The Parties are independent entities and neither this Agreement nor any provision of it or any of the Grant Documents shall be deemed to create a partnership or joint venture between the Parties. Further, neither the Agreement nor any of the Grant Documents shall in any way be interpreted or construed as making the Subrecipient, its agents or employees, agents or representatives of NCORR. The Subrecipient is and shall be an independent contractor in the performance of this Agreement and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. In no event shall NCORR be liable for debts or claims accruing or arising against the Subrecipient. The Subrecipient represents that it has, or shall secure at its own expense, all personnel required in the performance of this Contract. Such employees shall not be employees of, nor have any individual contractual relationship with NCORR.

**5.6 Indemnity.** The Subrecipient agrees, to the fullest extent permitted by law, to release, defend, protect, indemnify and hold harmless the State and NCORR and its employees and agents against claims, losses, liabilities, damages, and costs, including reasonable attorney fees, which

result from or arise out of: (a) damages or injuries to persons or property caused by the negligent acts or omissions of Subrecipient, its employees, or agents in use or management of the Grant; and (b) for any claims, whether brought in contract, tort, or otherwise, arising out of this Agreement, if related to the Subrecipient's actions or omissions. The obligations under this paragraph are independent of all other rights or obligations set forth herein. This indemnity shall survive the disbursement of the Grant funds, as well as any termination of this Agreement.

**5.7 Binding Effect, Contract Not Assignable by Subrecipient.** The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the parties hereto; provided, however, that the Subrecipient may not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any Grant proceeds or other moneys to be advanced hereunder in whole or in part unless expressly allowed under this Agreement, without the prior written consent of NCORR, which may be withheld for any reason and that any such assignment (whether voluntary or by operation of law) without said consent shall be void.

**5.8 Successor in Interest and Assignment by Grantee.** This Agreement shall be transferred from NCORR to any successor in interest designated by the US Department of Housing and Urban Development as Grantee for the CDBG-DR program for the State of North Carolina immediately upon that designation.

**5.9 Savings Clause.** Invalidity of any one or more of the provisions of this Agreement, or portion thereof, shall in no way affect any of the other provisions hereof and portions thereof which shall remain in full force and effect.

**5.10 Additional Remedies.** Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Agreement.

**5.11 Survival.** Where any representations, warranties, covenants, indemnities or other provisions contained in this Agreement by its context or otherwise, evidences the intent of the parties that such provisions should survive the termination of this Agreement or any Closing, the provisions shall survive any termination or Closing.

**5.12 Incorporation of Exhibits.** All exhibits attached to this Agreement are fully incorporated as if set forth herein.

**5.13 Entire Contract.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference.

**5.14 Headings.** The headings of the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit or expand the express provisions of this Agreement.

IN WITNESS WHEREOF, the Subrecipient and NCORR have executed this Agreement on the dates written below.



[Signature page follows.]

DRAFT

**AGREED:**

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**Tracy Jackson, Assistant County Manager  
Cumberland County**

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**Date**

---

**Laura H. Hogshead, Chief Operating Officer  
NC Office of Recovery and Resiliency**

---

**Date**

DRAFT

## **EXHIBIT A**

**CDBG-DR Project No. \_\_\_\_\_**

**This Exhibit shall contain the Project Specific Award Letter(s) issued by NCORR for each infrastructure project funded under this Agreement. Each Project Specific Award Letter(s) attached as Exhibit A shall be incorporated into this Agreement by reference.**

DRAFT

## **EXHIBIT B**

### **PROJECT BUDGET, DISTRIBUTION OF FUNDS, AND REFUNDS**

#### **CUMBERLAND COUNTY**

##### **1. Subrecipient Budget**

To obtain payment, the Subrecipient must submit itemized documentation substantiating direct costs incurred in implementing the CDBG-DR program. The Subrecipient's budget for the CDBG-DR program is as follows:

Funding Category	2019 SRA Allocation
Infrastructure Program	\$2,500,000
Infrastructure Program Activity Delivery Costs	\$125,000
Total - Infrastructure Program	\$2,625,000
Housing Recovery Program Transition Costs*	\$100,000

\* Costs only reimbursable for the transition period from July 1, 2019 to November 30, 2019. Costs must be submitted for reimbursement consistent with the requirements for the reimbursement of incurred costs.

