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**AGENDA**  
**CUMBERLAND COUNTY BOARD OF COMMISSIONERS**  
**REGULAR AGENDA SESSION**  
**JUDGE E. MAURICE BRASWELL**  
**CUMBERLAND COUNTY COURTHOUSE - ROOM 564**  
**MAY 13, 2021**  
**1:00 PM**

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INVOCATION- Commissioner Jimmy Keefe

PLEDGE OF ALLEGIANCE

1. APPROVAL OF AGENDA
2. APPROVAL OF MINUTES
  - A. April 8, 2021 Agenda Session Regular Meeting Minutes
3. PRESENTATIONS
  - A. Introduction of Federal Legislative Consulting Team
  - B. Cumberland-Hoke Regional Hazard Mitigation Plan
  - C. Homeless Day Center by Chris Cauley, City of Fayetteville, Interim Community Development Director
  - D. Redesigned Website Demonstration
4. CONSIDERATION OF AGENDA ITEMS
  - A. Request to Establish Sheriff's Office I.T. Positions Based Upon Contractual Agreements with Hope Mills and Spring Lake and Associated Budget Ordinance Amendment # B211224
  - B. Health Insurance Plan Changes Related to Pharmacy Rebates
  - C. Extension of the Health and Benefits Brokerage and Consulting Agreement with USI
  - D. Selection of State Centric Hazard Mitigation Program Option
  - E. Revisions to the Animal Control Ordinance
  - F. Text Amendment to Chapter 4, Article IV - Minimum Housing Code
  - G. Commissioners' Meeting Room Update
  - H. Renewal of a Lease Agreement with Easter Seals UCP of North Carolina and Virginia, Inc.
  - I. Renewal of a Lease Agreement with Cumberland County Communicare, Inc.
  - J. Professional Services Agreement with Innovative Emergency Management to Administer the Emergency Rental Assistance Program

- K. Funding Agreement with Kingdom Community Development Corporation
  - L. Policy Prohibiting Sales of Surplus Property to Bidders with Delinquent Property Taxes
  - M. Grant of Utility Easement to the City of Fayetteville
  - N. NCDOT Notice of Necessity to Relocate a Grave at 7945 Camden Road, Fayetteville
5. OTHER ITEMS
- A. City/County Liaison Committee Update
  - B. Headquarters Library Storm Drainage and Parking Lot Repairs Update
  - C. Grants Manager Position
  - D. Manager's Update: Board Priorities and the FY2022 Recommended Budget
6. MONTHLY REPORTS
- A. Financial Report
  - B. Health Insurance Update
  - C. Coronavirus Relief Funds (CRF) Plan Update
  - D. Southern Health Partners, Inc. Quarterly Statistical Report on Inmate Health Care
  - E. Community Development Block Grant - Disaster Recovery (CDBG-DR) Update
  - F. Project Updates
7. CLOSED SESSION: If Needed

**ADJOURN**

**AGENDA SESSION MEETINGS:**

**June 10, 2021 (Thursday) 1:00 PM**

**\*\*There are No Meetings in July\*\***



**ASSISTANT COUNTY MANAGER STRATEGIC MANAGEMENT/ GOVERNMENTAL  
AFFAIRS**

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021  
AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: SALLY SHUTT, ASSISTANT COUNTY MANAGER**

**DATE: 5/7/2021**

**SUBJECT: INTRODUCTION OF FEDERAL LEGISLATIVE CONSULTING TEAM**

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

**Presenter(s): RON HAMM, THE HAMM CONSULTING GROUP**

**BACKGROUND**

The Board of Commissioners has hired the Hamm Consulting Group to provide federal legislative consulting services. Lobbyists Ron Hamm, Leslie Mazingo and Debra Bryant will be introduced and provide a brief update on the American Rescue Plan and other funding opportunities. The team will be meeting with the commissioners and Leadership Team later in May to develop the County's Federal Legislative Action Plan

**RECOMMENDATION / PROPOSED ACTION**

For information purposes only.



## **EMERGENCY SERVICES DEPARTMENT**

### **MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021** **AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: GENE BOOTH, EMERGENCY SERVICES DIRECTOR**

**DATE: 4/14/2021**

**SUBJECT: CUMBERLAND-HOKE REGIONAL HAZARD MITIGATION PLAN**

**Requested by: TRACY JACKSON, ASSISTANT COUNTY  
MANAGER/ENVIRONMENTAL & COMMUNITY SAFETY**

**Presenter(s): GENE BOOTH AND CONSULTANTS FROM AECOM**

#### **BACKGROUND**

Many natural disasters are predictable, and much of the damage caused by these events can be reduced or eliminated. In an effort to reduce the mounting disaster losses, the U.S Congress passed the Disaster Mitigation Act of 2000. This act emphasized the need for State and Local Government to closely coordinate on mitigation planning activities and made the development of a hazard mitigation plan a specific eligibility requirement for any local government applying for federal mitigation grant funds. These funds include the Hazard Mitigation Grant Program, Pre-disaster Mitigation Program, and Flood Mitigation Assistance Program, all of which are administered by the Federal Emergency Management Agency (FEMA). The hazard mitigation plan must be updated every 5 years, and in many cases plans are done on a regional basis to be more cost effective.

Cumberland and Hoke Counties in conjunction with AECOM, FEMA Region IV, North Carolina Emergency Management, and community representatives worked together to update the existing plan. This process was inclusive of a Hazard Mitigation Planning Committee that included all the jurisdictions of both Cumberland and Hoke counties, private business, and volunteer organizations. A public meeting was also held on February 27<sup>th</sup>, 2020 to get input from the public. The updated plan has been reviewed by the State and is currently awaiting FEMA review.

Staff will introduce representatives from AECOM who will provide a brief overview of the plan and updates that have been made to it. Staff is also seeking any comments or feedback the Board may have regarding the

plan.

The full plan can be accessed at the following link:

[https://www.co.cumberland.nc.us/docs/default-source/emergency-services-documents/hazard-mitigation-plan-final-draft.pdf?sfvrsn=3064fdb5\\_0](https://www.co.cumberland.nc.us/docs/default-source/emergency-services-documents/hazard-mitigation-plan-final-draft.pdf?sfvrsn=3064fdb5_0)

### **RECOMMENDATION / PROPOSED ACTION**

Cumberland County Emergency Services is recommending that the Cumberland County Board of Commissioners adopt a resolution supporting the changes and updates reflected in the Cumberland-Hoke Regional Hazard Mitigation Plan as an item of business at its May 17, 2021 Regular Meeting.

### **ATTACHMENTS:**

Description	Type
AECOM Cumberland-Hoke HMP PPT	Backup Material
Resolution Draft 2021	Backup Material

# ***Cumberland Hoke Regional Hazard Mitigation Plan***

# What is Hazard Mitigation?

- Any sustained actions taken to reduce or eliminate the long-term risk to human life and property from hazards.
- Continuous, on-going process
- Pre- and post-disaster



# What is Hazard Mitigation?

- A few examples
- Elevating homes in floodplains
- Levees and floodwalls
- Stronger building codes
- Land use planning
- Safe rooms



# Why are we doing this?

- Long Term Goal
- Reduce disaster losses
- Loss of Life
- Damage to Property
- Economic impacts
- Social impacts



# Why are we doing this? Hazard Mitigation Benefits

- Mitigation saves money
- Every 1 invested will save 6
- Mitigation creates safer, more resilient communities
- Break the cycle of disaster damage
- Mitigation speeds disaster recovery

# Why are we doing this?

- Required for Federal Grant Eligibility Annually
- Pre-Disaster Mitigation Competitive (PDM-C)
- Flood Mitigation Assistance (FMA)
- Hazard Mitigation Grant Program (HMGP)
- Building Resilient Infrastructure and Communities (BRIC)
- Disaster Mitigation Act of 2000 (DMA2K) requires a local plan to be in place for the above programs
- Emphasizes a proactive approach to emergency management prevent damages before the disaster



# NC SENATE BILL 300

- Passed in June of 2001, amends the North Carolina Emergency Management Act (166A)
- Requires local hazard mitigation plans in order to maintain eligibility for Public Assistance (PA) for state-declared disasters

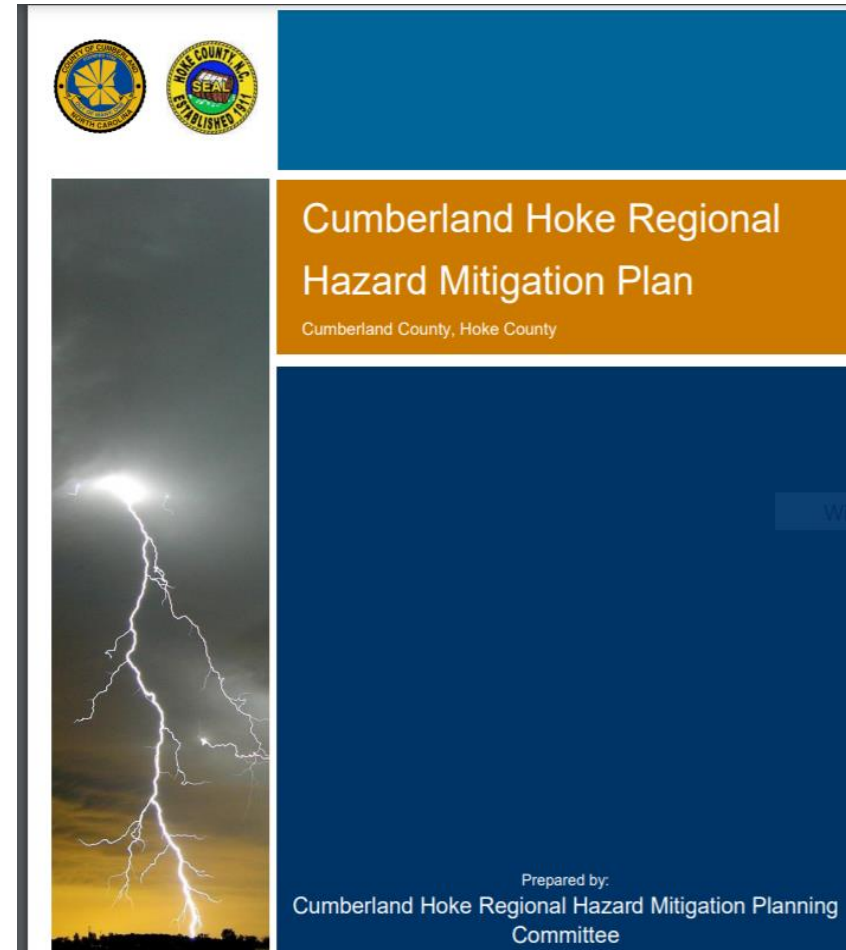
GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

SESSION LAW 2001-214  
SENATE BILL 300

AN ACT TO AMEND THE LAWS REGARDING EMERGENCY MANAGEMENT  
AS RECOMMENDED BY THE LEGISLATIVE DISASTER RESPONSE AND  
RECOVERY COMMISSION.

# Cumberland Hoke Regional Hazard Mitigation Plan

- Funded with a Federal HMGP Grant (Hurricane Matthew)
- NCEM is managing the grant & providing contractor support
- No local match requirement (State is covering)



# Cumberland Hoke Participating Jurisdictions

- Cumberland County
  - Eastover
  - Falcon
  - Fayetteville
  - Godwin
  - Hope Mills
  - Linden
  - Spring Lake
  - Stedman
  - Wade
- Hoke County
  - Raeford

# Mitigation Planning Cycle



# Local Plan - Minimum Criteria Description of the planning process

- Risk assessment
- Mitigation strategy
- Plan maintenance process
- Adopted by local governing body
- Reviewed by state and federal government



Local Multi-Hazard  
Mitigation Planning  
Guidance  
July 1, 2008



# Hazard Identification: State of North Carolina Hazard Mitigation Plan Hazards

Natural Hazards	Technological Hazards
<p>Flooding</p> <p>Hurricanes and Coastal Hazards</p> <p>Severe Winter Weather</p> <p>Excessive Heat</p> <p>Earthquakes</p> <p>Wildfires</p> <p>Dam Failures</p> <p>Drought</p> <p>Tornadoes/Thunderstorms</p> <p>Geological</p> <ul style="list-style-type: none"><li>– Landslides/Rock Fall</li><li>– Sinkholes</li></ul> <p>Infectious Disease</p>	<p>Hazardous Substances</p> <ul style="list-style-type: none"><li>– Hazardous Materials</li><li>– Hazardous Chemicals</li><li>– Oil Spill</li></ul> <p>Radiological Emergency – Fixed Nuclear Facilities</p> <p>Terrorism</p> <ul style="list-style-type: none"><li>– Chemical</li><li>– Biological</li><li>– Radiological</li><li>– Nuclear</li><li>– Explosive</li></ul> <p>Cyber</p> <p>Electromagnetic Pulse</p>

# Hazards Addressed in Cumberland Hoke

- Dam Failure
- Drought
- Extreme Heat
- Earthquake
- Flood
- Hurricane Tropical Storm
- Severe Weather
- Tornado
- Wildfire
- Winter Storm

# Maintenance, Adoption Approval

- Update plans every 5 years.
- Adopted plan required for eligibility for future mitigation funding.
- Each jurisdiction must adopt.
- Local plans submitted to State Hazard Mitigation Officer (SHMO) for initial review.
- SHMO forwards local plans to FEMA region for final review and approval.

- The Planning Process is as important, if not more important, than the document itself

RESOLUTION  
ADOPTING CUMBERLAND-HOKE REGIONAL  
HAZARD MITIGATION PLAN

WHEREAS, the citizens and property within Cumberland County are subject to the effects of natural hazards that pose threats to lives and cause damage to property, and with the knowledge and experience that certain areas of the county are particularly vulnerable to drought, extreme heat, hailstorm, hurricane and tropical storm, lightning, thunderstorm wind/high wind, tornado, winter storm and freeze, flood, hazardous material incident, and wildfire; and

WHEREAS, the County desires to seek ways to mitigate the impact of identified hazard risks; and

WHEREAS, the Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Legislature of the State of North Carolina has enacted General Statute Section 166A-19.41 (*State emergency assistance funds*) which provides that for a state of emergency declared pursuant to G.S. 166A-19.20(a) after the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act; and.

WHEREAS, Section 322 of the Federal Disaster Mitigation Act of 2000 states that local governments must develop an All-Hazards Mitigation Plan in order to be eligible to receive future Hazard Mitigation Grant Program Funds and other disaster-related assistance funding and that said Plan must be updated and adopted within a five year cycle; and

WHEREAS, the County of Cumberland has performed a comprehensive review and evaluation of each section of the previously approved Hazard Mitigation Plan and has updated the said plan as required under regulations at 44 CFR Part 201 and according to guidance issued by the Federal Emergency Management Agency and the North Carolina Division of Emergency Management.

WHEREAS, it is the intent of the Board of Commissioners of Cumberland County to fulfill this obligation in order that the County will be eligible for federal and state assistance in the event that a state of disaster is declared for a hazard event affecting the County;

NOW, THEREFORE, be it resolved that the Board of Commissioners of Cumberland County hereby:

1. Adopts the Cumberland-Hoke Regional Hazard Mitigation Plan.
2. Vests Cumberland County Emergency Services with the responsibility, authority, and the means to:
  - (a) Inform all concerned parties of this action.
  - (b) Cooperate with Federal, State and local agencies and private firms which undertake to study, survey, map and identify floodplain areas, and cooperate with neighboring communities with respect to management of adjoining floodplain areas in order to prevent exacerbation of existing hazard impacts.
3. Appoints Cumberland County Emergency Services to assure that the Hazard Mitigation Plan is reviewed annually, and every five years as specified in the Plan to assure that the Plan is in compliance with all State and Federal regulations and that any needed revisions or amendments to the Plan are developed and presented to the Davidson County Board of Commissioners for consideration.
4. Agrees to take such other official action as may be reasonably necessary to carry out the objectives of the Hazard Mitigation Plan.

Adopted this the \_\_\_\_ day of May, 2021.

\_\_\_\_\_  
Charles Evans, Chair  
Cumberland County Board of Commissioners

Attest:

\_\_\_\_\_  
Candice White, Clerk  
Cumberland County Board of Commissioners

Certified by: \_\_\_\_\_ (SEAL)

Date: \_\_\_\_\_



**OFFICE OF THE COUNTY MANAGER**

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: ANGEL WRIGHT-LANIER, ASSISTANT COUNTY MANAGER**

**DATE: 5/6/2021**

**SUBJECT: HOMELESS DAY CENTER BY CHRIS CAULEY, CITY OF FAYETTEVILLE, INTERIM COMMUNITY DEVELOPMENT DIRECTOR**

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

**Presenter(s): CHRIS CAULEY, CITY OF FAYETTEVILLE, INTERIM COMMUNITY DEVELOPMENT DIRECTOR**

**BACKGROUND**



Chris Cauley, City of Fayetteville, Interim Community Development Director will share a power point presentation and update regarding the Homeless Day Center. This presentation is being provided based upon discussion at the City/County Liaison Meeting on April 16, 2021.

**RECOMMENDATION / PROPOSED ACTION**

For discussion purposes only. No action needed.

**ATTACHMENTS:**

Description	Type
051321-Day Resource Center Power Point	Backup Material



# Day Resource Center Update

*May 13, 2021 BoCC Agenda Session*

- What is a Day Resource Center?
- Grant Background and Uses
- Project Timeline
- Next Steps and Operating

Since I'm new here...

Christopher Cauley

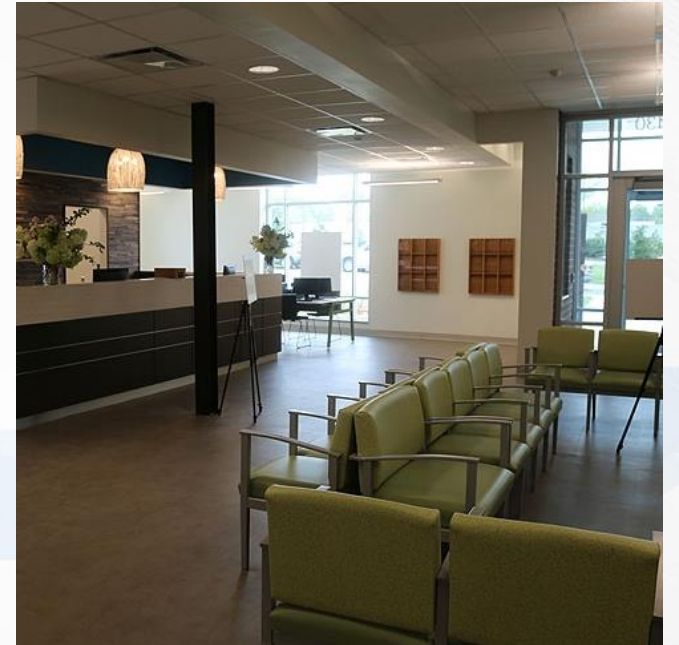
Acting Economic and Community  
Development Director

Economic and Community  
Development Department



# What is a Day Resource Center?

- Multipurpose facility designed to serve the needs of persons experiencing homelessness (not a shelter)
- Convergence of service providers to assist people who are typically transportation challenged



# Where is the Money from?

**Funder**  
US Department of  
Housing and Urban  
Development (HUD)

**Grantee**  
Department of Public  
Safety, North Carolina  
Office of Recovery &  
Resiliency (NCORR)

**Subrecipients**  
County Governments;  
Units of Local  
Government; Non-  
Profit Organizations

**Contractors**  
Consultants,  
Construction,  
Engineers,  
Environmental etc.

## NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY

- A New Office with a dedicated focus
- Certified on July 1, 2019 as the grantee for Hurricane Matthew and Hurricane Florence assistance
- Centralized structure for processing and issuing CDBG-DR awards
- Institutionalizing processes for handling federal grants, resulting in quicker, more efficient assistance



- PRIMARY USE – Increase capacity of emergency shelters in Fayetteville and Cumberland County as a whole
- Since we're going to build it for that reason – use it as a Day Resource Center when not engaged in primary use
- Build resiliency in at risk population so less are impacted to need emergency shelter
- Funds can be used to:
  - Buy the land
  - Design the facility
  - Construction
  - Equipment that is essential to the operation of the facility



- **Summer of 2019** NCORR officially became the Grantee for the CDBG-DR Program and began to standardize our agreements with Subrecipients.
- **Fall –Winter 2019** Subrecipients received and executed new agreements.
- **December 17, 2019** City of Fayetteville executed agreement with NCORR
- **March of 2020** Architect selected (IBI)
- **April of 2020** Fountainworks engaged for community focus groups
- **May of 2020** conducted focus groups and community survey
- **June of 2020** Architect space projection and site analysis
- **August of 2020** Sought Council consensus of potential sites
- **September of 2020** Closed session with Council on potential site

- Finalize Environmental Review
- Award full design
- Bid construction

Meanwhile....

- Develop an operator
- Figure out operating budget and funding sources
- Partnerships, Partnerships, Partnerships



# Questions?



[FayettevilleNC.gov](http://FayettevilleNC.gov)



**ASSISTANT COUNTY MANAGER STRATEGIC MANAGEMENT/ GOVERNMENTAL  
AFFAIRS**

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021  
AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: SALLY SHUTT, ASSISTANT COUNTY MANAGER**

**DATE: 5/6/2021**

**SUBJECT: REDESIGNED WEBSITE DEMONSTRATION**

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

**Presenter(s): SALLY SHUTT AND KEITH TODD, INFORMATION SERVICES  
TECHNOLOGY DIRECTOR**

**BACKGROUND**

Staff from the Information Services Technology and Public Information Department are nearing completion of an in-house redesign of the Cumberland County website. The website demonstration will highlight new navigation tiles, the incorporation of the Public Library's website under the County's umbrella and the integration of GIS applications on departmental pages, among other features.

To coincide with the launch of the redesigned website, the County wishes to change the domain name from *co.cumberland.nc.us* to *cumberlandnc.gov*. The DotGov Program, part of the [Cybersecurity and Infrastructure Security Agency](#), operates the .gov top-level domain (TLD) and makes it available to U.S.-based government organizations, from federal agencies to local municipalities. The .gov domain easily identifies government services on the internet and ensures additional levels of security of government entities.

In addition to feedback from the board on the redesign, we are seeking the board's consensus on changing the domain name from *co.cumberland.nc.us* to *cumberlandnc.gov* and having the chairman submit a .gov domain registration request letter to the .gov program.

**RECOMMENDATION / PROPOSED ACTION**

Provide feedback on the redesigned website and agree by consensus to change the domain name to [cumberlandnc.gov](http://cumberlandnc.gov) and to have the Chairman submit a request letter to the .gov program.



## **SHERIFF'S OFFICE**

### **MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021 AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: SHERIFF ENNIS WRIGHT**

**DATE: 5/3/2021**

**SUBJECT: REQUEST TO ESTABLISH SHERIFF'S OFFICE I.T. POSITIONS  
BASED UPON CONTRACTUAL AGREEMENTS WITH HOPE MILLS  
AND SPRING LAKE AND ASSOCIATED BUDGET ORDINANCE  
AMENDMENT # B211224**

**Requested by: SHERIFF ENNIS WRIGHT**

**Presenter(s): MAJOR TERRY RAY AND STEPHEN JELINEK**

### **BACKGROUND**

Attached you will find a memorandum from Sheriff Ennis Wright requesting two Department IT Support Specialist I positions for the Sheriff's Office Information Technology section. The annualized cost of both positions is \$128,884 and the cost for this fiscal year is \$21,481. Personnel costs will be reimbursed by the Town of Hope Mills and Town of Spring Lake per contractual agreements. No additional County funding is required for this action.

### **RECOMMENDATION / PROPOSED ACTION**

Sheriff Wright request the following action be placed on the May 17, 2021 Board of Commissioners' meeting: Approve the establishment of two new positions in the Sheriff's Office Information Technology section and approve the associated Budget Ordinance Amendment B211224.

### **ATTACHMENTS:**

Description	Type
Sheriff's Office Request for IT Positions	Backup Material



**Cumberland County  
SHERIFF'S OFFICE**  
Ennis W. Wright, Sheriff



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Internationally Accredited Law Enforcement Agency

TO: Amy Cannon, County Manager

FROM: Ennis Wright, Sheriff *EWW*

DATE: May 3, 2021

RE: Request to Establish Sheriff's Office I.T. Positions Based Upon Contractual Agreements with Hope Mills and Spring Lake

The Cumberland County Sheriff's Office has received contractual agreements from the Town of Hope Mills and Town of Spring Lake to provide funding for a designated information technologies professional. As such, two (2) Department IT Support Specialist I positions (Pay Grade 70) are requested to be established. These positions will be employees of the Sheriff's Office. The primary responsibility of these positions is the maintenance and improvement of the Records Management System (RMS) database, database manager, software, servers, peripherals, and like owned by the Sheriff's Office, but utilized by each Town. The current agreements are effective through June 30, 2021 and provide for funding to reimburse the Sheriff's Office for the cost of the position and server and software costs.

The annualized cost for both positions is \$128,884, or \$64,442 each, per year and the cost for this fiscal year is \$21,481. Estimated server and software costs, to be reimbursed over a four (4) year period, totals \$33,800 per Town, which will be billed beginning in July, 2021.

We request this item be placed on the May 17, 2021 Board of Commissioner's Agenda. Budget Revision 211224 has been completed related to this item. Thank you for your assistance with this matter.

Cumberland County

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THIS MEMORANDUM OF AGREEMENT is entered by, between and among the Cumberland County Sheriff's Office and the Hope Mills Police Department to establish and provide for mutual assistance with respect to the use of computer servers, databases, database managers, and the like for the benefit of the respective law enforcement agencies;

WHEREAS, Pursuant to N.C. Gen. Stat. §153A-212, titled, "Cooperation in Law-Enforcement Matters," and N.C. Gen. Stat. §160A-288, titled "Cooperation Between Law Enforcement Agencies," N.C. Gen. Stat. § 90-95.2, titled, "Cooperation Between Law-Enforcement Agencies", the undersigned Sheriff of Cumberland County does hereby agree to provide assistance to the Police Department of the Town of Hope Mills for the purposes expressed in this agreement and as allowed by law, and all of the agencies contemplated as parties under this agreement do hereby agree to provide assistance to each other in enforcing the laws of the State of North Carolina, including the use and maintenance of computer resources; and

WHEREAS, pursuant to the provisions of N. C. Gen. Stat. §160A-288 and §160A-288.2 the parties enter into this mutual aid agreement to effectuate such arrangements. As contemplated under N.C. Gen. Stat. §160A-288 which provides that "[u]nless specifically prohibited or limited by an ordinance officially adopted by the governing body of the city or county by which the person is employed, appointed, or elected to serve, the head of any law enforcement agency may temporarily provide assistance to another agency if so requested in writing by the head of the requesting agency." This agreement, and the signatures affixed to it, constitutes the request for assistance and its terms.

WHEREAS, the respective agencies have reached such agreement and for good and valuable consideration, the receipt whereof is hereby acknowledged and premised upon the mutual benefits to be derived hereunder, the parties covenant and agree and set out their agreement or memorandum of understanding as follows:

1 **Term.** Although subject to renewal, either expressly or as provided and contemplated under this agreement, the express term of this agreement shall be as follows:

1.1 **Effective Dates.** This agreement is as contemplated temporary in regard to the assistance contemplated and, therefore, shall only be effective from the date of the execution of this agreement by the last signing party, through June 30, 2021 (the fiscal year of each agency being defined as the period from July 1 of the current calendar year and June 30 of the next succeeding calendar year), unless renewed, extended or terminated as provided in this agreement. In the event that this agreement is amended or modified during the term of the effective dates, unless otherwise provided, such amendment or modification of this agreement shall be deemed to relate back to the initial effective date of this agreement.

1.2 **Renewal.** This agreement may be renewed by an express writing for that purpose executed on or before June 30 of the then current contract year to be effective for the next fiscal year, unless terminated during the contemplated period of the contract as provided in this agreement. Unless and until terminated as provided under the terms of this writing, this agreement shall be deemed to be renewed automatically at the end of the effective contract period on the expiration date of that period and shall be deemed to continue for the next succeeding fiscal year, provided, however, that it is understood between the parties that the parties intend to and shall execute a new memorandum of understanding or memorandum of agreement on or before the last day of the applicable fiscal year.

1.3 **Termination.** Notwithstanding the provisions of paragraphs 1.1 and 1.2 above or any other provision of this agreement, either party to this agreement, either with or without cause, upon notice being served in writing to the other party of not less than 90 days prior to the effective date of such termination, may terminate this agreement either with or without announcing the cause for such termination. In the event of such termination, then the obligations of each party under the terms of this agreement shall cease and become unenforceable as of the effective date of the termination. Unless otherwise expressly provided, an amendment, modification, or agreed alteration of this agreement shall not operate to be or shall not be interpreted as a termination of this agreement.

**2 Scope of Agreement.** This contract extends to the establishment and maintenance of data and database managed digital records, including those located or to be located on the servers or digital storage platforms of the Cumberland County Sheriff's Office to the extent that the County of Cumberland affords to the Sheriff's Office and the contracting Police Department the infrastructure and ability to use the requisite network and platform, and includes the obligation of the Hope Mills Police Department to provide funding for a designated information technologies professional as an employee of the Sheriff whose primary responsibility is and will be the maintenance and improvement of the database, database manager, software, servers, peripherals, and the like, contemplated under this agreement, as well as funding as hereinafter provided for the costs of software, firmware, hardware. Licenses and the like, and also includes an agency access agreement which provides access to and a limited right of use from the licensee and licensor of the records management system (RMS) obtained from him and provided by Central Square Technologies formerly Superiorion, which had previously entered an executed such an agency access agreement, as well as the Sheriff's Office access to access to and maintenance of, and each Police Department providing its routers, switches, and the like to be a part of the Cumberland County Sheriff's Office computer network, including that of its providers, as well as the exclusivity by Sheriff's Office IT personnel to the maintenance of and additions to as well as the protection with respect to devices, ports, software, hardware, firmware, and the like. Further, this agreement extends to and contemplates that the Police Department shall have the responsibility to and shall cause any conflicting hardware, software, firmware or other devices or applications to be made compatible or removed.

Additionally, the head of each of the agencies designated in this agreement acknowledge that the agency head of each of the parties has read and understands DCIN, NCIC, CJIS, and other applicable rules and regulations, and that the agency head will uphold the agreement and abide by the rules and regulations. Each shall have and execute a direct user agreement which agreement shall also be signed by the agency head and by the North Carolina CJIS System Officer (CSO).

Further, each participant and employee of each agency which is a party to this agreement with access to computerized information is aware of the issues of privacy and the limitations regarding the use of accessed information, and that he or she is bound by CJIS rules concerning these issues pursuant to Rule 18B .0407 of Title 14B as contemplated under 14B NCAC 18A .0304, and each party shall comply with the provisions of Title 14B, Chapter 18 A of the North Carolina Administrative Code.

