
AGENDA
CUMBERLAND COUNTY BOARD OF COMMISSIONERS
REGULAR AGENDA SESSION
JUDGE E. MAURICE BRASWELL
CUMBERLAND COUNTY COURTHOUSE - ROOM 118
APRIL 9, 2020
1:00 PM

1. APPROVAL OF AGENDA
2. APPROVAL OF MINUTES
 - A. Approval of March 12, 2020 Agenda Session Regular Meeting Minutes
3. CONSIDERATION OF AGENDA ITEMS
 - A. Recommendation from the Board of Elections on the Purchase of Voting Equipment Required Under the Help America Vote Act
 - B. Contract Renewal with Southern Health Partners for Healthcare Delivery Services at the Cumberland County Detention Center
 - C. Establishment of Irrevocable Trust for Other Post Employment Benefits (OPEB)
 - D. Encroachment Agreement with North Carolina Department of Transportation (NCDOT) for Bragg Estates Water & Sewer District
 - E. Interlocal Agreement with the Town of Spring Lake to Provide Sanitary Sewer Treatment and Operation and Maintenance of the Sanitary Sewer System for the Bragg Estates Water and Sewer District
 - F. Amendments to the Kelly Hills/Slocomb Road Water and Sewer District Rate Structure
 - G. Amendments to the Southpoint Water System Rate Structure Located in the Gray's Creek Water and Sewer District
 - H. Amended Memorandum of Agreement for State Acquisition Relocation Funds with the North Carolina Department of Public Safety - Division of Emergency Management
4. CLOSED SESSION: If Needed

ADJOURN

AGENDA SESSION MEETINGS:

May 14, 2020 (Thursday) 1:00 P.M.
June 11, 2020 (Thursday) 1:00 P.M.



BOARD OF ELECTIONS

MEMORANDUM FOR THE AGENDA OF THE APRIL 9, 2020 **AGENDA SESSION**

TO: BOARD OF COUNTY COMMISSIONERS

FROM: BOARD OF ELECTIONS

DATE: 4/1/2020

SUBJECT: RECOMMENDATION FROM THE BOARD OF ELECTIONS ON THE PURCHASE OF VOTING EQUIPMENT REQUIRED UNDER THE HELP AMERICA VOTE ACT

Requested by: BOARD OF ELECTIONS

Presenter(s):

BACKGROUND

BACKGROUND: The Ivotronic voting machines were purchased in 2006; they have been decertified and can no longer be used in an election. This was the equipment used to meet the requirements of the Help America Vote Act, that mandates that a voting system provide the same opportunity for access and participation to voters with disabilities as it does to voters without disabilities.

On September 17, 2019, three Board of Elections members attended a demonstration of the certified equipment as required by the State Board of Elections. The State also requires that before voting equipment can be purchased it must be tested in an election. The Express Vote was tested during the November 2019 municipal election in one precinct. The board proposes to utilize the Express Vote ballot marking device and its accessible peripherals to meet ADA requirements to allow for accessible voting.

The ExpressVote is compatible with the DS200 our current paper ballot system. Election Systems and Software is the vendor for both. The county board has requested approval from the State Board of Elections to purchase this equipment. The statute requires the Board of Elections to make preliminary recommendation to the Board of County Commissioners as to which type of voting equipment should be acquired by the county. The cost of the Express Vote system is \$277,300, this money has been budgeted to purchase the equipment.

RECOMMENDATION / PROPOSED ACTION

The Board of Elections makes the recommendation to the Board of Commissioners, to move forward with the purchase of the ExpressVote using the funds that have been budgeted for ADA equipment.



FINANCE OFFICE

MEMORANDUM FOR THE AGENDA OF THE APRIL 9, 2020 **AGENDA SESSION**

TO: BOARD OF COUNTY COMMISSIONERS

FROM: VICKI EVANS, FINANCE DIRECTOR

DATE: 3/31/2020

**SUBJECT: CONTRACT RENEWAL WITH SOUTHERN HEALTH PARTNERS FOR
HEALTHCARE DELIVERY SERVICES AT THE CUMBERLAND
COUNTY DETENTION CENTER**

Requested by: AMY CANNON, COUNTY MANAGER

**Presenter(s): VICKI EVANS, FINANCE DIRECTOR AND RONNIE MITCHELL,
SHERIFF'S OFFICE LEGAL COUNSEL**

BACKGROUND

As a result of a recommendation from a formal Request for Proposals process, the Board of Commissioners awarded Southern Health Partners, Inc. (SHP) the contract to provide healthcare delivery services at the Cumberland County Detention Center beginning July 1, 2017. The initial three-year term covered by the contract ends on June 30, 2020. The current contract language allows for extensions of additional one-year terms as follows:

SHP shall provide written notice to County of the amount of compensation increase requested for renewal periods effective on or after July 1, 2020, or shall otherwise negotiate mutually agreeable terms with County prior to the beginning of each annual renewal period.

Consistent with percentage increases in effect during the three-year initial term, SHP is requesting a two percent increase above the FY2020 base fee and per diem rate.

Through staff, the Sheriff has communicated that his office is satisfied with the services being provided by SHP and would like to seek renewal with this company.

RECOMMENDATION / PROPOSED ACTION

Management recommends forwarding this item to the full Board of Commissioners for approval as a Consent Agenda item at the April 20, 2020 regular meeting with the following action:

Approve the contract renewal with Southern Health Partners to provide Jail Health Services for FY2021. The annual renewal includes a two percent increase over the FY2020 base fee and per diem rate.

ATTACHMENTS:

Description	Type
FY2021 Renewal Letter from SHP	Backup Material



Southern Health Partners

Your Partner In Affordable Inmate Healthcare

April 1, 2020

Marshall Faircloth, Chair
Cumberland County Board of Commissioners
117 Dick Street, Room 561
Fayetteville, NC 28301

Re: Health Services Agreement

Dear Mr. Faircloth:

SHP has been a proud partner with Cumberland County for nearly three years now. We have enjoyed working with the Sheriff's Office and appreciate the trust and confidence placed in SHP to manage the medical program.

With a new contract period approaching, I am writing this letter for the historical record to acknowledge the annual renewal. Beginning in July we will need an increase in service rates to assure continued delivery of high quality staffing and services in accordance with the County's expectations. We are willing to honor a fixed 2% adjustment for July 2020-2021, as offered in our proposal.

I have outlined the new rate description for you below.

Contract Period: July 1, 2020, through June 30, 2021	
Base annualized fee:	\$2,591,974.90 (\$215,997.91 per month)
Per diem greater than 778 inmates:	\$1.34
Annual outside cost pool limits:	\$100,000.00 (first tier); \$200,000.00 (second tier)

Please look for the monthly billings to reflect the rate change starting with the July service fee invoice.

For SHP's file, I will ask you to please return a signed copy of this letter at your earliest convenience, or by April 30, 2020. A scan to email will be fine (email carmen.hamilton@southernhealthpartners.com). Except as stated herein, or as may be amended or modified in writing by mutual agreement of the parties, all provisions of the contract will remain in full force and effect.

Thank you in advance. We look forward to continued business together for many years to come.

Sincerely,

SOUTHERN HEALTH PARTNERS, INC.

Carmen Hamilton
Contracts Manager

CUMBERLAND COUNTY, NC
BY:

/cph

cc: Sheriff Ennis Wright
Ms. Lisa Blauser



FINANCE OFFICE

MEMORANDUM FOR THE AGENDA OF THE APRIL 9, 2020
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: VICKI EVANS, FINANCE DIRECTOR

DATE: 4/3/2020

**SUBJECT: ESTABLISHMENT OF IRREVOCABLE TRUST FOR OTHER POST
EMPLOYMENT BENEFITS (OPEB)**

Requested by: AMY CANNON, COUNTY MANAGER

Presenter(s): VICKI EVANS, FINANCE DIRECTOR

BACKGROUND

The fiscal year 2020 budget included a recommendation to establish an irrevocable trust for the County's OPEB liability with an initial budgeted contribution of \$1,000,000. Establishing an irrevocable trust is one way to demonstrate to the Local Government Commission and to bond rating agencies that the County is being more proactive in managing its substantial OPEB liability. As of June 30, 2019 the OPEB liability totaled \$171,702,000. This OPEB liability is specific to medical coverage benefits of eligible current and future retirees.

The NC State Treasurer's Office has provided step-by-step resources to help local governments in establishing irrevocable trusts for OPEB. They have also established the Ancillary Governmental Participants' Investment Program (AGPIP) into which local governments may invest its assets. To implement all of this, a resolution must be approved by the Board of Commissioners which includes adoption of the Trust Agreement; appointment of the Plan Administrator, Trustees, and authorized representatives directed to execute the documents.

The County Attorney has reviewed the documents and is fine with the attached documents.

RECOMMENDATION / PROPOSED ACTION

Staff recommend forwarding this item to the full Board of Commissioners for approval as a Consent Agenda item at the April 20, 2020 regular meeting with the following action:

1. Approval of the Resolution to Establish a Trust for OPEB and Participation in the AGPIP;
2. Approval of the Trust Agreement establishing the OPEB Trust.

ATTACHMENTS:

Description	Type
Resolution to Establish OPEB Trust	Backup Material
Trust Agreement (Attachment 1 to Resolution)	Backup Material
Deposit Agreement (Attachment 2 to Resolution)	Backup Material

**RESOLUTION TO ESTABLISH A TRUST FOR OTHER POST-EMPLOYMENT
BENEFITS (OPEB) AND PARTICIPATE IN THE ANCILLARY GOVERNMENTAL
PARTICIPANTS INVESTMENT PROGRAM (AGPIP)**

WHEREAS, the Cumberland County Board of Commissioners wishes to establish a Local Government Other Post-Employment Benefits Trust (“OPEB Trust”) pursuant to N.C.G.S. § 159-30.1 for the purpose of paying post-employment benefits for which Cumberland County is liable;

WHEREAS, the OPEB Trust will be an irrevocable trust, and the assets of the OPEB Trust will not be subject to the claims of the Cumberland County’s creditors;

WHEREAS, the Cumberland County Board of Commissioners wishes to invest assets from the OPEB Trust in the Ancillary Governmental Participants Investment Program (“AGPIP”) established by the Treasurer of the State of North Carolina (the “Treasurer”);

WHEREAS, the Cumberland County Board of Commissioners has determined that it is advisable and in the best interests of the Cumberland County to contribute assets from the OPEB Trust to AGPIP, as provided in the Deposit Agreement between the Cumberland County and the Treasurer, which is attached to this resolution as Attachment 2 (the “Deposit Agreement”).

NOW, THEREFORE, BE IT RESOLVED, that

The OPEB Trust is established by adoption of the Trust Agreement (Attachment 1 to this resolution);

The person serving as Finance Director for Cumberland County is appointed the Plan Administrator pursuant to the provisions of the trust agreement for the OPEB Trust;

The OPEB Trust is established for the purpose of paying post-employment benefits for which Cumberland County is liable;

The Trustee of the OPEB Trust shall be a Board of Trustees consisting of the County Manager, Deputy County Manager and Finance Director.

The OPEB Trust shall participate in AGPIP pursuant to the terms and conditions of the Deposit Agreement (Attachment 2 to this resolution);

The initial contribution of the OPEB Trust to AGPIP shall be \$1,000,000 (the “Contribution”).

The Plan Administrator and the following officers, managers, or representatives of Cumberland County (collectively, the “Authorized Representatives”) are authorized and directed to execute and deliver the Deposit Agreement, to take any other actions deemed necessary or appropriate to consummate the transactions provided for therein, and to cause the Contribution to be made:

County Manager,
Clerk to the Board of Commissioners,
Trustee, acting through the Board of Trustees,
County Attorney.

The Authorized Representatives, acting on behalf of Cumberland County, are authorized to take all such actions as they may deem necessary or appropriate to give effect to the foregoing resolutions; and

All actions heretofore taken by any of the Authorized Representatives acting on behalf of Cumberland County in furtherance of the foregoing resolutions are hereby ratified, adopted, approved, and confirmed in all respects.

This Resolution adopted by the Board of Commissioners of Cumberland County April 20, 2020, in a duly noticed Regular Meeting.

Cumberland County Board of Commissioners
By:

W. Marshall Faircloth, Chairman

Attest:

Candice H. White, Clerk to the Board

Attachment 1

AGREEMENT ESTABLISHING OTHER POST-EMPLOYMENT BENEFITS TRUST

This **Trust Agreement** is entered into as of the 20th day of April 2020, by and between Cumberland County (hereinafter the “**Employer**”) and the Cumberland County OPEB Trust Board of Trustees. (the “**Trustee**”);

R E C I T A L S :

WHEREAS, the governing body of the Employer adopted a resolution dated **APRIL 20, 2020** adopting this trust agreement;

WHEREAS, the Employer wishes to establish a trust pursuant to Section 159-30.1 of the North Carolina General Statutes, to be known as the “Cumberland County OPEB Trust” (hereinafter the “**Trust**”), for the purpose of funding its obligation to provide post-employment benefits other than pension benefits, as required to be reported under GASB 75;

WHEREAS, this Trust is established by the Employer with the intention that the Trust qualify as an irrevocable tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and the Regulations issued thereunder and as a tax-exempt trust under the provisions of the applicable laws of the State of North Carolina; and

WHEREAS, Employer has appointed a Board of Trustees as the Trustee of the Trust, and the members of the Board of Trustees shall serve as such by virtue of their respective positions of employment by the Employer pursuant to the terms and conditions set forth in this Trust Agreement; and

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

- 1.1** “**Assets**” shall mean all contributions and transfers of assets received into the Trust on behalf of the Employer, together with the income and earnings from such contributions and transfers and any increments accruing to them, net of any investment losses, benefits, expenses or other costs.
- 1.2** “**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.
- 1.3** “**Employer’s Agent**” shall mean an individual or entity appointed by the Employer to act in such matters as are specified in the appointment.
- 1.4** “**GASB 75**” shall mean Statement Number 75 issued by the Governmental Accounting Standards Board, regarding the reporting of OPEB Obligations.
- 1.5** “**Investment Advisory Committee**” shall mean a group of qualified private and public sector employees selected by the Employer that will be responsible for establishing and maintaining broad policies and objectives for all aspects of the Trust investments. The committee will review and approve the development or revision of all matters concerning

Trust investments. Investment matters addressed by the Investment Advisory Committee shall be communicated to the Employer, and the Employer shall communicate in writing to the Trustee any such investment matters necessary for the Trustee to fulfill its duties hereunder.