##### **2. Disbursement of Grant Funds.**

- a. No federal funds may be obligated until the Authority to Use Grant Funds (AUGF) has been issued for this undertaking (24 C.F.R., Part 58).
- b. No funds may be obligated or expended in any project activity except the administrative activity until the Subrecipient has submitted supporting documentation as specified in the NCORR Subrecipient Billing Guide to be provided to Subrecipient by NCORR.
- c. Requests for Reimbursement.
  - i. Other than administrative costs, any reimbursement request for reimbursement, must be accompanied by a request and any supporting materials as requested by NCORR. NCORR may, in its sole discretion, request additional documentation before approving any release of funds. NCORR will approve each request individually. The Subrecipient must

[illegible]

a. Program Income. The Subrecipient shall report monthly on forms created by NCORR all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, during the term of this Agreement, the Subrecipient may use such income only for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to NCORR at the completion of the Agreement. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee. All unexpended program income shall revert to the Grantee upon termination of this contract.

b. Refunds. The Subrecipient shall repay to NCORR or its designee any compensation it has received that exceeds the payment to which it is entitled herein, including any interest earned on funds reimbursed pursuant to the Agreement.

c. Unexpended Funds. Any unexpended Grant monies shall revert to NCORR or its designee upon termination of the Agreement. If the Subrecipient has any CDBG-DR funds on hand or accounts receivable attributable to the use of CDBG-DR funds at the time of termination, the Subrecipient shall transfer such funds and accounts receivable to NCORR or its designee.

d. Reduction of the Grant made less than projected budget amounts. NCORR may reduce the Grant amount if the Subrecipient expects that actual expenses will be less than budgeted. A copy of the budget amendment will be kept by NCORR.

e. Reimbursement for Improper Expenditures. In the sole discretion of NCORR, NCORR may recapture from the Subrecipient any amount of Grant assistance improperly expended, either deliberately or non-deliberately, by any person or entity. Additionally, a contract for administrative services should include a clause holding the administering organization responsible for reimbursement to the Subrecipient for any improperly expended grant funds, due to the actions or omissions of the administering organization, which had to be returned to NCORR.

f. Use of Real Property. Any real property under the Subrecipient's control that is acquired or improved in whole or in part with CDBG-DR funds in excess of \$25,000 must be used to meet one of the national objectives in 24 C.F.R. § 570.208 until five years after expiration of this Agreement. For any real property which is not used to meet one of the national objectives of CDBG-DR, the Subrecipient shall pay to NCORR or its designee an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. No payment is required if the property no longer meets one of the national objectives after five years following the expiration of this Agreement.

The regulations concerning any change in the use or planned use of real property acquired with CDBG-DR funds, found in 24 C.F.R. § 570.505, apply to this Agreement.

DRAFT



**ASSISTANT COUNTY MANAGER - ENVIRONMENTAL/ COMMUNITY SAFETY**

**MEMORANDUM FOR THE AGENDA OF THE DECEMBER 12, 2019**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: TRACY JACKSON, ASSISTANT COUNTY MANAGER FOR ENVIRONMENTAL AND COMMUNITY SAFETY**

**DATE: 12/2/2019**

**SUBJECT: REQUESTS FOR REAPPOINTMENTS TO THE PARKS & RECREATION ADVISORY COMMISSION**

**Requested by: AMY H. CANNON, COUNTY MANAGER**

**Presenter(s): TRACY JACKSON, ASSISTANT COUNTY MANAGER FOR ENVIRONMENTAL AND COMMUNITY SAFETY**

**BACKGROUND**

At the November 14, 2019 Board of Commissioners' Agenda Session, Michael Gibson, Director of Fayetteville-Cumberland Parks & Recreation, gave an update on the current membership of the Parks & Recreation Advisory Commission. Since that time, the membership roster has been reviewed, and it appears that two County appointed members to the Commission are eligible for reappointment. Staff recommends the Board of Commissioners reappoint Harold Smelcer and Iva Marie Kelly.

The Director of Parks & Recreation concurs with this proposed action.

**RECOMMENDATION / PROPOSED ACTION**

Staff requests the reappointment of Harold Smelcer and Iva Marie Kelly to the Fayetteville-Cumberland Parks & Recreation Commission be moved forward for consideration at the December 16, 2019 Board of Commissioners' Meeting.