In addition, the scope of this agreement, contemplates, but is not limited to, the provision of the specific computer services contemplated, but with respect to DCI each agency shall have its own separate Terminal Services and User Agreement, and the services customarily associated with and provided by such law enforcement agencies, and other associated tasks and services, and in times of necessity, to provide access to the requisite agencies employees to the use of terminals and other equipment (whether by telephone, radio, computer or other device) and to document such use by the agency and to ensure conformity to and compliance with the law, regulations, and policies governing such use, services, access, or the like, which may affect, but which shall not be deemed to be a part of this agreement.

**3 Scope of Services and Terms.** The scope of the services to be rendered and the services contemplated under the terms of this agreement, include, but is not limited to, the provision of the software, firmware, hardware, access, funding and the other deliverables or matters to be performed as described in the scope of the agreement contained or contemplated in paragraph 2 here of, (referred to for the sake of convenience as Service Offerings) and shall be subject to and include the following terms:

**3.1 Services to be Provided by Sheriff.** Subject to the terms and conditions of this agreement and the performance of the other agencies under this mutual assistance agreement, including, but not limited to, the receipt of the requisite payment of the funding contemplated to be paid by the respective agencies and the consent of the software providers, the Cumberland County Sheriff's Office shall grant or provide to or maintain and operate for itself and the other parties at least the following Service Offerings:

- 3.1.1 Servers and routers and switches (including replacement devices, services or platforms) .
- 3.1.2 Devices, programs, applications, or the like in a manner making the network available and usable by the other parties to this agreement, subject to the policies, regulations and directives of the Office and Sheriff and consistent with user agreements, intellectual property rights, and contractual terms and conditions of the providers, licensors or the like of each applications, programs, firmware, or the like.
- 3.1.3 Access to and use the Service Offerings in accordance with this agreement
- 3.1.4 Designated IT personnel with the primary responsibility to establish, service and maintain the specific Service Offerings

for the parties to this Agreement.

3.1.5 Direction of personnel to open, use, watch and maintain database records made pursuant to this agreement, and to provide reasonable services to assist in the maintenance and operation of computer and communications devices for the Police Department.

3.1.6 Permit the Hope Mills Police Department to connect to the Sheriff's Office RMS via the PWC connection from their networks on ports 80 and 443 (only) to a server hosting the TSPlus software provided that there shall be an ACL (Access Control List) maintained by Cumberland County I.S. which provides connectivity of and for Hope Mills P.D. via the PWC network connection) as well as to otherwise establish and maintain connectivity of mobile data terminals.

**3.2 Duties of the Hope Mills Police Department .** The Hope Mills Police Department shall have the duty to comply with the scope of this agreement, including, the following, and to:

3.2.1 Enter and execute and fully comply with a services user agreement with Central Square Technologies enabling the use of its licensed records management program or application across the Sheriff's Office's platform.

3.2.2 Pay the requisite fees and costs directly to Central Square Technologies for such user agreement or services.

3.2.3 Hope Mills Police Department shall provide funding and pay to the Cumberland County Sheriff's Office or the designee of the Sheriff the requisite costs for the hiring, training, and retention of an IT professional who shall be an employee of the Sheriff whose primary responsibility is and will be the maintenance and improvement of the database, database manager, software, servers, peripherals, and the like, contemplated under this agreement.

3.2.4 Use the Service Offerings in a manner consistent with and subject to the policies, regulations and directives of the Office and Sheriff and the licenses, user agreements, intellectual property rights, and contractual terms and conditions of the providers, licensors or the like of each applications, programs, firmware, or the like.

3.2.5 Cooperate fully with the Office of Sheriff in connection with the Sheriff's provision of the Services.

3.2.6 Cause the computers, switches and other devices used by the Police Department to be configured so as not to interfere or conflict with the Sheriff's Office's computer network and to cause the domain naming services, internet protocol to be identified consistently with the Sheriff's Office's network, and cause any conflicting hardware, software, firmware or other devices or applications to be made compatible or removed.

3.2.7 Hire and retain persons who are properly vetted, investigated, approved, and trained, consistent with the Sheriff's hiring policies and training policies, who are sufficiently trustworthy to be a user of the network, applications, software, and the like, and, in particular, without limiting the generality of the Central Square Technologies records management system .

3.2.8 Assist in and implement through the Cumberland County Sheriff's Office application or software updates, including, but not limited to, for SQL, CALS and the like.

3.2.9 Purchase and provide an Enterprise Plus License for TSPlus as well as a maintenance agreement for such license and service.

3.2.10 Provide funding for and pay the costs for the services as contemplated in paragraph 4 hereunder.

**4 Payment of Costs.** As referenced in this agreement, the Hope Mills Police Department shall pay the proportionate costs of the employee salary and benefits, software and application fees, fees for license upgrades, maintenance, and replacement of the server, SQL core license, OS license and backup license due or invoiced for the period or term of this agreement. All of such costs and each such payment shall be made within 30 days of the date of invoice for such cost or costs. The Hope Mills Police Department shall fund and pay proportionally for the period of this contract the following costs:

**4.1 Server and software costs for server.** The following are the costs indicted and anticipated to be incurred and the requisite *pro tanto* payment to be made by the Hope Mills Police Department to the Sheriff as shown as follows:

Item	Purchase Cost	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost
HP DL 380 Gen Server	\$13,000.00	\$3,250.00	\$3,250.00	\$3,250.00	\$3,250.00
SQL Core License	\$20,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
OS License	\$800.00	\$200.00	\$200.00	\$200.00	\$200.00

Backup License	\$1,000.00	\$250.00	\$250.00	\$250.00	\$250.00
Total	\$33,800.00+*	\$8,450.00+*	\$8,450.00+*	\$8,450.00+*	\$8,450.00+*

+\* Additionally, the Hope Mills Police Department shall purchase and convey to the Sheriff's Office a TPlus server (at the cost of the Hope Mills Police Department) to be used for the Hope Mills Police Department purposes. The license for the TPlus Enterprise requires a single payment fee of \$1,900.00. Maintenance agreements are required to be purchased in three year increments at a current cost of \$855.00 per term.

**4.2 Reimbursement for Cost of IT Employee.** The Police Department shall reimburse the Sheriff for personnel and training expenses incurred in the employment of a qualified information technologies employee for coverage up to forty (40) hours per week as contemplated in this agreement. The Hope Mills Police Department expenses for such reimbursement are not anticipated to exceed Thirty-two Thousand One Hundred Twenty-one Dollars (\$32,221.00) for the assigned employee annually. If additional services in excess of the base forty (40) hours are necessary (such as completing an action begun before the end of a shift that cannot be deferred to the following business day), the IT employee will receive Compensatory Time Off computed on a pay period basis, in accordance with Section 207(k), Fair Labor Standards Act. The Sheriff shall send the Hope Mills Police Department an invoice covering the previous quarter's service, which shall be paid within ten (10) business days (that is, excluding holidays and weekends).

**4.3 Quarterly Invoices.** Payments will be based on monthly invoices submitted by the Sheriff payable to:

Cumberland County Sheriff [Tax ID 56-6000291]  
Revenue Account # 1014200-422305 (Town of Hope Mills)  
131 Dick Street  
Fayetteville, NC 28301

**5 Conditions Precedent and Subsequent.** This agreement is subject to certain conditions, both express and implied, both precedent and subsequent, and there are conditions concurrent which are expressed in this agreement. Express conditions of this agreement include:

- 5.1 Each party to this agreement having and maintaining the capacity and authority to enter and to be bound by mutual assistance agreements under the laws of the State of North Carolina.
- 5.2 The granting of funding and the application of such funding to the agencies sufficient for the establishment, maintenance, and implementation of this agreement.
- 5.3 The County of Cumberland affording to the Sheriff's Office and the contracting Hope Mills Police Department the infrastructure and the requisite permissions and the ability to use the network, components and platform.
- 5.4 The Hope Mills Police Department entering, executing, maintaining and fully complying with a services user agreement with Central Square Technologies (or any successor provider, vendor or contractor) enabling the use of its licensed records management program or application across the Sheriff's Office's platform.
- 5.5 Payment by the Hope Mills Police Department of the requisite fees and costs contemplated under this agreement.
- 5.6 Acknowledgment that only Sheriff's Office IT personnel shall establish, manage, monitor, maintain, the network or platform to the extent that the network, platform or infrastructure is to be used for these mutual assistance purposes.
- 5.7 The Agencies who are parties to this agreement, hiring and retaining persons who are properly vetted and investigated, and trained consistent with the Sheriff's hiring policies, who are sufficiently trustworthy to be a user of the network, applications, software, and the like, and whom the Sheriff authorizes and continues to authorize to be a user of the network and any of its components, applications, and the like.
- 5.8 Each agency which is a party to this agreement shall first purchase, install and maintain a Barracuda 310 Web Security Gateway (or indubitably equivalent appliance) and a Barracuda 310 Email Security Gateway (or indubitably equivalent appliance), and shall and must also maintain licensed antivirus software on all of their computers and servers on any connecting network or device.
- 5.9 The Sheriff's consent to the contemplated mutual assistance.

**6 Retention of Rights by Hope Mills Police Department.** Notwithstanding any other provisions of this agreement, Hope Mills Hope

Mills Police Department has and shall have the right to access and to retain all of its data and Hope Mills Police Department purchased software. In the event of a request, a copy of the data will, upon proper request of the head of the agency, be exported from the Sheriff's database and provided to the respective Hope Mills Police Department at the cost of that agency. Further, the Hope Mills Police Department retains its individual rights, autonomy, and separation as an independent agency.

**7 Retention of Rights by Sheriff.** Notwithstanding any other provisions of this agreement, the Office of Sheriff has and shall have the right to access and to retain all devices, data in, which is a part of, or upon the network, servers, computers and devices of the Sheriff's Office network or platforms and to administer, govern, set and enforce policies, regulations, and the like with regard to the Sheriff's Office network, including all hardware, software, applications or the like, and the Sheriff in the sole discretion of the Sheriff retains all rights, authority, and control of the same, as well as all employees, agents, contractors and the like, and shall retain and have sole and exclusive control over the operations, status, access, maintenance and use of the Sheriff's Office network, servers, computers, hardware, software, firmware, licenses, and devices or platforms of the Office of the Sheriff and such right or authority shall not be in any manner restricted or modified by the terms of this agreement.

**8 Compliance with Law, Regulations, Policies, Standards, and Directives.** Having due regard to the foregoing, parties to this agreement shall comply with all laws, regulations, and ordinances, directives, executive orders, or other requirements of any governments or agencies thereof which may govern its performance under this Agreement, including, but not limited to, the provisions of Chapters 14, 15A, 122C, 153A, and 162 of the North Carolina General Statutes, and, in particular, but without limitation, Title 14B, Chapter 18A of the North Carolina Administrative Code; Article 3 of Chapter 114 of the North Carolina General Statutes; and all equal employment laws, and other applicable law as well as all applicable State and Federal laws and regulations as well as applicable ordinances of local government, especially those of the County of Cumberland, and particularly including, but not limited to DCI, CJIS, and related provisions of law as well as the policies, directives of the Office of Sheriff and applicable standards, specifically including, but not limited to its CJIS policies and directives, and shall cause to be executed any contracts, further assurances, and the like, requisite to compliance with the same.

**9 ADA Compliance/Non-Discrimination/Anti-Retaliation.** Without limiting the generality of the foregoing, the parties shall comply with Title VI and VII of the Civil Rights Act of 1964, Section 504, of the Rehabilitation Act of 1973, and the Americans With Disabilities Act of 1990 (ADA), Chapter 168 of the North Carolina General Statutes and all requirements imposed by the requisite Federal regulations, rules and guidelines issued pursuant to these Titles with respect to the personnel employed or deployed pursuant to this agreement, and shall conform to and comply with the anti-retaliation policies adopted by the Sheriff of Cumberland County.

**10 E-verify Compliance.** The parties and any contractor for them shall comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes and the terms of N.C. Gen. Stat. § 143-133.3. Without limiting the generality of the foregoing, the contractor as an employer shall comply with and certify that continued compliance with the provisions of N.C. Gen. Stat. § 64-26, and verify the work authorization of the employee through E-Verify. Further, such employer shall retain the record of the verification of work authorization required by such provision of law while the employee is employed and for one year thereafter, and shall make such certification and offer such proof of compliance as may reasonably be required by the other party to this agreement. The failure of the other party to this agreement to comply with this section of this agreement or with the requirements of Article 2 of Chapter 64 of the General Statutes is and shall be a material breach of this agreement.

**11 Governing Law.** The construction, interpretation and performance of this agreement and all transactions under it shall be governed by the domestic laws of the State of North Carolina and no other law.

**12 Capacity and Authority.** The parties represent that they have the capacity and authority to enter this agreement. The Sheriff designates the Major of the Services Division as the exclusive contracting officer on all matters pertaining to this agreement, and who may delegate technical functional matters to the Sheriff's Office IT director.

**13 Modification.** This Memorandum of Agreement is subject to modification only by and through the execution of a written agreement assented to by the parties and signed with the same formalities as the original Agreement between the parties, and unless otherwise expressly provided, an amendment, modification, or agreed alteration of this agreement shall not operate to be or shall not be interpreted as a termination of this agreement.

14 **Force Majeure.** No party to this Agreement shall be responsible or liable to the other for delays in performance of its duties or inability to act or perform their obligations under this contract due to circumstances, events or acts of others beyond their reasonable control, including, but not limited to, acts of God, fire, flood, storm, hurricane, tornado, theft of equipment, or changes in regulatory rules or regulations affecting the ability of either party to reasonably carry out its obligations under this Agreement. It is agreed and understood that this Agreement will be subject to termination by either party should there be imposed upon Premise Provider or Company any rule or regulation by any state, federal or local regulatory agency which would substantially adversely affect the operation of the equipment, platform, software, firmware or service provided or to be provided under the terms of this agreement.

15 **Waiver.** The other parties to this agreement, hereby waive, release and discharge the Sheriff, the County of Cumberland and any employee, agent, contractor or the like of the Sheriff or the County from any and all liability, claims, demands, actions, causes of action, proceedings, remedies, or the like, arising out of, in connection with, by, through, under or by virtue of this agreement or any act, action, service, or thing done or to be done, connected with or attenuated from this agreement or anything done pursuant to or outside the express terms of this agreement.

16 **Other and Further Assurances.** In order to give effect to the purposes and terms of this agreement, the parties agree to promulgate and execute such other document or other and further assurances, certificates, agreements, memoranda or the like which may reasonably be required to give effect to this agreement, its terms, conditions, covenants, and purposes upon request and within a reasonable time following such request.

17 **Partial Invalidity.** In the event that any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, or shall be factually or legally impossible to perform, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired by such partial invalidity, and the agreement shall to the extent possible continue, being construed without the invalid term, condition or absence of a party.

18 **Binding Effect.** The agreement reflected or contemplated under this memorandum and any documents contemplated under it shall supercede all prior agreements with respect to the terms and conditions of this agreement and shall be enforceable and have binding effect unless and until terminated in accord with the provisions of this agreement with respect to termination. In the event that one of the Hope Mills Police Department shall be unable to perform under this agreement or shall be denied access to the computer network or infrastructure or any application, program, device or component of it, the agreement shall, nevertheless, continue to be effective as to the agencies who have the capacity to and are able to enter and perform under this agreement. Accordingly, the absence of one Hope Mills Police Department from this agreement shall not obviate the agreement, but it shall continue in effect as to all other parties unless and until terminated.

19 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall be one and the same contract. Similarly, a copy which is and has been fully executed and which does not deviate from and has not been altered from the original and which is stored in portable document format (PDF) shall be treated as and have the same effect as an original.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement.

For the Office of the Sheriff of Cumberland County NC

By:

Ennis W. Wright, Sheriff

For the Town of Hope Mills  
Hope Mills Police Department

By:

Joel Arcciardo, Chief

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Cumberland County

THIS MEMORANDUM OF AGREEMENT is entered by, between and among the Cumberland County Sheriff's Office and the Spring Lake Police Department to establish and provide for mutual assistance with respect to the use of computer servers, databases, database managers, and the like for the benefit of the respective law enforcement agencies;

WHEREAS, Pursuant to N.C. Gen. Stat. §153A-212, titled, "Cooperation in Law-Enforcement Matters," and N.C. Gen. Stat. §160A-288, titled "Cooperation Between Law Enforcement Agencies," N.C. Gen. Stat. § 90-95.2, titled, "Cooperation Between Law-Enforcement Agencies", the undersigned Sheriff of Cumberland County does hereby agree to provide assistance to the Police Department of the Town of Spring Lake for the purposes expressed in this agreement and as allowed by law, and all of the agencies contemplated as parties under this agreement do hereby agree to provide assistance to each other in enforcing the laws of the State of North Carolina, including the use and maintenance of computer resources; and

WHEREAS, pursuant to the provisions of N. C. Gen. Stat. §160A-288 and §160A-288.2 the parties enter into this mutual aid agreement to effectuate such arrangements. As contemplated under N.C. Gen. Stat. §160A-288 which provides that "[u]nless specifically prohibited or limited by an ordinance officially adopted by the governing body of the city or county by which the person is employed, appointed, or elected to serve, the head of any law enforcement agency may temporarily provide assistance to another agency if so requested in writing by the head of the requesting agency." This agreement, and the signatures affixed to it, constitutes the request for assistance and its terms.

WHEREAS, the respective agencies have reached such agreement and for good and valuable consideration, the receipt whereof is hereby acknowledged and premised upon the mutual benefits to be derived hereunder, the parties covenant and agree and set out their agreement or memorandum of understanding as follows:

1 **Term.** Although subject to renewal, either expressly or as provided and contemplated under this agreement, the express term of this agreement shall be as follows:

1.1 **Effective Dates.** This agreement is as contemplated temporary in regard to the assistance contemplated and, therefore, shall only be effective from the date of the execution of this agreement by the last signing party, through June 30, 2021 (the fiscal year of each agency being defined as the period from July 1 of the current calendar year and June 30 of the next succeeding calendar year), unless renewed, extended or terminated as provided in this agreement. In the event that this agreement is amended or modified during the term of the effective dates, unless otherwise provided, such amendment or modification of this agreement shall be deemed to relate back to the initial effective date of this agreement.

1.2 **Renewal.** This agreement may be renewed by an express writing for that purpose executed on or before June 30 of the then current contract year to be effective for the next fiscal year, unless terminated during the contemplated period of the contract as provided in this agreement. Unless and until terminated as provided under the terms of this writing, this agreement shall be deemed to be renewed automatically at the end of the effective contract period on the expiration date of that period and shall be deemed to continue for the next succeeding fiscal year, provided, however, that it is understood between the parties that the parties intend to and shall execute a new memorandum of understanding or memorandum of agreement on or before the last day of the applicable fiscal year.

1.3 **Termination.** Notwithstanding the provisions of paragraphs 1.1 and 1.2 above or any other provision of this agreement, either party to this agreement, either with or without cause, upon notice being served in writing to the other party of not less than 90 days prior to the effective date of such termination, may terminate this agreement either with or without announcing the cause for such termination. In the event of such termination, then the obligations of each party under the terms of this agreement shall cease and become unenforceable as of the effective date of the termination. Unless otherwise expressly provided, an amendment, modification, or agreed alteration of this agreement shall not operate to be or shall not be interpreted as a termination of this agreement.

**2 Scope of Agreement.** This contract extends to the establishment and maintenance of data and database managed digital records, including those located or to be located on the servers or digital storage platforms of the Cumberland County Sheriff's Office to the extent that the County of Cumberland affords to the Sheriff's Office and the contracting Police Department the infrastructure and ability to use the requisite network and platform, and includes the obligation of the Spring Lake Police Department to provide funding for a designated information technologies professional as an employee of the Sheriff whose primary responsibility is and will be the maintenance and improvement of the database, database manager, software, servers, peripherals, and the like, contemplated under this agreement, as well as funding as hereinafter provided for the costs of software, firmware, hardware. Licenses and the like, and also includes an agency access agreement which provides access to and a limited right of use from the licensee and licensor of the records management system (RMS) obtained from him and provided by Central Square Technologies formerly Superiorion, which had previously entered an executed such an agency access agreement, as well as the Sheriff's Office access to access to and maintenance of, and each Police Department providing its routers, switches, and the like to be a part of the Cumberland County Sheriff's Office computer network, including that of its providers, as well as the exclusivity by Sheriff's Office IT personnel to the maintenance of and additions to as well as the protection with respect to devices, ports, software, hardware, firmware, and the like. Further, this agreement extends to and contemplates that the Police Department shall have the responsibility to and shall cause any conflicting hardware, software, firmware or other devices or applications to be made compatible or removed.

Additionally, the head of each of the agencies designated in this agreement acknowledge that the agency head of each of the parties has read and understands DCIN, NCIC, CJIS, and other applicable rules and regulations, and that the agency head will uphold the agreement and abide by the rules and regulations. Each shall have and execute a direct user agreement which agreement shall also be signed by the agency head and by the North Carolina CJIS System Officer (CSO).

Further, each participant and employee of each agency which is a party to this agreement with access to computerized information is aware of the issues of privacy and the limitations regarding the use of accessed information, and that he or she is bound by CJIS rules concerning these issues pursuant to Rule 18B .0407 of Title 14B as contemplated under 14B NCAC 18A .0304, and each party shall comply with the provisions of Title 14B, Chapter 18 A of the North Carolina Administrative Code.

In addition, the scope of this agreement, contemplates, but is not limited to, the provision of the specific computer services contemplated, but with respect to DCI each agency shall have its own separate Terminal Services and User Agreement, and the services customarily associated with and provided by such law enforcement agencies, and other associated tasks and services, and in times of necessity, to provide access to the requisite agencies employees to the use of terminals and other equipment (whether by telephone, radio, computer or other device) and to document such use by the agency and to ensure conformity to and compliance with the law, regulations, and policies governing such use, services, access, or the like, which may affect, but which shall not be deemed to be a part of this agreement.

**3 Scope of Services and Terms.** The scope of the services to be rendered and the services contemplated under the terms of this agreement, include, but is not limited to, the provision of the software, firmware, hardware, access, funding and the other deliverables or matters to be performed as described in the scope of the agreement contained or contemplated in paragraph 2 here of, (referred to for the sake of convenience as Service Offerings) and shall be subject to and include the following terms:

**3.1 Services to be Provided by Sheriff.** Subject to the terms and conditions of this agreement and the performance of the other agencies under this mutual assistance agreement, including, but not limited to, the receipt of the requisite payment of the funding contemplated to be paid by the respective agencies and the consent of the software providers, the Cumberland County Sheriff's Office shall grant or provide to or maintain and operate for itself and the other parties at least the following Service Offerings:

- 3.1.1 Servers and routers and switches (including replacement devices, services or platforms) .
- 3.1.2 Devices, programs, applications, or the like in a manner making the network available and usable by the other parties to this agreement, subject to the policies, regulations and directives of the Office and Sheriff and consistent with user agreements, intellectual property rights, and contractual terms and conditions of the providers, licensors or the like of each applications, programs, firmware, or the like.
- 3.1.3 Access to and use the Service Offerings in accordance with this agreement
- 3.1.4 Designated IT personnel with the primary responsibility to establish, service and maintain the specific Service Offerings

for the parties to this Agreement.

3.1.5 Direction of personnel to open, use, watch and maintain database records made pursuant to this agreement, and to provide reasonable services to assist in the maintenance and operation of computer and communications devices for the Police Department.

3.1.6 Permit the Spring Lake Police Department to connect to the Sheriff's Office RMS via the PWC connection from their networks on ports 80 and 443 (only) to a server hosting the TSPlus software provided that there shall be an ACL (Access Control List) maintained by Cumberland County I.S. which provides connectivity of and for Spring Lake P.D. via the PWC network connection) as well as to otherwise establish and maintain connectivity of mobile data terminals.

**3.2 Duties of the Spring Lake Police Department .** The Spring Lake Police Department shall have the duty to comply with the scope of this agreement, including, the following, and to:

3.2.1 Enter and execute and fully comply with a services user agreement with Central Square Technologies enabling the use of its licensed records management program or application across the Sheriff's Office's platform.

3.2.2 Pay the requisite fees and costs directly to Central Square Technologies for such user agreement or services.

3.2.3 Spring Lake Police Department shall provide funding and pay to the Cumberland County Sheriff's Office or the designee of the Sheriff the requisite costs for the hiring, training, and retention of an IT professional who shall be an employee of the Sheriff whose primary responsibility is and will be the maintenance and improvement of the database, database manager, software, servers, peripherals, and the like, contemplated under this agreement.

3.2.4 Use the Service Offerings in a manner consistent with and subject to the policies, regulations and directives of the Office and Sheriff and the licenses, user agreements, intellectual property rights, and contractual terms and conditions of the providers, licensors or the like of each applications, programs, firmware, or the like.

3.2.5 Cooperate fully with the Office of Sheriff in connection with the Sheriff's provision of the Services.

3.2.6 Cause the computers, switches and other devices used by the Police Department to be configured so as not to interfere or conflict with the Sheriff's Office's computer network and to cause the domain naming services, internet protocol to be identified consistently with the Sheriff's Office's network, and cause any conflicting hardware, software, firmware or other devices or applications to be made compatible or removed.

3.2.7 Hire and retain persons who are properly vetted, investigated, approved, and trained, consistent with the Sheriff's hiring policies and training policies, who are sufficiently trustworthy to be a user of the network, applications, software, and the like, and, in particular, without limiting the generality of the Central Square Technologies records management system .

3.2.8 Assist in and implement through the Cumberland County Sheriff's Office application or software updates, including, but not limited to, for SQL, CALS and the like.

3.2.9 Purchase and provide an Enterprise Plus License for TSPlus acceptable to the Sheriff's IT Director as well as a maintenance agreement for such license and service.

3.2.10 Provide funding for and pay the costs for the services as contemplated in paragraph 4 hereunder.

**4 Payment of Costs.** As referenced in this agreement, the Spring Lake Police Department shall pay the proportionate costs of the employee salary and benefits, software and application fees, fees for license upgrades, maintenance, and replacement of the server, SQL core license, OS license and backup license due or invoiced for the period or term of this agreement. All of such costs and each such payment shall be made within 30 days of the date of invoice for such cost or costs. The Spring Lake Police Department shall fund and pay proportionally for the period of this contract the following costs:

**4.1 Server and software costs for server.** The following are the costs indicted and anticipated to be incurred and the requisite *pro tanto* payment to be made by the Spring Lake Police Department to the Sheriff as shown as follows:

Item	Purchase Cost	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost
HP DL 380 Gen Server	\$13,000.00	\$3,250.00	\$3,250.00	\$3,250.00	\$3,250.00
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OS License	\$800.00	\$200.00	\$200.00	\$200.00	\$200.00

Backup License	\$1,000.00	\$250.00	\$250.00	\$250.00	\$250.00
Total	\$33,800.00+*	\$8,450.00+*	\$8,450.00+*	\$8,450.00+*	\$8,450.00+*

+\* Additionally, the Spring Lake Police Department shall purchase and convey to the Sheriff's Office a TPlus server (at the cost of the Spring Lake Police Department) to be used for the Spring Lake Police Department purposes. The license for the TPlus Enterprise requires a single payment fee of \$1,900.00. Maintenance agreements are required to be purchased in three year increments at a current cost of \$855.00 per term.

4.2 **Reimbursement for Cost of IT Employee.** The Police Department shall reimburse the Sheriff for personnel and training expenses incurred in the employment of a qualified information technologies employee for coverage up to forty (40) hours per week as contemplated in this agreement. The Spring Lake Police Department expenses for such reimbursement are not anticipated to exceed Thirty-two Thousand One Hundred Twenty-one Dollars (\$32,221.00) for the assigned employee annually. If additional services in excess of the base forty (40) hours are necessary (such as completing an action begun before the end of a shift that cannot be deferred to the following business day), the IT employee will receive Compensatory Time Off computed on a pay period basis, in accordance with Section 207(k), Fair Labor Standards Act. The Sheriff shall send the Spring Lake Police Department an invoice covering the previous quarter's service, which shall be paid within ten (10) business days (that is, excluding holidays and weekends).

4.3 **Quarterly Invoices.** Payments will be based on monthly invoices submitted by the Sheriff payable to:

Cumberland County Sheriff [Tax ID 56-6000291]  
Revenue Account # 1014200-422305 (Town of Spring Lake)  
131 Dick Street  
Fayetteville, NC 28301

5 **Conditions Precedent and Subsequent.** This agreement is subject to certain conditions, both express and implied, both precedent and subsequent, and there are conditions concurrent which are expressed in this agreement. Express conditions of this agreement include:

5.1 Each party to this agreement having and maintaining the capacity and authority to enter and to be bound by mutual assistance agreements under the laws of the State of North Carolina.

5.2 The granting of funding and the application of such funding to the agencies sufficient for the establishment, maintenance, and implementation of this agreement.

5.3 The County of Cumberland affording to the Sheriff's Office and the contracting Spring Lake Police Department the infrastructure and the requisite permissions and the ability to use the network, components and platform.

5.4 The Spring Lake Police Department entering, executing, maintaining and fully complying with a services user agreement with Central Square Technologies (or any successor provider, vendor or contractor) enabling the use of its licensed records management program or application across the Sheriff's Office's platform.

5.5 Payment by the Spring Lake Police Department of the requisite fees and costs contemplated under this agreement.

5.6 Acknowledgment that only Sheriff's Office IT personnel shall establish, manage, monitor, maintain, the network or platform to the extent that the network, platform or infrastructure is to be used for these mutual assistance purposes.

5.7 The Agencies who are parties to this agreement, hiring and retaining persons who are properly vetted and investigated, and trained consistent with the Sheriff's hiring policies, who are sufficiently trustworthy to be a user of the network, applications, software, and the like, and whom the Sheriff authorizes and continues to authorize to be a user of the network and any of its components, applications, and the like.

5.8 Each agency which is a party to this agreement shall first purchase, install and maintain a Barracuda 310 Web Security Gateway (or indubitably equivalent appliance) and a Barracuda 310 Email Security Gateway (or indubitably equivalent appliance), and shall and must also maintain licensed antivirus software on all of their computers and servers on any connecting network or device.

5.9 The Sheriff's consent to the contemplated mutual assistance.

6 **Retention of Rights by Spring Lake Police Department.** Notwithstanding any other provisions of this agreement, Spring Lake Spring

Lake Police Department has and shall have the right to access and to retain all of its data and Spring Lake Police Department purchased software. In the event of a request, a copy of the data will, upon proper request of the head of the agency, be exported from the Sheriff's database and provided to the respective Spring Lake Police Department at the cost of that agency. Further, the Spring Lake Police Department retains its individual rights, autonomy, and separation as an independent agency.