- 1.6 “**OPEB**” shall mean “other post-employment benefits,” such as medical, dental, vision, life insurance, long-term care and other similar benefits, provided to retirees, other than pension benefits.
- 1.7 “**OPEB Obligation**” shall mean an Employer’s obligation to provide post-employment health care and welfare benefits to its “eligible employees” as specified in such Employer’s written policies, the Plan and/or applicable collective bargaining agreements.
- 1.8 “**Plan**” shall mean the plan document adopted by the Employer for the purpose of documenting the Employer’s OPEB Obligations and governing the Employer’s satisfaction thereof.
- 1.9 “**Plan Administrator**” shall mean the individual designated by position of employment at the Employer to act on its behalf in all matters relating to the Plan and Trust.
- 1.10 “**Qualified Investments**” shall mean all investments authorized under Section 159-30.1(b) of the North Carolina General Statutes, including the following:
 - (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.
 - (2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service.
 - (3) Obligations of the State of North Carolina.
 - (4) Bonds and notes of any North Carolina local government or public authority, to the extent permitted in Section 159.30(c)(4) of the North Carolina General Statutes.
 - (5) Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided, that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Commissioner of Banks of the Department of Commerce of the State of North Carolina, be fully collateralized.
 - (6) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates of particular obligation.

- (7) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.
- (8) Participating shares in a mutual fund for local government investment; provided, that the investments of the fund are limited to Qualified Investments hereunder, and the fund is certified by the Local Government Commission. The Local Government Commission shall have the authority to issue rules and regulations concerning the establishment and qualifications of any mutual fund for local government investment.
- (9) A commingled investment pool established and administered by the State Treasurer pursuant to Section 147-69.3 of the North Carolina General Statutes.
- (10) A commingled investment pool established by interlocal agreement by two or more units of local government pursuant to Sections 160A-460 through 160A-464 of the General Statutes of North Carolina, if the investments of the pool are limited to those qualifying for investment under Section 159.30(c)(4) of the North Carolina General Statutes.
- (11) Evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian.
- (12) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States if entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a Federal Reserve Bank, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:
 - (a) Such obligations that are subject to such repurchase agreement are delivered (in physical or in book entry form) to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price, and, provided further, that the financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to

the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;

- (b) A valid and perfected first security interest in the obligations which are the subject of such repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the local government or public authority have been established for the benefit of the local government or public authority or its assignee;
 - (c) Such securities are free and clear of any adverse third party claims; and
 - (d) Such repurchase agreement is in a form satisfactory to the local government or public authority.
- (13) In connection with funds subject to the arbitrage and rebate provisions of the Code, participating shares in tax-exempt mutual funds, to the extent such participation, in whole or in part, is not subject to such rebate provisions, and taxable mutual funds, to the extent such fund provides services in connection with the calculation of arbitrage rebate requirements under federal income tax law; provided, the investments of any such fund are limited to those bearing one of the two highest ratings of at least one nationally recognized rating service and not bearing a rating below one of the two highest ratings by any nationally recognized rating service which rates the particular fund.
- (14) Investments of the State Treasurer authorized pursuant to Section 147-69.2(b4) of the North Carolina General Statutes.

- 1.11 “Registered Investment Advisor”** shall mean shall mean any Registered Investment Advisor as defined by Securities and Exchange Commission regulations appointed by the Employer or Plan Administrator who has entered into a consulting or management agreement with the Employer for investing the Assets of the Trust.

ARTICLE II THE TRUST

2.1 Purpose

The purpose of the Trust is to hold assets from which to satisfy the Employer’s commitment to provide post-employment benefits (other than pension benefits), as offered by the Employer to its employees in accordance with the Employer’s policies and/or applicable collective bargaining agreements.

2.2 Trustee Accounting

The Trustee shall be responsible only for maintaining records and maintaining accounts for the Assets of the Trust. The Employer shall be responsible for Plan-level accounting for OPEB.

2.3 No Diversion of Assets

The Assets in the Trust shall be held in trust for the exclusive purpose of providing OPEB to eligible employees of the Employer and defraying the reasonable administrative and actuarial expenses of the Trust. The Assets in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.

2.4 Type and Nature of Trust

Neither the full faith and credit nor the taxing power of the Employer is pledged to the distribution of benefits hereunder. Except for contributions and other amounts hereunder, no other amounts are pledged to the distribution of benefits hereunder. Distributions of benefits are neither general nor special obligations of any Employer, but are payable solely from the Assets of the Trust, as more fully described herein. No employee of any Employer or beneficiary may compel the exercise of the taxing power by any Employer.

Distributions of Assets under the Trust are not debts of any Employer within the meaning of any constitutional or statutory limitation or restriction. Such distributions are not legal or equitable pledges, charges, liens or encumbrances, upon any of the Employer's property, or upon any of its income, receipts, or revenues, except amounts in the accounts which are, under the terms of the Plan and Trust set aside for distributions. Neither the members of the governing body of the Employer nor its officers, employees, agents or volunteers are liable hereunder.

ARTICLE III ADMINISTRATIVE MATTERS

3.1 Certification to Trustee

The governing body of the Employer, or other duly authorized official, shall certify in writing to the Trustee the names and specimen signatures of the Plan Administrator and Employer's Agent, if any, and all others authorized to act on behalf of the Employer whose names and specimen signatures shall be kept accurate by the Employer acting through a duly authorized official or governing body of the Employer. The Trustee shall have no liability if it acts upon the direction of a Plan Administrator or the Employer's Agent that has been duly authorized hereunder even if that the Plan Administrator or the Employer's Agent is no longer authorized to act, unless the Employer has informed the Trustee of such change in writing.

3.2 Removal of Trustee

The members of the Board of Trustees shall hold office as a member of the Board of Trustees by virtue of their respective positions of employment with the Employer. Upon any member of the Board of Trustees ceasing to be employed in their respective positions, the respective successor to the position shall become the successor-member of the Board of Trustees by virtue of their employment. The Employer may also remove or substitute any member of the Board of Trustees by action of its governing body amending this Trust Agreement and notice to the Trustee.

3.3 Resignation of Trustee

No member of the Board of Trustees may resign except by ceasing to hold their respective position of employment with the Employer.

3.4 Plan Administrator

The governing body of the Employer shall have plenary authority for the administration and investment of the Trust pursuant to applicable state law and applicable federal laws and regulations. The Employer shall by resolution designate a Plan Administrator. Unless otherwise specified in the instrument the Plan Administrator shall be deemed to have authority to act on behalf of the Employer in all matters pertaining to the Trust. Such appointment of a Plan Administrator shall be effective upon receipt and acknowledgment by the Trustee and shall be effective until the Trustee is furnished with a resolution of the Employer that the appointment has been modified or terminated.

3.5 Failure to Appoint Plan Administrator

If the Employer does not appoint a Plan Administrator, or if such appointment lapses, the Employer shall be deemed to be the Plan Administrator.

3.6 Employer's Agent

The Plan Administrator, acting on behalf of the Employer, may delegate certain authority, powers and duties to Employer's Agent to act in those matters specified in the delegation. Any such delegation must be in writing that names and identifies the Employer's Agent, states the effective date of the delegation, specifies the authority and duties delegated, is executed by the Plan Administrator and is acknowledged in writing by the Employer's Agent and certified as required in Section 3.1.

3.7 Notice

Effective notice hereunder shall be delivered via United States Mail or other reliable means of delivery, including via telecopy, electronic mail or overnight delivery service, to the following:

EMPLOYER:

The County of Cumberland
PO Box 1829
Fayetteville, North Carolina 28302
Attention: Vicki Evans, Finance Director

PLAN ADMINISTRATOR:

Cumberland County Finance Director
PO Box 1829
Fayetteville, North Carolina 28302

BOARD OF TRUSTEES:

Cumberland County Manager
Cumberland County Deputy County Manger
Cumberland County Finance Director

**ARTICLE IV
THE TRUSTEE**

4.1 Powers and Duties of the Trustee

Any action taken by the Trustee hereunder shall be approved by no less than two members of the Board of Trustees at all times, including any time when there is a vacancy on the Board of Trustees. Except as otherwise provided in Article V, and subject to the provisions of Article VI, the Trustee shall have full power and authority with respect to property held in the Trust to perform all acts, take all proceedings, and exercise all rights and privileges, whether specifically referred to or not in this document, as could be done, taken or exercised by the absolute owner, including, without limitation, the following:

- (a) To invest and reinvest the Assets or any part hereof in Qualified Investments pursuant to this Trust and applicable state law.
- (b) To place uninvested cash and cash awaiting distribution in any type of interest-bearing account including, without limitation, time certificates of deposit or interest-bearing accounts issued by a commercial bank or savings and loan association organized under the laws of the State of North Carolina or having its principal office in North Carolina;
- (c) To borrow money for the purposes of the Trust from any source with or without giving security; to pay interest; to issue promissory notes and to secure the repayment thereof by pledging all or any part of the Assets;
- (d) To take all of the following actions: to vote proxies of any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Trust;
- (e) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (h) To exercise all the further rights, powers, options and privileges granted, provided for, or vested in trustees generally under applicable federal or state laws as amended from time to time, it being intended that, except as herein otherwise provided,

the powers conferred upon the Trustee herein shall not be construed as being in limitation of any authority conferred by law, but shall be construed as consistent or in addition thereto.

4.2 Additional Trustee Powers

In addition to the other powers enumerated above, the Trustee in any and all events is authorized and empowered:

- (a) To pay administrative fees as directed by the Plan Administrator;
- (b) To invest funds pending required directions in a designated account as directed by the Investment Advisory Committee or if there is no designated account, any type of interest-bearing account including without limitation, time certificates of deposit or interest-bearing accounts issued by a commercial bank or savings and loan association organized under the laws of the State of North Carolina or having its principal office in North Carolina Trustee or any affiliate thereof;
- (c) To cause all or any part of the Trust to be held in the name of the Trustee (which in such instance need not disclose its fiduciary capacity) or, as permitted by law, in the name of any nominee, and to acquire for the Trust any investment in bearer form, but the books and records of the Trust shall at all times show that all such investments are a part of the Trust and the Trustee shall hold evidences of title to all such investments;
- (d) To appoint a custodian with respect to the Trust Assets;
- (e) To employ such agents and counsel as may be reasonably necessary in managing and protecting the Assets and to pay them reasonable compensation from the Trust; to employ any broker-dealer, including a broker-dealer affiliated with the Trustee, and pay to such broker-dealer at the expense of the Trust, its standard commissions; to settle, compromise or abandon all claims and demands in favor of or against the Trust; and to charge any premium on bonds purchased at par value to the principal of the Trust without amortization from the Trust, regardless of any law relating thereto;
- (f) To abandon, compromise, contest, arbitrate or settle claims or demands; to prosecute, compromise and defend lawsuits, but without obligation to do so, all at the risk and expense of the Trust;
- (g) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or the Plan;
- (h) To permit such inspections of documents at the principal office of the Trustee as are required by law, subpoena or demand by a United States agency;
- (i) To comply with all requirements imposed by applicable provisions of law;
- (j) To seek written instructions from the Plan Administrator or other fiduciary on any matter and await their written instructions without incurring any liability. If at any time the Plan Administrator or the fiduciary should fail to give directions to the Trustee, the Trustee may act in the manner that in its discretion seems advisable under the circumstances for carrying out the purposes of the Trust;

- (k) To compensate such executive, consultant, actuarial, accounting, investment, appraisal, administrative, clerical, secretarial, medical, custodial, depository and legal firms, personnel and other employees or assistants as are engaged by the Plan Administrator in connection with the administration of the Plan and to pay from the Trust the necessary expenses of such firms, personnel and assistants, to the extent not paid by the Plan Administrator;
- (l) To act upon proper written directions of the Employer, Plan Administrator or Employer's Agent;
- (m) To pay from the Trust the expenses reasonably incurred in the administration thereof, as provided in the Plan;
- (n) To hold uninvested reasonable amounts of cash whenever it is deemed advisable to do so to facilitate disbursements or for other operational reasons,
- (o) To have and to exercise such other additional powers as may be advisable for the effective and economical administration of the Trust.

ARTICLE V INVESTMENTS

5.1 Trust Investments

The Employer and the Investment Advisory Committee, if any, shall have responsibility to select Qualified Investments for the Trust Assets. The Employer and the Investment Advisory Committee, if any, may appoint a Registered Investment Advisor to the Trust by executing a written consulting or management agreement with said Registered Investment Advisor.

5.2 Trustee Fees

All members of the Board of Trustees who are appointed by virtue of their position as an employee of the Employer shall receive no fee for service as a member of the Board of Trustees serving as Trustee hereunder.

5.3 Contributions

The Plan Administrator shall, on behalf of the Employer, make all contributions to the Trustee. Such contributions shall be in cash. All contributions shall be paid to the Trustee for investment and reinvestment pursuant to the terms of this Trust Agreement. The Trustee shall not have any duty to determine or inquire whether any contributions to the Trust made to the Trustee by the Plan Administrator are in compliance with the Employer's policies or applicable state law, nor shall the Trustee have any duty or authority to compute any amount to be paid to the Trustee by the Plan Administrator; nor shall the Trustee be responsible for the collection or adequacy of the contributions to meet the Employer's OPEB Obligation, as may be determined under GASB 75. The contributions received by the Trustee from the Employer shall be held and administered pursuant to the terms hereof without distinction between income and principal.