## **ENGINEERING AND INFRASTRUCTURE DEPARTMENT**

### **MEMORANDUM FOR THE AGENDA OF THE DECEMBER 12, 2019** **AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: JEFFERY P. BROWN, PE, ENGINEERING & INFRASTRUCTURE  
DIRECTOR**

**DATE: 12/3/2019**

**SUBJECT: CONTRACT FOR SECOND CHILLER AND COOLING TOWER  
REPLACEMENT AT DEPARTMENT OF SOCIAL SERVICES**

**Requested by: AMY H. CANNON, COUNTY MANAGER**

**Presenter(s): JEFFERY P. BROWN, PE, ENGINEERING & INFRASTRUCTURE  
DIRECTOR**

#### **BACKGROUND**

The Capital Improvement Plan (CIP) in FY 19 identified the second chiller at the Department of Social Services for replacement in FY 20. In July, Engineering & Infrastructure (E&I) staff contacted Progressive Design Collaborative, LTD (PDC), to perform the design for the replacement of the chiller. During the design phase, it was determined that replacement of the cooling tower should occur simultaneously due to its conditions. This would provide some cost savings through reducing contractor mobilization cost to the project location, gain efficiency by providing a new cooling tower to operate with the new chillers, and replace the cooling tower that is at the end of its life cycle.

The project was advertised electronically on the Cumberland County Vendor Self Service site and the State Interactive Purchasing System. The project pre-bid meeting was held on October 31, 2019. Due to an insufficient number of bidders present, the pre-bid was rescheduled for November 7, 2019 and the bid date was advertised for November 26, 2019. The certified bid tab and letter of recommendation to award the project from PDC are attached. The lowest, responsible and responsive bidder was provided by Boiler Masters in the amount of \$730,000. This bid amount includes the acceptance of bid alternate #1 for a more durable cooling tower and bid alternate #2 for a more energy efficient chiller to match the one that was installed earlier in the year. Budgeted funds are available for the completion of this project.

## **RECOMMENDATION / PROPOSED ACTION**

The Engineering and Infrastructure Director and County Management recommend that the proposed actions below be placed on the December 16<sup>th</sup> Board of Commissioners agenda as a consent item:

1. Accept the bids and award a contract to the lowest, responsible and responsive bidder Boiler Masters in the amount of \$730,000.
2. Establish a contingency in the amount of \$73,000 to be used for additional work recommended by the E&I Director and approved by the County Manager.

## **ATTACHMENTS:**

Description	Type
Bid Recommendation	Backup Material
Certified Bid Tab	Backup Material



Progressive Design Collaborative, Ltd  
3101 Poplarwood Court, Suite 320  
Raleigh, North Carolina 27604  
919-790-9989

November 29, 2018

Mr. Jeffery Brown, P.E.  
Engineering & Infrastructure (E&I) Director  
130 Gillespie Street, Room 214  
Fayetteville, NC 28301

Re: Cumberland County DSS Bldg – Phase 2  
Chiller Replacement  
PDC Project 19046

Mr. Brown:

Based on the attached bid tab for the referenced project, I am recommending Boiler Masters be awarded the project for the base bid amount of \$627,000, Alternate #1 amount of \$18,000 and Alternate #2 amount \$85,000 to provide the Chiller Replacement at Cumberland County Department of Social Services Building for a total of \$730,000.

Sincerely,

Scott Ennis, P.E.  
**PROGRESSIVE DESIGN COLLABORATIVE, LTD.**

Attachments:

Certified Bid Tabulation  
Boiler Masters Bid Submittal



[pdcengineers.com](http://pdcengineers.com)



Progressive Design Collaborative, Ltd  
3101 Poplarwood Court, Suite 320  
Raleigh, North Carolina 27604  
919-790-9989

## CERTIFIED BID TABULATION

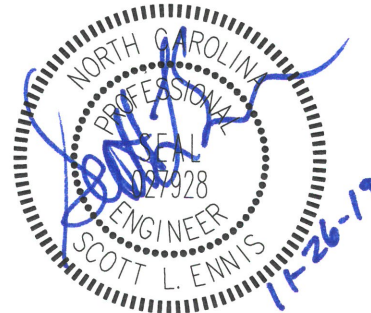
### CUMBERLAND COUNTY DSS CHILLER PHASE 2

PDC# 19046  
November 29, 2018

CONTRACTOR	LICENSE #	M/WBE	BID BOND	BASE BID	ALT. #1	ALT. #2
Boiler Masters	10313	X	X	\$627,000	\$18,000	\$85,000
Mechanical Maintenance	29240	X	X	\$947,563	\$46,371	\$85,128
Harrelson	29666	X	X	\$678,115	\$15,458	\$83,347
Smith's Refrigeration	14759	X	X	\$749,000	\$33,000	\$91,900
Haire Plumbing	4230	X	X	\$680,000	\$15,000	\$84,000
Hockaday Mechanical	11291	X	X	\$810,000	\$30,000	\$83,000

This is to certify this bid tabulation to be true and correct:

Scott Ennis, P.E.  
PROGRESSIVE DESIGN COLLABORATIVE, LTD.