**7 Retention of Rights by Sheriff.** Notwithstanding any other provisions of this agreement, the Office of Sheriff has and shall have the right to access and to retain all devices, data in, which is a part of, or upon the network, servers, computers and devices of the Sheriff's Office network or platforms and to administer, govern, set and enforce policies, regulations, and the like with regard to the Sheriff's Office network, including all hardware, software, applications or the like, and the Sheriff in the sole discretion of the Sheriff retains all rights, authority, and control of the same, as well as all employees, agents, contractors and the like, and shall retain and have sole and exclusive control over the operations, status, access, maintenance and use of the Sheriff's Office network, servers, computers, hardware, software, firmware, licenses, and devices or platforms of the Office of the Sheriff and such right or authority shall not be in any manner restricted or modified by the terms of this agreement.

**8 Compliance with Law, Regulations, Policies, Standards, and Directives.** Having due regard to the foregoing, parties to this agreement shall comply with all laws, regulations, and ordinances, directives, executive orders, or other requirements of any governments or agencies thereof which may govern its performance under this Agreement, including, but not limited to, the provisions of Chapters 14, 15A, 122C, 153A, and 162 of the North Carolina General Statutes, and, in particular, but without limitation, Title 14B, Chapter 18A of the North Carolina Administrative Code; Article 3 of Chapter 114 of the North Carolina General Statutes; and all equal employment laws, and other applicable law as well as all applicable State and Federal laws and regulations as well as applicable ordinances of local government, especially those of the County of Cumberland, and particularly including, but not limited to DCI, CJIS, and related provisions of law as well as the policies, directives of the Office of Sheriff and applicable standards, specifically including, but not limited to its CJIS policies and directives, and shall cause to be executed any contracts, further assurances, and the like, requisite to compliance with the same.

**9 ADA Compliance/Non-Discrimination/Anti-Retaliation.** Without limiting the generality of the foregoing, the parties shall comply with Title VI and VII of the Civil Rights Act of 1964, Section 504, of the Rehabilitation Act of 1973, and the Americans With Disabilities Act of 1990 (ADA), Chapter 168 of the North Carolina General Statutes and all requirements imposed by the requisite Federal regulations, rules and guidelines issued pursuant to these Titles with respect to the personnel employed or deployed pursuant to this agreement, and shall conform to and comply with the anti-retaliation policies adopted by the Sheriff of Cumberland County.

**10 E-verify Compliance.** The parties and any contractor for them shall comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes and the terms of N.C. Gen. Stat. § 143-133.3. Without limiting the generality of the foregoing, the contractor as an employer shall comply with and certify that continued compliance with the provisions of N.C. Gen. Stat. § 64-26, and verify the work authorization of the employee through E-Verify. Further, such employer shall retain the record of the verification of work authorization required by such provision of law while the employee is employed and for one year thereafter, and shall make such certification and offer such proof of compliance as may reasonably be required by the other party to this agreement. The failure of the other party to this agreement to comply with this section of this agreement or with the requirements of Article 2 of Chapter 64 of the General Statutes is and shall be a material breach of this agreement.

**11 Governing Law.** The construction, interpretation and performance of this agreement and all transactions under it shall be governed by the domestic laws of the State of North Carolina and no other law.

**12 Capacity and Authority.** The parties represent that they have the capacity and authority to enter this agreement. The Sheriff designates the Major of the Services Division as the exclusive contracting officer on all matters pertaining to this agreement, and who may delegate technical functional matters to the Sheriff's Office IT director.

**13 Modification.** This Memorandum of Agreement is subject to modification only by and through the execution of a written agreement assented to by the parties and signed with the same formalities as the original Agreement between the parties, and unless otherwise expressly provided, an amendment, modification, or agreed alteration of this agreement shall not operate to be or shall not be interpreted as a termination of this agreement.

14 **Force Majeure.** No party to this Agreement shall be responsible or liable to the other for delays in performance of its duties or inability to act or perform their obligations under this contract due to circumstances, events or acts of others beyond their reasonable control, including, but not limited to, acts of God, fire, flood, storm, hurricane, tornado, theft of equipment, or changes in regulatory rules or regulations affecting the ability of either party to reasonably carry out its obligations under this Agreement. It is agreed and understood that this Agreement will be subject to termination by either party should there be imposed upon Premise Provider or Company any rule or regulation by any state, federal or local regulatory agency which would substantially adversely affect the operation of the equipment, platform, software, firmware or service provided or to be provided under the terms of this agreement.

15 **Waiver.** The other parties to this agreement, hereby waive, release and discharge the Sheriff, the County of Cumberland and any employee, agent, contractor or the like of the Sheriff or the County from any and all liability, claims, demands, actions, causes of action, proceedings, remedies, or the like, arising out of, in connection with, by, through, under or by virtue of this agreement or any act, action, service, or thing done or to be done, connected with or attenuated from this agreement or anything done pursuant to or outside the express terms of this agreement.

16 **Other and Further Assurances.** In order to give effect to the purposes and terms of this agreement, the parties agree to promulgate and execute such other document or other and further assurances, certificates, agreements, memoranda or the like which may reasonably be required to give effect to this agreement, its terms, conditions, covenants, and purposes upon request and within a reasonable time following such request.

17 **Partial Invalidity.** In the event that any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, or shall be factually or legally impossible to perform, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired by such partial invalidity, and the agreement shall to the extent possible continue, being construed without the invalid term, condition or absence of a party.

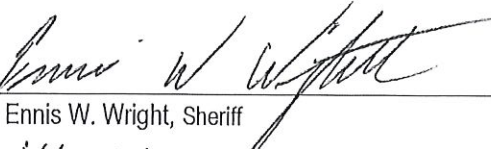
18 **Binding Effect.** The agreement reflected or contemplated under this memorandum and any documents contemplated under it shall supercede all prior agreements with respect to the terms and conditions of this agreement and shall be enforceable and have binding effect unless and until terminated in accord with the provisions of this agreement with respect to termination. In the event that one of the Spring Lake Police Department shall be unable to perform under this agreement or shall be denied access to the computer network or infrastructure or any application, program, device or component of it, the agreement shall, nevertheless, continue to be effective as to the agencies who have the capacity to and are able to enter and perform under this agreement. Accordingly, the absence of one Spring Lake Police Department from this agreement shall not obviate the agreement, but it shall continue in effect as to all other parties unless and until terminated.

19 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall be one and the same contract. Similarly, a copy which is and has been fully executed and which does not deviate from and has not been altered from the original and which is stored in portable document format (PDF) shall be treated as and have the same effect as an original.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement.

For the Office of the Sheriff of Cumberland County NC

For the Town of Spring Lake Police Department

By:   
Ennis W. Wright, Sheriff  
4/28/21

By:  04/28/2021  
Troy McDuffie, Chief

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## **RISK MANAGEMENT**

### **MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021 AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: VICKI EVANS, FINANCE DIRECTOR**

**DATE: 4/30/2021**

**SUBJECT: HEALTH INSURANCE PLAN CHANGES RELATED TO PHARMACY  
REBATES**

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

**Presenter(s): VICKI EVANS, FINANCE DIRECTOR AND KEVIN QUINN, USI**

#### **BACKGROUND**

The County's benefits brokerage and consulting firm, USI, has been in discussions with BCBS about additional savings that could be realized if the County were to make a negotiated change in the BCBS contract. If changed, the County would receive significant quarterly pharmacy rebates in exchange for paying BCBS a higher monthly administrative fee. The County currently receives no BCBS pharmacy rebates and the current monthly per employee per month administrative fee is \$19. Negotiations with BCBS are currently underway but are expected to be thoroughly vetted by Monday, May 10th.

During the meeting, Kevin Quinn will provide the projected amount of annual net savings, as well as additional background information to support the recommended change to be implemented July 1, 2021.

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

Staff and County Management recommends forwarding the following action to the full Board of Commissioners for approval as a Consent Agenda item at the May 17, 2021 regular meeting:

Approval of the BCBS negotiated change for the County to receive quarterly pharmacy rebates in exchange for paying a higher monthly administrative fee, as negotiated and presented by USI.



## **RISK MANAGEMENT**

### **MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021 AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: VICKI EVANS, FINANCE DIRECTOR**

**DATE: 4/30/2021**

**SUBJECT: EXTENSION OF THE HEALTH AND BENEFITS BROKERAGE AND  
CONSULTING AGREEMENT WITH USI**

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

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

#### **BACKGROUND**

In the fall of 2017, Chernoff Diamond who later merged into USI, began providing employee benefits and brokerage services to Cumberland County after assisting with correcting compliance issues that occurred during that year. In August 2018, the Board of Commissioners agreed to a two-year agreement that is set to expire on December 31, 2021.

Throughout the almost four years of this engagement, USI has been able to assist the County in stabilizing the health insurance fund by making recommendations that have resulted in significant savings for the County without causing employees to pay higher out-of-pocket costs. Examples include adding a carved out, fully insured plan specific to Medicare-aged retirees, and more recently recommending a change to how BCBS pharmaceutical rebates will be distributed.

Therefore, management proposes an additional two-year agreement with USI to allow further stability in the current health and ancillary plans. As with the current agreement, the County is not required to make direct payments to USI. Instead, USI receives commissions remitted by the carriers directly upon payment of premium by the County. USI reported \$263,000 in commissions from all carriers combined, over the past year.

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

Staff and County Management recommends forwarding the following action to the full Board of Commissioners for approval as a Consent Agenda item at the May 17, 2021 regular meeting:

Approval of a two-year agreement extension (July 1, 2021 - June 30, 2023) with USI to provide employee health and benefits brokerage and consulting services.

**ATTACHMENTS:**

Description

DRAFT USI Agreement 2021-2023

Type

Backup Material



# CLIENT SERVICE AGREEMENT – POLICY OR SERVICE FEE CONSENT

## Introduction

This Client Service Agreement (“Agreement”) is made and entered into on July 01, 2021 (“Effective Date”) through June 30, 2023 by and between USI Insurance Services LLC (“USI”) and Cumberland County (“Client”).

WHEREAS, USI is duly licensed to engage in the insurance business for the purposes set forth herein and;

WHEREAS, Client desires to engage the services of USI upon the terms and conditions hereinafter set forth.

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

### 1. LINES OF INSURANCE COVERAGE AND OTHER BENEFITS

This Agreement is entered into with respect to the lines of insurance coverage and other mutually agreed-upon programs for which Client agrees to retain USI as its Broker of Record.

### 2. SERVICES

USI agrees to provide to Client the services outlined in Exhibit A.

The above-referenced services shall be rendered by USI to Client pursuant to the terms of this Agreement. Any additional services requested by Client shall be negotiated by the parties under separate written agreement.

The services to be provided by USI are provided for the exclusive benefit of Client. The services, recommendations, proposals, and information provided by USI are not to be distributed to, used by, or relied upon by other parties. Furthermore, if the services to be provided by USI hereunder shall be deemed by Client to apply to any insurance policy/product in effect prior to the Effective Date, then USI’s services shall not be assumed by Client to remedy or resolve any deficiencies in such policy/product. USI will neither assume nor accept liability for any deficiencies, errors, or oversights inherent in such policy/product until such time as USI has had adequate opportunity to review such policy/policies and to provide recommendations to Client concerning same.

### 3. COMPENSATION

#### Fee & Commission Agreement



USI will be compensated for the services outlined in this Agreement through the payment of commissions received from insurance companies as outlined in Exhibit B.

The commission is usually a percentage of the premium you pay for your insurance policy and it is paid by the insurance company. At your request, we will provide you with a detailed statement regarding our compensation on your account and the way the compensation is calculated. The amount of premium you pay for a policy may change over the term of the policy. For example, the number of enrolled employees will affect the premium. Should the premium for any of your policies change, the amount of compensation paid to us by the insurance company would change accordingly.

#### **Contingent, supplemental, or bonus commissions**

It is possible that some of the insurance companies from which USI obtains coverage may pay it additional incentive commissions, sometimes referred to as contingent, supplemental, or bonus commissions, which may be based on the total volume of business we sell for them, and/or the growth rate of that business, retention rate, claims loss ratio, or other factors considering our entire book of business with an insurance company for a designated period of time. Such additional commissions, if any, would be in addition to any other compensation USI may receive. Generally, USI will annually receive from the various insurers with which it places employee benefits related risks less than 1% of its total annual premium placements as contingent compensation.

In the event there is a significant change in Client operations which affects the nature and scope of its insurance requirements, the parties agree to renegotiate USI's compensation, as appropriate.

#### **4. BUSINESS ASSOCIATE AGREEMENT**

USI has been retained by the Client's group health plan ("Covered Entity") to perform certain services on behalf of the Covered Entity in its capacity as a consultant with respect to activities of the Covered Entity as a "group health plan" as defined in 45 C.F.R. § 160.103. In connection with the provision of such services by USI, USI will use and disclose certain Protected Health Information (as defined below) concerning the Covered Entity and its activities.

USI and the Covered Entity desire to enter into a business associate agreement for the purpose of addressing the Privacy Rule, the Security Rule, and the Electronic Transaction Rule, (as those terms are defined below), and for addressing the privacy and security provisions set forth in the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") contained in Title XIII, Subtitle D, of the American Recovery and Reinvestment Act of 2009. In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, USI and the Covered Entity agree as follows:

##### **4.1. BUSINESS ASSOCIATE DEFINITIONS**

4.1.1 "Agreement" shall mean this document, including all properly executed amendments.

4.1.2 "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. § 164.402.



- 4.1.3 “Electronic Health Record” shall have the same meaning as the term “electronic protected health information” in § 13400(5) of the American Recovery and Reinvestment Act of 2009.
- 4.1.4 “Electronic Protected Health Information” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103.
- 4.1.5 “Electronic Transaction Rule” shall mean the final regulations issued by the U.S. Department of Health and Human Services concerning standard transactions and code sets under 45 C.F.R. Parts 160 and 162.
- 4.1.6 “Individual” shall mean the person who is the subject of the Protected Health Information or a person who qualifies as the personal representative of the individual in accordance with 45 C.F.R. § 164.502(g).
- 4.1.7 “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- 4.1.8 “Protected Health Information” shall mean any information, including genetic information, that:
  - (i) relates to the past, present, or future physical or mental health or condition of an Individual;
  - (ii) the provision of health care to an Individual; (c) or the past, present, or future payment for the provision of health care to an Individual; and that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.
- 4.1.9 “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 160.103.
- 4.1.10 “Secretary” shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom authority has been delegated.
- 4.1.11 “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 160.103.
- 4.1.12 “Security Rule” shall mean the Security Standards and Implementation Specifications at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- 4.1.13 “Transaction” shall have the same meaning as the term “transaction” in 45 C.F.R. § 160.103.
- 4.1.14 “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. § 164.402.

## **4.2. SAFEGUARDING PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION**

- 4.2.1 Permitted Uses and Disclosures. USI hereby agrees that it shall be prohibited from using or disclosing Protected Health Information for any purpose other than as expressly permitted or required by this Agreement.



4.2.1(a) Functions and Activities on Covered Entity's Behalf. Except as otherwise set forth in this Agreement, the parties hereby agree that USI shall be permitted to use and/or disclose Protected Health Information of the Covered Entity only for the purpose of conducting the transactions contemplated under this Agreement and only for purposes within the scope of USI's representation of the Covered Entity.

4.2.1(b) Business Operations. USI is permitted to use and/or disclose Protected Health Information, if necessary, for the proper management and administration of USI's representation of the Covered Entity, or to carry out any legal responsibilities of USI provided that, with respect to any disclosure of Protected Health Information, either:

4.2.1(b)(1) the disclosure is Required by Law; or

4.2.1(b)(2) USI obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that: (i) the Protected Health Information will be held in confidence and used or further disclosed only for the purposes for which USI disclosed the Protected Health Information to the person or as Required by Law; (ii) the person will use appropriate safeguards to prevent use or disclosure of the Protected Health Information; and (iii) the person immediately notifies USI of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.

4.2.1(c) Data Aggregation Services. USI is permitted to use or disclose Protected Health Information to provide data aggregation services, as that term is defined by 45 C.F.R. § 164.501, relating to health care operations of the Covered Entity.

4.2.1(d) Minimum Necessary. USI will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of Covered Entity's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that USI will not be obligated to comply with this minimum-necessary limitation if neither USI nor Covered Entity is required to limit its use, disclosure or request to the minimum necessary. USI and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act and HHS guidance.

#### 4.2.2 Information Safeguards.

4.2.2(a) Privacy of Covered Entity's Protected Health Information. USI will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Covered Entity's Protected Health Information. The safeguards must reasonably protect Covered Entity's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit



incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.

4.2.2(b) **Security of Covered Entity's Electronic Protected Health Information.** USI will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that USI creates, receives, maintains, or transmits on Covered Entity's behalf as required by the Security Rule.

4.2.3 **Subcontractors and Agents.** USI will require any of its subcontractors and agents to which USI is permitted by this Agreement, or in writing by Covered Entity, to disclose Covered Entity's Protected Health Information and/or Electronic Protected Health Information, to provide satisfactory assurances through a written agreement that meets the applicable requirements of 45 C.F.R. § 164.504(e) that such subcontractor or agent will comply with the same privacy and security safeguard obligations with respect to Covered Entity's Protected Health Information and/or Electronic Protected Health Information that are applicable to USI under this Agreement.

4.2.4 **Prohibition on Sale of Records.** USI shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless the Covered Entity or USI obtains from the Individual, in accordance with 45 C.F.R. § 164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Individual, except as otherwise allowed under the HITECH Act.

4.2.5 **Penalties for Noncompliance.** USI acknowledges that it is subject to civil and criminal enforcement for failure to comply with the Privacy Rule and Security Rule, as amended by the HITECH Act.

#### **4.3. COMPLIANCE WITH ELECTRONIC TRANSACTION RULE**

If USI conducts, in whole or part, electronic Transactions on behalf of Covered Entity for which HHS has established standards, USI will comply and will require any subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transaction Rule. USI shall also comply with the National Provider Identifier requirements, if and to the extent applicable.

#### **4.4. INDIVIDUAL RIGHTS**

4.4.1 **Access.** USI will make available to Covered Entity or, at Covered Entity's direction, to an Individual (or the Individual's personal representative) for inspection and obtaining copies Covered Entity's Protected Health Information about the Individual that is in USI's custody or control, so that Covered Entity may meet its access obligations under 45 C.F.R. § 164.524. If the Protected Health Information is held in an Electronic Health Record, then the Individual shall have a right to obtain from USI a copy of such information in an electronic format. USI shall provide such a copy to



Covered Entity or, alternatively, to the Individual directly, if such alternative choice is clearly, conspicuously, and specifically made by the Individual or Covered Entity.

4.4.2 Amendment. USI will, upon receipt of written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of Covered Entity's Protected Health Information, so that Covered Entity may meet its amendment obligations under 45 C.F.R. § 164.526.

4.4.3 Disclosure Accounting. To allow Covered Entity to meet its disclosure accounting obligations under 45 C.F.R. § 164.528:

4.4.3(a) Disclosures Subject to Accounting. USI will record the information specified below ("Disclosure Information") for each disclosure of Covered Entity's Protected Health Information, not excepted from disclosure accounting as specified below, that USI makes to Covered Entity or to a third party.

4.4.3(b) Disclosures Not Subject to Accounting. USI will not be obligated to record Disclosure Information or otherwise account for disclosures of Covered Entity's Protected Health Information if Covered Entity need not account for such disclosures.

4.4.3(c) Disclosure Information. With respect to any disclosure by USI of Covered Entity's Protected Health Information that is not excepted from disclosure accounting, USI will record the following Disclosure Information as applicable to the type of accountable disclosure made:

4.4.3(c)(1) Disclosure Information Generally. Except for repetitive disclosures of Covered Entity's Protected Health Information as specified below, the Disclosure Information that USI must record for each accountable disclosure is (i) the disclosure date, (ii) the name and (if known) address of the entity to which USI made the disclosure, (iii) a brief description of Covered Entity's Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure.

4.4.3(c)(2) Disclosure Information for Repetitive Disclosures. For repetitive disclosures of Covered Entity's Protected Health Information that USI makes for a single purpose to the same person or entity (including Covered Entity), the Disclosure Information that USI must record is either the Disclosure Information specified above for each accountable disclosure, or (i) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (ii) the frequency, periodicity, or number of the repetitive accountable disclosures; and (iii) the date of the last of the repetitive accountable disclosures.

4.4.3(d) Availability of Disclosure Information. USI will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates (3 years for disclosures related to an Electronic Health



Record, starting with the date specified by HHS). USI will make the Disclosure Information available to Covered Entity within 60 calendar days following Covered Entity's request for such Disclosure Information to comply with an Individual's request for disclosure accounting. With respect to disclosures related to an Electronic Health Record, USI shall provide the accounting directly to an Individual making such a disclosure request, if a direct response is requested by the Individual.

- 4.4.4 Restriction Agreements and Confidential Communications. USI will comply with any agreement that Covered Entity makes that either (i) restricts use or disclosure of Covered Entity's Protected Health Information pursuant to 45 C.F.R. § 164.522(a) or (ii) requires confidential communication about Covered Entity's Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that Covered Entity notifies USI in writing of the restriction or confidential communication obligations that USI must follow. Covered Entity will promptly notify USI in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct USI whether any of Covered Entity's Protected Health Information will remain subject to the terms of the restriction agreement. USI will comply with any restriction request if: (i) except as otherwise Required by Law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (ii) the Protected Health Information pertains solely to a health care item or service for which the health care provider involved has been paid out-of-pocket in full.

#### **4.5. BREACHES**

- 4.5.1 Privacy or Security Breach. USI will report to Covered Entity any use or disclosure of Covered Entity's Protected Health Information not permitted by this Agreement along with any Breach of Covered Entity's Unsecured Protected Health Information. USI will treat the Breach as being discovered in accordance with 45 CFR §164.410. USI will make the report to the Covered Entity not more than 15 calendar days after USI learns of such non-permitted use or disclosure. If a delay is requested by a law enforcement official in accordance with 45 CFR §164.412, USI may delay notifying Covered Entity for the applicable time period. USI's report will at least:

- 4.5.1(a) Identify the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of any Breach;
- 4.5.1(b) Identify Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual basis;
- 4.5.1(c) Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure;



4.5.1(d) Identify what corrective or investigational action USI took or will take to prevent further non-permitted uses or disclosures to mitigate harmful effects and to protect against any further Breaches;

4.5.1(e) Identify what steps the Individuals who were subject to a Breach should take to protect themselves;

4.5.1(f) Provide such other information, including a written report, as Covered Entity may reasonably request.

4.5.2 Security Incidents. USI will report to Covered Entity any attempted or successful (i) unauthorized access, use, disclosure, modification, or destruction of Covered Entity's Electronic Protected Health Information or (ii) interference with Business Associate's system operations in Business Associate's information systems, of which USI becomes aware. USI will make this report once per month, except if any such Security Incident resulted in a disclosure not permitted by this Agreement or Breach of Covered Entity's Unsecured Protected Health Information, Business Associate will make the report in accordance with the provisions set forth in Section 4.5.1.

#### **4.6. BUSINESS ASSOCIATE AGREEMENT TERM AND TERMINATION**

4.6.1 Term. Notwithstanding Section 5.1, this section shall be effective on the Effective Date and shall terminate when all Protected Health Information provided by Covered Entity to USI, or created or received by USI on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.

4.6.2 Right to Terminate for Cause. Covered Entity may terminate this Agreement if it determines, in its sole discretion, that USI has breached any provision of this section, and upon written notice to USI of the Breach, USI fails to cure the Breach within 60 calendar days after receipt of the notice. Any such termination will be effective immediately or at such other date specified in Covered Entity's notice of termination.

4.6.3 Return or Destruction of Covered Entity's Protected Health Information. Upon termination of this Agreement for any reason, USI, with respect to Protected Health Information received from the Covered Entity, or created, maintained, or received by USI on behalf of Covered Entity, shall:

4.6.3.1. retain only that Protected Health Information which is necessary for USI to continue its proper management and administration or to carry out its legal responsibilities;

4.6.3.2. return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that USI still maintains in any form;

4.6.3.3. continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information to prevent use or



disclosure of the Protected Health Information, other than as provided for in this section, for as long as USI retains the Protected Health Information;

- 4.6.3.4. not use or disclose the Protected Health Information retained by USI other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Section 4.2.1(b) which applied prior to termination; and
- 4.6.3.5. return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by USI when it is no longer needed by USI for its proper management and administration or to carry out its legal responsibilities.

Upon Covered Entity's direction, USI will transmit the Protected Health Information to another business associate of the Covered Entity at termination and/or could add terms regarding USI's obligations to obtain or ensure the destruction of Protected Health Information created, received, or maintained by subcontractors.

- 4.6.4 Continuing Privacy and Security Obligation. If return or destruction of the Protected Health Information is not feasible, USI agrees to extend the protections of this Agreement for as long as necessary to protect the Protected Health Information and to limit any further use or disclosure so as to be consistent with the intent of this Agreement.

#### **4.7. GENERAL PROVISIONS**

- 4.7.1 Access to Books and Records. USI hereby agrees to make its internal practices, books, and records relating to the use, disclosure, and safeguards for Protected Health Information received from, or created or received by USI on behalf of the Covered Entity, available to the Secretary or the Secretary's designee for purposes of determining compliance with the Privacy Rule and/or the Security Rule.
- 4.7.2 Mitigation Procedures. USI agrees to have procedures in place for mitigating, to the extent practicable, any deleterious effect from the use or disclosure of Protected Health Information received from, or created or received by, USI on behalf of the Covered Entity, in a manner contrary to this Agreement or the Privacy Rule.
- 4.7.3 Amendment to Agreement. Upon the compliance date of any final regulation or amendment to final regulation promulgated by HHS that affects USI or Covered Entity's obligations under this Agreement, this Agreement will be automatically amended such that the obligations imposed on USI or Covered Entity remain in compliance with the final regulation or amendment to final regulation.

#### **5. TERM AND TERMINATION**

- 5.1. Term. This Agreement shall commence on the Effective Date and shall continue through June 30, 2023 unless terminated in accordance with section 5.2 below. In the event of termination,



USI will assist Client in arranging a smooth transition process. However, USI's obligation and the obligation of its affiliates to provide services to Client will cease upon the effective date of termination, unless otherwise agreed in writing. USI shall be entitled to receive the fair market value of services rendered hereunder prior to the date of termination.

**5.2. Termination.** Either party shall have the right to terminate this Agreement upon 60 days' prior written notice to the other.

## **6. ACCURACY OF INFORMATION**

USI's ability to provide Client with the services outlined in Exhibit A is conditioned upon USI's receipt of accurate and timely information from Client. USI will not independently verify or authenticate information provided by or on behalf of Client. Client shall be solely responsible for the accuracy and completeness of such information and other documentation furnished to USI.

## **7. ADDITIONAL SERVICES**

Additional services are available for additional compensation and subject to the negotiation of separate agreements or by addendum to this Agreement. Such services may include, but are not limited to:

- Human resources advisory services
- Claims and eligibility audits
- Actuarial services
- Employee communications beyond what described in Exhibit A
- Interactive online client services
- Non-benefits insurance brokerage, risk management, and risk financing advice
- Retirement benefits

## **8. BOOKS AND RECORDS**

Client is entitled to copies of reports prepared by USI hereunder, contracts between Client and its carriers and administrators to the extent such contracts are in USI's possession and control, and communications between USI and Client's insurance carriers and employee benefits providers to the extent such books and records are maintained by USI with regard to its performance under this Agreement.

## **9. NO FIDUCIARY STATUS**

USI is not named a fiduciary with respect to any plan for which it may provide services. It is not intended by the Client or USI that any services performed by USI under this agreement shall include any fiduciary duties or make USI a fiduciary of any plan maintained by the Client.

## **10. DATA SECURITY**



To the extent required by applicable law, USI will implement and maintain reasonable security procedures and practices appropriate to the nature of the personal information it receives, and which are designed to help protect such information from unauthorized access, acquisition, destruction, use, modification, or disclosure.

#### **11. DATA PRIVACY**

In order to provide the services identified herein, it may be necessary for USI to receive from Client, or from a party on Client's behalf, information of a personal nature that may be protected by various federal and state privacy or other laws. USI advises Client to consult with its legal counsel as to how these laws impact Client and Client's employees, Client's plan, our contemplated engagement, and disclosure of information to USI. Client represents that it has the authority and all rights, authorizations, approvals and consents required to disclose its employees' and their beneficiaries' information to USI for USI's use in performing its services for Client and Client's employees. Client further represents that USI's use of this information to perform services for Client and Client's employees does not and will not violate any privacy notice or other policy issued by Client or any benefit program Client maintains, or any applicable law.

Moreover, because USI is not engaged in the practice of law and the services provided hereunder are not intended as a substitute for legal advice, USI recommends that Client secure the advice of competent legal counsel with respect to any legal matters related to any plan subject to this Agreement.

#### **12. ENTIRE AGREEMENT**

This Agreement contains the entire understanding of the parties with respect to the subject matter contained herein, superseding all prior agreements, understandings, and negotiations with respect to such matters. This Agreement may be modified or otherwise amended and the observance of any term of this Agreement may be waived only if such modification, amendment, or waiver is in writing and signed by the party to be charged with same. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors. Notwithstanding the foregoing, any Billing and Collection Agreement (see Exhibit B) to which USI and Client are parties, together with any amendment thereto or replacement thereof, shall remain in effect and shall not be superseded.

#### **13. FORCE MAJURE**

Neither party shall have any liability for any failure or delay in performance of its obligations under this Agreement because of circumstances beyond its reasonable control including, without limitation, acts of God, fires, floods, earthquakes, acts of war or terrorism, civil disturbances, sabotage, accidents, unusually severe weather, governmental actions, power failures, computer/network viruses that are not preventable through generally available retail products, catastrophic hardware failures, or attacks on its server.

#### **14. SELECTION OF ISSUING INSURANCE COMPANY**



USI has no ownership interest in and is not under common control with the insurance company that is issuing the lines of insurance coverage described in this Agreement. USI does not guarantee the solvency of any insurer with which it places Client's risks.

#### **15. VALUE ADDED SERVICES**

To the extent that state law prohibits value added services that are unrelated to the insurance products being sold, this Agreement may be modified so that the scope of services and the corresponding compensation therefore is compliant under state law.

#### **16. CONFIDENTIAL INFORMATION**

"Confidential Information" shall mean non-public information revealed by or through a party to this Agreement (a "Disclosing Party") to the other party (a "Receiving Party") including (a) information expressly or implicitly identified as originating with or belonging to third parties, or marked or disclosed as confidential, (b) information traditionally recognized as proprietary trade secrets, and (c) all forms and types of financial, business (including customer information), scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.

As to any Confidential Information disclosed by the Disclosing Party to the Receiving Party, the Receiving Party will take reasonable precautions in accordance with procedures it follows with respect to its own important confidential information to prevent disclosure, directly or indirectly, of all or any portion of the Confidential Information.

Except as may be required by law or legal process, the Receiving Party agrees not to otherwise use the Confidential Information obtained hereunder in the absence of written permission received from the Disclosing Party. The Receiving Party further agrees to return to Disclosing Party all Confidential Information received hereunder upon written request, therefore.