5.4 Records

(a) The Trustee shall maintain accurate records and detailed accounts of all investments, receipts, disbursements and other transactions hereunder. Such records shall be available at all reasonable times for inspection by the Employer and Plan Administrator. The Trustee shall, at the direction of the Plan Administrator, submit such valuations, reports or other information as the Plan Administrator may reasonably require.

(b) The Assets of the Trust shall be valued at their fair market value on the date of valuation, as determined by the Trustee based upon such sources of information as it may deem reliable; provided, however, that the Plan Administrator shall instruct the Trustee as to valuation of assets which are not readily determinable on an established market. The Trustee may rely conclusively on such valuations provided by the Plan Administrator and shall be indemnified and held harmless by the Employer with respect to such reliance. If the Plan Administrator fails to provide such values, the Trustee may take whatever action it deems reasonable, including employment of attorneys, appraisers or other professionals, the expense of which will be an expense of administration of the Trust. Transactions in the account involving such hard to value assets may be postponed until appropriate valuations have been received and Trustee shall have no liability therefore.

5.5 Statements

(a) Periodically as specified, and within sixty (60) days after December 31, or the end of the Trust's fiscal year if different, Trustee shall render to the Plan Administrator as directed, a written account showing in reasonable summary the investments, receipts, disbursements and other transactions engaged in by the Trustee during the preceding fiscal year or period with respect to the Trust. Such account shall set forth the assets and liabilities of the Trust valued as of the end of the accounting period.

(b) The Plan Administrator may approve such statements either by written notice or by failure to express objections to such statements by written notice delivered to the Trustee within ninety (90) days from the date the statement is delivered to the Plan Administrator. Upon approval, the Trustee shall be released and discharged as to all matters and items set forth in such statement as if such account had been settled and allowed by a decree from a court of competent jurisdiction.

5.6 Exclusive Benefit

The Assets of the Trust shall be held in trust for the exclusive purpose of providing OPEB to the eligible employees of the Employer pursuant to the Employer's policies and/or applicable collective bargaining agreements, and defraying the reasonable expenses associated with the providing of such benefits, and shall not be used for or diverted to any other purpose.

ARTICLE VI FIDUCIARY RESPONSIBILITIES

6.1 More Than One Fiduciary Capacity

Any one or more of the fiduciaries with respect to the Trust Agreement or the Trust may, to the extent required thereby or as directed by the Employer or the Plan Administrator pursuant to this Trust Agreement, serve in more than one fiduciary capacity with respect to the Trust Agreement and the Trust.

6.2 Fiduciary Discharge of Duties

Except as otherwise provided by applicable law, each fiduciary shall discharge such fiduciary's duties with respect to the Trust Agreement and the Trust:

- (a) Solely in the interest of the eligible employees and for the exclusive purpose of providing OPEB to eligible employees, and defraying reasonable administrative and actuarial expenses associated with providing such benefits; and
- (b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

6.3 Limitations on Fiduciary Responsibility

To the extent allowed by the state law applicable to this Trust Agreement:

- (a) No fiduciary shall be liable with respect to a breach of fiduciary duty by any other fiduciary if such breach was committed before such party became a fiduciary or after such party ceased to be a fiduciary;
- (b) No fiduciary shall be liable for a breach by another fiduciary except as provided by law; and
- (c) No fiduciary shall be liable for carrying out a proper direction from another fiduciary, including refraining from taking an action in the absence of a proper direction from the other fiduciary possessing the authority and responsibility to make such a direction, which direction the fiduciary in good faith believes to be authorized and appropriate.

6.4 Indemnification

- (a) Neither the Trustee nor the members of the Board of Trustees shall not be liable for, and the Employer shall indemnify, defend and hold the Trustee and the members of the Board of Trustees harmless from and against any claims, demands, loss, costs, expense or liability in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustee or the members of the Board of Trustees, arising as a result of Employer's active or passive negligent act or omission or willful misconduct in the execution or performance of the Employer's duties under this Trust Agreement.

- (b) In addition, neither the Trustee nor the members of the Board of Trustees shall be liable for, and Employer shall indemnify and hold the Trustee and the members of the Board of Trustees harmless from and against any claims, demands, loss, costs, expense or liability arising out of or in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustee or the members of the Board of Trustees, in the event that the Trust loses or fails to qualify for tax exempt status under Section 115 of the Code and the Regulations issued thereunder or as a tax-exempt trust under the provisions of North Carolina law.
- (c) This section shall survive the termination of this Trust Agreement.

ARTICLE VII AMENDMENT, TERMINATION AND MERGER

7.1 No Obligation to Continue Trust

Continuance of the Trust and continuation of the Employer's policies that provide OPEB are not assumed as contractual obligations of the Employer due to the creation of this Trust Agreement.

7.2 Amendments

(a) The Trust Agreement may only be amended or terminated as provided herein. The Employer shall have the right to amend this Trust Agreement from time to time, and to similarly amend or cancel any amendments. A copy of all amendments shall be delivered to the Trustee and Plan Administrator promptly as each is made.

(b) Such amendments shall be set forth in an instrument in writing executed by the Employer and the Trustee. Any amendment may be current, retroactive or prospective; provided, however, that no amendment shall:

- (1) Cause the Assets of any Trust to be used for or diverted to purposes other than for the exclusive benefit of eligible employees of the Employer or for the purpose of defraying the reasonable expenses of administering such Trust;
- (2) Have any retroactive effect so as to reduce the benefits of any eligible employees as of the date the amendment is adopted, except that such changes may be made as may be required to permit this Trust Agreement to meet the requirements of applicable law; or
- (3) Change or modify the liabilities of the Trustee or the members of the Board of Trustees hereunder without the consent of the Trustee or the members of the Board of Trustees.

7.3 Termination of the Plan

A termination of the Employer's obligation to provide OPEB pursuant to the Employer's policies for which the Trust was established shall not, in itself, effect a termination of the Trust. Upon any termination of the Employer's obligation to provide OPEB pursuant to the Employer's policies, the Assets of the Trust shall be distributed by the Trustee when directed by the Plan Administrator. From and after the date of such termination and until

final distribution of the Assets the Trustee shall continue to have all the powers provided herein as are necessary or expedient for the orderly liquidation and distribution of such assets and the Trust shall continue until the Assets have been completely distributed in accordance with the Employer's policies.

7.4 Fund Recovery Based on Mistake of Fact

Except as hereinafter provided, the Assets of the Trust shall never inure to the benefit of the Employer. The Assets shall be held for the exclusive purposes of providing post-employment health care and welfare benefits to eligible employees and defraying reasonable expenses of administering the Trust. However, in the case of a contribution which is made by the Employer because of a mistake of fact, that portion of the contribution relating to the mistake of fact (exclusive of any earnings or losses attributable thereto) may be returned to the Employer, provided such return occurs within two (2) years after discovery by the Employer of the mistake. If any repayment is payable to the Employer, then, as a condition precedent to such repayment, the Employer shall execute, acknowledge and deliver to the Trustee its written undertaking, in a form satisfactory to the Trustee, to indemnify, defend and hold the Trustee and the members of the Board of Trustees harmless from all claims, actions, demands or liabilities arising in connection with such repayment.

7.5 Termination

The Trust may be terminated only by the Employer. Such action must be in writing and delivered to the Trustee in accordance with the terms of this Trust Agreement.

ARTICLE VIII MISCELLANEOUS PROVISIONS

8.1 Nonalienation

Eligible employees do not have an interest in the Trust. Accordingly, the Trust shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of an eligible employee or any other party. Trust Assets shall not be subject to the claims of the Employer or the claims of its creditors.

8.2 Saving Clause

In the event any provision of this Trust Agreement and each Trust are held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Trust Agreement and/or Trust, but this instrument shall be construed and enforced as if said provision had never been included.

8.3 Applicable Law

This Trust Agreement shall be construed, administered and governed under the Code and the law of the State of North Carolina. To the extent any of the provisions of this Trust Agreement are inconsistent with the Code or applicable state law, the provisions of the Code or state law shall control. In the event, however, that any provision is susceptible to

more than one interpretation, such interpretation shall be given thereto as is consistent with the Trust Agreement being a tax-exempt trust within the meaning of the Code.

8.4 Employment of Counsel

The Trustee may consult with legal counsel (who may be counsel for the Trustee or the Employer) and charge the Trust. The Trustee and the members of the Board of Trustees shall be fully protected in relying on advice of such counsel.

8.5 Gender and Number

Words used in the masculine, feminine or neuter gender shall each be deemed to refer to the other whenever the context so requires; and words used in the singular or plural number shall each be deemed to refer to the other whenever the context so requires.

8.6 Headings

Headings used in this Trust Agreement are inserted for convenience of reference only and any conflict between such headings and the text shall be resolved in favor of the text.

8.7 Counterparts

This Trust Agreement may be executed in an original and any number of counterparts by the Employer and Trustee, each of which shall be deemed to be an original of the one and the same instrument.

AGREED TO AND ACCEPTED this ____ day of _____, 20__ .

TRUSTEE

Cumberland County OPEB Trust
By:

Amy H. Cannon, County Manager
Member, Board of Trustees

Duane Holder, Deputy County Manager
Member, Board of Trustees

Vicki Evans, Finance Director
Member, Board of Trustees

EMPLOYER

Cumberland County Board of
Commissioners By:

W. Marshall Faircloth, Chairman

Attest:

Candice H. White, Clerk to the Board

North Carolina Department of State Treasurer
Deposit Agreement for Investment in Ancillary Governmental Participant Investment Program
("AGPIP")

Equity Index Fund Pursuant to N.C.G.S. § 147-69.2(b) (8)
Bond Index Fund Pursuant to N.C.G.S. §§ 147-69.2(b)(1)-(6)
and/or
Short-Term Investment Fund Pursuant to N.C.G.S. §§ 147-69.1(c) and 147-69.2(b)(1)

WHEREAS, pursuant to the North Carolina General Statutes, certain public entities that are not part of the North Carolina Retirement System, each an Ancillary Governmental Participant ("Participant"), may deposit monies ("Monies") with the Treasurer of the State of North Carolina ("Treasurer"), who in turn will invest the Monies.

WHEREAS, pursuant to N.C.G.S. §§ 147-69.2(b2), 147-69.2(b4), 147-69.2(b5), or 147-69.2(d), or 147-69.5 or other such enabling legislation authorizing Participant to invest in AGPIP, certain Participants are authorized to direct the Treasurer as to the allocation of their investments;

WHEREAS, each Participant is exempt from federal income tax under Section 115 of the Internal Revenue Code of 1986 ("Code"), as amended, and the Constitution of the United States as an organization performing an essential government function or as an organization owned by an instrumentality of the State of North Carolina;

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1. General. The undersigned Participant understands, agrees, and acknowledges that it may deposit Monies from time to time with the Treasurer. Subject to the restrictions of the Participant's enabling legislation limiting the Participant's investment options, these Monies may be held and invested in one or more of the following: (i) a portfolio of primarily equity securities ("Equity Index Fund" or "EIF") as permitted by N.C.G.S. § 147-69.2(b)(8); (ii) a portfolio of fixed income instruments ("Bond Index Fund" or "BIF") as permitted by N.C.G.S. §§ 147-69.2(b)(1) through (6) and/or (iii) certain other fixed income instruments as permitted by N.C.G.S. § 147-69.2(b)(1) ("Short-Term Investment Fund" or "STIF").

The undersigned Participant understands and acknowledges that investments in the EIF are to be effected through investments made by the Treasurer in individual, common, or collective trust funds of banks, trust companies, and group trust funds of investment advisory companies as long as the investment manager has assets under management of at least \$100 million. The trustee of each such third-party trust ("Third-party Trustee") shall be appointed by the Treasurer. The undersigned Participant further understands and acknowledges that investments in the BIF are effected through third-party investment management, custodial, and brokerage arrangements. The STIF is to be managed internally by the Treasurer and utilizes third-party custodial and brokerage arrangements.

The undersigned Participant understands, agrees and acknowledges that if the Participant is a Local Government Other Post-Employment Benefits Trust (“OPEB Trust”) established pursuant to N.C.G.S. § 150-30.1 or Local Government Law Enforcement Officer Special Separation Allowance Trust (“LEOSSA Trust”) established pursuant to N.C.G.S. §§ 147-69.5 and 159-30.2, the Participant has established an irrevocable trust by resolution or ordinance of the entity’s governing board. The resolution or ordinance states the purpose for which the OPEB Trust or LEOSSA Trust is created and the method for determining and selecting the trustees.

Section 2. Representations and Warranties. As a condition to its investment, the Participant acknowledges, represents, warrants and agrees that:

- a) The Participant recognizes that it is indirectly investing in equity securities (if the Participant is eligible for the EIF), debt instruments (if the Participant is eligible for the BIF) and/or short-term fixed income investments. BIF, EIF, and/or STIF may lose money over short or long periods of time as they are not bank deposits, are not guaranteed by the State of North Carolina, the Treasurer, or any private sector entity, and may lag the rate of inflation. Neither BIF, EIF, nor STIF is necessarily a complete investment program and returns may lag the returns of a balanced portfolio with comparable risk. BIF and EIF provide only limited liquidity and, Monies invested in the BIF and EIF should not be needed for immediate disbursement. The Participant recognizes that investments in EIF, BIF, and/or STIF are subject to, among other things: general equity and bond market investment risks (including, but not limited to, the risk of the loss of capital); investment manager risk (including, but not limited to, the risk that poor security selection by the manager will cause the investment to underperform relevant to benchmarks or other investments with similar objectives); interest rate risks; credit risks (including, where applicable, custodial credit risks, which is the risk that in the event of the failure of the counterparty, the Treasurer will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party); pre-payment risk; foreign equity risk; emerging market risk; and derivatives risk.
- b) The Participant has taken full cognizance of and understands all of the risk factors, including transition risk, related to investments in EIF, BIF and/or STIF, as applicable.
- c) The Participant is able to bear the economic risk of investments in EIF, BIF and/or STIF, as applicable.
- d) The Participant has such knowledge and experience in financial and business matters that the Participant is capable of evaluating the merits and risks of an investment in the EIF, BIF and/or STIF.
- e) The Participant is solely responsible for determining the suitability of and the statutory authorization of the allocation of its investment between any of the EIF, BIF, and/or STIF, as applicable. The initial allocation shall be made on the form set forth in Appendix A attached hereto and the signatory of such form is a duly authorized representative of the Participant. Allocations thereafter shall be set forth on the deposit/withdrawal/transfer form as set forth in the sample form in Appendix B to be signed on an ongoing basis by a duly authorized representative of the Participant. The Participant acknowledges that the Treasurer shall not rebalance the Participant’s allocation on an ongoing basis in order to maintain the

initial percentage allocation made by the Participant. The Participant shall be responsible for reviewing its monthly statements to determine if a rebalance is necessary and shall direct the Treasurer if such rebalance is to be effected. The Participant is responsible for directing the Treasurer as to the source and manner of any rebalance.