## BID FORM

FOR

### Cumberland County DSS Building Chiller Replacement Phase 2

PDC Project # 19046

The undersigned, as bidder, proposes and agrees if this proposal is accepted to contract with Cumberland County for the furnishing of all materials, equipment, and labor necessary to complete the construction of the work described in these documents in full and complete accordance with plans, specifications, and contract documents, and to the full and entire satisfaction of Cumberland County, and Progressive Design Collaborative, Ltd. for the sum of:

**SINGLE PRIME CONTRACT:**

Base Bid: SIX HUNDRED TWENTY SEVEN THOUSAND <sup>00</sup>/<sub>100</sub> Dollars \$ 627,000.00  
(ADD)  
Alternate #1 (Cooling Tower) Bid: EIGHTEEN THOUSAND <sup>00</sup>/<sub>100</sub> Dollars \$ ADD \$18,000.00  
(ADD)  
Alternate #2 (Chiller) Bid: EIGHTY FIVE THOUSAND <sup>00</sup>/<sub>100</sub> Dollars \$ ADD \$85,000.00

Addendum received and used in computing bid:

Addendum No. 1 11/1/19  
Addendum No. 2 \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_  
Addendum No. 4 \_\_\_\_\_

**Checklist for submitting bid:**

1. This Form
2. Bid Bond
3. MBE Affidavit A or Affidavit B
4. Accepted Terms in sample contract with Cumberland County
5. Acknowledgement of Addenda
6. Signatures and Seal (if corporation)
7. Provide a physical copy of Prime Contractor's License

Respectively submitted this 26 day of NOVEMBER 2019.

BOILER MASTERS INC.

*(Name of firm or corporation making bid)*

Federal ID# 56-1287200

Witness:

*(Proprietorship or Partnership)*

By:

MARLIN HARGETT, JR.

Title: VICE PRESIDENT

*(Owner, Partner, Pres. or VP)*

Address: PO BOX 16105

GREENSBORO, NC 27416

Attest:

By:

NATHAN HARWARD

Title: ASST SECRETARY

*(Corp. Sec./Ass't Sec.)*

*(Corporate Seal)*

**ACCEPTED by**

Cumberland County

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_ 2019

## CONTRACTOR'S CERTIFICATION FOR LEGAL REVIEW OF CONTRACT WITH CUMBERLAND COUNTY

THE UNDERSIGNED, ON BEHALF OF THE CONTRACTOR OR VENDOR NAMED BELOW, CERTIFIES  
WITH RESPECT TO THE ATTACHED CONTRACT BETWEEN CUMBERLAND COUNTY AND  
BOILER MASTERS INC FOLLOWS:

The contractor is

☐ an individual

☒ a corporation

☐ a limited liability company

☐ a unit of local government

☐ other: \_\_\_\_\_). (If the contractor is  
described as "other," a certified copy of the legal documents by which it is organized must be  
attached.)

The contractor's business address is PO BOX 16105, GREENSBORO, NC 27416.

(If this is an out-of-state address, the contract must be signed by the contractor before it is reviewed.)

If the contractor is not an individual or a unit of local government, is it registered with the Secretary of State to  
do business in North Carolina?

☒ Yes (Attach a copy of the screen page from NC Secretary of State Website showing active status.)

☐ No (If it is not registered with the North Carolina Secretary of State, a certificate of good standing  
from the Secretary of State in the state in which it is organized must be attached.)

The individual or individuals making this certification and signing the contract on behalf of the contractor are  
duly authorized to do so by action of the contractor.

If the contract was prepared or drafted by contractor or contractor's attorney, complete the following  
additional certifications:

This contract is made subject to the laws of the State of  
NORTH CAROLINA.

This contract ☐ does ☒ does not contain a provision which may require the county to indemnify  
the contractor. If it does contain this indemnity provision, the maximum amount for which the  
county may liable under this indemnity is \$ 0.00. (An indemnity provision that is  
not capped may result in the contract not being accepted by the county.)

All obligations incurred by the county under the terms of this contract terminate on the following date:  
-. (Any contract provision which extends the obligations of the county  
beyond the date the contract terminates will not be accepted by the county.)

The contractor agrees that the county does not waive its rights as to any provisions of the contract which are  
against the public policy of the State of North Carolina, regardless of the choice of law stated in the  
contract.

CERTIFIED BY MARLIN HARGETT, JR. FOR THE CONTRACTOR STATED ABOVE.