The obligations hereunder remain in full force and effect until and unless: (a) the Receiving Party can show that such Confidential Information was in the Receiving Party's possession prior to the date of the disclosure by Disclosing Party; or (b) such Confidential Information was obtained by the Receiving Party after the date of this Agreement from a party other than Disclosing Party, and the Receiving Party has no knowledge that said party is under an obligation of confidentiality to the Disclosing Party with respect to such information; or (c) such Confidential Information becomes generally available to the trade, or to the public, through sources other than Receiving Party; or (d) such Confidential Information is developed at any time by the Receiving Party independent of information or materials disclosed by Disclosing Party to the Receiving Party.

In the event that the Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to



disclose any Confidential Information furnished by the Disclosing Party, it is agreed that the Receiving Party will cooperate with the Disclosing Party and provide the Disclosing Party with prompt notice of such request(s) or requirement(s) so that the Disclosing Party may seek an appropriate protective order, at its sole cost, or waive compliance by the Receiving Party with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party is nonetheless, in the opinion of the Receiving Party, legally required to disclose the Confidential Information forwarded by the Disclosing Party, the Receiving Party may disclose such information without liability hereunder, provided, however, that the Receiving Party shall disclose only that portion of such Confidential Information which it considers that it is legally required to disclose.

Upon termination of this Agreement, or upon Disclosing Party's earlier request, Receiving Party shall promptly deliver to Disclosing Party all Confidential Information and any other material which Disclosing Party furnishes to Receiving Party in connection with this Agreement.

#### **17. INTELLECTUAL PROPERTY**

USI and Client shall each retain individual ownership of all materials, ideas, concepts, inventions, discoveries, plans, product names, proprietary information, patents, copyrights, documents, data, programs, training materials, slogans, artwork, research data and results and marketing designs that each provides to this consulting effort (the "Existing Materials"). All Existing Materials shall be subject to the terms and conditions of the confidentiality provisions contained herein. Any and all ideas, concepts, inventions, discoveries, plans, product names, proprietary information, patents, copyrights, documents, data, programs, training materials, slogans, artwork, research data and results and marketing designs (the "Work Product") conceived or developed between USI and Client hereunder, to the extent that such Work Product is distinct from the individually-owned Existing Materials, shall become the sole and exclusive property of Client. Client agrees to hereby grant USI an unlimited non-exclusive license to use the Work Product, which license shall include use among USI's affiliates.

#### **18. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

#### **19. NOTICES**

Any notices required to be given under this Agreement shall be in writing and may be sent by certified mail, return receipt requested, or by confirmed facsimile, to the following addresses which may be changed, from time to time, by written notice as provided herein, setting forth the new address.

Client: 117 Dick St #451, Fayetteville, NC 28301

USI: East Tower, 725 RXR Plaza, Uniondale, NY 11556



**OTHER GENERAL LEGAL PROVISIONS**

If any part, term, or provision of this Agreement shall be found by a court to be legally invalid or unenforceable, then such provision or portion thereof shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any contract document shall not affect the validity of any other provisions or portion of this Agreement.

The parties agree that neither party shall have any liability for indirect, special, punitive, consequential, or incidental damages, including, without limitation, loss of profits.

IN WITNESS WHEREOF, the Client and USI have executed this agreement as of the date(s) first written below.

USI Insurance Services LLC

Cumberland County

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## **EXHIBIT A SERVICES**

### **STRATEGIC PLANNING**

- Compile and maintain employee benefits plan information (e.g. plan design, costs, employee contributions) in USI systems to facilitate future analysis and development
- Prepare initial summary of benefits to discuss during Strategic Planning Meeting
- Benchmark health plan and health costs, comparing organization with norms
- Create a comprehensive, multi-year, wellness program. Third party administrators and other vendors costs not included
- Review impact of possible program modifications and identify the implications to administration and communications
- Conduct initial strategic planning meeting, review benefits program and strategy and design program for future plan years
- Review implementation of Comprehensive Disease Management program including a cost benefit analysis

### **RENEWAL, MARKETING, VENDOR SELECTION & IMPLEMENTATION SERVICES**

- Analyze current cost structure, provide insight and recommendations for potential improvements
- Coordinate the receipt of all plan renewals
- Prepare renewal summary, discuss renewal
- Negotiate renewals with all carriers
- Market benefit programs using USI's proprietary RFP process
- Prepare and present a detailed marketing and renewal report including:
  - All Costs (including multi-year rate guarantees when available)
  - Network analysis, including disruption analysis and network discounts comparison
  - Financial impact of making plan design or stop loss program changes
- Coordinate finalist presentations when necessary
- Coordinate claims audit with outside audit firm if claim review available (coordination efforts by USI are included)

### **FINANCIAL MANAGEMENT & REPORTING**

- For Employer groups with claims experience, utilizing USI Analytics, review financial structure of benefits program (medical, Rx, dental and vision plans)
- For Employer groups with claims experience, prepare stewardship reports for all plans USI manages, including:
  - Claims performance reports including, expected and maximum claims, high cost claims, trend analysis, claims per employee, claims by plan
  - Detailed utilization review including review of cost drivers of plan and recommended interventions to manage costs effectively
  - Claim projections for upcoming plan year



- Development of multi-year pro-forma calculations as necessary
  - Utilize USI contribution modeling system to develop contributions strategies for Client
  - Develop equivalent premium rates and COBRA rates for all self-insured plans
  - Ensure impact of the Affordable Care Act are considered when developing contribution strategy
- Review and negotiate Stop Loss contracts that meet Client objectives
- Consider all Funding mechanisms as appropriate
- Actuarial development of Incurred But Not Reported reserves (ASO clients)

#### **ONGOING SERVICE & VENDOR MANAGEMENT**

- USI dedicated management team including Practice Leaders, Consultants, Account Managers, and Actuaries.
- USI Client Manager to provide support to Client's employees
- Eligibility, Claims and Billing support as necessary
- Meet as needed to review financials and to discuss/review other open items
- Review vendor updates to contracts and benefit summaries for accurate terms, plan requirements and plan design
- Monitor and report on carrier financial ratings for contracted vendors
- Develop and manage implementation schedule for any plan changes and/or service changes
- Manage vendor participation in annual enrollment process
- Coordinate Health Fairs
- Assistance from consulting team with Union negotiations, as necessary
- Support accounting audit activities by acting as a liaison between Client, insurance vendors and other advisors such as accounting or legal

#### **COMMUNICATIONS**

- Assist Client with design and preparation of communication materials including:
  - Enrollment Guide (prepared electronically; printing available at additional cost)
  - PowerPoint presentation for Open Enrollment Meetings
  - Preparation of employee Open Enrollment memos
  - Brainshark presentation for Open Enrollment
  - Conduct up to 2 surveys per year including, creation, launch and summary of results report

#### **COMPLIANCE & REGULATORY SUPPORT**

- Employee Benefits Audit to discover gaps in compliance. Will work with Client to correct issues as necessary
- Dedicated Health Care Reform Expert to provide ongoing ACA support as necessary, including onsite meeting
- USI ERISA support
- Summary Plan Description and Summary of Benefit Coverage document review
- Creation of Summary Plan Description Wrap Document as necessary



- Section 125 non-discrimination testing, as necessary
- Preparation of Affordable Care Act Market Place Notices
- Preparation of employee notices, including: CHIPRA, Medicare D, and other notices as necessary
- Annual CMS filing
- Development and management of HIPAA Training for Client's staff
- Access to USI webinars (SHRM credit may be available)
- Access to USI Insights newsletters

**VOLUNTARY BENEFITS PROGRAMS**

- Conduct review of current programs and provide recommendations for program changes and counselor led education meetings

DRAFT



## EXHIBIT B FEE & COMMISSION SCHEDULE

In consideration of the performance of the Services as described in Exhibit A, USI shall be compensated as outlined below:

Estimated Annual Commissions: <sup>1</sup>	\$260,000
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1. Commissions are remitted by the carrier directly to USI upon payment of premium by the Client.
2. Compensation will be in effect for the Term unless modified in accordance with Section 12 of the Agreement.

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<sup>1</sup> Estimated Annual Commissions are commissions payable to USI which are included in the premium and/or administrative costs payable by the Client to the insurance carriers.



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

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: TRACY JACKSON, ASSISTANT COUNTY MANAGER**

**DATE: 5/6/2021**

**SUBJECT: SELECTION OF STATE CENTRIC HAZARD MITIGATION PROGRAM OPTION**

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

**Presenter(s): TRACY JACKSON, ASSISTANT COUNTY MANAGER**

**BACKGROUND**

The North Carolina Department of Public Safety (DPS) - Division of Emergency Management has been approved by FEMA to deliver State Centric administration and technical support for the following programs:

- Hazard Mitigation Grant Program (HMGP)
- Building Resilient Infrastructure in Communities (BRIC)
- Flood Mitigation Assistance (FMA)
- Mitigation Grants appropriated by the North Carolina General Assembly

The State's role as administer will be to:

- Obtain contractors to execute specified work
- Oversee all project work
- Pay all invoiced work
- Close out projects on the sub-applicants behalf

The State is asking potential sub-applicants to opt-in or opt-out of State administration of these programs. Sub-applicants that choose to opt out must prepare and submit a business plan to the Secretary of DPS showing how the sub-applicant will:

- Manage the potential scope of work associated with any of the aforementioned grants
- Identify a point-of-contact for State staff to complete grant-related work

- Explain the sub-applicant's financial and staff capability to complete awarded grant work within the 3-4 year period of performance

Please see section 4 of the attached Plan document for all of the responsibilities of grant management.

Staff does not recommend trying to administer these grants in-house due to the level of complexity, knowledge, experience, and staff time required to adequately deliver the aforementioned programs and close them out.

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

Staff recommends the Board opt-in to the State Centric Hazard Mitigation Implementation Plan allowing NCDPS to administer hazard mitigation-related grants and requests this item be moved forward to the May 17, 2021 regular meeting of the Board of Commissioners as a Consent Agenda Item.

#### **ATTACHMENTS:**

Description	Type
Hazard Mitigation State Centric Implementation Letter	Backup Material
State Centric Hazard Mitigation Plan	Backup Material



# North Carolina Department of Public Safety

## Emergency Management

Roy Cooper, Governor  
Erik A. Hooks, Secretary

Michael A. Sprayberry, Executive Director

March 26, 2021

### **MEMORANDUM**

**TO:** HMGP Sub-Applicant Designated Agents  
HMGP Sub-Applicant Emergency Management Directors

**THRU:** Michael A. Sprayberry, Director  
North Carolina Department of Public Safety

**FROM:** Steve McGugan, Assistant Director, Hazard Mitigation Section  
North Carolina Department of Public Safety

**SUBJECT:** Hazard Mitigation State Centric Implementation

North Carolina Emergency Management (NCEM), Hazard Mitigation (HM) Section is implementing the Hazard Mitigation Grant Program (HMGP) State Centric work plan for DR-4393 (Hurricane Florence), DR-4412 (Tropical Storm Michael) and DR44-65 (Hurricane Dorian). This is exciting news for the State and for sub-applicants because it allows the State to serve as the applicant and sub-applicant for all HM grants. HM will manage and pay for contract work related to the awarded grants and assists the sub-applicants by removing the financial and management burden of completing all the work awarded under each grant. We further expect to be approved by FEMA to maintain the State Centric model for all Disaster and Non-Disaster grants in the future.

The primary responsibility of the HM Section is to administer and provide ongoing technical assistance and customer service to any and all sub-applicants of the following mitigation grants: Hazard Mitigation Grant Program (HMGP), the Building Resilient Infrastructure in Communities (BRIC), and Flood Mitigation Assistance (FMA). The HM Section also administers State of North Carolina mitigation grant funds when appropriated by the General Assembly. The HM Section has evolved and grown to be able to support all of our state and citizens with effective and timely grant management, focused on delivering disaster survivors support as soon as possible. Due to this unrepresented growth and program development, FEMA is allowing North Carolina to be the first state in the Union to offer this State Centric approach to grants management.

### **What does this mean for a sub-applicant if you take advantage of the State Centric Plan?**

When the State/sub-applicant is awarded a Hazard Mitigation grant, the State will promptly begin the work required to meet the Scope of Work (SOW) of the grant. The State will obtain

**MAILING ADDRESS:**  
4238 Mail Service Center  
Raleigh, NC 27699-4238

[www.ncdps.gov/ncem](http://www.ncdps.gov/ncem)

**OFFICE LOCATION:**  
200 Park Officers Dr  
Durham NC 27713

Telephone: (919) 873-5847



*An Equal Opportunity Employer*

the contractors, oversee all project work, pay all invoiced work and close out the projects on our sub-applicant's behalf. The State will work with each sub-applicant's staff to communicate with grant recipients so they are informed and have predictability when work will be completed on their homes. The State will also direct contractors to hire local as much as possible so funds are directed into the sub-applicant's communities. The State will also provide management costs to sub-applicants for any work their employees do assisting the HM staff working in their counties. In the end, it is a win-win for everyone because the State will use its contracting powers to complete work quickly. Since the State will be managing the contracts, sub-applicants will not need to budget money to pay contractors and wait for reimbursements. The State will do all of the project management reducing project management burdens on limited staffs. Finally, the State's efforts will negate a sub-applicant's need to contract out for consultants to do the grant's SOW at a potential higher cost than the Management Cost funds awarded under the grant.

### **What is required of the sub-applicant to take advantage of the State Centric Plan?**

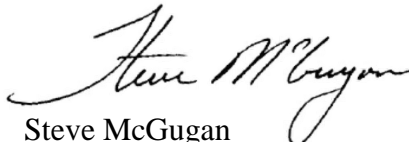
All that is required of the sub-applicant is to request/agree to the State's program. You take advantage of the program immediately by selecting and signing the OPT IN section of the attached form.

### **What if the sub-applicant wants to do the work themselves?**

If the sub-applicant selects to OPT-OUT on the attached form, they must also prepare correspondence to the Secretary of the Department of Public Safety, through the Executive Director of NCEM. This correspondence must be a business plan showing how the sub-applicant will manage the grant's SOW and identify the primary sub-applicant point of contact the HM Section will work with to complete all grant related work. Finally, the business plan must show the sub-applicant possesses the financial and staff capability to complete the awarded grant work within the 3-year period of performance. The enclosed State Centric Plan, specifically Section 4, lays out all of the responsibilities of managing the grant at the sub-applicant level.

NCEM and the HM Section are here to provide full service grant management to every sub-applicant and citizen in the State. We are poised with staff and resources to make the Hazard Mitigation Grant Program work for you in a timely manner while easing your administrative and financial burden. If you have any questions about program details, you can contact the undersigned at 919-873-5843 or email [steve.mcgugan@ncdps.gov](mailto:steve.mcgugan@ncdps.gov).

We look forward to working on your behalf!



Steve McGugan  
State Hazard Mitigation Officer  
Assistant Director/Hazard Mitigation Chief  
North Carolina Emergency Management  
NC Department of Public Safety

# State Centric Election Form for all North Carolina Sub-Applicants

From: \_\_\_\_\_

(Insert Sub-Applicant Name Above)

Thru: NCEM HM Section  
NCEM Executive Director

For: Secretary, Department of Public Safety

Reference: Sub-applicant Selection for State Centric Support for Hazard Mitigation Grants DR-4393 (Hurricane Floyd), DR-4412 (Tropical Storm Michael) and DR-4465 (Hurricane Dorian)

## OPT-IN Section

\_\_\_\_\_ As a sub-applicant for one of the named disasters above, we select to participate in the State Centric Model. We request the State to provide all of the contract and payment support to complete the grant we received from FEMA. We will provide local support to our community by appointing a sub-applicant Point of Contact (POC) who will work with the North Carolina Emergency Management Hazard Mitigation Section on a reimbursement basis to assist in coordinating all work in the jurisdiction.

Sub-Applicant POC: \_\_\_\_\_

-----

## OPT-OUT Section

\_\_\_\_\_ As a sub-applicant for one of the named disasters above, we do not wish to participate in the State Centric model for the Hazard Mitigation Grant Program but choose to self-perform all work required to complete the grant. Attached is our plan and timeline for completing all work as required by the grant within the specified Period of Performance (POP). We certify funds have been set aside to rapidly complete this work and will promptly and monthly request reimbursements to demonstrate work is ongoing. We will provide required documentation and justification for all reimbursements, both project work and management costs. We will promptly sign the HMGP grant agreement upon receipt and adhere to all requirements within the grant agreement, specifically reporting, reimbursement and closeout documentation. If at anytime we fail to meet the requirements of this OPT-OUT selection or the terms of the Grant Agreement (GA), we understand the State may terminate the GA and we will automatically move into the State Centric plan with any penalties incurred due to contracted work being cancelled being paid by us, the sub-applicant, with no means of reimbursement through the HM grant.

Sub-Applicant POC: \_\_\_\_\_

Sub-Applicant Designated Agent: \_\_\_\_\_ (Printed Name)

Sub-Applicant Designated Agent Signature: \_\_\_\_\_ DATE \_\_\_\_\_



# STATE CENTRIC PLAN

As of 21 May 2020 through DR-4465 Period of Performance

## PURPOSE

To Provide the State's Framework and Guidance in managing all Disaster Hazard Mitigation Grants from the Federal Emergency Management Agency (FEMA) for DR-4393 (Hurricane Florence), DR-4412 (Tropical Storm Michael) and DR-4465 (Hurricane Dorian).

THE STATE CENTRIC PLAN  
NORTH CAROLINA’S HAZARD MITIGATION GRANT PROGRAM

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## Section 1 - General

### 1A. Purpose

The purpose of North Carolina's State Centric Plan is to focus the capabilities and capacity of the State's Hazard Mitigation (HM) Office in order to professionally and in a timely manner execute Disaster Hazard Mitigation grants. The HM Office achieves these goals by rapidly building contracting capacity, maximizing project management capability to ensure projects are completed in accordance with (IAW) all specifications, scopes of work and within cost thereby increasing the speed of relief and shortening the period of recovery to affected North Carolinians. The plan focuses on industry proven programmatic and financial management procedures with greater oversight of grant execution through detailed project management and process control. North Carolina's HM Office will follow this management plan for Disaster Grants DR-4393 (Hurricane Florence), DR-4412 (Tropical Storm Michael) and DR-4465 (Hurricane Dorian) provided by the Federal Emergency Management Agency (FEMA) to the State of North Carolina, performing the roles and responsibilities of both the APPLICANT and SUB-APPLICANT. This plan outlines and details how the HM Section, on behalf of the state, will administer the Hazard Mitigation Grant Program (HMGP) under Section 404 of the Robert T Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288 as Amended). The plan also provides a means for counties to continue to manage their own HMGP program IAW standards and requirements set forth in Section 4, ensuring they meet the same quality, capacity and timing as the State's HM Office. The organization of this plan is based on the requirements of 44 CFR part 206, 2 CFR part 200, and FEMA's *Hazard Mitigation Assistance Guidance* and *Hazard Mitigation Assistance Guidance Addendum* of February 27, 2015.

Nothing in this plan is intended to conflict with federal laws or regulations or FEMA policies governing the HMGP program. If any such unintended conflicts arise, the federal law or regulation or FEMA policy will take precedence over this plan.

### 1A1. Applicability

This plan is applicable to all of North Carolina's counties and municipalities supported by the HM Office and covered by a Regional Hazard Mitigation Plan. This policy also supports Non-Governmental Organizations (NGOs) and Voluntary Organizations Active in Disasters (VOADs) IAW HMA Guidance 2015, "Individuals and businesses are not eligible to apply for HMA funds; however, an eligible Applicant or subapplicant may apply for funding on behalf of individuals and businesses".

### 1A2. Approval Authority

The Secretary of the North Carolina Department of Public Safety is the approval authority for execution of the State Centric plan. As approved, the Secretary will direct the Executive Director of the Division of Emergency Management with the execution of the plan

### 1A3. Cost Share of Disaster Grants

The cost share for all Disaster related HMGP grants is 75% Federal and 25% Non-Federal paid by the State in order to support the counties and municipalities affected by any disaster.

## 1B. Designation of Responsible Agency

In accordance with the North Carolina Emergency Management Act of 1977, Chapter 166A of the North Carolina General Statutes and pursuant to 44 Code of Federal Regulations section 206.437(b)(1), the North Carolina Department of Public Safety (NCDPS) through North Carolina Emergency Management (NCEM) is the State agency with the responsibility for the administration of the HMGP. North Carolina operates under an approved 2018 North Carolina Enhanced State Mitigation Plan with an effective date of April 25, 2018 and an expiration date of April 24, 2023.

The following excerpts are representative of the laws and regulations governing the management of the HMGP for North Carolina.

### 1B1. Federal Authority

- Public Law 93-288 - Robert T. Stafford Disaster Relief and Emergency Assistance Act (codified as amended at 42 U.S.C. §§ 5121-5207)
- Public Law 93-234 - Flood Disaster Protection Act of 1973
- Public Law 103-181- Hazard Mitigation and Relocation Assistance Act of 1993
- Public Law 98-502- Single Audit Act
- Public Law 81-920 - Federal Civil Defense Act
- Title 31 CFR Part 205, Rules and Procedures for Efficient Federal-State Funds Transfers
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands
- Executive Order 12612, Federalism
- Executive Order 12699, Seismic Safety
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- FEMA Regulations Code of Federal Regulations, Title 44:
  - Part 7, Nondiscrimination in Federally Assisted Programs
  - Part 9, Floodplain Management and Protection of Wetlands
  - Part 14, Administration of Grants: Audits of State and local governments
  - Part 17, Government-wide debarment and suspension and government-wide requirements for a drug-free workplace
  - Part 18, New restrictions on lobbying
  - Subchapter B, Insurance and Hazard Mitigation
  - Subchapter D, Disaster Assistance
  - Part 201, Mitigation Planning
  - Part 206, Federal Disaster Assistance Federal Financial Management Guidance
- 2 CFR part 200

### 1B2. State Authority

State authority in accordance with State of North Carolina Constitution of 1776

- North Carolina General Statutes § 143B-601
- North Carolina Emergency Management Act of 1977, Chapter 166A of the North Carolina General Statutes
- North Carolina Division of Emergency Management Directive 700-03

### 1B3. North Carolina Emergency Management Division Mitigation Policy

In accordance with Title 44 of the Code of Federal Regulations (44 CFR) sections 206.434(b), 206.435(b), and 206.435(c), the State of North Carolina has established policies which govern the selection and eligibility of hazard mitigation projects. At a minimum, these policies are consistent with the Federal criteria stated in section 206.434(b). In addition, the HM Office has established policies to carry out the State's hazard mitigation program, with the base Standard Operating Procedure (SOP) located at the following web link ( <https://www.ncdps.gov/documents/standard-operating-procedures-hazard-mitigation> ) which outlines the states methodology for all mitigation work and in some instances goes beyond the Federal minimum criteria.

### 1C. Designation of State Hazard Mitigation Roles

#### Governors Authorized Representative (GAR)

The GAR is the individual designated by the Governor to represent the State of North Carolina in activities related to the implementation of Public Law 93-288, as amended by PL 100-707, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and in ongoing State disaster/emergency preparedness, response and hazard mitigation activities pursuant to a Presidential declaration of major disaster.

#### State Hazard Mitigation Officer (SHMO)

The Executive Director of NCEM identifies the Hazard Mitigation Section Chief as the staff member who serves as State Hazard Mitigation Officer (SHMO). The SHMO is responsible for all primary planning-related matters related to the Section 404 Hazard Mitigation Grant Program, and the Section 322 Hazard Mitigation Planning Program.

#### Hazard Mitigation Section Chief

The HM Section Chief is responsible for overseeing the full life cycle of grants management for HMGP including development, pre-approval, implementation, and closeout of HMGP grants per HMA guidelines. The HM Section Chief coordinates with cross-recovery functions including Recovery Management, Recovery Support Functions, and other resiliency efforts that inform the programmatic direction of the HMGP. The Hazard Mitigation Section Chief serves as the SHMO simultaneously.

### 1D. NCEM Hazard Mitigation Section

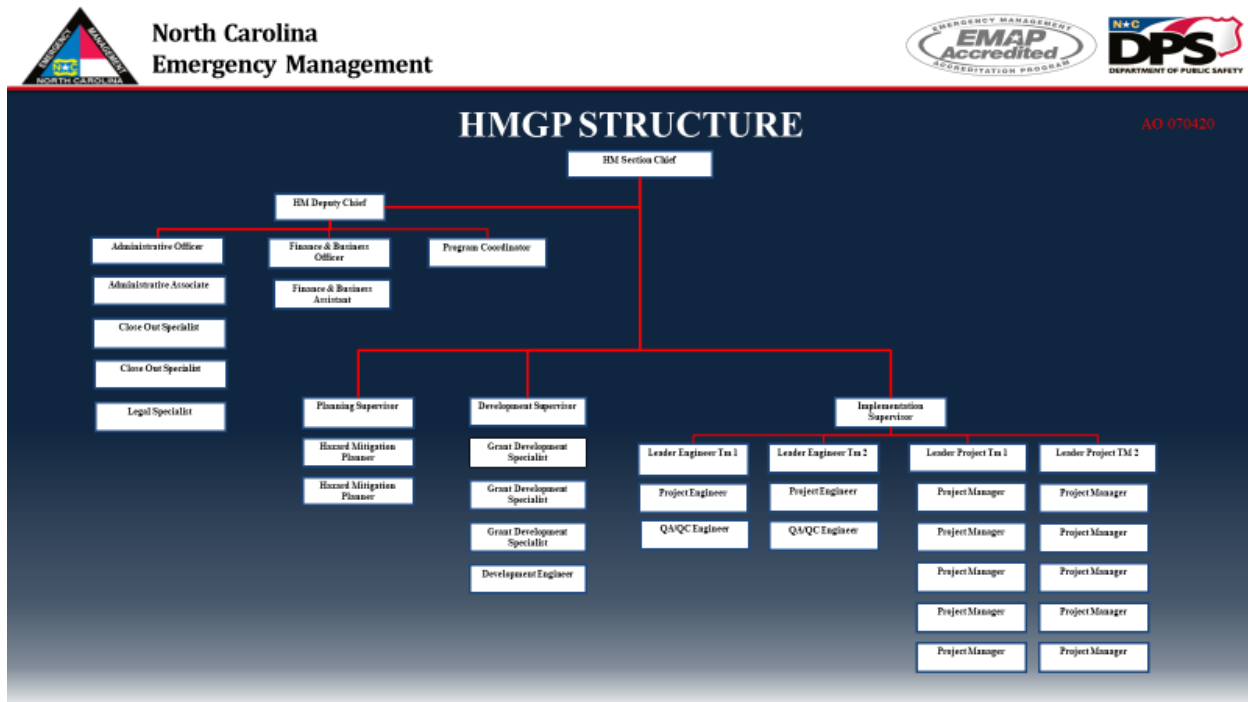
The Hazard Mitigation Section's workload includes the administration of all FEMA disaster mitigation and Non-disaster mitigation grants programs. Additionally, the hazard mitigation section's staff is engaged in work associated with maintaining and updating the State of North Carolina's Hazard Mitigation Plan and 34 regional hazard mitigation plans. The Hazard Mitigation Section is the state's linkage to the FEMA Region IV Mitigation Division's Hazard Mitigation Assistance Branch and currently conducts all business through FEMA's Region IV Regional Office located in Atlanta GA. At the request of the GAR, FEMA may stand up a local state office for hazard mitigation within FEMA's Joint Field Office (JFO) depending on the size and scope of the disaster mitigation grant.

## 1D1. Hazard Mitigation Staffing Plan

The hazard mitigation section is composed of a variety of skilled and trained professionals to support the administration and execution of hazard mitigation grants and work. The hazard mitigation section has the capability of being a full service organization providing outreach to North Carolina communities alerting them when grant opportunities become available, assisting in preparing grant applications, submitting grant applications to FEMA, providing grant award project management, designing engineer solutions for mitigation projects, providing legal support for acquisitions and contract management, conducting outreach to other state, federal and local agencies, and administering all grant funds received and disbursed.

The intent of the section's design is to support all Disaster grants beginning with the awarding of projects from Hurricane Florence through Hurricane Dorian's Period of Performance. The specifics of how the state will manage these grants is further laid out in sections 2 (Disaster Grants) as well as Section 3 (Grants Management) of this document. The staff's make up presents flexibility to always be in development, implementation and planning concurrently with no lapse in effort.

The chart below outlines the section's organization:



During periods when multiple disaster and non-disaster grants are being overseen by the HM Section staff, the HM Section has mechanisms in place to increase staffing through NC Temporary Solutions. This mechanism along with external contractors allows the HM section to activate additional capacity to assist in planning, application development, project implementation and close-out as needed.

## 1D2. Hazard Mitigation Position Duties

The following defines the primary purpose and requirements for all of the positions within the Hazard Mitigation Section in addition to the HM Section Chief outlined in paragraph 3 preceding.

**Deputy Chief:** The Deputy Chief of Hazard Mitigation is responsible for overall project development, project implementation and overseeing all staff functions for the section; the enforcement of regulations and SOPs and the administrative functions of the section. The Deputy Chief represents the Hazard Mitigation Section Chief as required and participates in meetings at varying levels. In addition, the deputy oversees the function of the Hazard Mitigation workforce and staff and assists with the development of Hazard Mitigation policy, procedures and practices.

**Program Coordinator:** This position is responsible for analyzing and solving technical problems of the section; creating administrative plans, Standard Operating Procedures, policies, and directives; the enforcement of laws and regulations; and frequent public contacts in promoting established programs of Hazard Mitigation Assistance Grants and state funded mitigation programs.

**Finance and Business Officer:** The Grants Manager manages all of the Mitigations Section's Hazard Mitigation Grant Program (HMGP) accounts for the state of North Carolina. This position tracks all of the HMGP funds dispersed across the state. The Grants Manager prepares monthly budget briefings and tracks overall grant amounts, funds expended, funds remaining, and projected concerns as it relates to the period of performance (from development to closeout) for time sensitive grants. This position supervises the Grant Assistant Position.

**Finance and Business Assistant:** This position provides assistance in managing Hazard Mitigation Grant Program (HMGP) accounts for the state of North Carolina. This position tracks all of the HMGP funds dispersed across the state. This position assists in preparing monthly budget briefings and tracks overall grant amounts, funds expended, funds remaining, and projected concerns as it relates to the periods of performance for time-sensitive grants.

**Administrative Officer:** This position will operate as office manager, executive assistant to the Assistant Director and management team of Hazard Mitigation, and act as supervisor to the office assistant, closeout specialist team and legal specialist. The Administrative Officer also coordinates tasks associated with onboarding and/or offboarding employees of the section.

**Administrative Assistant:** The primary purpose of this position is to perform receptionist duties, data entry and document preparation, filing, processing of incoming and outgoing mail, and otherwise relieves department staff of clerical work and minor administrative detail. Provides daily administrative support to staff as it relates to organization and general office production.

**Closeout Specialist:** This position is responsible for proof reading, document verification and strong communication skills to closeout projects. This position will work with the Hazard Mitigation team to accomplish tasks associated with the closeout of Hazard Mitigation projects

by assembling, creating, reviewing, reconciling, and verifying legal, real estate, financial, and other documentation from Hazard Mitigation projects. Other duties include document preparation, data entry, creating reports, office and electronic filing, and other duties as assigned.