- f) The Participant acknowledges that its investment in the EIF, BIF and/or STIF, as the case may be, is permissible under the Participant's North Carolina statutory authority, is suitable for the Participant based upon its other securities holdings, financial situation, liquidity requirements and that the Participant has adequate means of providing for possible contingencies.
- g) The Participant understands that it is not permitted to sell, transfer, or assign any of its investment. In order to liquidate its investment, the Participant will be required to follow the procedures described in Section 4 of this Deposit Agreement. The Participant understands and acknowledges that the Treasurer will use reasonable efforts when transferring money from one investment to another and that the risk of any decline in the value of an investment in EIF, BIF and/or STIF during the interval between any permitted withdrawal date, as further described in Section 4 of this Deposit Agreement, is borne by the Participant.
- h) The Participant acknowledges, represents, warrants and agrees that the Treasurer may at any time in its sole discretion change requirements for deposits, withdrawals, and transfers applicable to Participant accounts should the Treasurer in good faith determine that such changes would be in the collective interest of the EIF, BIF, and/or STIF.
- i) Further, the Participant acknowledges, represents, warrants and agrees that (i) it is exempt from federal income tax under Section 115 of the Code and the Constitution of the United States as an organization performing an essential government function or as an organization owned by an instrumentality of the State of North Carolina; (ii) the investment by the Participant described herein has been duly authorized by all necessary corporate action of the Participant; (iii) the Participant has the requisite corporate power and authority to execute and deliver this document and to deposit the Monies for investment as described herein; (iv) for any Participant authorized to invest with the Treasurer in the EIF, the Treasurer has the power and authority under N.C.G.S. § 147-69.2(b)(8) and applicable law to appoint a Third-party Trustee or Third-party Trustees to hold the monies and assets of the Participant.
- j) The Participant acknowledges that the furnishing of this Deposit Agreement and the Enrollment Packet for the BIF, EIF and STIF is not intended to constitute investment advice or the offering of an investment product. The Treasurer is undertaking the statutory responsibility set out in N.C.G.S. 147-69.3. There is no agreement or understanding between the Treasurer and any Participant under which the latter receives advice from the Treasurer concerning investments which are to be used as a primary basis for the Participant's investment decisions relating to BIF, EIF, or STIF.
- k) The Participant acknowledges that: (1) the BIF, EIF, and STIF can have liquidity limitations, volatility of returns, and risk of loss, including the potential for loss of the principal invested; (2) that Treasurer is not providing investment advice to the Participant; (3) that investing in the BIF, EIF of STIF is only suitable for participants who are willing to bear the economic

risks of the investment; (4) that the participant will carefully review and consider all potential risks and costs before enrolling and investing.

- l) The undersigned understands and acknowledges that the Treasurer has the discretion, without prior notice, to make changes to the EIF and BIF, including but not limited to external manager, fees, investment guidelines or strategy.
- m) The Participant acknowledges and represents that it (i) is not subject to any sanctions administered or enforced by the United States Office of Foreign Assets Control, the United Nations Security Council, the European Union, or other relevant sanctions authority; and (ii) has not and will not transfer funds into an account which have been derived from activities subject to sanctions administered or enforced by the United States Office of Foreign Assets Control, the United Nations Security Council, the European Union, or other relevant sanctions authority.
- n) The Participant acknowledges and represents the following (check the correct box in (i) and (ii)):
 - i) The Participant ☒ IS / ☐ IS NOT a “Municipal Entity” as that term is defined under the Municipal Advisor Rules (Section 15B of the Securities Exchange Act of 1934, as amended, and the applicable rules thereunder (Rule 15Ba1 et. seq.)).
 - ii) The Participant has information concerning the source of the Monies and confirms that:
 - A. ☒ None of the Monies constitutes “Proceeds of Municipal Securities” or “Municipal Escrow Investments” as those terms are defined under the Municipal Advisor Rules;
 - OR**
 - B. ☐ Some or all of the Monies constitutes “Proceeds of Municipal Securities” or “Municipal Escrow Investments” as those terms are defined under the Municipal Advisor Rules.
- o) The Participant will notify the Treasurer immediately if it has reason to believe that the foregoing acknowledgements, representations, warranties and agreements may cease to be true. The Participant acknowledges, represents, warrants and agrees that the Treasurer may at any time in its sole discretion make a mandatory payout of Participant accounts should the Treasurer in good faith determine that such a payout would be in the collective interest of the EIF, BIF, and/or STIF, or if a Participant has breached the requirements herein.

Section 3. Fees. The Participant acknowledges, represents, warrants and agrees that fees, expenses, and charges will be deducted from their accounts by the Treasurer. As permitted by N.C.G.S. § 147-69.3(f), the Treasurer may apportion the reasonable costs of administration, management, and operation directly among each of the EIF, BIF, and STIF and such costs will not be itemized at the Participant level. Such costs may include without limitation internal and external investment management and administrative fees and expenses.

Section 4. Deposits and Withdrawals. In order for entities to participate in AGPIP, they must open a STIF Account with the State Treasurer (if they do not already have one) and fund the account. The STIF account is used to move monies into and out of the investments in BIF and/or EIF (if eligible). STIF deposits must be made by 10 a.m. to receive same day credit, otherwise, credit will be made the following business day. Additional information regarding the establishment of a STIF account can be found at <https://www.nctreasurer.com/fod/Resources/BankingHandbook.pdf>.

- a) *Minimum Account Balance.* The minimum balance to open a new account in either BIF or EIF will generally be \$100,000 in each account. The Treasurer reserves the right to establish a de minimis account value, close Participant accounts below such de minimis value, and transfer the proceeds of applicable Participant account balances to their STIF account.
- b) *Procedures for Deposits and Withdrawals.* Once all the required enrollment documents have been completed, received, and eligibility for BIF/EIF has been confirmed and the elected accounts opened, the Participant should email a deposit and withdrawal form to AGPIP@nctreasurer.com for all accounts. BIF/EIF transactions can only be made once a month and must be submitted no later than 5 business days prior to the end of the calendar month. Transactions received 5 business days prior to the end of the calendar month will be processed on the last business day of the month and monies will be available the second business day of the next month. Should the BIF/EIF deposit and withdrawal form be received in less than five (5) business days prior to the month end, the participant must submit a new deposit/withdrawal form for the next month five (5) business days prior to the end of the calendar month.
- c) *Transfers or reallocations between STIF, BIF and or EIF.* Transfers/reallocations between investments in STIF, BIF and or EIF are permitted, subject to all of the limitations on deposits, withdrawals and other procedural requirements provided in this Section 4.
- d) A deposit and withdrawal form is not effective until it is confirmed in an email from the Treasurer to the Participant. The Participant is responsible for contacting the Treasurer if it does not receive a confirmation email.

Section 5. RELIANCE BY THIRD-PARTY TRUSTEES. THE PARTICIPANT EXPRESSLY AGREES THAT ALL OF THE ACKNOWLEDGEMENTS, REPRESENTATIONS, WARRANTIES AND AGREEMENTS MADE HEREIN MAY BE RELIED UPON BY ANY THIRD-PARTY TRUSTEE APPOINTED BY THE TREASURER.

Note: Information provided in these documents may contain Sensitive Financial and Personal Information that should not be emailed without being encrypted. If your system does not support email encryption, it is advisable that you contact AGPIP@nctreasurer.com and "cc" OPSTEAM@nctreasurer.com for potential options to deliver the information in a secure format.

The undersigned Ancillary Governmental Participant has caused this Deposit Agreement to be
executed by its Authorized Representative as of the date written below.

Ancillary Governmental Participant:

(Type or Print)

By:

Vicki Evans

Name (Type or Print)

Finance Director

Title

Signature

Date

Authorized Representative

Name: Vicki Evans

Title: Finance Director

Address: PO Box 1829

Fayetteville, NC 28302

Tel: (910) 678-7750 Fax: (910) 321-6120

E-mail: vevans@co.cumberland.nc.us

Primary Contact (for statements and communications, if
different from Authorized Representative)

Name: Ivonne Mendez

Title: Accounting Supervisor

Address: PO Box 1829

Fayetteville, NC 28302

Tel: (910) 678-7748 Fax: (910) 321-6120

E-mail: imendez@co.cumberland.nc.us

Acknowledged and Agreed: _____

Authorized Representative of Department of State Treasurer

Date: _____



ENGINEERING AND INFRASTRUCTURE DEPARTMENT

MEMORANDUM FOR THE AGENDA OF THE APRIL 9, 2020 **AGENDA SESSION**

TO: BOARD OF COUNTY COMMISSIONERS

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

DATE: 3/31/2020

SUBJECT: ENCROACHMENT AGREEMENT WITH NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (NCDOT) FOR BRAGG ESTATES WATER & SEWER DISTRICT

Requested by: AMY H. CANNON, COUNTY MANAGER

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

BACKGROUND

The Board of Commissioners (BOC) accepted and approved the Letter of Conditions from USDA Rural Development for the Bragg Estates Loan and Grant at their meeting on December 15, 2014. The following conditions were accepted; a Rural Utilities Service (RUS) loan not to exceed \$497,000, a RUS grant not to exceed \$1,453,000 and a contribution from Cumberland County of \$50,000 for a total project cost of \$2,000,000.

After the easement from the Corps of Engineers was finalized, McGill Associates and the Public Utilities Division began work to complete the design of the sanitary sewer system for the construction bid phase of the project. It has been determined that one of the items needed to move the project forward is an Encroachment Agreement with North Carolina Department of Transportation (NCDOT). This agreement is the same that has been used in previous water and sewer projects and is their standard agreement. County Legal has reviewed the agreement.

RECOMMENDATION / PROPOSED ACTION

The Engineering and Infrastructure Director and County Management recommend that the NCDOT Encroachment Agreement be placed on the April 20, 2020 Board of Commissioners agenda and the Bragg Estates Water and Sewer District agenda as a consent item.

ATTACHMENTS:

Description

Type

Encroachment Agreement

Backup Material

evidence of approval can be shown.

Provided the work contained in this agreement is being performed on a completed highway open to traffic; the party of the second part agrees to give written notice to the Division Engineer of the party of the first part when all work contained herein has been completed. Unless specifically requested by the party of the first part, written notice of completion of work on highway projects under construction will not be required.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun within one (1) year from the date of authorization by the party of the first part unless written waiver is secured by the party of the second part from the party of the first part.

During the performance of this contract, the second party, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

- a. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U. S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to,
 - (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (2) cancellation, termination or suspension of the contract, in whole or in part.
- f. Incorporation of Provisions: The contractor shall include the provisions of paragraphs "a" through "f" in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

R/W (161) : Party of the Second Part certifies that this agreement is true and accurate copy of the form R/W (161) incorporating all revisions to date.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed the day and year first above written.

DEPARTMENT OF TRANSPORTATION

BY: _____
DIVISION ENGINEER

ATTEST OR WITNESS:

W. Marshall Faircloth, Chairman

Bragg Estates Water & Sewer District
Second Party

INSTRUCTIONS

When the applicant is a corporation or a municipality, this agreement must have the corporate seal and be attested by the corporation secretary or by the empowered city official, unless a waiver of corporate seal and attestation by the secretary or by the empowered City official is on file in the Raleigh office of the Manager of Right of Way. In the space provided in this agreement for execution, the name of the corporation or municipality shall be typed above the name, and title of all persons signing the agreement should be typed directly below their signature.

When the applicant is not a corporation, then his signature must be witnessed by one person. The address should be included in this agreement and the names of all persons signing the agreement should be typed directly below their signature.

This agreement must be accompanied, in the form of an attachment, by plans or drawings showing the following applicable information:

- 1. All roadways and ramps.
- 2. Right of way lines and where applicable, the control of access lines.
- 3. Location of the existing and/or proposed encroachment.
- 4. Length, size and type of encroachment.
- 5. Method of installation.
- 6. Dimensions showing the distance from the encroachment to edge of pavement, shoulders, etc.
- 7. Location by highway survey station number. If station number cannot be obtained, location should be shown by distance from some identifiable point, such as a bridge, road, intersection, etc. (To assist in preparation of the encroachment plan, the Department's roadway plans may be seen at the various Highway Division Offices, or at the Raleigh office.)
- 8. Drainage structures or bridges if affected by encroachment (show vertical and horizontal dimensions from encroachment to nearest part of structure).
- 9. Method of attachment to drainage structures or bridges.
- 10. Manhole design.
- 11. On underground utilities, the depth of bury under all traveled lanes, shoulders, ditches, sidewalks, etc.
- 12. Length, size and type of encasement where required.
- 13. On underground crossings, notation as to method of crossing - boring and jacking, open cut, etc.

14. Location of vents.

GENERAL REQUIREMENTS

1. Any attachment to a bridge or other drainage structure must be approved by the Head of Structure Design in Raleigh prior to submission of encroachment agreement to the Division Engineer.
2. All crossings should be as near as possible normal to the centerline of the highway.
3. Minimum vertical clearances of overhead wires and cables above all roadways must conform to clearances set out in the National Electric Safety Code.
4. Encasements shall extend from ditch line to ditch line in cut sections and 5' beyond toe of slopes in fill sections.
5. All vents should be extended to the right of way line or as otherwise required by the Department.
6. All pipe encasements as to material and strength shall meet the standards and specifications of the Department.
7. Any special provisions or specifications as to the performance of the work or the method of construction that may be required by the Department must be shown on a separate sheet attached to encroachment agreement provided that such information cannot be shown on plans or drawings.
8. The Department's Division Engineer should be given notice by the applicant prior to actual starting of installation included in this agreement.