SIGNATURE: 

DATE SUBMITTED: NOVEMBER 26, 2019

End of Section 00 50 00.02

## Identification of HUB Certified/ Minority Business Participation

1, MARLIN HARGETT, JR. c/o BOILER MASTERS INC.

(Name of Bidder)

do hereby certify that on this project, we will use the following HUB Certified/ minority business as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #

### Work Type

\*Minority  
Category

**\*\*HUB**  
**Certified**  
**(Y/N)**

[illegible]

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**\*\* HUB Certification with the state HUB Office required to be counted toward state participation goals.**

The total value of minority business contracting will be (\$) 14,500.00.



FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS, THAT WE Boiler Masters, Inc.  
\_\_\_\_\_, as Principal, and \_\_\_\_\_  
The Ohio Casualty Insurance Company, as Surety, who is  
duly licensed to act as Surety in North Carolina through the Cumberland County,  
as Oblige, in the penal sum of 5% of principals bid

DOLLARS, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED, sealed and dated this 27th day of November, 2019.

WHEREAS, the said Principal is herewith submitting Proposal for:

**Cumberland County  
DSS Building – Chiller Replacement Phase 2**

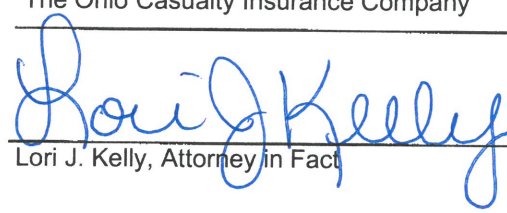
and the Principal desires to file this Bid Bond in lieu of making the cash deposit as required by G. S. 143-129:

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that if the Principal shall be awarded the Contract for which the bid is submitted and shall execute the Contract and give bond for the faithful performance thereof within ten days after the award of same to the Principal, then this obligation shall be null and void; but if the Principal fails to so execute such Contract and give Performance Bond as required by G. S. 143-129, the Surety shall upon demand, forthwith pay to the Oblige the amount set forth in the first paragraph hereof; and provided further, that the bid may be withdrawn as provided by G. S. 143-129.1.

Boiler Masters, Inc. (SEAL)

  
\_\_\_\_\_  
MARLIN HARGETT, JR. - VICE PRESIDENT (SEAL)

The Ohio Casualty Insurance Company (SEAL)

  
\_\_\_\_\_  
Lori J. Kelly, Attorney in Fact (SEAL)



**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 8083555

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Adrian C. Burchett; Duainette H. Cullum; Wesley V. Dasher, Jr.; Frank W. Hafner, Jr.; Alfred T. Johnson; Lori J. Kelly; Robert J. Lavisky; Marian C. Newman

all of the city of Columbia, state of SC each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 3rd day of May, 2018.



The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 3rd day of May, 2018, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Upper Merion Twp., Montgomery County  
My Commission Expires March 28, 2021  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS** – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 27th day of November, 2019.



By: Renee C. Llewellyn  
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



# State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts

Affidavit of MARLIN HARGETT, JR. c/o BOILER MASTERS INC. (Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

**Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive.** (1 NC Administrative Code 30 I.0101)

- ☒ **1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- ☒ **2 – (10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- ☒ **3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- ☒ **4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- ☒ **5 – (10 pts)** Attended prebid meetings scheduled by the public owner.
- ☐ **6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☒ **7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- ☐ **8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- ☐ **9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- ☒ **10 – (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: 11/26/19 Name of Authorized Officer: MARLIN HARGETT, JR.

Signature: [Signature]  
Title: VICE PRESIDENT



State of NC, County of GUILFORD  
Subscribed and sworn to before me this 26 day of NOVEMBER 2019  
Notary Public [Signature]  
My commission expires 7/24/2023

License Number

10313

North Carolina  
State Board of Examiners of Plumbing,  
Heating & Fire Sprinkler Contractors  
State License No. 10313

Expiration Date

December 31, 2019

*This is to Certify that:*

Boiler Masters, Inc.  
PO Box 16105  
Greensboro, NC 27416

Marlin H. Hargett Jr.

Marlin H. Hargett Jr.: Heating Group 1 - Class I, Heating Group 2; Marlin Hugh Hargett III: Heating Group 1 - Class I, Heating Group 2, Plumbing Class I

*Is duly registered, licensed and authorized to engage in the business of*

Heating Group 1 - Class I, Heating Group 2, Plumbing Class I

*Within the State of North Carolina until December 31, 2019, when this license expires. This authority is granted in accordance with the provisions of Chapter 87, Article 2 of the General Statutes of North Carolina.*



Witness my hand and seal of the Board

This 1st day of January 2019

Chairman

License Year

2019

License No.