**Legal Specialist:** The Legal Specialist provides legal support for the HM Section by working with NCDPS Legal office to obtain guidance and advice on multiple contracting actions and real estate transactions. The Legal Specialist prepares, analyzes, and obtains final opinion/approval from NCDPS Legal for real estate documents, grant agreements, and other legal documentation under the supervision of an attorney in the NCDPS Legal Office.

**Planning Supervisor:** The Plans Supervisor plans, implements, and manages the efficient and effective acquisition, management, utilization, and dissemination of geospatial data, information, and information technology for the State of North Carolina. The Plans Supervisor also manages the Emergency Management (HAZMIT) Planners.

**HAZMIT Planner:** Risk Management provides three broad critical service functions that support local, state and federal homeland security, emergency management, and law enforcement efforts. This includes identification, monitoring, and mapping of vulnerabilities and consequences from hazards and threats on key infrastructure and key resources, establishment and maintenance of key data exchange and information technology infrastructure and applications for the efficient exchange of communication and data, and the management of data acquisition, dissemination, maintenance, and exchange between local, state and federal partners.

**Development Supervisor:** The primary purpose of this position is to be responsible for supervising and directing the work of grant application developers and is engaged in the development of federally funded Hazard Mitigation Assistance Grants and state funded mitigation programs. The Development Supervisor will also meet with local, state, and federal officials to facilitate smooth operation of programs and assure efficient and effective completion of all project work.

**Grant Development Specialist:** The Grant Development Specialist oversees the development of multiple construction, acquisition, and other projects and insures programmatic compliance with policy directives and guidance as well as with internal Standard Operating Procedures. Meets with local, state, and federal officials to facilitate smooth operation of programs, and the associated processes and procedures as well as knowledge of real estate appraisals, preparing property estimates, and researching tax documentation.

**Implementation Supervisor:** The primary purpose of this position is to be responsible for supervising and directing the work of project managers, engineers, and additional contractors as needed to execute the implementation of federal disaster and non-disaster grants as well as state funded mitigation programs. The Implementation Supervisor will also meet with local, state, and federal officials to facilitate smooth operation of programs, and evaluating procedures to measure performance and assure efficient and effective completion of all project work.

**Project Manager Team Lead:** The Project Manager Team Lead is engaged in the implementation, and closeout of federally funded Hazard Mitigation Assistance Grants and state

funded mitigation programs. The Project Manager Team Lead oversees multiple construction and acquisition projects and insures programmatic compliance with policy directives and guidance as well as with internal Standard Operating Procedures. This position also supervises Project Managers.

**Project Manager:** The main role of the Project Manager is to oversee multiple construction and acquisition projects and insures programmatic compliance with policy directives and guidance as well as with internal Standard Operating Procedures. The Project Manager's primary tasks of this position include Grant Consultation (both verbally and in written form), effective grants strategy implementation, on-going processing of manual and electronic grant related filings and data collection documents associated with governmental entities receiving the State issued grant funds. Meets with local, state, and federal officials to facilitate smooth operation of programs. Development Specialist: The Grant Development Specialist is responsible for preparing proper documentation for properties affected by disasters for approval by FEMA; this position is also responsible for promoting established programs of federally funded (FEMA) Hazard Mitigation Assistance Grants and state funded mitigation programs to counties, cities, and towns in North Carolina.

**Engineer Team Lead:** The Engineering Team Lead is responsible for technical supervision and oversight for one of two Engineering Teams, supporting home elevations, acquisition/demolitions and/or mitigation reconstructions. The Lead position is responsible for ensuring the efficient operations of the Engineering Team, including quality control and technical guidance for: Construction plan reviews, quantity takeoffs, development of project management schedules, verifying material and labor requirements based on plans, and benefits cost analysis. The Team Lead may be directly assigned to provide engineering support for specific projects with higher technical requirements, including infrastructure or multifamily housing projects.

**Project & QA/QC & Development Engineers:** These Engineers are responsible for conducting detailed construction plan reviews and quantity takeoffs (QTOs), building project management schedules and verifying job site material and safety requirements in support of home elevations and mitigation reconstruction projects. The Engineers also conduct detailed Benefits Cost Analysis for application development for FEMA Hazard Mitigation Grants verifying that projects are both cost effective for either type of construction (elevation or mitigation reconstruction) and if not, renders decisions that homes must be acquired.

### 1D3. Maintaining Staff Proficiency and Training

In order to maintain our customary level of performance and ability, the NCEM Hazard Mitigation Section requires training in areas such as environmental compliance, benefit/cost analysis, computer skills (EGrants and NEMIS), interpersonal relations, problem-solving and conflict resolution. The HM office will coordinate for this training with FEMA for FEMA specific skills and other sources for non-FEMA skills.

### 1D3a. Onboard Training

When personnel are first hired into the HM section, they must complete training that ensures they are at a baseline of proficiency for managing projects consistent with FEMA guidelines. The HM office will coordinate with FEMA Region IV to conduct or provide virtually training that introduces each new hire the hazard mitigation grant process for both disaster and non-disaster grants. Additionally, the HM office will ensure the new hire is trained in DPS and State required training. All of this training must be completed within the first 60 days of employment with the HM Office.

### 1D3b. Annual Training

Annually, the HM Office will coordinate and schedule training with FEMA Region IV for annual updates to programs that all personnel need to be aware of to manage the HMGP. Additionally, the HM leadership will ensure that additional mandatory training that may be directed by FEMA or the State is scheduled and all section personnel will attend. The HM section will maintain training records of all training for each individual to ensure the section is fully trained at all times and in compliance with FEMA guidance on training.

### 1D4. Risk Management Coordinating Council and Interagency Hazard Mitigation Team

For NCEM, an Interagency Hazard Mitigation Team (IHMT) is established by the Risk Management Coordinating Council (RMCC). This panel is made up of professionals, educators and subject matter experts in the field of risk management and natural hazards. This council is established with the intended purpose of convening periodically to examine natural hazards and advise on plans and policies to address these issues. This council serves to aid in identifying, notifying and assisting potential projects pursuant to 44 CFR 206.437 (b)(2). The list of RMCC members is:

AECOM	NC Division of Mitigation Services
Duke University	NC Emergency Management Association
ECSU	NC Geologic Survey
ECU, Center for Natural Hazards Research	NC League of Municipalities
EPA	NC Sea Grant (NC State)
ESP	NCDCM
FEMA	NCDEQ
NC Association of County Commissioners	NCDOT
NC Association of Regional Councils of Governments	NCEM
NC Climate Office	NCORR
NC Coastal Reserve & Nat'l Estuarine Research Reserve	NCSU
NC Department of Administration - State Construction	NOAA Coastal Hazards Center
NC Department of Ag & Consumer Services	NOAA/NWS Space Weather Prediction Center
NC Department of Insurance	NOAA/NWS, Raleigh Weather Forecast Office
NC Dept of Agriculture & Consumer Services	North Carolina Utilities Commission
NC Dept of Commerce	UNC System
NC Dept of Environment Quality, Coastal Resource Commission	UNC-Marine Sciences
NC Dept of Health and Human Services	USDA
NC Dept of Information Technology	USGS
NC Division of Coastal Management	Wood Environmental
NC Division of Energy, Mineral, and Land Resources, NC Dam Safety	

## Section 2 – Mitigation Planning

### 2A. Preparation and Update of State and Regional Hazard Mitigation Plans

North Carolina is recognized by FEMA as having an Enhanced Mitigation Plan that meets the requirements of Stafford Act section 322(e) and is very energetic in preparing and maintaining accurate and detailed State and Regional Hazard Mitigation plans. The planning section is responsible for working with all covered counties and municipalities as well as with FEMA to ensure plans are complete and updated every 5 years.

### 2B. The State's 322 Plan.

The State's 322 Plan is maintained in accordance with the following guidance:

The plan will be updated and re-submitted to FEMA for re-approval every five years, as required by 44 CFR 201.5. The plan may also be subject to interim updates if any of the following conditions apply:

1. At the request of the Governor;
2. When significant new risks or vulnerabilities are identified; or
3. If the findings of the annual / post-disaster review and evaluation warrant.

NCEM will conduct an annual evaluation of the plan, generally in the month of April. The evaluation will consider several basic factors including:

1. Changes in the level of risk to the State and its citizens.
2. Changes in laws, policies, or regulations at the State or local levels.
3. Changes in State agencies or their procedures that will affect how mitigation programs or funds are administered.
4. Significant changes in funding sources or capabilities.
5. Changes in the composition of the RMCC
6. Progress on implementing mitigation actions (including project closeouts) and identification of new mitigation actions that the State is considering.
7. Major changes to local or multi-jurisdictional hazard mitigation plans

The necessity of plan updates will be determined by the evaluation process described above. In general, NCEM will notify the RMCC that the Agency is initiating an interim plan update, and describe the circumstances that created the need for the update. NCEM will determine if the full RMCC should be consulted regarding the potential changes. If it is determined that the RMCC should be involved, the nature of the involvement will be at the discretion of NCEM. When interim updates are completed, NCEM will advise all RMCC members that the plan has been updated, and describe the nature of the update.

Updates/amendments may be adopted into the plan by letter to FEMA from the Governor's Authorized Representative. Amendments may be adopted by the state without prior review from FEMA Region IV, although a courtesy review may be requested before adoption of amendments.

Update per the 5-year requirement in 44 CFR 201.4 and 201.5:

As required by 44 CFR part 201, every five years the plan will be updated for re-submission and reapproval by FEMA. In those years, the evaluation process will be substantially more rigorous and will examine all aspects of the plan in detail. It is anticipated that several meetings of the RMCC will be required to conduct a full update of the plan and that the plan will be formally readopted by the State. Between 6 and 12 months prior to the update deadline, NCEM will initiate the plan update process by contacting RMCC members and other appropriate agencies and organizations to determine a schedule and process for updating the plan. The update process will entail a detailed and structured re-examination of all aspects of the original plan, followed by recommended updates. The recommendations will be presented to the RMCC for consideration and approval. It is expected that the Executive Director of NCEM will reapprove the plan and adopt as the Governor's Authorized Representative.

## 2C. Planning Assistance in the update of local/regional plans.

NCEM provides assistance to local governments through:

1. Funding of plan updates, either in full, or through cost-sharing
2. Training to local government partners and contractors
3. Technical Assistance with Hazard Analysis, Mitigation Opportunities Assessment, Project development, Benefit/Cost Analysis,
4. Technical assistance and review of local/regional plan updates

The Hazard Mitigation Planning Branch uses a database to track the status of all hazard mitigation plans in the state down to the municipal level. The Planning Branch reviews upcoming funding needs at every funding opportunity including all programs under Unified Hazard Mitigation Assistance. Due to the unpredictability of the annual United Hazard Mitigation Assistance (UHMA) programs local governments are encouraged to begin applying for funding to update their plan in years two and three of their approval status. Therefore, when plans cross the one-year mark of plan approval the planning staff begins reaching out to the local governments about funding opportunities.

Hazard Mitigation Planning staff work with local governments informing them of the preferred timeline for updating hazard mitigation plans. This is generally accomplished during training classes, EM forums, through regular emails and is also pushed down through the field staff. The timeline used for reviewing and updating a plan is as follows:

Eighteen months prior to plan expiration begin plan review  
Twelve months to update the plan through the planning process  
Six months for NCEM and FEMA review period.

The review process for NCEM is accomplished by electronic submittal of the plan to NCEM. The plan is assigned to a planner to review against the FEMA Local Plan Review Tool. This process generally takes two to three weeks to accomplish. If the plan has met all of the requirements it is then mailed to FEMA on a Compact Disc (CD). However, if it does not meet the requirements, the deficiencies are clearly and concisely identified in the plan review tool. The

planner will also clearly and concisely identify how to correct the deficiencies to meet the requirements. Usually the contractor will have the corrections made within a couple of days and sometimes even within a couple of hours. The key to keeping the NCEM review process to a minimal time is how the planners identify the deficiencies in the plan review tool and clearly explaining what needs to be changed or added to meet the requirement.

The FEMA review process follows 44 CFR §201.6. FEMA has 45 days when possible to review the plan. When they have reviewed the plan the review tool is sent back to NCEM with either an “Approval Letter”, “Approvable Pending Adoption Letter”, or “Needs Revisions Letter”. If the plan needs revisions NCEM will review all FEMA comments and the plan. If NCEM concurs with the comments the planners will work with the contractor to identify how to meet the requirement. If NCEM finds the comments to be in error the planners will work with FEMA to resolve the issue. The FEMA review timeframe is very fluid in nature and has taken up to 90 days. The Hazard Mitigation Planning Branch also tracks the plans process through review from the time the plan is mailed to FEMA to receipt of a letter back. If plans have been at FEMA for review for longer than thirty days, the Planning Supervisor contacts FEMA about the status of the plan.

Upon either “Approval” or “Approvable Pending Adoption”, the plan review tool and letter is sent back to the contractor for distribution to the local governments and the local adoption process is initiated. This process can take several months due to the meeting schedules and priorities of the local governments. This is particularly the case between the months of April through August when local governments are focused on budgets for the new fiscal year (1 July through 30 June of the following year) and in NC some local elected officials do not meet during the months of July and August. Once the resolution is approved and signed by the local government it is then forwarded to the Planning Branch. The Planning staff then send all of the ratified plans to FEMA for processing. FEMA will in turn send an “Approval Letter” to NCEM who distributes it accordingly.

## Section 3 –Disaster Awards Managed by the State

### 3A. State Centric Methodology

The state centric model to manage disaster HM awards focuses the capacity and capability of the HM Section to provide cradle to grave execution of the HMGP. The HM section is capable of providing full service to all counties and municipalities within the state supporting:

- The building and entering applications into the National Emergency Management Information System (NEMIS)
- Overseeing and completing all awarded projects in any disaster grant
- Closing out and archiving all grants once the period of performance (POP) is complete.

The intent of the state centric model is to minimize impacts on local communities and governments where insufficient staff exists to take on the complex management of a HMGP. Using the size and skills of the staff, the Hazard Mitigation Section Chief sets the priorities for management of all projects and directs how external contracts will be advertised and awarded to support work across the state. The state will manage all mitigation projects, planning projects and initiative projects, unless a county or municipality opts out pursuant to Section 4 of this plan.

When the state executes acquisition on behalf of a county/municipality, the HM section will coordinate with the local government that has local land use authority. This is especially critical for acquisition projects that may result in a loss of tax revenue for the local government but must adhere to 44 CFR Part 80, which sets forth ongoing responsibilities related to the acquired property. For instance, local governments will be responsible for taking and retaining the property's interest; maintaining the property as open space including all maintenance costs associated with open space; submitting proposed uses on the property to NCEM and FEMA for open space compatibility determinations; and monitoring and reporting on property compliance after the grant is awarded. The state will also make the proper arrangements for land conveyance after the closing of any acquisition so that the acquired deed passes properly to the local land use authority.

When the state executes elevation and mitigation reconstruction projects, the state will coordinate with the county to ensure contractors make the proper coordination, obtain the correct permits, set up the required building inspections and close out construction obtaining Certificates of Occupancy, before returning homeowners to their homes. The state will also request the county/municipality to be part of any design charettes ensuring sites meet any local criteria for design and esthetics.

When doing planning projects for the counties/municipalities, the HM Planning branch will work with the local planning staff (s) to set up required meetings, work with any contractors to take local input reflecting local concerns, and work with any retained consultants in support of the plan to prepare all planning documents and send them through FEMA review.

### 3B. Receiving Disaster Declarations and Publishing Notices of Funding Opportunities (NOFO) to counties

The process of building any application for submission to FEMA for HMGP funds begins with the publication of the Disaster Declaration by the President of the United States followed up by a letter from FEMA which will denote if HMGP funding is available. Once the state has been notified by FEMA the HM Section will draft **a state specific** Notice of Funding Opportunity (NOFO) to be sent out to all of the state's counties and municipalities after the HM Section receives FEMA's 30-Day estimate for HMGP funds available. The state specific NOFO will outline for each county/municipality the specified time window for submitting applications and what type of projects and their priority will be accepted for consideration and development. The dates set by the HM Section are intended to give counties/municipalities maximum time to evaluate their needs and at the same time meet the time requirements of the HM Section to prepare the State's application meeting FEMA's submission date. The HM Section will work with individual counties on a case by case basis if there are extenuating circumstances that more time is needed in developing their requirements and sub-applications to the State.

The HM Section will ensure that all potential eligible sub-applicants are informed of the HMGP programs available, the types of assistance authorized under each HMGP and the areas eligible to receive such assistance. The HM Section will utilize any or all of the following methods to notify potential eligible sub-applicants of the availability of HMGP funds and to provide details concerning the sub-application process, programmatic eligibility and key deadlines:

- Electronic mailings (email and text messages)
- Mass mailings
- Selected mailings
- Sub-applicant briefings and site visits
- Public Meetings

Notifications will also be forwarded in writing via the NCEM Branch Offices and Area Coordinators, and direct contact will be established with local Emergency Management Coordinators, local planning offices, local floodplain administrators, town and county managers, and chief elected officials. Materials provided to stakeholders will describe the sub-application process, program eligibility requirements and key deadlines. Potential sub-applicants will be asked to complete a standard letter of interest (LOI) outlining certain details of their proposed mitigation plans and work and return them to the HM Section for evaluation.

It is critical that all counties and municipalities closely read the NOFO published by the HM Section and ask questions of the HM Section staff if there may be any confusion. The NOFO will designate what type of projects are a priority for funding and what optional opportunities there may be, if any, provided by FEMA. The NOFO will set a submission deadline for either the Letters of Intent (LOIs) and final application documentation. Both the LOIs and application documents for disaster grants are submitted in EMGrants. All counties and municipalities may gain access to EMGrants to submit their LOIs/Applications.

### 3C. Identification of Potential Applicants

NCEM will provide technical assistance to potential -applicants by notifying them of the availability of HMGP funds and helping them identify potential mitigation activities in their community designed to prevent future loss of life and property. To identify potential eligible -applicants, the Hazard Mitigation Section will:

- Consult with the NCEM Area Coordinators to identify potential eligible sub-applicants;
- Consult the North Carolina State Hazard Mitigation (322) Plan for potential eligible sub-applicants;
- Consult the Local Hazard Mitigation Plans for potential eligible sub-applicants;
- Consult with the designated State NFIP Coordinator;
- Consult NFIP Repetitive Loss data for potential eligible sub-applicants
- Consult with Private entities that coordinate through the NCEM Business Emergency Operations Center (BEOC) for potential sub-applicants
- Consult with NGOs and VOADs based on work they are doing in the affected areas for potential sub-applicants.

### 3D. Development of Applications and Letters of Intent

Once the State publishes the NOFO, it is imperative for local jurisdictions or sub-applicants to begin building their LOIs and ensure they have access to EMGrants. A best practice for local jurisdictions is to keep a running list of properties and infrastructure projects that would benefit from a mitigation grant to rapidly build their LOIs. This can be accomplished by submitting previous damaged properties that could not be assisted in any previous disaster grants. Additionally, local emergency staffs should get into their communities where damaged has just occurred and immediately note/record homes or infrastructure that could be nominated for consideration as new projects. Counties/Municipalities should make every effort to provide as much information about each nomination as possible before submitting their LOI/application. If possible, specifically for infrastructure projects, have engineer scopes of work, preliminary cost estimates and timelines completed as it will assist the HM development branch in building the final application to FEMA. Once the HM section receives all LOIs and application information by the date(s) specified, the HM Section will begin reviewing all submissions to ensure they meet the directions outlined in the NOFO. The section will also check for completeness of all application information. It is imperative that when submitting projects, all local jurisdictions submit properties in the priority order of who needs assistance the most. Focus should be placed on those needing immediate assistance to reduce financial burden.

All properties not identified as a priority will be accepted but will be considered for funding after applications to fund priority activities have been addressed. Application review and funding priority will be given first to those counties in a declared disaster area (for all disaster grants) or those counties meeting all the requirements for accuracy in their LOI/application submission. A scoring matrix will be used for preliminary evaluation and ranking of potential projects.

### 3E. Project Selection Priorities

The State considers the needs of its citizens in setting priorities for what projects are proposed for submission and completely developed in HMGP disaster applications. While the needs of the citizens are the first priority, the State must also closely follow the priorities set forth in any FEMA guidance. In the end, the state will attempt to submit as many projects as our priority allows while meeting the directives of the FEMA Disaster Declaration. The HM Section will also ensure conformance to the state mitigation plan and any local or tribal regional hazard mitigation plans approved under 44 CFR Part 201. NCEM's prioritization goal is to provide assistance where it is needed the most, to address projects in a manner that maximizes net social benefits and encumbers as close to 100 percent of available HMGP funds as possible. Project types are broken down into one of three groups; mitigation projects, planning projects and Initiative projects. The paragraphs below outline each of these projects.

#### 3E1. Mitigation Projects

The purpose of any Mitigation Project is to reduce future flood damage, particularly to structures that are insured under the National Flood Insurance Program (NFIP) and to enact mitigation measures that reduce the risk of loss of life and property from future disasters. These projects are focused on long-term efforts. While assisting as many individual residents as necessary, it is also necessary to focus on developing projects that protect communities at large if possible. The state has the primary responsibility for prioritizing, selecting, and administering mitigation projects. Individuals and Non-Profit organizations may not apply directly to the state for assistance, but any local county or municipal government may sponsor an application on their behalf. Mitigation projects support risk reduction activities, improve resiliency, eliminate the impact of future events, and provide long-term solutions to ongoing problems by offering cost-effective solutions aimed at avoiding repetitive damage from disasters into the future. Funds may be used to protect either public or private property or to purchase property that has been subject to or is in danger of repetitive damage. Examples of Mitigation Projects include:

- Acquisition and demolition of primary residential structures
- Elevation of primary residential structures
- Mitigation Reconstruction of primary residential structures that do not meet the requirements for feasible elevation
- Landslide/Slope Stabilization Projects to restore slope stability to areas impacted by wildfire and resultant loss of vegetative land cover
- Defensible space measures to create perimeters around residential and non-residential buildings and structures through the removal or reduction of flammable vegetation
- Ignition-resistant construction to utilize non-combustible building envelope assemblies, ignition-resistant materials, and the use of proper retrofit techniques in new and existing structures
- Hazardous fuels reduction to reduce hazardous fuels, conduct vegetation thinning, and reduce flammable materials beyond defensible space perimeters but proximate to at-risk structures

### 3E2. Planning Projects

Planning funding is made available to all 100 counties and the Eastern Band of Cherokee Indians for the expressed intent of updating their regional/local hazard mitigation plans. All local jurisdictions and counties are now part of either a multi-jurisdictional or regional hazard mitigation plan in North Carolina. The Hazard Mitigation Section will develop applications, when possible, for planning-related activities defined below: Eligible activities include but are not limited to:

- Update or enhance sections of the current FEMA-approved mitigation plan, such as:
  - Risk and vulnerability assessment based on new information, including supporting studies, data collection, such as social analysis and built environment analyses;
  - Mitigation strategy, specifically strengthening the linkage to mitigation action implementation, with emphasis on available HMA project grant funding; or
  - Incorporate climate adaptation, green building, or smart growth principles into the risk assessment and/or mitigation strategy.
  - Watershed or River Basin Studies not including mapping
- Integrate information from mitigation plans, specifically risk assessment of mitigation strategies, with other planning efforts, such as;
  - Disaster recovery strategy (pre or post), preparedness, or response plans;
  - Comprehensive (e.g. land use, master) plans;
  - Capital improvement of economic development plans;
  - Resource management/conservation plans (i.e., stormwater, open space); or
  - Other long-term community planning initiatives (i.e., transportation or housing).
- Building capacity through delivery of technical assistance and training.
- Evaluation of adoption and/or implementation of ordinances that reduce risk and/or increase resilience

### 3E3. Initiative Projects

Initiative funding is normally allocated according to the following priorities:

1. Provision of permanent backup generators or generator quick connects (manual disconnect/transfer switches for portable generators) for county or municipal emergency operations centers in the declared counties.
2. Provision of flash-flood warning systems (sirens/other audible warning devices) in the Western Branch area.
3. Provision of permanent backup generators or generator quick connects for other county or municipal critical public facilities.
4. Other innovative projects that promote resilience that are meet the requirements of the 5% initiative program.

### 3F. Ranking and Scoring Rubric for LOIs/Applications

The State's normal procedure for establishing priority projects is to use a Rubric for evaluating the county/municipality applications to determine which projects/properties meet the priorities of

the State's NOFO and FEMA guidance. A sample Rubric is below, but will be updated for each and every NOFO released by the HM Section. This ensure the HM section is identifying those citizens and projects that best meet the NOFO guidance and provide the greatest assistance. The rubric is set up to ensure projects are evaluated by type and by priority so that no county/municipality or project/property is disadvantaged through the process. The rubric below is an example of the possible category types, the levels of priority by category and the scoring used to evaluate the submission:

<b>LOCATION</b>		
<b>Priority</b>	<b>Category</b>	<b>Scoring</b>
Priority 1	Projects Located in Declared Counties	+7
Priority 2	Projects Located in Non-Declared Counties with documented event related Damage	+4
Priority 5	Projects Located Outside of Priority Areas listed above	+1
<b>RESIDENTIAL MITIGATION</b>		
<b>Priority</b>	<b>Category</b>	<b>Scoring</b>
Priority 1	Residential Structures with displaced homeowners	+10
Priority 2	Residential Structures Substantially Damaged during an event	+7
Priority 3	Residential Structures with documented damages by an event	+5
Priority 4	Severe Repetitive Loss (SRL)/Repetitive Loss (RL) Residential Structures Damaged during an event	+3
Priority 5	Other Unmet Residential Needs as recommended by the County/City based on local conditions	+1
<b>COMMERCIAL MITIGATION</b>		
<b>Priority</b>	<b>Category</b>	<b>Scoring</b>
Priority 1	Commercial Structures Substantially Damaged during an event	+7
Priority 2	Commercial Structures with documented damages during an event	+5
Priority 3	Mitigating other Unmet Needs as recommended by the County/City based on local conditions	+3
<b>INFRASTRUCTURE MITIGATION</b>		
<b>Priority</b>	<b>Category</b>	<b>Scoring</b>
Priority 1	Disaster Critical Facilities	+7
Priority 2	Stormwater Drainage improvements and related mitigation measures	+5
Priority 3	Non-critical facilities	+2

All sub-applications within each category will be prioritized using the project's benefit cost ratio. A benefit cost analysis is required by FEMA and allows the HM Section to determine if a project is cost effective. Once the initial evaluation is completed, the HM section notifies the counties and municipalities submitting LOIs/Applications which projects will move forward in the application development process and those that will be pulled from the current grant application. While the State wishes to help every citizen, constraints exist requiring the State to make tough choices of who can be assisted currently and those that must wait until the next opportunity from FEMA is received.

### 3G. Application assembly and mandatory reviews by State Agencies

Once the HM Section completes all initial screening criteria and notifies the counties and municipalities of those properties or projects not moving forward in the application process, the Developmental Branch begins completing the final application to FEMA. There are several items that go into the applications and reviews that must take place either concurrently or sequentially.

One of the most critical aspects of proving that any mitigation project is of value to be completed requires the Developmental Branch to conduct a detailed Benefits Cost Analysis (BCA) using FEMA approved methodology. The Benefit/Cost Analysis of a HMGP project proposal will be conducted according to current FEMA guidance. The purpose of this analysis is to demonstrate that each project results in benefits (reduction of future costs) that are at least equal to the cost of the project (or a Benefits Cost Ratio (BCR) of 1 or greater). Projects may be taken out of strict rank or BCA in order to maximize use of funding.

The next major review after the BCR is completed is the State's Environmental and Historic Preservation (EHP) Review. The HM Section Chief will appoint, as an additional duty, one developmental mitigation specialist as the "On-staff Environmental Specialist". This staff member is responsible for coordinating with the North Carolina Clearinghouse, the State Historic Preservation Officer (SHPO), FEMA and other relevant local, state and federal agencies in the completion of a thorough environmental review of all proposed projects for environmental and historic preservation compliance subject to the requirements of the National Environmental Policy Act of 1969, 44 CFR part 9, FEMA Directive 108-1, and other relevant laws, codes, rules, guidance and policies. The following procedure(s) will be used to ensure compliance:

#### 3G1. Step One – Preliminary State Environmental and Historic Preservation Review

Environmental and Historic Preservation (EHP) refers to FEMA's review process for ensuring the protection and enhancement of environmental, historic, and cultural resources, as required by Federal environmental and historic preservation laws and Executive Orders. The EHP review process ensures compliance with FEMA Directive 108-1, Environmental Planning and Historic Preservation Responsibilities and Program Requirements. Additionally, the EHP review ensures applicable EHP laws, such as the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA), and all of their implementing regulations are used to determine if projects can be forwarded to FEMA for approval. Finally, the EHP review also reviews projects for compliance with Executive Order (EO) 11988 (Floodplain Management), EO 11990 (Protection of Wetlands) and EO 12898 (Environmental Justice). The environmental review process must be completed for each application at both the State and Federal level.

The HM Section follows the environmental review process for projects and properties throughout the entire Development Phase. The HM Development Branch coordinates with the following agencies (referred to as the State Clearinghouse), to conduct their required reviews concurrently with project development:

- North Carolina State Historic Preservations Office (SHPO)

- United States Army Corps of Engineers (USACE)
- North Carolina Department of Transportation (NCDOT)
- Coastal Area Management Act (CAMA)
- North Carolina Wildlife Resources Commission (NCWRC)

Depending on the nature and location of a project, requests for review may be sent to additional organizations.

When the HM Section receives an application for funding, a request for review is sent to each of these organizations. This submission will include a signed memo explaining the purpose of the coordination, planned activities and list of properties associated with the projects. The properties/projects are listed with sufficient information for the coordinating agency to identify their location. Typically, the HM Section provides a spreadsheet list outlining the project/property proposed action (acquisition, elevation, etc.), the mailing or road address (with city, state, county and zip code) and the Latitude/Longitude to the center point of the structure relative to the project/property.

The state reviews each application to ensure compliance with the North Carolina Environmental Policy Act, referred to as the State Environmental Policy Act or SEPA. Since HMPG grants use federal funds, FEMA must review each application for the appropriate NEPA determination and compliance with state and federal regulations and Executive Orders (EO).

#### [State Environmental Review Requirements](#)

The State's environmental review begins when the HM Development Branch notifies all the members of the State Clearing house by memorandum of projects being considered and developed for an HMGP application. The memorandum includes each project's location (with latitude and longitude), a description of the work to be done (in the case of acquisitions and elevations - a brief scoping document) and a discussion of the anticipated environmental impacts. A SEPA review is required if all of the following conditions apply:

- There is a State agency action (e.g., issuance of a permit or grant)
- Environmental impacts may occur
- These potential impacts are not exempt under predetermined minimum criteria allowed specifically for NCDPS, and
- There is an expenditure of State funds or use of public (State or local) lands.