ENGINEERING AND INFRASTRUCTURE DEPARTMENT

MEMORANDUM FOR THE AGENDA OF THE APRIL 9, 2020 **AGENDA SESSION**

TO: BOARD OF COUNTY COMMISSIONERS

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

DATE: 3/31/2020

**SUBJECT: INTERLOCAL AGREEMENT WITH THE TOWN OF SPRING LAKE TO
PROVIDE SANITARY SEWER TREATMENT AND OPERATION AND
MAINTENANCE OF THE SANITARY SEWER SYSTEM FOR THE
BRAGG ESTATES WATER AND SEWER DISTRICT**

Requested by: AMY H. CANNON, COUNTY MANAGER

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

BACKGROUND

In response to the approval of the USDA Rural Utilities funding to construct a sanitary sewer system in the Bragg Estates Water and Sewer District, the Town of Spring Lake has agreed to provide sanitary sewer treatment and the operation and maintenance of the Bragg Estates sewer system. The attached agreement between the Town and the County spells out the terms and conditions of each party and is a requirement to move forward with the funding process. This agreement mirrors the interlocal agreement that is currently in place for the Overhills Water and Sewer District and the Town. County Legal has reviewed the agreement.

RECOMMENDATION / PROPOSED ACTION

The Engineering and Infrastructure Director and County Management recommend that the Interlocal Agreement be placed on the April 20, 2020 Board of Commissioners agenda and the Bragg Estates Water and Sewer District agenda as a consent item.

ATTACHMENTS:

Description
Interlocal Agreement

Type
Backup Material

**STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND**

**BRAGG ESTATES WATER & SEWER
DISTRICT SANITARY SEWER SERVICE AGREEMENT**

THIS AGREEMENT made and entered into this ____ day of _____, 2020 by and between the Town of Spring Lake, a North Carolina municipal corporation, (hereinafter referred to as “Spring Lake”), and the County of Cumberland, a North Carolina Body Politic, acting by and through its Bragg Estates Water & Sewer District, (hereinafter referred to as “Bragg Estates”).

W I T N E S S E T H

THAT WHEREAS, Bragg Estates wishes to contract with Spring Lake to furnish sanitary sewer treatment and provide for the operation and maintenance of the Bragg Estates Water & Sewer District in an area as shown on Exhibit “A” attached hereto; and

WHEREAS, Spring Lake has agreed to treat sanitary sewer for Bragg Estates to include operation and maintenance of the sanitary sewer collection system installed by Bragg Estates within the delineated service area according to the following terms and conditions:

1. The sanitary sewer collection system being constructed by Bragg Estates shall be built in accordance with engineering plans and specifications and constructed by a contractor licensed to perform utility construction in North Carolina.
2. Bragg Estates will be responsible for the cost of constructing the sanitary sewer collection system as sized accordingly to serve the delineated service area as approved by USDA with Spring Lake being responsible for upgrades, in materials and line sizing as it may deem necessary.
3. The cost of operation and maintenance of the sanitary sewer collection system is built into the sanitary sewer rate being charged to Bragg Estates as shown on Exhibit “B”. Spring Lake shall render accurate monthly bills to Bragg Estates. Such bills shall be computed by multiplying Bragg Estates’ sewer flow, expressed in thousand (M) gallons, by the applicable rate per thousand (M) gallons for this customer class. The rate per thousand (M) gallons shall be subject to change annually. Routine operation and maintenance includes: (1) Repair damaged, deteriorated, or broken sewer mains; (2) Repair damaged, deteriorated, or broken sewer service laterals from the main to edge of road right-of-way or easement; (3) Routine maintenance and repair of pump station equipment; (4) Cleaning and rodding of clogged sewer mains; (5) Repair of manholes to include rings and covers; and (6) Other routine maintenance and repairs as needed; (7) Administrative and engineering support of above, as required; (8) 24 hours, 7 days per week on-call dispatch with appropriate response forces; (9) Responding to inquiries by existing and potential users of sanitary sewer service; (10) Investigating and working to resolve complaint issues; (11) Maintaining metered electric service at pumping stations, as well as, chemicals associated with pump station operation.
4. Monthly bills rendered for services as provided hereunder are payable within 30 days from their date, at Spring Lake’s office, Town of Spring Lake, P.O. Box 617, Spring Lake, NC 28390.
5. Spring Lake will be responsible for the cost associated with upsizing mains within the delineated Bragg Estates service as may be deemed necessary in order to meet Spring Lake’s existing and future sanitary sewer needs which would not be otherwise required for the sanitary sewer collection system being installed by Bragg Estates pursuant to this Agreement.
6. All sanitary sewer lines installed by Bragg Estates that are funded with USDA loan and/or grant funds will not be charged a capacity or impact fee and shall be owned and operated by Bragg Estates subject to Spring Lake’s right to upsize such mains at its expense and to transmit sanitary sewer through such mains to areas beyond the Bragg Estates area.
7. Bragg Estates will acquire all rights-of-way and/or encroachments as may be needed for construction of the sanitary sewer collection system as referenced herein.

8. Spring Lake reserves the right to extend or continue sanitary sewer mains from such mains as initially constructed by Bragg Estates to points outside of the delineated Bragg Estates service area. Future connections or main extensions that occur outside of the delineated Bragg Estates area are not subject to this Agreement and shall be the property of Spring Lake unless the Bragg Estates boundary is expanded by mutual agreement of the parties herein in order to serve development of contiguous properties.

9. The further extension of or connection to mains within the delineated Bragg Estates service area will be pursuant to applicable extension and connection policies and procedures of Bragg Estates in effect at the time a request for service is made.

10. Bragg Estates may by resolution adopt a policy whereby future customers and/or extenders of sanitary sewer infrastructure in the Bragg Estates service area will be subject to the then current applicable Spring Lake Policies and Procedures to simplify the application process for customers with the understanding that such customers remain responsible to Bragg Estates for compliance with such policies and procedures.

11. Laterals not installed during the initial sanitary sewer collection system as constructed by Bragg Estates will be subject to the applicable lateral charge and facility investment fee charged by Spring Lake. Bragg Estates customers will not be charged a main charge by Spring Lake if located within the Bragg Estates service area on mains installed by Bragg Estates.

12. Annual Notification of Anticipated Usage and Restriction: (a) Spring Lake reserves the right and authority to limit the annual increase in usage by Bragg Estates to an amount not greater than 20% of the previous calendar year's usage. However, additional limits may be imposed if an outside agency having jurisdiction over the treatment facilities requires restrictions on increases in usage on the Spring Lake's system. Consideration will be given on a case-by-case basis to address anticipated sanitary sewer needs in excess of the above stated 20% increase; (b) any limitations or restrictions on sanitary sewer usage due to situations beyond Spring Lake's control will also apply to Bragg Estates. Bragg Estates will be responsible to ensure the individual sanitary sewer customers on its system comply with these restrictions or limitations.

13. The term of this Agreement may be amended by written agreement between Spring Lake and Bragg Estates. The term of this Agreement is for five years from _____, 2020, and at the end of each anniversary date of this Agreement, the termination date of the term of this Agreement shall automatically extend for an additional period of one year unless terminated by said parties giving not less than two years written notice to the other party including the initial term or by mutual consent of both parties.

14. *Severability*: It is hereby declared to be the intention of Spring Lake and Bragg Estates that the paragraphs, sentences, clauses and phrases of this Agreement are severable. If one or more paragraphs, sections, sentences, clauses or phrases shall be declared void, invalid or otherwise unenforceable for any reason by valid and final judgment or decree of any court of competent jurisdiction, such judgment or decree shall not affect the remaining provisions of this Agreement and the same shall continue to be fully effective and enforceable on the basis that said remaining provisions would have been agreed to by Spring Lake and Bragg Estates without the incorporation of such void, invalid or otherwise unenforceable paragraph, section, sentence, clause or phrase.

15. *Notices*: Whenever written notices are required under this Agreement, said notice shall be in writing and shall be delivered personally or shall be sent by prepaid registered or certified mail. If notice is mailed to Spring Lake, it should be addressed as follows:

Mayor, Town of Spring Lake
P.O. Box 617
Spring Lake, NC 28390

If notice is mailed to Bragg Estates, it should be addressed as follows:

Chairman, Board of Governors
Bragg Estates Water & Sewer District
P.O. Box 1829
Fayetteville, NC 28302-1829

Either party may change its mailing address by giving written notice of the new address. Unless so changed, the addresses set forth above shall apply.

18. *Binding Effect:* This contract shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns.

19. *Entire Agreement:* This contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed in writing.

20. *Governing Law:* This contract shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto through their duly authorized officers has executed this contract as to the date and year first above written.

BRAGG ESTATES WATER & SEWER DISTRICT

By: _____
W. Marshall Faircloth, Chairman

ATTEST:

Candice White, Clerk to the Board

APPROVED for Legal Sufficiency
BRAGG ESTATES Water & Sewer District
Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Rick L. Moorefield, County Attorney
Attorney for BRAGG ESTATES

Vicki Evans, Finance Director
Finance Officer for BRAGG ESTATES

THE TOWN OF SPRING LAKE

By: _____
Larry G. Dobbins, Mayor

ATTEST:

Rhonda Webb, Town Clerk

APPROVED, as to form this _____ day of _____, 2020.

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Ellis Hankins
Spring Lake Attorney

Gay Tucker, Interim Finance Director
Financial Officer for Spring Lake

NORTH CAROLINA – CUMBERLAND COUNTY

I, _____, a Notary Public of said County and State do hereby certify that _____ personally appeared before me this day and acknowledged that he/she is the Clerk to the Board of the BRAGG ESTATES Water and Sewer District, and that the authority duly given and as the act of said, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal and attested by himself/herself as its _____.

WITNESS my hand and Notarial Seal, this the _____ day of _____, 2020.

My Commission Expires:

Notary Public

NORTH CAROLINA - CUMBERLAND COUNTY

I, _____, a Notary Public of said County and State do hereby certify that _____, personally appeared before me this day and acknowledged that she is Clerk of The Town of Spring Lake, North Carolina, and that the authority duly given and as the act of the agency, the foregoing instrument was signed in its name by its Mayor, sealed with its seal and attested by himself/herself as the Town Clerk.

WITNESS my hand and Notarial Seal, this the _____ day of _____, 2020.

My Commission Expires:

Notary Public

Exhibit A

Bragg Estates Water and Sewer District

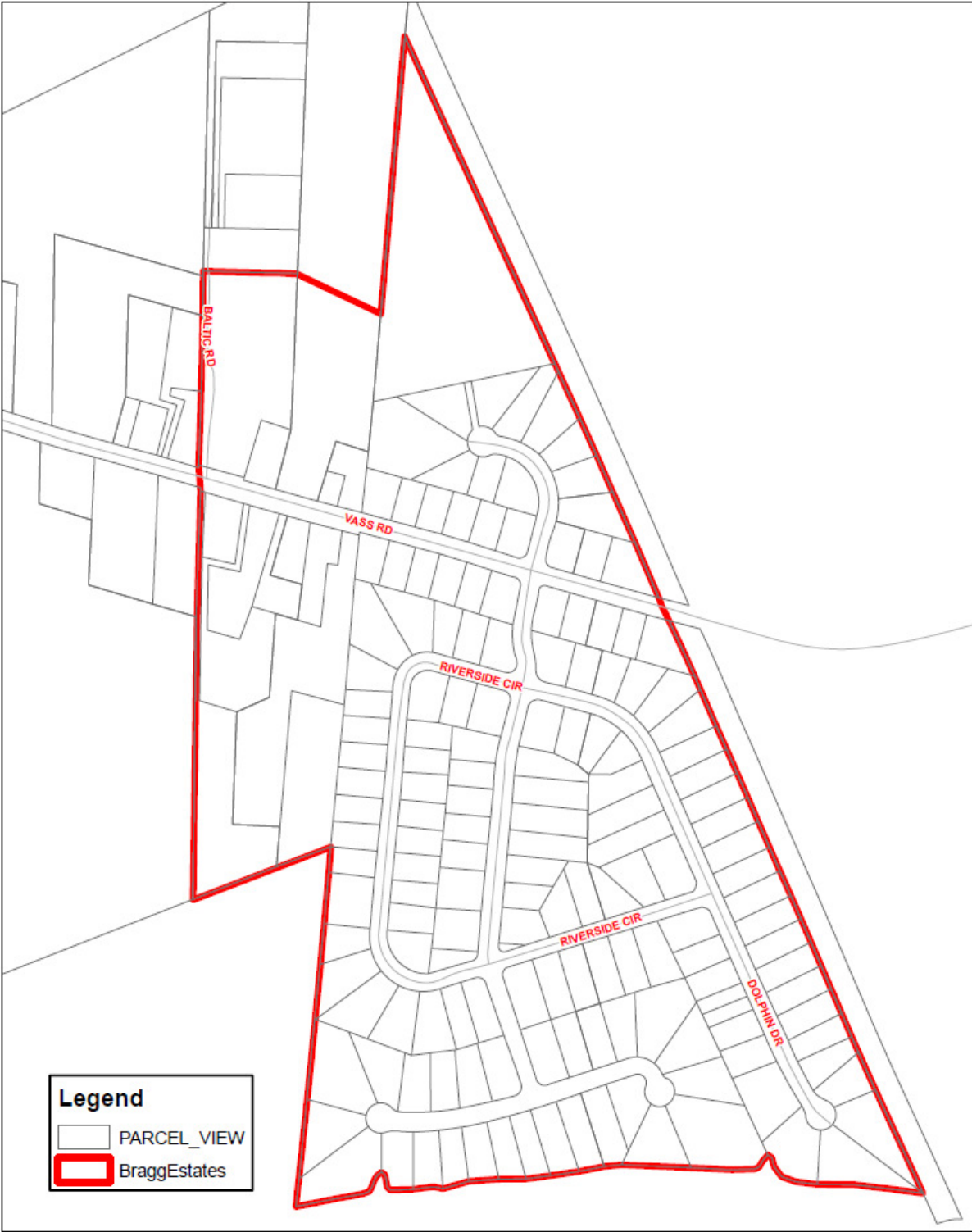


Exhibit B

Rate Schedule

\$4.00 per thousand gallons

\$9.25 per tap



ENGINEERING AND INFRASTRUCTURE DEPARTMENT

MEMORANDUM FOR THE AGENDA OF THE APRIL 9, 2020 **AGENDA SESSION**

TO: BOARD OF COUNTY COMMISSIONERS

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

DATE: 3/31/2020

SUBJECT: AMENDMENTS TO THE KELLY HILLS/SLOCOMB ROAD WATER AND SEWER DISTRICT RATE STRUCTURE

Requested by: AMY H. CANNON, COUNTY MANAGER

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

BACKGROUND

A review of the operational costs of the Kelly Hills sewer system has revealed that the current rate structure for sewer service is not meeting the operation and maintenance costs being incurred by the system nor generating revenue for future capital costs. The North Carolina Rural Water Association (NCRWA) assisted the Public Utilities Division in a rate study. The present rate structure is not generating sufficient revenue to set aside a capital reserve fund for future operation and maintenance of the system. The NCRWA recommended a rate structure that generates revenue to cover these future costs.