63135

# North Carolina

## Licensing Board for General Contractors

This is to Certify That:

Boiler Masters Incorporated  
Greensboro, NC

is duly registered and entitled to practice

## General Contracting

Limitation: Unlimited  
Classification: Building

until

December 31, 2019

when this Certificate expires.

Witness our hands and seal of the Board.

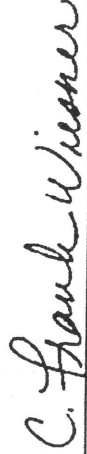
Dated, Raleigh, N.C.

January 1, 2019

This certificate may not be altered.



  
Chairman

  
Secretary-Treasurer



Progressive Design Collaborative, Ltd  
3101 Poplarwood Court, Suite 320  
Raleigh, North Carolina 27604  
919-790-9989

## CERTIFIED BID TABULATION

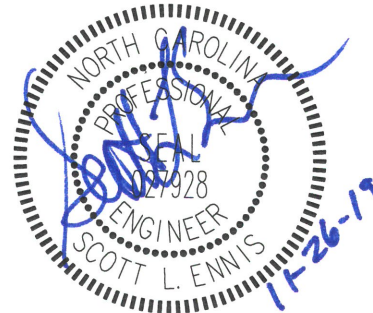
### CUMBERLAND COUNTY DSS CHILLER PHASE 2

PDC# 19046  
November 29, 2018

CONTRACTOR	LICENSE #	M/WBE	BID BOND	BASE BID	ALT. #1	ALT. #2
Boiler Masters	10313	X	X	\$627,000	\$18,000	\$85,000
Mechanical Maintenance	29240	X	X	\$947,563	\$46,371	\$85,128
Harrelson	29666	X	X	\$678,115	\$15,458	\$83,347
Smith's Refrigeration	14759	X	X	\$749,000	\$33,000	\$91,900
Haire Plumbing	4230	X	X	\$680,000	\$15,000	\$84,000
Hockaday Mechanical	11291	X	X	\$810,000	\$30,000	\$83,000

This is to certify this bid tabulation to be true and correct:

Scott Ennis, P.E.  
PROGRESSIVE DESIGN COLLABORATIVE, LTD.





## **COMMUNITY DEVELOPMENT**

### **MEMORANDUM FOR THE AGENDA OF THE DECEMBER 12, 2019 AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: DEE TAYLOR, DIRECTOR OF COMMUNITY DEVELOPMENT**

**DATE: 12/2/2019**

**SUBJECT: COMMUNITY DEVELOPMENT BLOCK GRANT - DISASTER  
RECOVERY (CDBG-DR) MONTHLY UPDATE**

**Requested by: AMY H. CANNON, COUNTY MANAGER**

**Presenter(s): COMMUNITY DEVELOPMENT STAFF**

#### **BACKGROUND**

Cumberland County, in partnership with the North Carolina Office of Recovery & Resiliency (NCORR), is implementing activities funded through the Community Development Block Grant Disaster Recovery Program. The attached report is an update on the status of all projects undertaken by Cumberland County.

#### **RECOMMENDATION / PROPOSED ACTION**

No action is needed. This item is provided for informational purposes only.

#### **ATTACHMENTS:**

Description	Type
Cumberland County CDBG-DR Program Update	Backup Material

**CUMBERLAND COUNTY CDBG-DR PROGRAM UPDATE**  
**FOR THE DECEMBER 12, 2019**  
**BOARD OF COMMISSIONER'S AGENDA SESSION**

Status as of December 2, 2019:

Total Applications	County Application Intake (Step 1)	State Eligibility Check (Step 2)	State Duplication of Benefits Check (Step 3)	State Under Further Review
349	0 (0 county/0 city)	2 (1 county/1 city)	2 (1city/1 county)	33 (12 county/21 city)
State Inspection & Environmental Review (Step 4)	State Grant/Award Determination (Step 5)	Contractor Selection/Bid Work (Step 6)	Construction (Step 7)  Complete (Step 8)	Withdrawn/Ineligible/Inactive
10 (3 county/7 city)	110(47 county/63 city)	24 (14 county/10 city)	25 (12 county/13 city)  43**	9 (1 county/8 city) 62 (15 county/47 city) 29 (3 county/26 city)

*\*Step 1 performed by County; Steps 2-8 performed by State for County; Steps 2-8 performed by Horne & State for City*

*\*\*consist of 11 applicants completed and other applicants withdrawn for various reasons*

Milestones/Activities:

- U.S. Department of Housing & Urban Development recently approved North Carolina Office of Recovery & Resiliency (NCORR) effective July 1 as the administering agency for CDBG-DR grant funds;
- NCORR executed SRA with City of Fayetteville - \$3,990,000;
- NCORR has contracted with Horne, LLC to perform Steps 2-8 for County single family recovery program;
- NCORR submitted SRA to County for review to execute December;
- Robins Meadow Permanent Supportive Housing Project – County received Authority to Use Grant Funds Form from NCORR on 9/24 waiting for NCORR to send grant specific award letter;
- Robins Meadow Permanent Supportive Housing Project A/E Services – staff proceeding with executing contract;
- DRA-17 Program – County acquired 9 properties

Current Staffing:

- State POC: John Ebbighausen – Director of Disaster Recovery Programs, NC Office of Recovery & Resiliency (NCORR)
- Cumberland County:
  - Sylvia McLean, P.T. Community Development (CD) Consultant; Chavaungh McLamb, Admin Housing Coordinator II; Tye Vaught, Admin Program Officer II

Hours of Operation (Cumberland County Application Intake Center): - Closing – 12/31

- Monday – Friday, 9 a.m. to 4 p.m.
- Location – Cumberland County Community Development Dept – 707 Executive Place
- City of Fayetteville: Cindy Blot, Eco & CD Director; Horne, LLC





**FINANCE OFFICE**

**MEMORANDUM FOR THE AGENDA OF THE DECEMBER 12, 2019**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: VICKI EVANS, FINANCE DIRECTOR**

**DATE: 12/2/2019**

**SUBJECT: FINANCIAL REPORT**

**Requested by: AMY CANNON, COUNTY MANAGER**

**Presenter(s): VICKI EVANS, FINANCE DIRECTOR**

**BACKGROUND**

The fiscal year 2020 October year-to-date financial report schedules for the general fund are not included in the agenda packet. During this reporting period, tax office software conversion required a period of system downtime in which tax payments were received and recorded within the general fund but not distributed to the appropriate tax distribution accounts. This caused the October year-to-date reports to show inflated revenue amounts within the general fund for the reporting period which is not accurate. The Tax Office has since been able to complete the distributions during the month of November. Therefore, the monthly financial schedules reflecting fiscal year 2020, November year-to-date will be provided for the January Agenda Session.

**RECOMMENDATION / PROPOSED ACTION**

For information/discussion purposes only.



**ENGINEERING AND INFRASTRUCTURE DEPARTMENT**

**MEMORANDUM FOR THE AGENDA OF THE DECEMBER 12, 2019**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: JEFFERY P. BROWN, PE, ENGINEERING & INFRASTRUCTURE  
DIRECTOR**

**DATE: 12/2/2019**

**SUBJECT: PROJECT UPDATES**

**Requested by: AMY H. CANNON, COUNTY MANAGER**

**Presenter(s): JEFFERY P. BROWN, PE, ENGINEERING & INFRASTRUCTURE  
DIRECTOR**

**BACKGROUND**

Please find attached the monthly project update report for your review.

**RECOMMENDATION / PROPOSED ACTION**

This is for information purposes only as there is no action required for this item.

**ATTACHMENTS:**

Description	Type
Project Updates	Backup Material

MONTHLY PROGRESS REPORT				
Project Location	Contract Amount	Project Status	Contract Start Date	Contract Duration
Courthouse, Detention Center, Community Corrections, Headquarters Library Parking Lots	\$174,251.53	The only remaining parking lot in this project is the HQ Library East Public Parking Lot. This lot has been impacted by PNG, PWC and the failed stormwater pipe from Maiden Lane.	5/7/2018	90 days
Crown Coliseum Ice Plant, Chiller and Ice Floor Replacement	\$3,441,390.00	The contractor has completed the ice floor and mechanical center installation. The system is currently active. The existing dasher board system is being utilized as we wait on the new dasher boards to be delivered. Delivery and installation is scheduled for the first two weeks in January 2020.	3/22/2019	150 days
Building Maintenance and Central Maintenance Parking Lot	\$420,422.87	The contractor is performing punch list items on the project.	4/22/2019	180 days
Detention Center Roof Replacement	\$1,238,351.00	The preconstruction meeting was held on November 4th. The contractor is awaiting materials after successfully completing the pull tests.	Not Started	120 days
Detention Center Building Exterior Improvements	\$150,359.00	The contractor is performing sealant installation around the facility.	10/24/2019	90 days
Department of Social Services Chiller Replacement Project Phase II -	\$741,215.00	This project is pending Board of Commissioner approval December 12, 2019 to be placed on the agenda for the December 16, 2019 Board of Commissioners' Meeting.	Not Started	120 days
Judge E. Maurice Braswell Courthouse Generator	\$2,828,700.00	The contractor has performed silt fence installation and removed a tree in preparation of constructing the concrete slab. The temporary generator is in place and the underground storage tank is being prepared for removal.	10/23/2019	179 days