The HM Section has the final authority to impose quality control over environmental work that is produced and submitted to both the State Clearinghouse and FEMA. In the case of acquisition, elevation, or mitigation reconstruction projects, the county/municipality must provide the HM Section with tax cards as part of the application information. The HM Section environmental specialist must be able to interpret and verify both the existing environmental conditions and the potential of environmental impacts of the proposed project. Therefore, if the site information needed cannot be obtained without doing a site visit, then NCEM environmental specialist may conduct a project site visit. The initial project site visit is to verify information included in the

application, determine whether a closer site inspection will be necessary in the future, and to determine whether there may be a need to conduct an Environmental Assessment.

The HM Section must determine from either site inspection, property title search, or other method if any of the properties were in or near a site likely to have been a deposit or storage site for toxic or hazardous materials. If so, then the county/municipality must confer with the property owner. As appropriate, the county/municipality should consider modifying their LOI to exclude these properties from their application.

Next, the HM Section determines whether any structures included in the project or whether the project site is recognized by NC Department of Cultural Resources as historically significant. Tax cards, as well as a determination by the SHPO will yield this information. The county/municipality will modify their application, as necessary, based on findings of preliminary environmental review, benefit-cost analysis, engineering, and eligibility reviews.

The HM Section or the county/municipality will discontinue the application process if, despite consideration of all allowable modifications and alternatives, either:

- The preferred modification is rejected
- All modifications to original application result in an ineligible application
- All possible modifications, although they would meet all requirements of FEMA's four reviews, are inconsistent with the State's disaster recovery or mitigation policies.

### [3G2. Step Two - Proceeding with Final Documentation to FEMA](#)

Upon completion of all mandatory calculations, coordination with required external agencies and receipt of all required paperwork from property owners, the HM section will complete final application entries and submit the application to either the FEMA HMGP team in the Joint Field Office (JFO) or to Region IV. All applications will be submitted into the National Emergency Management Information System (NEMIS). If requests for information (RFIs) are received from FEMA, the development team will respond to those requests in 30 days or less to keep applications moving swiftly through the FEMA review process.

### [Federal Environmental Review Requirements](#)

Throughout the State's work to develop the disaster application, FEMA Region IV works with the State, as the applicant, to gather information about potential EHP impacts and provide guidance to avoid, minimize, and mitigate impacts during initial project planning and development. The REO or any HMA EHP Specialist may provide the State, as the applicant, guidance on requirements for scope of work submittal and any other information or collection forms required for evaluation. In order for FEMA EHP to conduct the best evaluation possible, the State must ensure a complete application is submitted with an adequate scope of work (SOW) and project alternatives as applicable. When FEMA Region IV HMA Program Section receives the State's application FEMA programs will submit a copy of the State's application to FEMA EHP by email to initiate the federal EHP review. FEMA EHP will notify the FEMA program staff if additional EHP information is required so that the program staff can work with

the State to obtain required information and/or documentation. FEMA EHP will not conclude the EHP review until all necessary information is received. FEMA will document CATEXs, EAs, EISs, and every other EHP review process that requires documentation in the official system of record.

The following criteria must be met in order to fulfill the federal environmental review process:

- Comments from State Clearinghouse process: If any significant comments, concerns, or issues are raised through the SEPA review process, they should be addressed before submitting final application to FEMA.
- Compliance with the National Historic Preservation Act (NHPA).
- Documentation that no extraordinary circumstances, as defined in the 44 CFR, exist in relation to the proposed action.
- Permits with the Natural Resource Conservation Service, US Army Corps of Engineers, and/or US Fish and Wildlife Services, as necessary.

Upon completion of all technical and EHP reviews at FEMA Region IV, final decision on each application is made and an obligation letter is then signed by either FEMA Region IV Regional Administrator or the Federal Coordinating Officer. That letter is then transmitted to the State, through the HM Section, and begins the Implementation Phase of all approved projects.

### 3H. Receipt of Award Letters from FEMA

Upon receipt of an obligation letter from FEMA, the HM Section begins the process of completing the scopes of work specified in each and every grant letter. The work is executed by the Implementation branch of the HM Section. The Implementation branch will enter all necessary information into EMGrants for management of the project as well as begin project management task such as building work schedules, coordinating with property owners to identify when work will be completed on their properties and rights of entry, coordinate with contractors for project schedules, and work with engineers to ensure project drawings and specifications meet local building codes and other requirements.

The HM Section will use monthly progress reports, cost reports and information gathered in periodic project site visits to prepare a quarterly progress report on all open projects for presentation to FEMA Region IV no later than the 30th day following the end of a calendar quarter.

### 3I. Award Management through the Period of Performance (POP)

In order to efficiently manage all work required for any and all projects awarded by FEMA, the HM Office must adhere to proven construction and other project management principles. This requires the HM Office, working with DPS procurement and other state procurement agencies, to entering into contracts per 2 CFR 200.317 and following all of North Carolina's standards for procurement of non-federal work. The result of these contracts must ensure that work performed and billed supports the lines of effort to complete the work in FEMA's award letters. In the end, these contracts must focus on increasing the speed of work completion, ensuring the reliability of

the work performed, ensuring the highest quality of material and workmanship goes into each property and the quality assurance/quality control of work to meet the specifications and scope of work for each project. Effectively managing these key areas of project execution increases the likely hood of the state meeting the required period of performance as well as meeting or saving costs on all awarded projects.

### 3J. Setting up State Contracts

2 CFR 200.317 requires that “When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds” and that “The state will comply with § 200.322 *Procurement of recovered materials* and ensure that every purchase order or other contract includes any clauses required by § 200.326 *Contract provisions*.”<sup>1</sup> The HM Section will conduct contracting procedures according to state contract law and all other applicable laws and guidelines. Contracts will be competitively bid in accordance with (IAW) Federal and State guidelines and will be open to as many contractors as possible. Contractors will be competitively pre-qualified by studying each contractor’s past historical performance and reviewing personnel resumes to ensure they have both the pedigree and documented performance to support the work the state requires. The process of entering into these contracts begins by the issuance of a Request for Qualification (RFQ) upon receipt of a NOFO from FEMA. This allows ample time to move through the contracting process and meet all guideline timeline requirements in the FEMA grant letter. While the HM Section is developing the final application to FEMA. Issuing a RFQ at this time provides an ample amount of time for all contractors to be properly reviewed before selection. Once the HM Office submits the final application to FEMA for technical review and determination of possible award, the HM Office will establish work sectors which supports the disbursement of properties across the state. After all work zones are developed, the HM Office will send out a Request for Proposals (RFP) to those prequalified contractors to accept bid work. Contracts will be awarded as lump sum bids for anticipated work zones. Contractors will also be required to hire as many local sub-contractors from the counties where work is being done, to ensure as much money as possible is returned to impacted counties. Anticipated hiring of local contractors will initially be set at 50% and if exceptions are to be made, the HM Section will make that determination based on contractor’s demonstration that local skill craft is not available to support all work.

### 3K. Project Level Cost Tracking

Project Managers are responsible for cost tracking of all costs during the Period of Performance. Costs will be tracked IAW the developmental spread sheet and reimbursed IAW 2 CFR Part 200. Additionally, all duplication of benefit (DOB) receipts will be collected and maintained for each

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<sup>1</sup> In contrast, all other non-Federal entities, including subrecipients of a state, must follow the more detailed requirements of 2 CFR 200.318 through 200.326. Accordingly, in cases where a county or municipality elects pursuant to Section 4 of this plan to “opt out” and to serve as the Sub-recipient itself, all procurement must be conducted in accordance with the procurement policies and procedures of the Sub-recipient and in compliance with 2 CFR 200.318-326. In cases where NCEM provides procurement technical assistance or serves as a purchasing agent for a Sub-recipient where the resulting contract is signed by the Sub-recipient (not by NCEM), the procurement must comply with 2 CFR 200.318 through 200.326. For additional guidance on procurement under federal grants, visit <https://www.fema.gov/procurement-disaster-assistance-team>.

property. For construction projects, whether elevations or mitigation reconstruction, Project Managers will develop cost sheets based on the construction contractor's pre-work submission. Cost tracking occurs throughout the project's life and payments will be made IAW contractor submittals. PMs will approve reimbursement for costs based on the monthly submittals from contractors IAW with the pre-work plan.

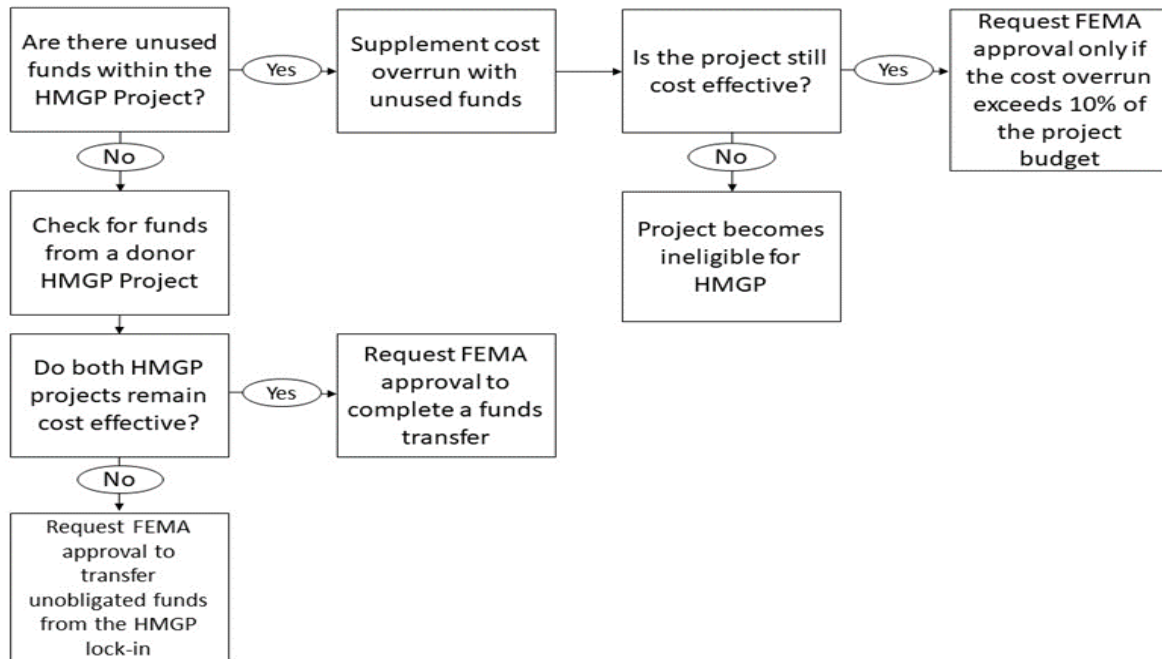
All cost reports from a contractor or sub-recipient, will be entered into EMGrants. PMs will review all costs within EMGrants and if allowable, forwards the approved reimbursement request to the Senior Project manager for review. Once the Senior PM completes the reimbursement review, those costs will be forwarded to the financial analyst to be processed for payment. Using EMGrants to track reimbursements allows the HM Section to manage and analyze costs associated with all projects and to prepare weekly, quarterly and monthly reports and avoid duplicate payments.

### 3L. Adjusting Project Costs and Cost Overrun Approval

If there is a cost overrun within a line item of a project and there are any unused funds within the project, the unused funds from within the project may be used to supplement the overrun only if the project remains cost effective. If the overrun exceeds more than 10% of the total project budget (for non-construction projects only), then FEMA must also approve the use of the unused portion of project funds. Steps include:

- 1) If there are costs adjustment within a project, that does not change the overall total project value, the SHMO approves the costs adjustments to the project. During close grant close out, changes approved are highlighted as cost corrections are highlighted on the project closeout sheet.
- 2) If there is an overall cost overrun on a project, then the SHMO must identify and notify FEMA Region IV. That notification will include a request for additional funding from either 1) a different project within the overall disaster grant that may have underruns or 2) from additional unobligated funds remaining in the grant.

The chart below is a good reference for making determinations on the scenarios described above:



### 3M. Award Closeout and Archiving

Once the Project Manager determines a project is complete IAW the Scope of Work, the project will be moved to the Closeout Branch to begin preparing final closeout paperwork. The closeout process begins with a closeout inspection that includes the Project Manager, a QA/QC engineer, a representative from the local county, the contractor performing the work and if possible, the property owner (for elevations and mitigation reconstructions). During this site visit, the Project Manager confirms: 1) successful completion of the Scope of Work per HMA Guidelines; 2) No adverse issues are encountered in the field (i.e. no encroachment on acquired parcels, or non-conforming issues encountered with elevations, GPS waypoints and photos are taken and have no issues); and 3) all documentation is on file at the local level per guidelines. Closeout deliverables, set forth through HMA Guidance and FEMA Approval Letters, are then collected as required. Final reimbursement for eligible expenses is then paid following a programmatically successful closeout visit and collection of all required deliverables.

### 3N. Administrative Closeout

Once the project is programmatically complete per above, the Project Manager will complete closeout file organization according the HM Section Standard Operating Guidelines. The closeout file is then submitted to the HM Section Chief and HM Section Closeout Specialist for final review of programmatic and fiscal information. The project is then submitted to the GAR for final approval via the completion of a FEMA Closeout Request Letter and a Project Closeout Certification Statement. The Project Closeout Certification Statement confirms that the NEMIS approved line items have been executed within the approved Scope of Work, and that all required deliverables are on file in the HM Section files. The FEMA Closeout Request Letter requests that FEMA Region IV programmatically close the project, and that any under runs be

de-obligated. FEMA then sends a Final Claims Letter confirming that this action has taken place.

### 3O. Archives

Project records are archived by NCEM Hazard Mitigation Section for three (3) years, both electronically and in hardcopy, as specified in 2 CFR 200.333 and the UHMA Guidance. Per HMA Guidance, the Sub-recipient is required to keep records for at least 3 years from the submission date of its single or last expenditure report submitted in accordance with 2 CFR Section 200.343 (HMA FY15 Guidance, F.1 Sub-award Closeout, pg. 90). Once this time period is complete, records are forwarded to the State Archives for storage.

## Section 4 – Sub-Recipient Management of Grant Awards

### 4A. Local/Municipality Grant Management and Execution

While the state is prepared to manage all grants provided by the HM program, local municipalities or governments may request to self-perform the work provided in a grant. In order to do so, they must first consult with the HM Section Chief to lay out their plan to complete the work within the Period of Performance (POP) of the grant. Based on the sub-applicants past grant management performance combined with the current sub-applicant plan and the sub-applicant's management plan, the HM Section Chief will verify the required capacity exists at the local level to execute the grant's requirements. The HM Section Chief, after determining the sub-applicant is capable of managing the grant, a formal letter will be submitted to the NCEM Executive Director/GAR requesting permission for the local county/municipality authority to oversee specific project grants at the local level. Once the Executive Director/GAR concurs and signs the request, the Hazard Mitigation Section will execute a Grant Agreement with the local officials as well as notify FEMA that a county/municipality has been granted the authority to execute their project(s). The grant agreement will clearly outline the scope of work the local community must complete and will also outline critical dates that work must be accomplished within the POP.

If at any time during the grant the local municipality fails to meet critical dates and times as outlined in the grant agreement, fails to request reimbursements within 2 consecutive quarters, or demonstrates mismanagement of the program by not completing work within the specified scope or completing work that is substandard and not to local codes, the HM Section Chief will recommend to the Executive Director/GAR that based on lack of performance or mismanagement, the Grant Agreement should be terminated and the state should take over all remaining project work. If the Executive Director agrees, notification will be made to FEMA of the decision and a termination letter will be sent to the local authority stating that due to poor performance or mismanagement the grant agreement is terminated and the state will take over executing all remaining work. The local authority will have 30 days to appeal this decision and at the same time, all work must stop. If the local authority chooses not to appeal, any reimbursements required for the local municipality will be filed within 60 days of the termination letter for work done up until the time of termination. The HM Section Chief will review the reimbursement request to ensure that work was within the scope of the project and is reflective of work done up until the point of termination. If the local municipality wishes to appeal the decision of revocation, they can follow the appeals process laid out in Section 9 of this plan.

### 4B. Receipt of Award Letters from FEMA

Upon receipt of an obligation letter from FEMA, the HM Section executes a grant agreement with the sub-applicant. The grant letter is prepared by the Project Manager from the Implementation branch that will be assigned to review all work and prepare all reimbursements to the sub-applicant. Upon signing of the grant letter, the sub-applicant must begin completing the tasks supporting the scope of work of the project. The Project manager is always available to answer questions, provide technical guidance and settle questions. If a county retains a consultant to work on their behalf, the contract must be provided to the HM Section for review as well as to ensure the contract does not exceed the financial requirements of the FEMA award

letter. The sub-applicant will go through an implementation briefing attended by the sub-applicants' leadership, the SHMO, the Implementation branch Supervisor and the assigned project manager. At this briefing a review of EMGrants will be done in order to ensure the sub-applicant knows how to file for reimbursements and enter monthly progress reports. Progress reports will be completed on a standard form within the grant management software, EMGrants Pro, from the sub-recipient's designated agent to the NCEM Hazard Mitigation Section Program Manager not later than the 10th of each month. Sub-recipients who do not deliver timely progress reports will not be eligible for reimbursement of HMGP expenses until such time as accurate and timely progress reports are presented to NCEM.

#### 4C. Award Management through the Period of Performance (POP)

In order to efficiently manage all work required for any and all projects awarded by FEMA, the sub-applicant must adhere to proven construction and other project management principles. This may include the HM Office, working with the sub-applicant and their consultant (if hired), entering into contracts per 2 CFR Section 200.318-326 and following all of North Carolina's standards for procurement of non-federal work. Additionally, the HM Section project manager will schedule minimum monthly sit-down reviews with the sub-applicant and their consultant to review the monthly progress report and planned work for the next month. This ensures the HM Section is aware of all work completed and anticipated and that all work stays on schedule to meet the POP for the award.

#### 4D. Project Level Cost Tracking

The HM Section Project Managers remain responsible for cost tracking of all costs during the Period of Performance. Project Managers will work with retained consultants (if the local municipality decides to retain a consultant to assist with local project management capability) to ensure all receipts are maintained and documented for each property. Additionally, all duplication of benefit (DOB) receipts will be collected and maintained for each property. For construction projects, whether elevations or mitigation reconstruction, PMs will develop cost sheets based on the construction contractor's pre-work submission. Costs will ensure all projects come in at or under the developmental worksheet. PMs will then approve reimbursement for costs based on monthly submittals from contractors IAW with the pre-work plan.

All cost reports from a contractor or sub-recipient, will be entered into EMGrants. PMs will review all costs within EMGrants and if allowable, forwards the approved reimbursement request to the Senior Project manager for review. Once the Senior PM completes the reimbursement review, those costs will be forwarded to the financial analyst to be processed for payment. Using EMGrants to track reimbursements allows the HM Section to manage and analyze costs associated with all projects and to prepare weekly, quarterly and monthly reports and avoid duplicate payments.

#### 4E. Adjusting Project Costs and Cost Overrun Approval

If there are cost overruns or changes to Scopes of Work, the sub-applicant (or their consultant) must submit in writing reasons for the changes or cost overruns. They will identify possible

underruns where funds may be moved from if a cost overrun. If a scope of work change, they are required to provide what work may have been done prior to the scope of work change is requested so that proper reimbursements can be made. Once all documentation is received by the HM Section, the SHMO will work with the sub-applicant to quickly move underrun funds if possible to keep work moving. If Scope of Work change meets BCA requirements, the SHMO will submit request to FEMA for approval of the Scope of Work request. Under no circumstances will the sub-applicant move any funds or begin any scopes of work changes without approval from the HM Section or an updated Grant Letter from FEMA. If an updated Grant Letter is required, then the sub-applicant will not do any work until an updated grant agreement is signed stipulating the new Scope of Work and the amended project funding for the project.

#### 4F. Award Closeout and Archiving

Once the Project Manager determines or the sub-recipient notifies their assigned project manager that a project is complete IAW the Scope of Work, either through required Progress Reporting or other form of correspondence, the assigned HM Section Chief will prepare for a close out visit. The close out visit will consist of the Project Manager, a QA/QC engineer, a representative from the sub-applicant, their consultant (if applicable) and if possible the property owner. During this site visit, the Project Manager confirms: 1) successful completion of the Scope of Work per HMA Guidelines; 2) No adverse issues are encountered in the field (i.e. no encroachment on acquired parcels, or non-conforming issues encountered with elevations, GPS waypoints and photos are taken and have no issues); and 3) all documentation is on file at the local level per NCEM guidelines. Closeout deliverables, set forth through HMA Guidance and FEMA Approval Letters, are then collected as required. Final reimbursement for eligible expenses is then paid following a programmatically successful closeout visit and collection of all required deliverables.

#### 4G. Administrative Closeout

Once the project is programmatically complete per above, the Project Manager will complete closeout file organization according the HM Section Standard Operating Guidelines. The closeout file is then submitted to the HM Section Chief and HM Section Closeout Specialist for final review of programmatic and fiscal information. The project is then submitted to the GAR for final approval via the completion of a FEMA Closeout Request Letter and a Project Closeout Certification Statement. The Project Closeout Certification Statement confirms that the e-Grants or NEMIS-approved line item budget has been executed within the approved Scope of Work, and that all required deliverables are on file in the NCEM Hazard Mitigation Section. The FEMA Closeout Request Letter requests that FEMA Region IV programmatically close the project, and that any under runs be de-obligated. FEMA then sends a Final Claims Letter confirming that this action has taken place.

#### 4H. Archives

Project records are archived by NCEM Hazard Mitigation Section for three (3) years, both electronically and in hardcopy, as specified in 2 CFR 200.333 and the UHMA Guidance. Per HMA Guidance, the Sub-recipient is required to keep records for at least 3 years from the submission date of its single or last expenditure report submitted in accordance with 2 CFR

200.343 (HMA FY15 Guidance, F.1 Sub-award Closeout, pg. 90). Once this time period is complete, records are forwarded to the State Archives for storage.

## Section 5 –Grant Management and Administrative

### 5A. Grant and Fund Management Procedures

NCEM manages grant funds in accordance with federal and state guidance and procedures including those procedures identified in 2 CFR Section 200, N.C. Gen. Stat. § 143B-426.39, N.C. Gen. Stat. § 143C-6-22 -23, administrative code regulations and internal policies, procedures and guidance set forth in NCDPS and NCEM standard operating guides and procedures.

The NCEM Hazard Mitigation Section uses a variety of methods to collect grants administration information and completes a monthly review of all pertinent sources of information to ensure that funds are being drawn down and disbursed in accordance with the scope of work, timeline and budget identified and approved in each project. On a monthly basis, the NCEM Hazard Mitigation Section reports to the Division Budget Officer and Deputy Director to advise on the use and availability of funds and the consistency of information shown in various fiscal tracking tools. Three main systems are used to track program expenses and expenditures:

**Project Cost Tracker:** As cost reports are received from a Sub-recipient, the Hazard Mitigation Project Cost Tracker allows staff to collect and track expenditures according to approved cost estimate line items within a project's scope of work. In addition to recording costs, the Project Cost Tracker allows the Project Manager to manage and analyze costs associated with an HMGP project, prepare weekly, quarterly and monthly reports and avoid duplicate payments.

**Grants Management Database:** The Grants Management Database is operated and maintained by the Fiscal Section of the NCDPS. In addition to Sub-recipient information, period of performance dates, and cost share distributions, the Grants Management Database indicates project budget information, cost report payment dates and total expenditures. It also allows the user to run reports based on all HMGP projects within a given disaster or cost center.

**North Carolina Accounting System (NCAS):** The North Carolina Accounting System (NCAS) is an accounting system that facilitates internal control over fiscal operations and provides a structure for recording accounting data for the purpose of preparing standardized financial statements and reports.

### 5B. Key Grant Management Terms

**Approval:** NCEM receives notice of approval of specific project sub-applications from FEMA Region IV. If there is a sub-recipient for a project, notice is provided to them along with instructions that no project activities are to begin prior to the execution of a Grant Agreement between the Sub-recipient and the NCEM.

**Obligation:** NCEM receives official written notice on form 76 –A and an official Project Award Letter from FEMA Region IV that shows the obligated federal amount that is deposited into the NCEM SMARTLINK account.

**Grant Agreement:** upon receipt of an Award Letter, NCEM Hazard Mitigation Section drafts a grant agreement between any Sub-recipient and NCEM. This agreement serves as the legal basis for distribution and reimbursement of funds, project management and resolution of any issues that may arise during, or as a result of project administration. For a detailed list of procedures related to projects including management costs refer to the attached “Chapter 2 Financial Management”.

**Drawdowns:** Any Sub-recipients request reimbursement of eligible project and management cost expenses through the use of a NCEM Cost Report. Requests for reimbursement (or advance of funds) **MUST** be submitted through a standard form on EMGrants Pro and **MUST** be accompanied by suitable supporting documentation that confirms the amount of the requested reimbursement or advance and that provides a suitable link between the item being billed and the scope of work of the approved project grant. Cost reports identify sub-recipient, project title and have an attached detailed and itemized list of expenses with receipts, paid invoices, or other suitable documentation.

**Closeout:** Once project work is complete, NCEM will work with Sub-recipient to audit records, make a final site visit to collect photographs of completed work, collect final latitude/longitude information and ensure relevant and necessary deed restrictions have been recorded and that final fiscal records balance. Financials will be balanced across all offices responsible for tracking funds expended beginning with the local municipality to the HM Section to NCEM finance, DPS finance and other State-level agencies. NCEM will request formal project closeout and de-obligation of excess funds where possible within 90 days of the completion of the project. If for any reason closeout cannot be accomplished within 90 days, the HM Section will notify FEMA regional representatives no less than 60 days prior to the end of the Closeout and Liquidation Period (CLP) to request an extension to the CLP in order to allow for proper and successful closeout. Sample documents are available from NCEM-HM by request.

## 5C. Management Cost Administration

The HM Section will request management costs pursuant to FEMA Policy #104-11-1 and Stafford Act Section 324. NCEM will expend awarded Management Costs in compliance with Section 324 and any relevant FEMA guidance. Eligible Management Cost Expenses include indirect costs, direct administrative costs, and other administrative costs associated with a specific project.

FEMA Policy #104-11-1 supersedes the UHMA guidance on management costs, except for the list of eligible management cost activities identified in the UHMA Guidance Part III E.1.5 (to include but are not inclusive):

- Solicitation, review and processing of sub-applications and sub-awards
- Sub-application development and technical assistance to sub-applicants regarding feasibility and cost effectiveness and BCA
- Geocoding mitigation projects identified for further review by FEMA

- Delivery of technical assistance (e.g., plan reviews, planning workshops, training) to support the implementation of mitigation activities
- Managing awards (e.g., quarterly reporting, closeouts)
- Technical monitoring (e.g., site visits, technical meetings, etc.)
- Purchase of equipment, per diem, travel expenses and professional development directly related to implementation of HMA programs
- Staff salary costs directly related to performing the activities listed above

### 5C1. State Management Costs

The allocation of the 10% recipient management costs will not change. The state will utilize the funds provided by FEMA to pay all of the allowable costs to staff, operate and conduct eligible activities under the grant. These costs will be requested per the current requirements laid out by FEMA and will be accounted for, reviewed and closed out per current standing Guidance, regulations and policies. As an Enhanced Plan state, initially NCEM will request up to 25% of available estimated management costs to support all work necessary to prepare a disaster grant for submission to FEMA. Once projects have been obligated, NCEM will request annual management costs to support HM Section operations on regular intervals, normally two (2) times per year.

### 5C2. Sub-Applicant Management Costs

The allocation of the 5% sub-recipient costs will operate under a modified procedure where the funds would be used to reimburse local jurisdictional activities the state requests them to perform. The 5% management cost funds will be requested in NEMIS and will be reimbursed based on actual cost incurred as specified on the authorizing letter received from Region IV. The HM Section will request and make available local management costs for project administration activities upon obligation of grant funds pursuant to Stafford Act section 324. The management costs for the county/municipality will be no more than 5% of the total awarded projects for their county/municipality. The HM Section will provide management cost letters to each county/municipality, whether the state will be doing the work for the county or if the county elects and is approved to do the work as a sub-grantee. Intent of the separate letter for management cost is to ensure management costs are not mixed and reimbursed with project costs. The HM Section fully supports the local management cost being for the sole use of the county/municipality and the extra costs they may incur to administer the grant if awarded as a sub-grantee. Management costs are to be reimbursed per normal reimbursement procedures through EMGrants. Reimbursable costs include the hiring of local consultants (if the county/municipality retain such services) to perform management activities. In the event that the county/municipality chooses not to pursue Management Cost funding, NCEM will request that they opt out in writing and a copy of their notice will go to the project development file.

If a county/municipality is approved to self-manage project work pursuant to Section 4 of this Plan, the sub-recipients are reimbursed for their management costs up to 5% of the total amount of eligible project funds reimbursed. Management Costs may be held by the State, if the sub-applicants fail to submit monthly progress reports on time and 100% accurate as of the reporting date. The State will also not incrementally reimburse over 90% of planned management cost for

a project. The final 10% of eligible management cost expenses will be held until the final/closeout progress and cost reports are submitted. This is to ensure management costs are not over-reimbursed thus triggering a de-obligation action. The HM Section will closely monitor the Sub-Recipient's drawdown of Management Costs using progress reports and cost reports submitted monthly or as needed/requested. In the event draw down of Management Cost funds is not on pace to be fully executed by the Sub-Recipient, coordination will be made between the HM Section and the Sub-Recipient. In the event Management Cost funds are not fully expended by the Sub-Recipient, those remaining funds will be de-obligated and not used by the State.

#### 5D. NCEM/FEMA Spend Plan Coordination

In addition, the NCEM Hazard Mitigation Section works very closely with FEMA Region IV on a federally-required Spend Plan. The FEMA Spend Plan times the obligation of project funding in a coordinated manner. NCEM and FEMA Region IV collaborate to consider elements including State prioritization and projected project complexity (e.g., number of structures or potential Environmental and Historic Preservation issues). The steps for collaborating on the FEMA-required Spend Plan include:

- A. Once all projects are evaluated for eligibility and cost effectiveness, a global submission roster for 5% Initiative, Planning Set-Aside, and Brick and Mortar projects is submitted by the Hazard Mitigation Grants Branch to the GAR for approval.
- B. The GAR will review, approve, and if necessary modify the submission roster and project prioritization.
- C. The Hazard Mitigation Section will then contact the FEMA Region IV Program Specialist and provide the GAR-approved submission roster, and subsequently work with Region IV HMA staff to project timeframes of anticipated federal obligations. This may involve working sessions between NCEM Hazard Mitigation Section staff and FEMA Region IV HMA staff to ensure that projects conveyed on the submission roster are integrated into FEMA's latest Spend Plan template.
- D. FEMA obligates projects according to the timescale as set forth by the Spend Plan and maintains close contact with NCEM Hazard Mitigation Section staff to adjust as necessary based on factors including technical review, Requests for Information (RFI's) or other information.