The rates were last changed in 2015, when the County took over billing from PWC. PWC has increased their cost to the District since this time. The attached rate structure is proposed for the Kelly Hills/Slocumb Road Water and Sewer District. The proposed rate structure will be mailed to all the customers on the system no later than June 1, 2020 and will go into effect on July 1, 2020. The existing rate structure and proposed rate structure are provided in the chart below.

	<u>Existing</u> <u>Rate</u> <u>Connected</u> <u>Customer</u>	<u>Existing Rate</u> <u>Nonconnected</u> <u>Customer</u>	<u>Proposed</u> <u>Rate</u> <u>Connected</u> <u>Customer</u>	<u>Proposed</u> <u>Rate</u> <u>Nonconnected</u> <u>Customer</u>
Flat Rate Sewer Usage	\$39.74	-	\$43.50	-
Operation and Maintenance	-	-	6.00	6.00
Availability	10.00	10.00	10.00	10.00
Administration	2.00	2.00	2.00	2.00
Total	\$51.74	\$12.00	\$61.50	\$18.00

The attached rate structure also includes a suggested rate increase of 5% per year for the next three years. During our rate study we reached out to the UNC School of Government to see how other counties handle their rate increases and this option was suggested since many other utilities employ this as a standard industry practice. The benefit of setting the rates this way allows the customers to know exactly how much the rates will be increased yearly as opposed to something different each year.

RECOMMENDATION / PROPOSED ACTION

The Engineering & Infrastructure Director and County Management recommend that the item be placed on the April 20, 2020 Board of Commissioners agenda and the Kelly Hills/Slocumb Road Governing Board agenda as a consent item.

ATTACHMENTS:

Description

Kelly Hills Rate Structure

Type

Backup Material

Kelly Hills/Slocomb Road Sanitary Sewer Rate Schedule

Monthly Rate shall be the sum of the Availability Fee, the Administration Fee and the Operation and Maintenance Fee.

Availability Fee shall be the fee charged to all customers to which a County water or sewer line has been made directly available.

RATES AS OF:	July 1, 2020	July 1, 2021	July 1, 2022	July 1, 2023
Availability Fee	\$10.00	\$10.00	\$10.00	\$10.00
Administration Fee	\$2.00	\$2.00	\$2.00	\$2.00
Operation and Maintenance Fee	\$6.00	\$6.30	\$6.62	\$6.95

Monthly Flat Rate shall be the sum of the Flat Rate Usage Charge, Availability Fee, the Administration Fee and the Operation and Maintenance Fee.

RATES AS OF:	July 1, 2020	July 1, 2021	July 1, 2022	July 1, 2023
Flat Rate Usage Charge	\$43.50	\$45.68	\$47.96	\$50.36

Other Fees

RATES AS OF:	July 1, 2020	July 1, 2021	July 1, 2022	July 1, 2023
Deposit	\$100.00	\$100.00	\$100.00	\$100.00
Late Penalty	\$10.00	\$10.00	\$10.00	\$10.00
Processing Fee per Collection Action	\$30.00	\$30.00	\$30.00	\$30.00
Administrative Filing Fee per Collection Action	\$100.00	\$100.00	\$100.00	\$100.00
Disconnect Fee (Administrative charge to discontinue service for non-payment)	\$25.00	\$25.00	\$25.00	\$25.00
Reconnect Fee - Business Hours (Administrative charge to re-establish service after discontinuance for non-payment)	\$25.00	\$25.00	\$25.00	\$25.00
After-Hours Reconnect Fee (Available until 9:00 pm)	\$75.00	\$75.00	\$75.00	\$75.00
Returned Bank Fee (Amount of bank item plus return fee - CASH, MONEY ORDER or CERTIFIED CHECK ONLY)	Per NCGS 25-3-506	Per NCGS 25-3-506	Per NCGS 25-3-506	Per NCGS 25-3-506
Court Costs	Actual	Actual	Actual	Actual
Elder Valve	Actual plus 10%	Actual plus 10%	Actual plus 10%	Actual plus 10%

Kelly Hills/Slocomb Road Sanitary Sewer Rate Schedule

Connection Fees and Charges

1. Facility Investment Fee:

The Facility Investment Fee will be based on the customer's water meter size and will provide Kelly Hills/Slocomb Road Water and Sewer District with funds for long-term system replacement and upgrade.

<u>Size of Water Meter</u>	<u>Facility Investment Fee</u>
5/8"	\$720.00
1"	\$1,800.00
1 1/2"	\$3,600.00
2"	\$5,760.00

Facility Investment Fees for water meter sizes 3" or larger shall be determined by an engineering estimate.

2. Sewer Laterals:

An estimate shall be given to the applicant prior to installation and shall be paid by the applicant prior to any installation of laterals to be connected to the sewer system. All charges include labor, equipment and materials required for the installation of the specified pipe size or sizes.

3. Main Extension Charges:

An estimate shall be given to the applicant prior to installation and shall be paid by the applicant prior to extending the main in the sewer district. All charges include labor, equipment and materials required for the installation of the specified pipe size or sizes.



ENGINEERING AND INFRASTRUCTURE DEPARTMENT

MEMORANDUM FOR THE AGENDA OF THE APRIL 9, 2020
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

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

DATE: 3/31/2020

SUBJECT: AMENDMENTS TO THE SOUTHPOINT WATER SYSTEM RATE STRUCTURE LOCATED IN THE GRAY'S CREEK WATER AND SEWER DISTRICT

Requested by: AMY H. CANNON, COUNTY MANAGER

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

BACKGROUND

The North Carolina Rural Water Association (NCRWA) recently completed a rate study for the Southpoint water system. After reviewing the operational costs of the Southpoint water system, it has revealed that the present rate structure for water service is not meeting the costs being incurred by the system for future capital costs as well as future operating and maintenance costs. The NCRWA recommended that the rate structure generate revenue to be cover anticipated future costs.

The rates have not changed since the system went live in 2013. The attached rate structure proposed for the Southpoint water system, located in the Gray's Creek Water and Sewer District, will provide adequate funding for these future costs. The proposed rate structure must be mailed to all the Southpoint customers no later than June 1, 2020 and will go into effect on July 1, 2020. The existing rate structure and proposed rate structure are provided in the chart below.

	<u>Existing</u>		<u>Proposed</u>	<u>Proposed</u>
	<u>Rate</u>	<u>Existing Rate</u>	<u>Rate</u>	<u>Rate</u>
	<u>Connected</u>	<u>Nonconnected</u>	<u>Connected</u>	<u>Nonconnected</u>

	<u>Customer</u>	<u>Customer</u>	<u>Customer</u>	<u>Customer</u>
Average Rate Water Usage (4,000 gallons)	\$32.00	-	\$33.50	-
Operation and Maintenance	-	-	2.50	2.50
Availability	10.00	10.00	10.00	10.00
Administration	2.00	2.00	2.00	2.00
Total	\$44.00	\$12.00	\$48.00	\$14.50

The attached rate structure also includes a suggested rate increase of 5% per year for the next three years for operation and maintenance and water usage. During our rate study we reached out to the UNC School of Government to see how other Counties handle their rate increases and this option was suggested since many other utilities employ this as a standard industry practice. The benefit of setting the rates this way allows the customers to know exactly how much the rates will be increased yearly as opposed to something different each year.

RECOMMENDATION / PROPOSED ACTION

The Engineering & Infrastructure Director and County Management recommend that the item be placed on the April 20, 2020 Board of Commissioners agenda and the Gray's Creek Water and Sewer District Governing Board agenda as a consent item.

ATTACHMENTS:

Description

Southpoint Rate Structure

Type

Backup Material

Southpoint Water Rate Schedule

Monthly Rate shall be the sum of the Availability Fee, the Administration Fee and the Operation and Maintenance Fee.

Availability Fee shall be the fee charged to all customers to which a County water or sewer line has been made directly available.

RATES AS OF:	July 1, 2020	July 1, 2021	July 1, 2022	July 1, 2023
Availability Fee	\$10.00	\$10.00	\$10.00	\$10.00
Administration Fee	\$2.00	\$2.00	\$2.00	\$2.00
Operation & Maintenance Fee	\$2.50	\$2.63	\$2.76	\$2.89

Monthly Water Usage Rate shall be the sum of the Water Usage Charge, Availability Fee, Administration Fee and the Operation & Maintenance Fee.

RATES AS OF:	July 1, 2020	July 1, 2021	July 1, 2022	July 1, 2023
Water Usage Charge				
0 - 2,000 Gallons	\$11.50 Minimum	\$12.08 Minimum	\$12.68 Minimum	\$13.31 Minimum
Next 4,000 Gallons	\$11.00 per 1,000 Gallons	\$11.00 per 1,000 Gallons	\$11.00 per 1,000 Gallons	\$11.00 per 1,000 Gallons
Next 2,000 Gallons	\$12.00 per 1,000 Gallons	\$12.00 per 1,000 Gallons	\$12.00 per 1,000 Gallons	\$12.00 per 1,000 Gallons
Next 2,000 Gallons	\$13.00 per 1,000 Gallons	\$13.00 per 1,000 Gallons	\$13.00 per 1,000 Gallons	\$13.00 per 1,000 Gallons
Next 40,000 Gallons	\$14.00 per 1,000 Gallons	\$14.00 per 1,000 Gallons	\$14.00 per 1,000 Gallons	\$14.00 per 1,000 Gallons
Next 50,000 Gallons	\$15.00 per 1,000 Gallons	\$15.00 per 1,000 Gallons	\$15.00 per 1,000 Gallons	\$15.00 per 1,000 Gallons
All Over 100,000 Gallons	\$16.00 per 1,000 Gallons	\$16.00 per 1,000 Gallons	\$16.00 per 1,000 Gallons	\$16.00 per 1,000 Gallons

Other Fees

RATES AS OF:	July 1, 2020	July 1, 2021	July 1, 2022	July 1, 2023
Deposit	\$100.00	\$100.00	\$100.00	\$100.00
Late Penalty	\$10.00	\$10.00	\$10.00	\$10.00
Processing Fee per Collection Action	\$30.00	\$30.00	\$30.00	\$30.00
Administrative Filing Fee per Collection Action	\$100.00	\$100.00	\$100.00	\$100.00
Disconnect Fee (Administrative charge to discontinue service for non-payment)	\$25.00	\$25.00	\$25.00	\$25.00
Reconnect Fee - Business Hours (Administrative charge to re-establish service after discontinuance for non-payment)	\$25.00	\$25.00	\$25.00	\$25.00
After-Hours Reconnect Fee (Available until 9:00 pm)	\$75.00	\$75.00	\$75.00	\$75.00
Returned Bank Fee (Amount of bank item plus return fee - CASH, MONEY ORDER or CERTIFIED CHECK ONLY)	Per NCGS 25-3-506	Per NCGS 25-3-506	Per NCGS 25-3-506	Per NCGS 25-3-506
Court Costs	Actual	Actual	Actual	Actual
Special Meter Reading (Performed at request of customer; no charge if initial reading was over-read)	\$10.00	\$10.00	\$10.00	\$10.00
Meter Verification Fee (Meter removed and taken to testing facility; performed at written request of customer; no charge if meter over-registers by more than 5%)	\$50.00	\$50.00	\$50.00	\$50.00
Flow Test	\$50.00	\$50.00	\$50.00	\$50.00

Southpoint Water Rate Schedule

Connection Fees and Charges

1. Water Laterals:

An estimate shall be given to the applicant prior to installation and shall be paid by the applicant prior to any installation of laterals to be connected to the water system. All charges include labor, equipment and materials required for the installation of the specified pipe size or sizes.

3. Main Extension Charges:

An estimate shall be given to the applicant prior to installation and shall be paid by the applicant prior to extending the main in the water district. All charges include labor, equipment and materials required for the installation of the specified pipe size or sizes.



OFFICE OF THE COUNTY MANAGER

MEMORANDUM FOR THE AGENDA OF THE APRIL 9, 2020
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

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

DATE: 3/30/2020

SUBJECT: AMENDED MEMORANDUM OF AGREEMENT FOR STATE ACQUISITION RELOCATION FUNDS WITH THE NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY - DIVISION OF EMERGENCY MANAGEMENT

Requested by: AMY H. CANNON, COUNTY MANAGER

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

BACKGROUND

This amended Memorandum of Agreement addresses the full range of hurricane grant funding that State Acquisition Relocation Funding (SARF) can be applied to. This includes DRA-17 and the FEMA Hazard Mitigation Grant Program. The amount available for SARF remains \$121,000 as it was in prior agreements.