## **RISK MANAGEMENT**

### **MEMORANDUM FOR THE AGENDA OF THE DECEMBER 12, 2019 AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: JULIE A. CRAWFORD, BENEFITS COORDINATOR**

**DATE: 11/27/2019**

**SUBJECT: HEALTH INSURANCE UPDATE**

**Requested by: AMY H. CANNON, COUNTY MANAGER**

**Presenter(s): N/A**

#### **BACKGROUND**

As of July 1, 2019, retirees who are 65 and older became covered by a County funded fully insured plan through AmWINS. All other covered members remained insured by the County's self-funded plan through BCBS. The information provided below and within the graphs has been updated to include the monthly premium amount paid to fund the fully insured plan and the actual monthly claims amounts for all other covered members. Combining these amounts for FY20 and beyond is necessary to ensure a complete picture when comparing the claims results to prior years.

Total health insurance claims plus the fully insured premium amount for FY20 are up 24.98% for the month of October as compared to the same month in FY19. To provide some perspective, below is the four-month average for the past five fiscal years. This average represents the average monthly year-to-date claims for each fiscal year and includes the fully insured premium for FY20. Additionally, graphs are provided in the attachment to aid in the analysis.

Year to date claims and premium payment through October	\$5,944,263.00
Less year to date stop loss credits	<u>(\$39,634.93)</u>
Net year to date claims and premium payment through October	\$5,904,628.07

**Average monthly claims and fully insured premium (before stop loss) per fiscal year through October:**

FY16 \$1,819,838  
FY17 \$1,410,663  
FY18 \$1,391,318  
FY19 \$1,480,898  
FY20 \$1,486,066

**RECOMMENDATION / PROPOSED ACTION**

For information only – no action needed.

**ATTACHMENTS:**

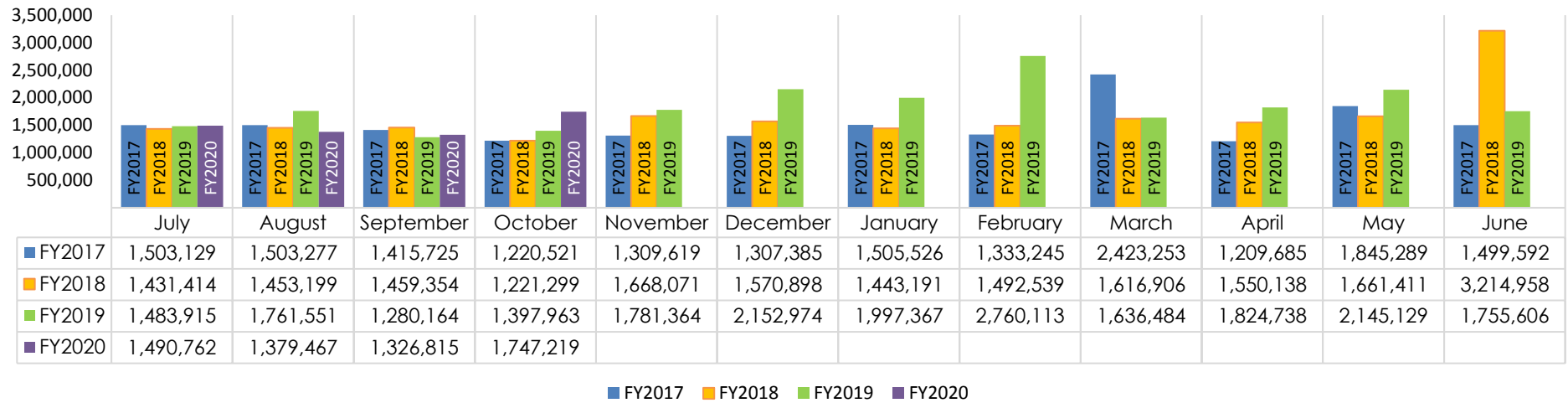
Description

Health Insurance Graphs Oct 2019

Type

Backup Material

## Monthly Insurance Claims FY17-FY19 Claims & Fully Insured Premium FY20



## Monthly Insurance Claims FY17 - FY19 Claims & Fully Insured Premium FY20