#### 5E. Compliance with Federal Regulations and Guidelines

The NCEM Hazard Mitigation Section ensures compliance with the administrative and audit requirements as directed by FEMA, through appropriate award letters and other written guidance as required. All requirements of 2 CFR Part 200 are addressed.

#### 5F. Applicable Federal Regulations and Procedures (2 CFR part 200)

Key 2 CFR part 200 requirements include the following. The relevant 2 CFR part 200 provision is shown in parentheses at the beginning of each section.

**(200.201) Use of grant agreements:** All subgrants shall be made in accordance with 2 CFR 200. The Grant Agreement (GA) is the binding legal contract that shall be made between the Sub-recipient and NCDPS governing all actions and activities related to the HMGP funds to any local government or other entity. The Grant Agreement between Sub-recipient and NCDPS is the principle document used to ensure that local government Sub-recipients are using funds for eligible purposes. 2 CFR Subpart E, *Cost Principles*, establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. Following execution of the grant agreement, NCEM Hazard Mitigation Section staff is to conduct an implementation meeting with local government representatives to provide guidance concerning appropriate use of funds. Funds are not reimbursed unless a direct link between the expense and the approved project scope of work and budget detail document can be established through provision of suitable back up documentation including, but not limited to, paid or signed advance invoices, time sheets, etc.

**(200.203) Notices of funding opportunities:** Applications for funding through the Hazard Mitigation Grant Program are completed and submitted to FEMA using the NEMIS System. NCEM Hazard Mitigation Section Project Managers provide technical assistance to communities in completion of all portions of the NEMIS application. Completed sub-applications are reviewed by the NCEM Hazard Mitigation Section Chief and are approved for final submission to FEMA. Prior to submission to FEMA, application briefs are reviewed by the Director of NCEM to ensure that non-federal funds match capabilities are not being exceeded.

**(200.205) High Risk Recipients:** North Carolina maintains a list of high risk and debarred communities. NCEM will not enter into a grant agreement with a high-risk community until and unless a special grant agreement incorporating additional oversight and funds management procedures is executed. See part (23)(a) and (23)(b) of the sample grant agreement. NCEM will not enter into agreements with debarred communities.

**(200.213) Sub-awards to Debarred and Suspended Parties:** NCEM/NCDPS will not enter into a grant agreement with any debarred or suspended party. Should a Sub-recipient be suspended or debarred during the course of execution of an HMGP grant, parts 9, 10 and 11 of the grant agreements shall provide recourse.

**(200.302) Standards for Financial Management Systems:** The NCEM Hazard Mitigation Section has a well-documented procedure for maintaining oversight and control over all accounts and expenses.

**(200.305) Payment:** The NCEM Hazard Mitigation Section maintains a well-documented system to manage payment requests and disbursements to local government Sub-recipients for advance or reimbursement of programmatically eligible funding pursuant to the grant agreement, project budget and scope of work, and all applicable rules, policies, guidance and standards.

**(200.306) Matching Funds or Cost Sharing:** Under HMGP, the State of North Carolina will pay the 25% non-federal cost share on all approved project, plan and initiative applications. The cost share is broken out in both the application detailed budget and in part (2) of the grant agreement.

**(200.307) Program Income:** Disposition of program income is addressed in the grant agreement executed between NCDPS and the Sub-recipient. Attachment D, page D-3 item 7 addresses program income. If NCEM identifies program income that has not been returned to the state, funds will be offset from future reimbursement requests against the HMGP, other UHMA funding programs or Public Assistance. NCEM pays careful attention during the project development stage to avoid creating situations where program income might be generated.

**(200.308) Revision of budget and program plans:** All requests for a change in the approved scope of work for a specific HMGP project shall be addressed in writing to the NCEM-HM Grants Branch Manager. The NCEM-HM Grants Branch Manager will evaluate such requests, and if deemed valid, the NCEM-HM Grants Branch Manager will contact the Region IV HMA Branch Chief and request approval of the change of scope. Changes of scope must still result in a sound, cost effective project that meets all other programmatic requirements.

The NCEM-HM Grants Branch Manager will evaluate all requests for a change in budget on specific HMGP projects. Changes in budget that can be accommodated within an already approved budget without increasing or decreasing a single budget line item by more than 10% for non-construction projects may be approved by the NCEM-HM Grants Branch Manager. Changes in budget that are in excess of 10% for non-construction projects of a given line item, or that require the obligation of additional funds will be evaluated by the SHMO and forwarded to the Region IV HMA Branch Chief for approval if such budget change does not materially impact the cost effectiveness of the overall project and provided additional unobligated HMGP funds are still available. Eligible budget realignments are permissible for construction projects under the FY15 UHMA that governs DR-4393.

**(200.309) Period of Performance:** A project grant period of performance is established on the FEMA obligation letter. The grant agreement executed between NCEM and Sub-recipient establishes a project period of performance that is usually at least 90 days shorter than the POP established in the obligation letter. Should conditions warrant, NCEM may amend the POP established in the grant agreement. If warranted, NCEM may ask FEMA to extend the official period of performance for a specific grant or for the general HMGP period of performance. Outside of extreme circumstances, NCEM will advise FEMA of the need for a grant extension at least 90 days prior to the expiration of the FEMA Period of Performance.

**(200.311) Real Property:** The grant agreement, the NCEM SOG and the UHMA guidance promulgated by FEMA govern the disposition of real property that is impacted by actions associated with HMGP projects. Property disposition, title and restriction shall be in accordance with 2 CFR part 200.311, 44 CFR part 80 and 44 CFR part 206 as applicable.

**(200.317-326) Procurement:**

**a. Procurement by State agency.** 2 CFR 200.317 requires that when procuring property and services under a Federal award, a State agency must follow the same policies and procedures it uses for procurements from its non-Federal funds. In addition, a State agency must

comply with § 200.322 *Procurement of recovered materials* and ensure that every purchase order or other contract includes any clauses required by § 200.326 *Contract provisions*.

**b. Procurement by local governments and other non-State entities.** In contrast, all other non-Federal entities, including subrecipients of a state, must follow the more detailed requirements of 2 CFR 200.318 through 200.326. Accordingly, in cases where a county or municipality elects pursuant to Section 4 of this plan to “opt out” and to serve as the Sub-recipient itself, all procurement must be conducted in accordance with the procurement policies and procedures of the Sub-recipient and in compliance with 2 CFR 200.318 through 326. In cases where NCEM provides procurement technical assistance or serves as a purchasing agent for a Sub-recipient where the resulting contract is signed by the Sub-recipient (not by NCEM), the procurement must comply with 2 CFR 200.318 through 200.326. For additional guidance on procurement under federal grants, visit <https://www.fema.gov/procurement-disaster-assistance-team>.

NCEM will request a copy of local procurement practices and process for review during implementation and prior to project closeout. No reimbursements for services, supplies or equipment shall be made to Sub-recipient until such documentation has been provided and reviewed by NCEM. During the sub-application process, Sub-recipients shall provide signed copies of all relevant notices and assurances associated with the Federal Standard Form 424 process. Pursuant to section (10)(a) of the grant agreement, neither NCEM nor NCDPS shall assume any liability for acts or purchases made by or on behalf of the Sub-recipient.

**(200.327) Financial Reporting:** Grants management fiscal status shall be reported by the Fiscal Section of the NCDPS in accordance with the requirements of 2 CFR 200.327. NCEM will assist in the provision of these reports by maintaining oversight of all expenditures, encumbrances, and reimbursements via a monthly review of all relevant books and accounting systems to help insure appropriate use of state and FEMA funds.

**(200.328) Monitoring and Reporting Program Performance:** NCEM shall monitor all grants and all grant funded activities in accordance with part 200.328 of 2 CFR. NCEM shall secure a progress report from each grant recipient no later than the 10th day of the month. The report shall be made on the form provided by NCEM and shall be delivered via US mail, by hand, or by electronic media as agreed between the Sub-recipient and the NCEM Project Manager. Cost reports will not be reviewed, and funds will not be reimbursed in the absence of a complete and up to date progress report. Project Managers shall note receipt or non-receipt of monthly progress reports on the Hazard Mitigation Tracker Spreadsheet.

NCEM shall provide FEMA Region IV with a quarterly progress report not later than the 30th day of the month following the end of a calendar quarter. Said report shall provide a snapshot of project progress based on both an analysis of work done toward completion of the approved scope of work and an analysis of funds spent and reimbursed. Quarterly reports shall be detailed enough to provide a realistic view of project status.

**(200.333) Records Retention:** NCEM shall retain all grant related records in accordance with 2 CFR 200.333. Part (7) of the grant agreement governs local records retention by the Sub-

recipient. NCEM retains original paper records and also scans any materials received in order to maintain an electronic archive.

In addition to the three-year requirement set forth in 44 CFR, North Carolina regulations and practices dictate that when the state or federally mandated records retention period expires, all public records and documents shall be appropriately preserved and delivered to the NC Department of Archives and History for retention for an additional 5 years. Prior to submission of records to the NC Department of Archives and History, NCEM HM staff will review materials and redact any personal information such as social security numbers, dates of birth, or other sensitive information, or any information such as NFIP claims history that is protected by the US Privacy Act. At the conclusion of the 5-year retention period, the NC Department of Archives and History will review the records for cultural and/or historical significance, and if none is found, will destroy the records.

**(200.338) Remedies for noncompliance:** Should NCEM HM find a Sub-recipient in violation of any provision of grants law, code, policy or guidance, a remedy shall be enforced pursuant to 2 CFR 200.338. Specific and non-specific remedies are addressed in Part 11 of the grant agreement.

**(200.339) Termination:** Termination of grant contracts (agreements) is governed by part 11 of the NCDPS grant agreement.

**(200.448) Intellectual property:** It is not anticipated that any copyrighted material will be produced or procured using HMGP funds. Should such a situation arise, 2 CFR 200.448 would be the governing guidance. In addition, disposition of copyrights may also be addressed in part (23)(a) and (23)(b) of the grant agreement.

**(200.501) Audit requirements:** Non-federal entity audit requirements are addressed in part 14 of the grant agreement between NCDPS and the Sub-recipient. Part 14 (b) addresses the single audit act.

**(206.437) (b)(xi) 404 Plan Compliance:** This plan outlines procedures and processes in accordance with the requirements of 44 CFR part 206. 2 CFR Part 200 compliance is addressed in other parts of this Plan. Part 206 compliance is addressed in detail in each section of this plan and elsewhere in NCEM SOGs and grant agreements.

## **5G. Provision of Technical Assistance**

The Hazard Mitigation Grants Section of NCEM is committed to providing outstanding service to the citizens and local governments of North Carolina and as such will provide technical assistance to local governments in all phases of the hazard mitigation project process including planning, project identification, grant sub-application development, environmental review, benefit cost analysis, project implementation and closeout. Certain aspects of project development and implementation call for specific skills including engineering, design, construction, interpretation of laws, rules and regulations from a variety of fields, and evaluation of environmental conditions and impacts. While Hazard Mitigation Section Specialists may not

be qualified by education, license or experience to perform certain duties, NCEM is a coordinating agency, and as such will make every effort to ensure that local governments have access to the best possible advice from experts within NCEM, other agencies or certain professionals as warranted by specific situations.

Sub-recipients may request technical assistance from the NCEM Hazard Mitigation Section at any time during any phase of project development or implementation by contacting their NCEM Area Coordinator, the Hazard Mitigation Section Chief/SHMO or any member of the Hazard Mitigation Section Staff. Hazard Mitigation Specialists will make regular contact with Sub-recipients during the entire project lifetime to ascertain whether or not technical assistance is required. Contact may be in the form of telephone calls, emails, project site visits, or other means as appropriate.

## 5H. Quarterly Reporting of Approved Projects

The NCEM Hazard Mitigation Section overhauled its internal tracking system for all projects and Management Costs. Construction and planning grants are tracked in the Section's "Hazard Mitigation Project Tracker." The project tracker contains vital Scope of Work, Period of Performance, and Financial Data (i.e. obligations from FEMA Award Letters, and Authorizations/Encumbrances from ongoing drawdowns).

The Hazard Mitigation Project Tracker has Quarterly Report templates that roll up ongoing data entry activities. Quarterly Progress Reports (QPRs) are generated from EMGrants Pro, the grants management software program. This information is sent to the North Carolina Program Lead at FEMA Region IV on a quarterly basis. The fields that are populated in the QPR were agreed upon in meetings between the NCEM Hazard Mitigation Section and FEMA Region IV in 2009. The QPR template is flexible and can be modified going forward to meet FEMA Reporting needs.

These programmatic QPRs are then reviewed in person which may include site visits conducted by the FEMA Region IV Program Leads shortly after submittal. Programmatic issues and strategies are discussed each visit.

## 5I. Compliance with Audit Requirements

This plan complies with the quarterly reporting requirements set forth in 44 CFR part 206. The audit requirements for HMGP are set forth in 2 CFR Part 200 Subpart F. This circular establishes audit requirements for state, local, and Indian tribal governments that receive federal assistance. It requires that audits be performed on an organization-wide basis and not on a grant-by-grant basis. These audits are conducted in order to determine, for the entire organization, whether:

financial operations are conducted properly,

the financial operations are presented fairly,

the organization has complied with laws and regulations affecting the expenditure of federal funds,

internal procedures have been established to meet the objectives of federally assisted programs, and

Financial reports contain accurate and reliable information.

In general, audits of federal funds received by NCEM will be conducted as part of the regular audit cycle as required by N.C. Gen. Stat. §§ 159-34, 143C-2-1, and 143C-6-23. The 2 CFR Part 200 Subpart F audit requirements are an extension of the traditional financial audit that most governments are receiving now and include:

A supplemental schedule of grant activity - which lists selected grant data on a grant-by-grant basis

An auditor's report on the supplemental schedule, an auditor's report on internal control, an auditor's report on compliance matters, details of questioned cost and practices, noncompliance and other audit findings.

Audits of federal funds should be conducted in accordance with:

Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States. GAGAS incorporates the typical Generally Accepted Auditing Standards (GAAS) but involve additional auditor responsibilities including special reporting on internal controls and on compliance with applicable laws and regulations.

The General Accounting Office "Guidelines for Financial and Compliance Audits of Federally Assisted Programs."

The State will use the established internal procedures for reviewing and submitting to audits. These audits will be conducted as needed or as requested. Audits will be recorded and maintained with the associated grant programs. For the purposes of this plan, DR-4393-NC audits will be documented and maintained with administrative files associated with DR-4393-NC.

Noncompliance – The NCEM Hazard Mitigation Section will retain the authority to address a sub-recipient's noncompliance with grant requirements. The NCEM Hazard Mitigation Section will provide an opportunity to sub-recipients to bring the grant into compliance, if applicable, or by imposing remedy actions or special conditions on Sub-recipients that fail to comply with grant requirements (2 CFR Part 200.207 and 2 CFR Part 200.338). Remedies, solutions or plans of action to bring grants back into compliance will be determined by the NCEM Hazard Mitigation Section as appropriate based on the conditions and circumstances.

## 5J. Processing of Appeals

For any county/municipality or sub-recipient, appeals concerning project prioritization or selection for further development will first be addressed to the NCEM Hazard Mitigation Section Chief. Appeals shall be in writing and shall be delivered no more than 30 days after a decision has been published either electronically, or in written format.

Policy decisions rendered by the NCEM Hazard Mitigation Section Chief may be appealed within 30 days to the Director of the North Carolina Emergency Management.

Appeal of decisions concerning project eligibility, funding, or other matters that arise following obligation of funds by FEMA shall be made in accordance with guidance promulgated in 44 CFR 206.440. Sub-recipients may send written appeals to the NCEM Hazard Mitigation Section Chief/SHMO who will evaluate the merit of the appeal and forward it to the Regional Administrator for consideration. Additional (further) appeals will be handled according to the instructions in 44 CFR 206.440.

## 5K. Incorporation into State Emergency Operations Plan

The State Hazard Mitigation Grant Program Administrative Plan will be incorporated by reference into the state Emergency Operations Plan (EOP) upon approval by FEMA.

## 5L. Plan Review and Maintenance

This HMGP Administrative Plan will be reviewed annually to ensure compliance with applicable federal and North Carolina statutes, laws, regulation and policies. This plan may also be updated to meet any organizational changes in policy or to improve program delivery and administration.

## APPENDIX I: DEFINITIONS

**Grant** means an award of financial assistance.

**Hazard Mitigation** is any sustainable action taken to reduce or permanently eliminate the long-term negative consequences to human life and property from natural hazards.

**Recipient or Grantee** means a government to which a grant is awarded, and which is accountable for use of the funds provided. The Recipient is the entire legal entity even if only a particular component of the entity is designated in the grant award document. The State is the Recipient except as noted in 44 CFR 206.436(g)(1) regarding Indian tribal governments.

**Subrecipient or Sub-Grantee** means the government or other legal entity to which a sub-grant is awarded, and for which is accountable to the Recipient for the use of the funds provided. Sub-recipients may be a State agency, local government, private non-profit organization, or Indian Tribe as outlined in 44 CFR 206.434(a).

**Management Cost** means any administrative expenses and any other expenses not directly chargeable to a specific project that are reasonably incurred by a Recipient or Sub-recipient in administering and managing a PA program or HMGP grant award.

**Letter of Interest** means the initial notice that the State intends to participate in the Hazard Mitigation Grant Program, which will be submitted to FEMA by the State within 60 days of the declaration, as outlined in 44 CFR, Section 206.436.

**Private Non-Profit Facility** means any private nonprofit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations. See 44 CFR 206.221(e) for full definition..

**Project** means any mitigation measure, project, or action proposed to reduce risk of future damage, hardship, loss, or suffering from disasters. The term "project" is used interchangeably with the term "measure" in the Federal regulations, and the term "measure" is used interchangeably with the term "project".

**Section 322 Hazard Mitigation Plan** is the hazard mitigation plan that identifies and evaluates mitigation opportunities. Mitigation plans are required under Section 322 of the Disaster Mitigation Act of 2000 (44 CFR part 201 for local hazard mitigation plan requirements) as a condition of receiving Federal Disaster Assistance. The Act permits states to adopt either a Standard or Enhanced all-hazard Mitigation Plan. A Standard Plan permits up to 15% and an Enhanced Plan permits up to 20% for HMGP funding.

**Section 404 Administrative Plan** is the plan required by Section 404 of the Stafford Act (44 CFR 206, Subpart N) to administer the Hazard Mitigation Grant Program.

**Section 404 Project** means a project proposed by eligible sub-applicants to the State Hazard Mitigation Officer for funding following a Presidential Major Disaster Declaration.

Other definitions applicable to the administration of the hazard mitigation program are found at 44 CFR 206.431, and the North Carolina Administrative Plan for Public Assistance.

## APPENDIX II: APPLICATION MANAGEMENT

### Appendix II-A: Grant Development

Tasks to be performed:

- a) Evaluate potential projects identified by the MOAS
- b) Establish funding priorities by category based on local government response
- c) Contact local governments and discuss sub-applicant eligibility and potential mitigation activities
- d) Solicit Letters of Interest (LOIs)
- e) Conduct site visits with sub-applicants to determine information needs and eligibility of proposals including compatibility with local HM Plan
- f) Establish deadlines for final sub-applications
- g) Collect information for project environmental review
- h) Establish project priority ranking on final sub-applications
- i) Establish funding cut-off levels based on project ranking
- j) Coordinate notification to sub-applicant of scoring and funding decisions
- k) Coordinate sub-applicant appeals
- l) Assign HM Project Managers to specific projects
- m) Coordinate additional data needs for final sub-application preparation, including benefit cost and environmental analysis
- n) Coordinate notification to sub-applicants of any additional data submittal deadlines
- o) Coordinate notification to sub-applicants of unfavorable benefit-cost analysis results or otherwise ineligible proposals
- p) Conduct environmental review and prepare report for CATEx
- q) Coordinate preparation and final review of projects prior to submission to FEMA
- r) Brief State Hazard Mitigation and Long-Term Recovery Advisory Group on sub-application status
- s) Coordinate the preparation of draft news releases for HMGP projects
- t) Document need for additions and/or changes to existing HMGP policies during project development
- u) Prepare overall HMGP budget spreadsheet for disaster
- v) Develop Management Cost budget and application
- w) Conduct benefit cost and environmental analysis training for staff and local officials

#### Benefit Cost Analysis

Under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) {Sec 404} 5170c. Hazard Mitigation: (a) In General the President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damages, hardship, loss, or suffering in any area affected by a major disaster.

The Code of Federal Regulations (CFR), the State of North Carolina shall administer HMGP funds in accordance with the following: TITLE 44, CHAPTER I, PART 206, Subpart N--Hazard Mitigation Grant Program Sec. 206.434 Eligibility. 5) Be cost-effective and substantially reduce

the risk of future hardship, loss, or suffering resulting from a major disaster. The Recipient must demonstrate this [cost-effectiveness and substantial reduction] by documenting that the project;

1. Addresses a problem that has been repetitive, or a problem that poses a significant risk to public health and safety if left unsolved;
2. Will not cost more than the anticipated value of the reduction in both direct Damages and subsequent negative impacts to the area if future disasters were to occur. Both costs and benefits will be computed on a net present value basis;
3. Has been determined to be the most practical, effective, and environmentally sound alternative after consideration of a range of options;
4. Contributes, to the extent practicable, to a long-term solution to the problem it is intended to address;
5. Considers long-term changes to the areas and entities it protects and has manageable future maintenance and modification requirements.

Benefit/Cost Analysis of HMGP project proposals will be conducted using the most current guidance available from FEMA.

## Appendix II-B: Grant Implementation

### Tasks to be performed:

- Coordinate with Fiscal Section on receipt of FEMA obligation packages
- Coordinate with PIO the preparation of news releases on awarded grants
- Coordinate with Fiscal Section and Office of State Attorney General the preparation of project Grant Agreements
- Conduct training on grant implementation for staff and sub-applicants
- Coordinate receipt and payment of sub-applicant reimbursement requests
- Coordinate receipt of payment notification by Department
- Coordinate receipt of project progress reports
- Brief State Hazard Mitigation and Long-Term Recovery Advisory Group on status of projects
- Document need for additions and/or changes to existing HMGP policies during implementation
- Document the need for project cost overruns and other unexpected impacts on project timelines (see appendix IV-Process for Addressing Cost Overruns)
- Conduct closeout visits with communities; closeout grants with community and FEMA

## Appendix II-C: Grant Closeout

### Tasks to be performed:

- a) Receive notification from the Sub-recipient that a project is ready to close either through the ongoing monthly monitoring process or via correspondence (formal or informal).
- b) For all “brick and mortar” projects: conduct a closeout site visit to the project site to confirm programmatic compliance. Inspect local files for completeness according to NCEM HM Branch closeout checklists. Retrieve copies of required deliverables for the Scope of Work according to NCEM HM Branch closeout checklists and the FEMA Award Letter. Inspect structures and/or cleared parcels to ensure compliance with NCEM SOP’s and UHMA Guidance. Retrieve a signed “Project Completion Certificate” from the Sub-recipient to document the Sub-recipient’s official completion with the project Scope of Work.
- c) Obtain a reimbursement request (“Cost Report”) for remaining eligible expenses within the Scope of Work. Ensure that these reimbursements have occurred within the State and Federal Period of Performance, as documented by the NCEM-Sub-recipient Grant Agreement and FEMA Award Letter. Process payment request for eligible expenses according to NCEM HM Branch guidelines.
- d) Conduct administrative closeout well within the final 90-day FEMA Admin Project Closeout period. Compile project documentation and deliverables in hard and electronic copy files according to NCEM HM Branch Guidelines. Conduct final financial project reconciliation, and balance project-specific financial records for encumbrances (“Project Cost Tracker”) to HM Branch aggregate records for encumbrances (“Hazard Mitigation Project Tracker”) to the NCDPS database for actual payments (“Grants Management Database”).
- e) Closeout File Review Process: Submit file to the Hazard Mitigation Grants Branch Manager who reviews for programmatic compliance and financial accuracy against NCEM SOP’s, checklists, the FEMA Award Letter, and UHMA Guidance.
- f) FEMA Closeout Request Process: through the SHMO and NCEM Recovery Chief, submit a project closeout request letter to the GAR for signature that also includes a Project Closeout Certification Statement. The Project Closeout Certificate Statement attests to the final expenditures across all line items in the FEMA-approved Scope of Work, and ensures that all deliverables have been stored in HM Branch Records.
- g) Obtain a FEMA Final Claims Letter: once reviewed by FEMA, a FEMA Final Claims Letter is sent back to NCEM. The Letter is then appended to the file, and the entire, completed file is stored in a file cabinet specific to the disaster/funding stream.
- h) A final “de-obligation” Grant Adjustment Notice and FEMA Final Claims Letter is then provided to the NCDPS to de-obligate any remaining project under runs from Grants Management Database in accordance with the FEMA Final Claims Letter.

## APPENDIX III – PLAN EVALUATION AND AFTER-ACTION REVIEW

### Appendix III (A) – General Evaluation Plan and Measurement Criteria

In order to determine effectiveness of the State Centric plan it is important that the HM Section constantly evaluates performance to results. Performance is intended to measure the outputs done by the section against the standards for time, costs and other criteria that are sound metrics to definitely establish productivity. Results are the ‘on the ground’ tangible products that either a homeowner, a contractor or the government can observe to know if work has been completed. Success is achieved when performance and results are both trending positive and the citizens impacted by disasters are able to move forward, putting the remnants of the disaster behind them.

#### Appendix III (A) 1. – Measurement Criteria

Measuring Performance and Results require establishing quantifiable values that can be measured to a set standard and then measuring whether the Performance and Results exceeded, met, or underperformed for each standard.

Measuring Performance will examine the following areas and meet the following definitions:

**P1. Preparing State Application to FEMA** includes preparing the Benefits Cost Ratio, acquiring all documentation to support the application, accurately entering the application into NEMIS and receiving Request For Information from FEMA after application submission.

**P2. Preparing Engineer Estimates and Projects costs** includes preparing accurate initial work requirements, identifying all project hazards, completing an accurate Independent Government Estimate (IGE) in order to ensure project costs are not exceeded during project implementation

**P3. Preparing Contracts** focuses on preparing legally sound contract documents that prevents liability on NCDPS and NCEM and provides accurate controls to prevent lapses in work and reimbursements.

**P4. Preparing Project Schedules and Work Flows** focuses on accurately planning work to meet the PoP for every FEMA project award as well as provided predictability to citizens in the program so they know how long before they receive relief and how long work will take place on their homes.

**P5. Project Tracking and Monitoring** looks at how well the HM Section follows the completion of work, ensures that work is done to standard and meets contractual reimbursements based on submission within the Terms and Conditions (Ts & Cs) of the construction contracts

**P6. Project Closeout** ensures that projects are timely closed out with FEMA and that overall grant closeout occurs within the original PoP and does not exceed the federal closeout award date.

Measuring the Results is defined by the following categories and meets these definitions;

**R1. Total % of Available HMGP Funds awarded to the state** examines how closely the HM Development branch was able to fully use the funds provided by FEMA at the 12-month Lock-In Letter.

R2. **Total days lapsed between FEMA Award and Project Start** focuses on the readiness of the HM Implementation branch to begin project management and having qualified contractors and bids prepared for project execution.

R3. **Total % Accuracy of project completion** measures how quickly all projects awarded by FEMA are completed and prepared for closeout IAW project schedules.

R4. **Total % Expenditure of funds** measures how well the overall HM Section did at expending funds at or below submitted application budget and utilization of management costs awarded by FEMA.

### Appendix III (A) 2 – Measurement Standards

<u>Performance Area</u>	<u>Measured Standard(s)</u>
P1. Preparing State Application to FEMA	Project Submitted w/o Extension Accurate BCR Less than 5 RFIs per project
P2. Preparing Engineer Estimates and Project Costs	Cost Estimate within 5% contract bid award Less than 5% change orders on projects
P3. Preparing Contracts	Request for Qualification done by application submission Requests for Bid out to qualified contractors within 3 day of award letter
P4. Preparing Project Schedules and Work Flows	Schedule estimate within 15 days of contracted work
P5. Project Tracking and Monitoring	Project work reporting accurate within 3 days Less than 5% delay due to unscheduled work stoppage No more than one extension of 90 days
P6. Project Closeout	Projects closed out at RIV within 60 days of completion Award closed out at RIC within 75 days of work completion

<u>Results Measured</u>	<u>Measure Standard(s)</u>
R1. Total % of Available HMGP funds awarded to State	>90%
R2. Total days lapsed between FEMA Award and Project Start	<30 Days
R3. Total % Accuracy of project completion	>95%
R4. Total % Expenditure of funds	< or = 100%

### Appendix III (B) – Conducting an After-Action Review (AAR)

While measuring numerical results provides a snapshot in time of plan performance, it is also imperative to gauge these measurements by gathering first hand feedback from multiple entities invested in the process. In order to do this effectively, it is best to conduct either a formal or informal After-Action Review. The purpose of the AAR is to solicit feedback on specific topics in order to provide the best program possible for all customers of the State Centric program. All observation feedback must be classified into one of 3 observation groups which support determining how the program is performing. These categories are:

- **Strength:** Strengths are processes and/or procedures followed correctly with excellent results which should be highlighted and continued.
- **Potential Best Practice:** Potential Best Practices are processes and/or procedures that were developed in one county or for one job type (i.e. elevation) in response to a deficient or non-existent method, requiring innovative solutions to accomplish the mission. Potential Best Practices should be considered for replication or adoption through the HM Section.
- **Area(s) for Improvement:** Area(s) for Improvement are observations that indicate a challenge that occurred during the execution of the state program and should be relooked and examined how to make more efficient.

### Appendix III (C) – Method of Gaining Plan Feedback

The HM Section, under the direction of the NCDPS Secretary, the NCEM Director or at the request of FEMA region IV will conduct an AAR if a given situation arises that immediate feedback is needed. Otherwise, at least bi-annually, the HM Section Chief will conduct a formal AAR with those participating in the HMGP program, to include homeowners, counties and contractors. The method of conducting the AAR will be either through a web invitation survey, paper survey or in person interview. The HM Section Program Coordinator, under the direction of the HM Section Chief will develop the questionnaires for the AAR based on inputs received from NCDPS/NCEM/ FEMA leadership and other areas the HM Section Chief identifies for review.

### Appendix III (D) – Frequency of Feedback and Reporting

The results of the AARs will be prepared and made available to the leadership of NCDPS/NCEM/FEMA no later than 30 days at the close of the survey and will be available upon approved request for those citizens participating in the HM program.



## **ANIMAL SERVICES**

### **MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021 AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

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

**DATE: 4/20/2021**

**SUBJECT: REVISIONS TO THE ANIMAL CONTROL ORDINANCE**

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

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

#### **BACKGROUND**

Chapter 3 of the Cumberland County Code of Ordinances has not undergone significant revisions since 2013. During that time, many policies, procedures, and practices at Animal Control have changed. We are proposing several significant changes to the ordinance to promote more responsible pet ownership, increase adoptions, and decrease euthanasia rates. We are requesting several revisions to the Department Fee Schedule that are intended to address specific issues encountered by the shelter and our officers. Staff will also ask that pet licensing be abolished as it is ineffective as a means to decrease the excess pet population and is not cost effective to administer.