This funding may be used by eligible applicants seeking a buyout of a hurricane-damaged residence to cover costs associated with moving, relocation, and other approved activities. There is also funding available to cover some of the County's cost for administering the program.

RECOMMENDATION / PROPOSED ACTION

Staff recommends this item be forwarded to the full Board of Commissioners for consideration as a Consent Agenda item at their April 20, 2020 regular meeting.

ATTACHMENTS:

Description

SARF Program Information

Revised SARF Memorandum of Agreement (MOA) with NCDPS-EM & Cumberland County (DRA5369-036)

Type

Backup Material

Backup Material



State Acquisition Relocation Fund (SARF) Program Information

Funds may be used to provide relocation assistance to homeowners whose primary residence was damaged during Hurricane Matthew and is being acquired in a Hazard Mitigation Grant Program (HMGP) or Disaster Recovery Act (DRA). To receive SARF assistance the homeowner must relocate within their home County.

The subgrantee identified by the Hazard Mitigation Assistance or Disaster Recovery Act project is considered the managing entity for the SARF program. \$5,500 per property is granted to the managing entity to administer the program.

Maximum Allocation: Gap Assistance-\$50,000 per property

The maximum Gap Assistance for a specific property is \$50,000. All homeowners will not need the same amount of gap assistance since all homes are different. The gap funding should not exceed \$50,000, however, should it exceed this amount North Carolina Emergency Management (NCEM) will review reasons and decide on approval. SARF assistance will be paid at closing of replacement home and will cover the gap needed to purchase replacement home. Homeowners will receive SARF assistance in the value of:

- A) The difference between the contract sales price of damaged home or the lowest comparable home
- B) The difference between the contract sales price of damaged home or replacement home

Homeowners should receive information on the availability of comparable replacement dwellings, referrals to potential replacement dwellings, and inspection of replacement dwellings to ensure that they are permanent, decent, safe and sanitary.

Maximum Allocation: Homeowner Relocation Assistance-\$5,000 per property

Any homeowner that receives SARF funds is entitled to receive expenses dedicated to moving and related moving expenses. At closing, the homeowner is eligible to receive allocation up to \$5,000, all owners will not need the same amount of funds due to the number of rooms and size of home. The actual maximum amount of assistance for each property must be calculated using the 2015 HUD "Fixed Residential Moving Cost" schedule for North Carolina:

# of ALL rooms (ex. kitchen, living room)	1 room	2 rooms	3 rooms	4 rooms	5 rooms	6 rooms	7 rooms	8 rooms	additional rooms
\$Amount	\$550	\$750	\$1050	\$1200	\$1350	\$1600	\$1700	\$1900	\$150

The homeowner will request to the closing attorney the amount they wish to receive for moving expenses, the balance of funds up to \$5,000 may be used to pay for closing costs associated with the purchase of the new property. These costs include an appraisal, survey, floodplain certification, inspection, termite inspection, title work and insurance, recording fees, property taxes, and any attorney fees for closing. These costs may be paid at or outside of closing.



State Acquisition Relocation Fund (SARF) Program Information

Eligibility Requirements

Property being acquired must be:

- Owner-occupied primary residence at the time of the event (if the structure is inhabitable)
- Located in a regulated Special Flood Hazard Area (SFHA) (i.e., AE or VE zones)
- Approved for acquisition under HMGP DR-4285, DRA 2017 or DRA 2018 program
 - Homeowner Applicants that earners greater than \$84,260 a year must demonstrate a compelling financial hardship OR the local agency must document a compelling land-use policy objective such as elimination of repetitive loss or prevention of checkerboarding of acquisitions, etc. LMI waivers should be addressed to the HMGP Project Manager and will be processed by the NCEM Hazard Mitigation Assistant Director.

Replacement property must:

- Meet HUD requirements for comparable decent, safe and sanitary dwellings, use HUD Form 52580- <https://www.hud.gov/sites/documents/52580-A.PDF>
 - For more information about HUD requirements, go to <https://www.gpo.gov/fdsys/granule/CFR-2011-title24-vol1/CFR-2011-title24-vol1-sec5-703>)
 - A comparable replacement home is:
 - Decent, safe, and sanitary.
 - Functionally equivalent to the resident's present home.
 - Available for purchase and affordable (i.e. having a monthly payment less than 30% of the participant's income)
 - Reasonably accessible to the resident's place of employment.
 - Located within a reasonable distance to public and commercial facilities, such as schools and shopping, as present home.
 - Not subject to unreasonable adverse environmental conditions.
 - Available to all persons regardless of race, color, religion, sex, or national origin.
 - Decent, safe, and sanitary housing is housing that meets local housing and occupancy requirements. Additionally, it is housing that:
 - Is structurally sound, weather-tight, and in good repair.
 - Contains a safe, adequate electrical wiring system.
 - Has adequate living space for the occupants.
 - Has a kitchen with a sink, hot and cold running water, and connections for a stove and refrigerator.
 - Has a separate, complete bathroom with hot and cold running water and sewage system.
 - Has heating as required by climatic conditions.
 - Has an unobstructed exit to safe, open space at ground level.
 - Is free of any barriers that would preclude your reasonable use of the unit, if you are a person with a physical disability.
- Be located outside of regulated floodplain areas as shown on the current Flood



State Acquisition Relocation Fund (SARF) Program Information

Insurance Rate Map (FIRM) (i.e., 100yr floodplain).

If not possible, the county must certify that no appropriate housing is available outside of floodplain. In the case of such certification, the replacement housing may be approved by NCEM if it is located in the SFHA provided that the location is in an area regulated by a unit of local government pursuant to a current floodplain management ordinance and the construction fully complies with current National Flood Insurance Program (NFIP) standards and the adopted Local Flood Damage Prevention Ordinance.

- Qualify as “real property”. Modular units are acceptable if they are permanently affixed to real property. Manufactured homes will be considered real property for this program as long as they are permanently affixed and classified as real property by the County. Under NCGS 105-273, a manufactured home (single-wide and double-wide) is considered real estate if it *“has the moving hitch, wheels, and axles removed; and is placed on the permanent foundation on land owned by the owner of the manufactured home.”*
- Relocation must be within originating County but can be waived with a letter of exception granted by the originating county allowing relocation in a contiguous county only.

Program Requirements

- For homes being acquired, priority will be given to floodway and V-zone properties as shown on the current FIRM.
- Assistance will be delivered by check at closing for the new property as documented on the HUD1 form. If the replacement home is located in a floodplain, the property owner will be required to maintain adequate flood insurance on the property for 5 years. This requirement must be included in the deed of trust recorded with the Registrar of Deeds.
- Assistance provided to permanently displaced persons must result in permanent decent, safe and sanitary housing conditions.

Application Requirements

The attached application form must be submitted by the managing entity to apply for SARF assistance.

- The applicant must verify that the properties have been approved for acquisition in the HMGP DR-4285 or DRA-17 or DRA-18 programs.
- The applicant must include a project description that outlines the following information:
 - the number of families to be relocated
 - income status of all applicants
 - estimated funding requirements (# of households x \$60,500)
 - any available relocation resources
 - whether there are suitable comparable houses within the same general geographic area
 - whether new houses need to be constructed.



State Acquisition Relocation Fund (SARF) Program Information

- The applicant's implementation strategy for the relocation activity must be described, including:
 - the method of project implementation and management (e.g., whether activities will be carried out through in-house staff, inter-local agreement, or contractors)
 - Amount of funds needed for moving expenses, such as determination of comparable replacement units, appraisals, legal fees, and advisory services for the relocation activity. These funds may not be spent on service delivery for the HMGP or DRA acquisition activity. In general, service delivery fees should not exceed \$5,500 per property; however, an applicant may request a higher level of service delivery fees if it can provide specific justification for the higher level.
 - The proposed implementation timeline and budget, specifying the number of relocations to be completed each year and the funds necessary for completing those relocations.
- A location map identifying the areas of buy-out properties and the replacement housing (if known) must be attached. If the relocation funds are expected to be used in a specific area, such as a new subdivision, a project map must be provided.

STATE OF NORTH CAROLINA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF EMERGENCY MANAGEMENT

AND

CUMBERLAND COUNTY

MEMORANDUM OF AGREEMENT (MOA)

MOA# DRA5369-036
DPS Fund Code: 24552-2X06
MOA Amount: \$121,000

County: Cumberland
Tax ID/EIN#: 56-6000291
DUNS #: 0885716900000

MOA Period of Performance: October 1, 2018 through December 31, 2022

This Memorandum of Agreement (“MOA” of “Agreement”) is made this ____ day of _____, 2020, by and between the (“Municipality/County”), and the NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, DIVISION OF EMERGENCY MANAGEMENT (“NCEM”).

WITNESSETH:

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

WHEREAS, certain buildings, facilities, personal items and equipment owned or rented by residents in the Municipality/County were damaged by floodwaters associated with the severe weather associated with Hurricane Matthew (hereinafter collectively referred to as the “storm survivors”);

WHEREAS, an expedited major disaster declaration from the President of the United States was granted on October 10, 2016 as FEMA-4285-DR-NC;

WHEREAS, Executive Order 107 issued on October 3, 2016 and amended on October 6, 2016 declared a state of emergency throughout the State;

WHEREAS, the North Carolina General Assembly passed the Disaster Recovery Act of 2016 (S.L. 2016-124 Section 4.1(4)) and directed sixty-six million two hundred twenty-eight thousand three hundred seventy dollars (\$66,228,370) to the State Emergency Response and Disaster Relief Fund to provide the State match for federal disaster assistance programs;

WHEREAS, the North Carolina General Assembly passed the Disaster Recovery Act of 2017 (S.L. 2017-119) and allocated twenty million dollars (\$20,000,000) to the Department of Public Safety, Division of Emergency Management for various projects including housing elevation, acquisition, and mitigation for homes not covered by the Hazard Mitigation Grant Program (“HMGP”), and to provide State Acquisition Relocation Funds (“SARF”), which enable low to moderate income homeowners to purchase homes;

WHEREAS, the North Carolina General Assembly in the Current Operations Appropriations Act of 2018 provided for Disaster Recovery (S.L. 2018-5, Sec. 5.6(b)(5)), twenty five million fourteen thousand seven hundred seventy six dollars (\$25,014,776) to the Department of Public Safety, Division of Emergency Management for various projects including housing elevation, acquisition, and mitigation reconstruction for homes not covered by the HMGP, and to provide SARF, which enable low to moderate income homeowners to purchase homes, and to provide flood insurance subsidies;

WHEREAS, pursuant to Executive Order No. 120, dated December 9, 2016, and the applicable statutes cited therein, including N.C. Gen. Stat. § 166A-19.41(d)(1) and (d)(3), and NCEM’s Standard Operating Procedures for Hazard Mitigation, and subject to the terms and conditions of this Agreement, NCEM will provide a grant to the Municipality/County or County for the purpose of providing State Acquisition Relocation Funds or other URA assistance to eligible storm survivors;

WHEREAS, the parties entered into Hazard Mitigation Grant Agreements for FEMA-DR-4285-NC projects, incorporated by reference herein, (Exhibit A) wherein NCEM provided funds from the Federal Emergency Management Agency (FEMA) and the North Carolina General Assembly to MUNICIPALITY/COUNTY for Hazard Mitigation projects. All terms, conditions, and provisions of the original MUNICIPALITY/COUNTY FEMA-4285-DR-NC Hazard Mitigation Grant Agreement are to apply to this MOA and are made a part of this MOA as though expressly included;

WHEREAS, the North Carolina General Assembly has made funds available through NCEM to the MUNICIPALITY/COUNTY/COUNTY for relocation assistance and tenant relocation assistance under the provisions of the Disaster Recovery Acts of 2016, 2017, and the Current Operations Appropriations Act of 2018, the Stafford Act at 42 U.S.C. 5181 and its implementing regulations at 44 C.F.R. Part 25, the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970 (URA), 42 U.S.C. 4601 et. seq., as amended, and its implementing regulations at 49 C.F.R. Part 24, 24 C.F.R. Part 42, and 24 C.F.R. 570.606, and the North Carolina Uniform Relocation Assistance and Real Property Acquisition Policies Act, N.C. Gen. Stat. §133-5 et. seq.

NOW THEREFORE, in consideration of the mutual promises contained herein, NCEM and the Municipality/County/County agree as follows:

- I. SCOPE OF SERVICES:** Pursuant to the Disaster Recovery Acts of 2016, 2017, and Current Operations Appropriations Act of 2018, the Stafford Act--42 U.S.C. 5181, 44 C.F.R. Part 25, the URA--42 U.S.C. 4601 et. seq, 49 C.F.R. Part 24, 24 C.F.R. Part 42, 24 C.F.R. 570.606, and N.C. Gen. Stat. §133-5 et. seq., the funds provided by this Agreement may be used by the MUNICIPALITY/COUNTY for State Acquisition and Relocation Funds (SARF) for relocation assistance and tenant relocation assistance in Municipality/County:
- **State Acquisition Relocation Funds (SARF)** SARF provides a gap payment up to \$50,000, to cover the difference between the funds appropriated from Session Law 2016-124, CDBG-DR, or other federal programs and the funds necessary to help a household relocate from the current damaged home to a similar housing unit outside of the special flood hazard area. In addition to the gap payment, the County may also provide applicants with up to an additional \$5,000 in relocation costs or other URA assistance as allowed in the URA-- 42 U.S.C. 4601 et. seq, 49 C.F.R. Part 24, 24 C.F.R. Part 42, 24 C.F.R. 570.606, or N.C. Gen. Stat. §133-5 et. Seq. through SARF.
 - **State Acquisition Relocation Funds (SARF)** provides management cost back to the county to support each acquisition. Each acquisition executed by the county provides the county an amount equal to \$5,500.

For any funds provided from the Disaster Recovery Act of 2017 or Current Operations Appropriations Act of 2018, only low- to moderate-income households are eligible for SARF. Households not meeting income eligibility will have to apply to NCEM for consideration of a waiver. Additional program requirements and guidelines are available in the NCEM section of NCDPS's website at

<https://www.ncdps.gov/documents/standard-operating-procedures-hazard-mitigation>.

Income Eligibility Requirements Table	
Number of household family members or full-time occupants that exceed 18 years of age:	Annual Income can be no greater than
Single occupant household	\$84,260
Two or more-person household.	\$84,260

- II. LIMITATIONS ON THE USE OF FUNDS:** The following limitations on the use of funds apply:

- a) Limited Activities: Funds provided under this Agreement may be used as described in Section I above.
- b) Submission: The MUNICIPALITY/COUNTY will submit within 30 days of signing the agreement the plans to award SARF funds to eligible applicants for eligible expenses under the Disaster Recovery Acts of 2016 and 2017, the Current Operations Appropriations Act of 2018, the URA, 49 C.F.R. Part 24, 42 U.S.C. 5181, 44 C.F.R. Parts 7, 9, 10, 18, 25, 80, 206, and 209, 2 C.F.R. Part 200, N.C. Gen. Stat. §133-5 et. seq., Chapter 166A of the North Carolina General Statutes, the State of North Carolina Administrative Plan for the HMGP, and the NCEM Standard Operating Procedures for Hazard Mitigation including but may not be limited to, Chapter 5 “URA and Relocation Assistance” which can be located at <https://www.ncdps.gov/documents/standard-operating-procedures-hazard-mitigation> and other applicable SARF program guidelines to be provided by NCEM.
- c) Federal Funding Priority: No funds provided under this Agreement may be used to cover costs that will be, or likely will be, covered by federal funds. For the purposes of this provision, costs “will be” covered by federal funds where there is a binding commitment of federal funds for the costs at issue at the particular location(s). For the purposes of this provision, costs “likely will be” covered by federal funds if there is a pending homeowner application for federal funds for the costs at issue for the particular homeowner location(s).
- d) Floodplain Limitations: No funds provided under this Agreement may be expended for the construction of or movement of a household to any location within the 100- year floodplain, unless the MUNICIPALITY/COUNTY certifies that no appropriate housing or housing sites are available outside of the floodplain and the replacement housing is approved by NCEM according to program guidelines.
<https://www.ncdps.gov/documents/standard-operating-procedures-hazard-mitigation>
 If the relocated home is in the floodplain, the homeowner shall be required to acquire and maintain flood insurance and homeowner’s insurance, and shall execute a Declaration of Covenant, Conditions and Restrictions (“Covenant”) that requires the property to be insured by flood insurance and homeowner’s insurance for the life of the home. The Covenant will be executed at Grant Closing, recorded with the County Register of Deeds and shall encumber the property in perpetuity. If the relocated home is in the floodplain, it must comply with the current National Flood Insurance Program (NFIP) and the local Flood Damage Prevention Ordinance. Any homeowner in the 100-year floodplain who receives assistance through this Agreement shall be prohibited from receiving state assistance for future flood events if that homeowner fails to maintain flood insurance after receiving assistance through this Agreement. Such homeowners must be notified of this requirement when receiving assistance through this Agreement.
<https://www.ncdps.gov/documents/standard-operating-procedures-hazard-mitigation>
 North Carolina will follow federal HUD and HMGP guidance to ensure all structures meet guidelines spelled out in 24 C.F.R. Part 55 and 44 C.F.R. Parts 60 and 80.
- e) Insurance Subrogation: Pursuant to the Disaster Recovery Acts of 2016, 2017 and the Current Operations Appropriations Act of 2018, if a person’s home is relocated with funds from the Hazard Mitigation Grant Program or the State Acquisition and Relocation Fund, the applicant receiving the state assistance shall authorize and approve that the State Emergency Response and Disaster Relief Fund be subrogated to the

person's rights to secure insurance coverage for damage to the original home, and any monies received from the insurance coverage shall be paid to the State Emergency Response and Disaster Relief Fund. The MUNICIPALITY/COUNTY shall ensure that those homeowners or applicants potentially affected by this section are notified of, and adhere to, its requirements.

- f) Applicant Equity to Other Recovery Programs: The homeowner or applicant who applies to the MUNICIPALITY/COUNTY or NCEM for benefits under this Agreement should not receive benefits or compensation that would materially exceed benefits that are provided for similar activities by the State of North Carolina's CDBG-DR Housing Recovery Programs. Any exceptions to these limitations will be handled on a case-by-case basis and must be supported by a compelling justification. Regarding Duplication of Benefits ("DOB"), any funds from FEMA, SBA, insurance companies, nonprofits or any other source that are received by homeowner(s) for damage to the residence for the rehabilitation, elevation or replacement to the home must be deducted from the homeowner(s) award amount as a DOB.
- g) If the new residence is a manufactured home, the manufactured home unit must be permanently affixed and qualify as real property.
- h) Regarding Disbursement of Funds, SARF for Homeowners/GAP Assistance for the purchase of a new property under the HMGP Program will be disbursed by check and listed as a line item on the Settlement Statement at closing. If closing has already occurred the check may be disbursed directly to the homeowner(s). SARF for Homeowners/URA and SARF for Renters/URA assistance for moving and approved relocation expenses will be disbursed by check, payable to the Homeowner(s) or involuntarily displaced persons.

III. COMPENSATION: NCEM will provide the Municipality/County \$121,000 out of either the Disaster Recovery Acts of 2016, 2017, or Current Operations Appropriations Act of 2018 under this Agreement.

The entirety of the Agreement amount is a grant to the Municipality/County by NCEM. The Municipality/County will submit quarterly reports on January 15, April 15, July 15, and October 15 to document the use of the funds expended in the prior three-month period, provided that documentation for the use of all funds under this Agreement must be submitted no later than January 15, 2023. The term of the agreement may be extended upon written request of the Municipality/County to the NCEM. Quarterly reports shall be submitted to the following address to the North Carolina Department of Public Safety/Division of Emergency Management:

NCDPS-Division of Emergency Management
Hazard Mitigation Section
4238 Mail Service Center
Raleigh, NC 27699-4238

Any funds not expended by December 31, 2022 are subject to the claw-back or deobligation provisions of Paragraph V below.

- IV. REIMBURSEMENT:** All cost must be verified through receipts and other documentation. Payment shall be submitted to the Municipality/County after receipt of completed and documented invoices, within 15 business days after receipt of invoices. Cost reports and invoices shall be submitted to the following address to the North Carolina Department of Public Safety/Division of Emergency Management:

NCDPS-Division of Emergency Management
Hazard Mitigation Section
4238 Mail Service Center
Raleigh, NC 27699-4238

The Municipality/County must include an original, signed copy of each cost report.

- V. CLAW-BACK OR DEOBLIGATION:** NCEM reserves the right to de-obligate any remaining award funds after this Agreement's expiration date or before the expiration date of this Agreement, should the Municipality/County violate the terms of this Agreement or should it become apparent that the Municipality/County will not be able to expend the funds prior to the expiration date of this Agreement. Before taking action, NCEM will provide the Municipality/County 15 days' notice of intent to impose corrective measures and will make every effort to resolve the problem informally.
- VI. REGULATION:** The funds awarded under this Agreement must be used in compliance with all applicable state and federal laws, rules, regulations, ordinances, codes, licensing requirements, policy or guidance governing their use. By accepting this payment, the below official agrees to use these funds in a manner consistent with federal and state laws and regulations.
- VII. TAXES:** The Municipality/County shall be responsible for all taxes.
- VIII. WARRANTY:** The Municipality/County will hold NCEM harmless for any liability and personal injury that may occur from or in connection with the performance of this Agreement to the extent permitted by the North Carolina Tort Claims Act. Nothing in this Agreement, express or implied, is intended to confer on any other person any rights or remedies in or by reason of this Agreement. This Agreement does not give any person or entity other than the parties hereto any legal or equitable claim, right or remedy. This Agreement is intended for the sole and exclusive benefit of the parties hereto. This Agreement is not made for the benefit of any third party. No third party may enforce any part of this Agreement or shall have any rights hereunder. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement. Nothing herein shall be construed as a waiver of the sovereign immunity of the State of North Carolina.

- IX. POINTS OF CONTACT:** To provide consistent and effective communication between the NCEM and the Municipality/County, each party shall appoint a Principal Representative(s) to serve as its central point of contact responsible for coordinating and implementing this AGREEMENT.

The NCEM contact shall be Assistant Director for Mitigation or his designee.

The Municipality/County contact shall be Assistant County Manager William Tracy Jackson or her/his designee.

- X. PUBLIC RECORD ACCESS:** This Agreement may be subject to the North Carolina Public Records Act, Chapter 132 of the North Carolina General Statutes.
- XI. AUDITING & ACCESS TO PERSONS AND RECORDS:** Staff from the North Carolina Office of State Auditor, NCEM, Office of State Budget and Management, or other applicable state agency internal auditors shall have access to Municipality/County officers, employees, agents and/or other persons in control of and/or responsible for the records that relate to this Agreement for purposes of conducting audits and independent evaluations. These parties shall also have the right to access and copy any and all records relating to the Agreement during the term of the Contract and within two years following the completion of project close-out, to verify accounts, accuracy, information, calculations and/or data affecting and/or relating to payments, requests for change orders, change orders, claims for extra work, requests for time extensions and related claims for delay/extended general conditions costs, claims for lost productivity, claims for loss efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, and/or any other type of claim for payment or damages from NCEM, or associated state parties and affected homeowners.
- XII. SITUS:** This Agreement shall be governed by the laws of North Carolina and any claim for breach or enforcement shall be filed in state court in Wake County, North Carolina.
- XIII. ANTITRUST LAWS:** This Agreement is entered into in compliance with all State and Federal antitrust laws.
- XIV. E-VERIFY:** If this Agreement is subject to N.C. Gen. Stat. § 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
- XV. OTHER PROVISIONS/SEVERABILITY:** Nothing in this Agreement is intended to conflict with current laws or regulations of the State of North Carolina, Department of Public Safety, North Carolina Emergency Management, or the Municipality/County. If a term of this Agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this Agreement shall remain in full force and effect.
- XVI. COMPLIANCE:** The Municipality/County shall be wholly responsible for financing to be made under this AGREEMENT and for the supervision of its employees and

assistants. The Municipality/County shall be responsible for compliance with all laws, ordinances, codes, rules, regulations, licensing requirements and other regulatory matters that are applicable to the conduct of its business and purchase requirements performed under this AGREEMENT.

XVII. ENTIRE AGREEMENT: This Agreement and any annexes, exhibits and amendments annexed hereto and any documents incorporated specifically by reference represent the entire Agreement between the parties and supersede all prior oral and written statements or agreements.

XVIII. MODIFICATION: The Municipality/County certifies that the undersigned possesses the authority to legally execute and bind Municipality/County to the terms of this MOA. This MOA may be amended only by written amendments duly executed by all of the undersigned or their successors including but may not be limited to, the Secretary of the Department of Public Safety and the Municipality/County's manager.

XIX. TERMINATION: The terms of this Agreement, as modified with the consent of all parties, will remain in effect until December 31, 2022.

The Parties may terminate this Contract by mutual written consent with thirty (30) days prior written notice to the Parties, or as otherwise provided by law.

NCEM may suspend, reduce, or terminate its obligations under this Agreement, in whole or in part, upon thirty (30) days' notice, whenever they determine that the Municipality/County has failed to comply with any term, condition, requirement, or provision of this Agreement. 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 Municipality/County or a subsequent Municipality/County in the observance or performance of any of the terms, conditions or covenants of this Agreement.
- b) Misrepresentation. If any representation or warranty made by the Municipality/County 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.
- c) Abandonment of the Project. If Municipality/County abandons or otherwise ceases to continue to make reasonable progress towards completion of the Project.

NCEM shall promptly notify the Municipality/County, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect. Upon termination, NCEM retains the right to recover any improper expenditures from the Municipality/County and the Municipality/County shall return to NCEM any improper expenditures no later than thirty (30) days after the date of demand or termination of the agreement.

In the event of termination, NCEM shall require the return of unspent funds. NCEM may, in its sole discretion, allow the Municipality/County 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.

XX. STANDARD CONDITIONS: NCEM and MUNICIPALITY/COUNTY agree that NCEM's performance and obligation to pay under this Agreement is contingent upon state fund availability. NCEM's performance and obligation to pay under this MOA is contingent upon an annual appropriation by the Legislature and is contingent upon Congress providing Hazard Mitigation Grant Program funds for projects.

XXI. EXECUTION AND EFFECTIVE DATE: This Agreement shall become effective upon return of this original Memorandum of Agreement, properly executed on behalf of the Municipality/County, to NCEM and will become binding upon execution of all parties to the Agreement. The terms of this Agreement will be effective as of the date of execution. The last signature shall be that of Erik A. Hooks, Secretary for the North Carolina Department of Public Safety.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
[signatures on following pages]

IN WITNESS WHEREOF, the parties have each executed this Agreement, which shall be effective upon the date of the last signature below.

William Tracy Jackson
Assistant County Manager
Cumberland County

Date

Michael A. Sprayberry, Director
North Carolina Emergency Management

Date

Erik A. Hooks
Secretary
North Carolina Department of Public Safety

Date

DocuSigned by:



1/8/2020 | 09:48:44 AM EST

Will Polk, Assistant General Counsel

Date

Reviewed for the Department of Public Safety

DocuSigned by:



1/8/2020

Darlene Langston, Budget Director

Date

North Carolina Department of Public Safety



OFFICE OF THE COUNTY MANAGER

MEMORANDUM FOR THE AGENDA OF THE APRIL 9, 2020
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM:

DATE:

SUBJECT: MEETINGS

Requested by:

Presenter(s):

BACKGROUND

May 14, 2020 (Thursday) 1:00 P.M.

June 11, 2020 (Thursday) 1:00 P.M.