Included with this memorandum is a summary of the proposed changes to the ordinance and a mark-up version of the ordinance. Staff has consulted with Fayetteville Police Department (FPD), the City Manager and City Attorney of the City of Fayetteville, and representatives from the Town of Hope Mills. All municipalities were provided the attached information for review and comment. As of the date of this memorandum, there has been no opposition expressed by any of the municipalities or FPD. County Legal has also been intricately involved in the update and provided counsel and guidance along the way.

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

Staff recommends the Board rescind the Chapter 3 - Animal Control Ordinance from the Cumberland County Code of Ordinances, replace it with the proposed Animal Services Ordinance, and requests this be moved

forward as an Item of Business at the May 17, 2021 Regular Meeting.

**ATTACHMENTS:**

Description

Type

Summary of Changes

Backup Material

Current Ordinance w/ Mark-Ups & Changes

Backup Material

Section	Page	Subject	Change	Reason for change
3-4 and 3-5	1-2	Animal Services Board	Some previously approved changes were not put in the ordinance regarding terms of Board members. Update info on veterinarian who is on the Board	update needed to match current policy
3-10	3-4	Definitions	Add definitions of Breeding, Show and Hunting dogs Add conviction for cruelty to NRO definition	Terms need to be defined as they are frequently disputed by dog owners with regards to Section 3-22. Adding to NRO definition ensures convicted animal abusers cannot own animals for a period of 3 years minimum
3-13	5	Diseased, injured or sick animals	Add option of surrendering animal to CCAS	Current ordinance only allows for owner to pay for treatment or have animal euthanized. CCAS may be able to treat and adopt.
3-14	6	Property owner may impound animal	Update found animal requirements	Current ordinance is out-dated and needs to be simplified for someone who has found an animal. FO free ads are only 2 days.
3-15	6,7	Nuisance animals	Nuisance process (c) and (d) covered by policies and SOP. (f) and (g) are already covered in other parts of ordinance	Actions or steps to be taken by CCAS are more appropriately outlined under SOP vs. ordinances. Having procedures listed creates expectations that may not be feasible without involving law enforcement.
3-18	8	Inhumane or cruel treatment	move to section 3-23	Combine all "cruelty" ordinances into one section for simplicity
3-19	8,9	Control of animals	clarify what is considered running at large	Currently, an animal would be considered "running at large" if it is on the owner's property but not on a leash. Frequently this is used in neighbor disputes.
3-20	9	Records, disposition of animals	Allow Director to reduce or waive fees with approval of County Manager when needed. Remove limit on adoptions by employees and remove return of animals in poor health.	Most NC counties reduce or waive fees to prevent euthanasia and overcrowding during summer months. Special events such as Clear the Shelter could be done without taking up BoC time. Eliminate (d) and (e) as they are more appropriately handled in department SOPs
3-21	10	Redemption of animals	Remove licensing requirement, add microchip	See section on licensing below. Add microchip as requirement to reclaim in order to be able to accurately track repeat offenders.

3-22	10	Spaying or neutering as condition	Clarify requirements, add provision of exception for medical reasons	Clean up this section to make it more clear. Add requirement of current rabies for exception and allow exception for medical reasons.
Section	Page	Subject	Change	Reason for change
3-23	11	Keeping of animals	Add what was previously 3-18. Give authority to ASOs to determine what meets minimum standards. Add spay/neuter to list of requirements for legal tethering Add sanitation and safety requirements to enclosures Require security bond or cash from owners of impounded animals	Currently if the minimum standards are met, ACOs have no authority to impound. However, minimum standards do not always meet the needs of the animal. Spaying prevents tethered female dogs from producing litters, and neutering reduces aggression in male dogs that is exacerbated by tethering. Bond or cash will enable CCAS to recover costs for animals that are legally impounded.
3-25	13	Wild dogs	Remove this section	Capture and destruction of wild dogs is covered under dangerous dogs section
3-26	14	Dog Limit	Remove this section	Owners of dogs that are causing legitimate problems for neighbors will be dealt with under nuisance, sanitation, etc. The limit by itself is not enforceable by CCAS without involving law enforcement (seizing personal property).
3-28	15	Breeding permit	Change to Litter permit	The current ordinance is difficult to enforce. Much easier to prove that a litter has been produced vs. that a dog has been bred.
3-34 (d)	19	Temporary permits for dangerous dogs	Remove this section	We do not offer "temporary" permits for dangerous dogs. Either the dog is removed from the county, or the owner purchases a full permit.
3-40 m and o	23 and 24	Rabies	Update ordinance to match state requirements and change section on carcass handling	state law specifies that the most current edition of Compendium of Animal Rabies Prevention and Control shall be followed. The Compendium changed in 2016 and our ordinances should also be updated. Animal carcasses are surrendered to Animal Services, not the health department. Also add that decisions on testing are as advised by NCDHHS

3-50- 3-52 3-54	25,26	Pet licensing	Remove licensing requirement	Licensing is a labor intensive process that is generating a shrinking return and has a negative connotation for citizens.
Section	Page	Subject	Change	Reason for change
3-60	27,28	Injured animal fund	Rename fund "animal medical" and simplify what fund will cover.	Current wording requires an ASO to determine whether injury is "potentially mortal". Also excludes animals that don't have an ID tag or microchip, which creates potential liability if microchip is missed or if tags have been lost. Already have a budget line for "Animal Medical" donations, so merging these 2 lines will provide better oversight for donations overall.
3-74	29	Selling live animals	Clarify what is considered permission for 501(c)(3) to have animals in public areas	We have no defined permit for 501(c)(3) organizations to display animals for adoption in public areas. We do have a process for approving these organizations to take animals from our shelter.
3-75	29	Provisions within corporate limits of municipality	Add ban of roosters to section (c)	Roosters are unnecessary for egg production of home flocks. Roosters are frequently a source of nuisance complaints within the city limits.
3-80	30	Enforcement	Remove c and d	These portions of the ordinance are covered in other sections.
3-81	31	Penalties for violations	remove e	This fine is unnecessary (either the dog is unsafe and euthanized or the dog is a PDD and other fines apply).

## Chapter 3 - ANIMALS<sup>(1)</sup>

### Footnotes:

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**Editor's note**— An ordinance adopted June 17, 2013, amended ch. 3 in its entirety to read as herein set out, removing in their entirety articles pertaining to kennel licensing/permits and public hazard dogs. Former ch. 3, §§ 3-1—3-23, 3-25—3-47, 3-58—3-65, 3-70—30-75, 3-78, 3-83—3-88, and 3-97—3-99, pertained to animals, and derived from § 1 of an ordinance adopted Aug. 21, 2000; § 1 of a resolution adopted Oct. 16, 2000; § 1 of a resolution adopted Apr. 22, 2003; and § 1 of an ordinance adopted Nov. 21, 2005.

### ARTICLE I. - ADMINISTRATION

Sec. 3-1. - ~~Animal control~~Animal Services department established.

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

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

Sec. 3-2. - ~~Animal control~~Animal Services director.

The ~~animal control~~Animal Services department shall be supervised by the ~~animal control~~Animal Services director, who shall be the director of that department, appointed by the county manager.

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

Sec. 3-3. - Functions of ~~animal control~~Animal Services department.

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

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

Sec. 3-4. - ~~Animal control~~Animal Services board established.

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

members shall serve ~~staggered~~three-two-year terms; ~~four members shall have terms that all terms~~ expire on June 30 in ~~the year of the term expiration, even-numbered years following the year of their initial appointment and three members shall have terms that expire on June 30 of odd-numbered years.~~

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

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

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

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

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

Secs. 3-6—3-9. - Reserved.

## ARTICLE II. - GENERAL PROVISIONS

### Sec. 3-10. - Definitions.

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

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

*Animal-control/Animal Services department* means the Cumberland County ~~Animal-Control/Animal Services~~ Department.

*Animal-control/Animal Services director* means the director of the ~~animal-control/Animal Services~~ department, or his/her designee.

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

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

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

*Breeding, show, or hunting-dog* means any ~~animal-dog~~ that the owner has bred or intends to breed that has been examined by a licensed veterinarian within the previous 12 months and for which the owner possesses a registration certificate from the American Kennel club, The Canadian Kennel Club, or the United Kennel Club, was used in breeding, showing, or hunting in the last year if over one year old; or any animal younger than one year that is eligible to breed, show or hunt in the coming year.

*Chapter* means the provisions of this ~~animal-control/Animal Services~~ chapter as may be in effect in Cumberland County or any municipal jurisdiction located therein.

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

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

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

*Director* means the director of the ~~animal-control/Animal Services~~ department.

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

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

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

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

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

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

*Impoundment* means placing an animal in an ~~animal-control~~[Animal Services](#) vehicle or unit, or holding an animal at the animal shelter, or holding an animal at any other location at the direction of the director of ~~animal-control~~[Animal Services](#).

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

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

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

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

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

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

*Permit* means a permit issued by the ~~animal-control~~[Animal Services](#) department or similar agency of any applicable governmental unit having jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Any person who finds a domesticated animal or fowl on his property to his injury or annoyance may:
  - (1) Take such animal to the ~~Animal Control~~[Animal Services](#) shelter; or

- (2) Retain possession of such animal or fowl and, within one business day, notify the ~~animal control~~[Animal Services](#) department of this custody, giving a description of the animal and [any information regarding](#) the owner's name, if known. Any person removing the animal from the impounder's property shall remove the animal in such a manner so as not to cause injury to the animal.
- (b) No person shall knowingly and intentionally harbor, feed or keep in possession by confinement or otherwise any stray animal which does not belong to him, unless he shall have within one business day from the time such animal came into his possession notified the ~~animal control~~[Animal Services](#) department ~~of his intention either to: (i) surrender the animal to the animal shelter, or (ii) advertise for five consecutive days such stray animal in the local newspaper with the greatest average daily circulation in the community. If the person possessing such stray animal elects to so advertise and the owner thereof shall not have responded by the tenth day after the date of the first publication, the person so advertising shall be presumed the legal owner of such animal. If the advertisement of a stray animal shall not have been first published within 72 hours after so notifying the animal control department, then the animal shall be surrendered to the animal control department.~~
- (c) Any animal reported as found to Animal Services shall be considered the legal property of the finder if no verified owner has reclaimed the animal within 10 business days of the reporting.

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

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

- (a) *[Definitions.]*
- (1) For the purposes of this section, "nuisance" means, but is not limited to, the conduct or behavior resulting from any act of omission or commission by the owner or keeper of any small or large animal, fowl, cat or dog which molests passersby or passing vehicles, damages private or public property; barks, whines, howls, crows, growls or makes other noises in an habitual or continuous fashion which annoys the comfort, repose, health or safety of the people in the community; is unconfined in season; defecates on the property of someone other than the owner; or eats or otherwise destroys the plants, shrubs or similar landscaping on the property of someone other than the owner.
- (2) For the purposes of this section, "nuisance animal" means any animal that commits any of the acts, conduct or behaviors defined as constituting a nuisance in this section.
- (b) *[Keeping of nuisance animal prohibited.]* No person shall keep any animal which is a nuisance animal or which causes a nuisance as defined in this section.
- (c) ~~*Violations.—Notice of violation.*~~ When an ~~animal control~~[Animal Services](#) officer ~~or Law Enforcement Officer determines that witnesses~~ a violation of this section, ~~they~~[Animal Services](#) shall investigate and follow the Department's procedures for mitigation of nuisance issues. ~~has occurred, he may issue a written warning of violation and notice of public nuisance, which shall be served on the owner or keeper of the animal. The owner or keeper shall be responsible for abating the nuisance within 24 hours by making sure his animal does not engage in any further act or acts which may constitute a nuisance under this section.~~
- ~~(d) *Failure to abate the nuisance.* If the animal control officer determines that the animal has engaged in any further act(s) constituting a nuisance, or if the owner or keeper of the animal fails to abate the condition which constitutes the nuisance within 24 hours after issuance of the written warning of violation, the animal control officer may issue a notice of violation and civil penalty for the first offense and additional penalties for each subsequent offense. If the owner fails to abate the nuisance after the first civil penalty, the animal control officer may seize and impound the animal. If the animal is seized, the animal control officer must post a notice of seizure and impoundment with the owner or keeper of the animal. The owner or keeper may reclaim the animal upon payment of any civil penalties and shelter fees or charges for the impoundment. If the animal is not reclaimed~~

within five days, it shall become the property of the animal control department and shall be disposed of according to the department's policies.

- (e) *Owner unknown.* In situations where the owner of a nuisance animal is unknown, the ~~animal control~~Animal Services officer shall impound the animal ~~without and~~ posting notice of the impoundment. If the owner does not redeem the animal within ~~three~~ five days, the animal shall become the property of the ~~animal control~~Animal Services department and shall be disposed of according to the department's policies.
- (f) ~~Animal housed or restrained less than 15 feet from public way.~~ When an animal control officer has determined that an animal is being housed or restrained within 15 feet of a public street, road or sidewalk, and the animal poses a threat to the public, but the animal is not in the street, road or on the sidewalk, the animal control officer shall issue a warning to the owner or keeper of the animal directing that the animal be moved to a distance greater than 15 feet from the public street, road or sidewalk. If the owner or keeper refuses to move the animal, the animal control officer shall issue a notice of violation and civil penalty for the first offense and additional penalties for each subsequent offense. After the first civil penalty the animal control officer may impound the animal. The animal control officer must leave a notice of impoundment with the owner/keeper or affix the notice to the premises from which the animal has been seized. The owner shall have five days to redeem the animal. If the animal is redeemed, the owner must pay all civil penalties and shelter fees for the impoundment. If the owner fails to redeem the animal within five days, the animal shall become the property of the animal control department and shall be disposed of according to the department's policies.
- (g) ~~Animal found in the public way.~~ If an animal is housed or restrained within 15 feet of a public street, road or sidewalk and the animal poses a threat to the public, and the animal control officer finds it to be in the public street, road or on the sidewalk and the owner or keeper is not at home or refuses to remove the animal from the public street, road or sidewalk, the animal control officer may impound the animal. The animal control officer must leave a notice of impoundment with the owner or keeper or affix the notice to the premises from which the animal was housed or restrained. The animal services officer may issue a notice of violation and civil penalty for a first offense and additional penalties for each subsequent offense. The owner shall have five days to redeem the animal. If the animal is redeemed, the owner or keeper must pay all civil penalties and shelter fees for the impoundment. If the owner or keeper fails to redeem the animal within five days, the animal shall become the property of the animal control department and shall be disposed of according to the department's policies.
- (h) *Private remedies.* This section shall not be construed to prevent a private citizen from pursuing a private cause of action for damages against the owner or keeper of any animal that has caused injury to said private citizen or his property for damages or any other loss resulting from an animal being a nuisance as defined by this section or otherwise.

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

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

- (a) No person shall permit or conduct any dog fights, cock fights, or other combat between animals, or between animal and human.
- (b) It shall be unlawful for any owner or person to keep, own, possess, maintain, control, or use materials used or intended to be used in dog fighting or cock fighting. Such items shall include but are not limited to treadmills; fighting or fight training pit; wooden sticks or handles used or capable of being used to pry open jaws; magazines, photographs, film, or videotapes depicting animal fighting or animal fight training; breeding stands; jaw strengthening devices; spurs; gaffs or slasher cases; gaff or knife gauges; mounting blocks; leather wraps; scabbards and leg or wing bands; training, conditioning, or fight contracts or records; veterinary drugs; suture kits, needles; and syringes and

other veterinary supplies used for the administration of veterinary treatment for wounds or injuries from animal fighting or animal fight training.

- (c) Upon criminal charges being brought for violations of this section, the ~~animal control~~Animal Services director may petition the court for the confiscation of any animals kept or involved, or materials used or intended to be used in such fighting.

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

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

- (a) For the purpose of this section, a "wild or exotic animal" means an animal which is usually not a domestic animal and which can normally be found in the wild state, including, but not limited to, alligators, apes, bats, bears, crocodiles, deer, elephants, foxes, leopards, lions, lynxes, monkeys, panthers, raccoons, rhinoceroses, wolves, poisonous snakes, skunks, tigers, and like animals. Hybrids or cross-breeds of any wild or exotic animals shall also be considered as wild or exotic animals.
- (b) It is unlawful to keep, harbor, breed, sell or trade any wild or exotic animal for any purpose, except as may be licensed by the state wildlife resources commission under its regulations pertaining to wildlife rehabilitators.
- (c) This section shall not apply to zoological parks, zoos, educational or medical institutions, or circuses that perform in Cumberland County for not more than seven days. If a circus is scheduled to be in Cumberland County for more than seven days, then the circus may apply to the ~~animal control~~Animal Services director for an extension permit for a period not to exceed an additional seven days, on such terms as the ~~animal control~~Animal Services director shall determine will protect the public health, safety and welfare.

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

~~Sec. 3-18. - Inhumane or cruel treatment prohibited.~~

~~It is unlawful for any owner or person to:~~

- ~~(1) Perform or carry out any inhumane or cruel treatment against any animal; or~~
- ~~(2) Keep, possess, own, control, maintain, use or otherwise exercise dominion over any animal or animals which by reason of noise, odor or sanitary conditions become offensive to a reasonable and prudent person of ordinary tastes and sensibilities or which constitute or become a health hazard as determined by the animal control director, the Cumberland County Inspections Director or the Cumberland County Environmental Health Supervisor, as appropriate.~~

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

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

- (a) It is unlawful for any owner or person to permit or negligently allow any domestic animal to run at large, with the exceptions listed below. Any ~~dog, cat or~~ domestic animal that is not on the owner or keeper's property ~~not confined as provided in this chapter~~, and not under the actual physical leash control or hand restraint of its owner or keeper, shall be deemed to be running at large. Any such animal found running at large shall be either:
  - (1) Impounded by an ~~animal control~~Animal Services officer at the department's shelter subject to being reclaimed by its owner or keeper in accordance with the department's policies; or

- (2) In the discretion of the ~~animal control~~Animal Services officer, a dog or cat found at large which ~~is licensed by the county and is~~ vaccinated for rabies, except a "dangerous dog," as that term is defined in article III of this chapter, may be released to its owner, upon such terms and conditions as the ~~animal control~~Animal Services officer deems appropriate.
- (b) No impounded animal shall be returned to its owner until any applicable impoundment and boarding, vaccination, other fees or costs and any penalties are paid.
- (c) Any impounded animal not claimed by its owner after a three-day holding period, exclusive of Sundays and county-observed holidays, shall become the property of the county and shall be adopted or disposed of in accordance with the department's policies.
- ~~(d) Every female dog or cat in season (heat) shall be kept confined in such a manner that such female dog or cat cannot come in contact with other animals, except for controlled breeding purposes. Female animals picked up by the animal control department which are in season (heat) shall be kept separate from male animals at all times.~~

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

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

- (a) An ~~animal control~~Animal Services officer, upon receiving any animal for impoundment, shall record the description, breed, color and sex of the animal and whether or not it is licensed and the date and time of impoundment. If the animal is licensed or if the owner is known, the officer shall enter the name and address of the owner or the county license on the impoundment records. If the owner is known, the ~~animal control~~Animal Services department shall telephone the owner or, if unsuccessful in attempting to telephone such owner, shall mail notice at the address shown on the department's records to notify the owner, that unless reclaimed within 72 hours after mailing of notice, Sundays and county-observed holidays excluded, the animal may be adopted or humanely disposed of by the department's shelter. Attempts to contact the owner will be recorded on the impoundment record.
- (b) After the 72 hours of impoundment as prescribed above, animals that have not been reclaimed by the owner thereof shall be adopted or otherwise disposed of in a humane manner and as required by law. Provided, however, in the discretion of the ~~animal control~~Animal Services director, a healthy animal may be retained for an additional period for the purpose of adoption or transferred to an approved local animal adoption or rescue agency.
- (c) Before any dog or cat is released for adoption from the department's shelter, the adopter shall pay such fee(s) as may be prescribed therefore in any fee schedule adopted ~~from time to time~~ by the board of commissioners. ~~The Animal Services Director may reduce or waive adoption fees with prior approval from the County Manager when needed to reduce overcrowding and euthanasia at the shelter. Adopted animals~~Such dog or cat also shall be issued any required rabies vaccination and county license.
- ~~(d) Any employee of the animal control department may adopt one cat and one dog in any calendar year and such number of other animals as the animal control director may by written policy prescribe.~~
- ~~(e) There is hereby established a grace period of five days, beginning on the day of adoption and ending at the close of business of the fifth day thereafter (or the first business day which falls after the fifth day if such fifth day is a Sunday or legal holiday), during which period an animal adopted from the animal shelter may be returned to the animal shelter without refund for a replacement animal, conditioned solely upon the presentation of written certification of a licensed veterinarian that the adopted animal is in poor health.~~

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

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

- (a) An owner shall be entitled to resume possession of his impounded ~~dog or cat or other small animal kept as a house pet domestic animal~~, upon compliance with the ~~vaccination~~ provisions of this chapter and payment of any applicable impoundment, boarding, vaccination or other fees. ~~Such dog or cat also shall be issued any required county license, as provided for in this chapter, if such dog or cat has not previously been licensed.~~ Animals four months old and older will be vaccinated for rabies ~~and microchipped by shelter rabies vaccinators.~~ New owners of adopted animals less than four months old shall have three business days from the time that the animal reaches the age of four months, in which to have the animal vaccinated against rabies and return the proof to the department's shelter. Failure to obtain the required rabies vaccination shall constitute a violation of this section.
- (b) When a law enforcement officer takes a person into custody who is in possession of an animal, and no other competent person is immediately present at the scene to take care of the animal, the animal will be impounded for its welfare. The animal will be impounded at the department's shelter until contact can be made with the animal's owner and an appropriate disposition of the animal determined. Once an ~~animal control~~ Animal Services officer makes contact with the owner, the owner will have three business days 72 hours to arrange for the appropriate disposition of the animal. ~~On the fourth business day After the 72-hour period expires,~~ the animal shall become the property of the county and shall be disposed of as provided in this chapter.

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

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

- (a) No dog or cat may be adopted from the animal shelter unless the animal has been surgically spayed or neutered, or the adopting owner agrees to do have the animal surgically spayed or neutered in accordance with any time limit imposed by the ~~animal control~~ Animal Services director.
- ~~(b) The animal control director shall implement procedures to enforce this section.~~
- ~~(b)~~ The failure of any person adopting an impounded animal to comply with this section shall constitute a violation of this section and shall constitute the forfeiture of the animal to the ~~animal control~~ Animal Services department.
- ~~(c)~~ Any animal ~~picked up by animal control for found~~ running at large as defined in Sec 3-19(a) or designated potentially dangerous or dangerous dog shall be spayed or neutered prior to being returned to its owner.
- ~~(d)~~ The ~~animal control~~ Animal Services director when dealing with dogs picked up for running at large may at his or her discretion make a one-time exception for breeding, show, or hunting dogs that meet the definitions of those categories within this chapter and are currently vaccinated for rabies with proof of same
- (f) An owner of an animal found running at large who can provide a written statement from a licensed veterinarian that a spay or neuter procedure would be detrimental to the animal's health or wellbeing may be allowed a one-time exception by the Director.

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

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

- (a) All ~~dogs, cats and other small animals kept as house pets companion animals~~ shall be housed, fed and protected from the weather in such a manner as not to create a nuisance.
- (b) ~~It is unlawful for any owner or person to:~~No person shall willfully or negligently:
  - (1) Torture, cruelly beat, injure, maim, mutilate or without good cause destroy or kill any animal, whether wild or tame, belonging to himself or to another;
  - (2) Deprive any animal of appropriate food, water drink or shelter; or
  - ~~(3) Cause any other person to do any of the above acts.~~
  - (3) Perform or carry out any inhumane or cruel treatment against any animal; or
  - (4) Keep possess, own, control, maintain, use or otherwise exercise dominion over any animal or animals which by reason of noise, odor, or sanitary conditions becomes offensive to a reasonable and prudent person of ordinary tastes and sensibilities or which constitute or become a health hazard as determined by the Animal Services Director, the Cumberland County Inspections Department, or the Cumberland County Environmental Health Department as appropriate.
  - (5) Cause any other person to do any of the above acts
- (c) If an animal is found by any ~~animal control~~Animal Services officer to be in one of the above described conditions in subsection 3-23(a) or (b), the officer shall take appropriate measures, including civil or criminal enforcement, to protect the welfare of the animal. If the ~~animal control~~Animal Services officer determines that a confined animal's life is in immediate danger or the animal has been abandoned, the ~~animal control~~Animal Services officer shall seize such animal if such seizure is not prohibited by applicable law and shall report the conditions to an appropriate law enforcement agency if seizure is not permitted. The ~~animal control~~Animal Services officer shall leave a notice for the owner or keeper advising why the animal has been taken.
- (d) No dog, cat or other small animal shall be confined within or on a motor vehicle under such conditions as may endanger the health or well-being of the animal, including, but not limited to, dangerous temperature or lack of appropriate shade or protection from the elements. ~~adequate food or water.~~
- (e) No person shall abandon or cause to be abandoned any dog, cat or any other type of animal.
- (f) Owners and keepers of dogs, cats and other small animals shall provide food, shelter and medical attention to such animals, including, but not limited to, the following:
  - (1) Sufficient wholesome food that is nutritious for the species;
  - (2) Fresh, potable drinking water;
  - (3) Medical attention to relieve such animals from suffering;
  - (4) Shade from the sun; adequate ventilation and
  - (5) Shelter to allow the animal to remain warm, dry and protected from the elements. Such shelter shall be fully enclosed on three sides, roofed and have a solid floor. ~~The entrance to the shelter shall be flexible to allow the animal's entry and exit, and sturdy enough to block entry of wind or rain.~~The shelter shall be small enough to retain the animal's body heat and large enough to allow the animal to stand and turn comfortably. The enclosure shall be structurally sound and in good repair.
- (g) Any animals kept in conditions that are determined by an Animal Services Officer to be insufficient to maintain their general health and wellbeing may be impounded for the animal's protection at the owner's expense.

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(hg) It shall be unlawful to tether a dog except in accordance with this subsection.

- (1) No dog shall be tethered outdoors unless the keeper or owner of the dog is outside and within sight of the animal at all times, holding the tether.
- (2) It shall be an affirmative defense to a violation of this subsection that the tethering is required to protect the safety or welfare of a person or the dog, provided that the keeper or owner of the dog acquires a permit from the ~~animal control~~Animal Services director.
- (3) The provisions of this subsection (hg) shall not apply to a temporary tether:
  - a. During a lawful animal event, veterinary treatment, grooming, training, or law enforcement activity; or
  - b. To a keeper or owner walking a dog with a hand-held leash, or during lawful hunting activities if reasonably necessary for the safety of the dog, or while a dog is actively engaged in shepherding or herding livestock; or
  - c. When meeting the requirements of a camping or recreation facility; or
  - d. ~~When the animal's caretaker is outside and within eyesight of the animal; or~~
  - e. After taking possession of a dog that appears to be a stray dog and after having advised the ~~animal control~~Animal Services department of the stray.
- (4) The provisions of subsections (hg)(2) and (3) above shall apply only if:
  - a. The tether is not placed directly round the dog's neck and is attached to a properly fitting collar or harness of nylon or leather worn by the dog; and
  - b. The weight of the tether does not exceed more than one-tenth of the dog's body weight; and
  - c. The tether is unlikely to become tangled or twisted and is attached with a swivel that will prevent tangling or twisting.
  - d. The tether is arranged to be free of any obstacles which may limit the movement of the dog and the tether is at least 12 feet long; and
  - e. The dog is tethered in a manner that permits access to necessary shelter and water.

f. The dog has been spayed or neutered.

- (5) Any dog that remains tethered in violation of this subsection for more than 14 days after the owner receives a notice of violation may be seized by an ~~animal control~~Animal Services officer or law enforcement officer and impounded at the department's shelter. If the dog's owner does not show that an adequate confinement enclosure complying with the requirements of this chapter has been installed on the owner's property within 3 business days~~72 hours~~ of the impoundment, ~~exclusive of Sundays and county government holidays,~~ the dog shall be deemed to have been forfeited to the county and shall be disposed of in accordance with the department's policy.

(ih) Any companion animal dog~~companion animal dog~~ confined within a fenced yard or run must have an adequate space for exercise. Provided, however, that where companion animals dogs~~companion animals dogs~~ are kept or housed on property without a fenced yard and such dogs are kept in an enclosure or run, such enclosure or run shall provide adequate space for exercise. Such an enclosure or run shall be constructed of chain link or similar type of materials with all four sides enclosed. The enclosure shall be of sufficient height to prevent the animal dog from escaping from such enclosure. The top of such enclosure shall be sufficiently covered to provide the animal dog with adequate shade and protection from the elements. The enclosure shall be maintained so that it shall remain sanitary and preclude injury to the animal.

(ji) Security of costs for impounded animals. Any person claiming an ownership interest in any animal confined pursuant to this chapter may prevent the disposition of the animal after the 3 day hold

period set forth in section 3-19(d) by posting a security bond or cash with the Animal Services department prior to the animal being adopted or euthanized in an amount sufficient to guarantee payment of all of the reasonable expenses expected to be incurred in caring and providing for the animal, including the estimated cost of medical care, for at least thirty (30) days; however, such security shall not prevent the Animal Services department from disposing of the animal at the end of the thirty-day period covered by the posted bond/cash, unless the person claiming an ownership interest in the animal posts an additional security bond or cash with the Animal Services department to secure payment of the animal's reasonable expenses for an additional thirty (30) days, and does so prior to the expiration of the first thirty day period. The amount of the bond/cash shall be determined by the Animal Services Director based on the current fee schedule and on the condition of the animal after examination by the shelter veterinarian or shelter manager. Failure to timely post the security shall result in the animal being immediately forfeited to the Animal Services department for disposition. If the fees, costs and penalties owed for the animal are not paid in full by the end of each security period, the security already posted shall be forfeited to the county on said date and used to pay the remaining unpaid fees, costs and penalties owing for the animal. The animal's owner shall remain responsible for all remaining unpaid fees, costs and penalties. Any security bond/cash remaining after the payment of all fees, costs and penalties shall be remitted to the person who posted the bond/cash.

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

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

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

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

~~Sec. 3-25. — Apprehension of wild dogs.~~

~~If the animal control director shall determine that:~~

- ~~(1) — A dog or dogs are running wild in any area within the jurisdiction of this chapter; such dogs are feral and do not have an owner, keeper or custodian; such dogs appear not to have been vaccinated for rabies because such dogs are not wearing current and valid rabies tags; such dogs are substantially interfering with the use and enjoyment of property or the conduct of business, or are harassing or threatening persons; and that such dogs cannot after extraordinary effort be apprehended; or~~
- ~~(2) — An animal or animals are running wild and appear to be rabid or terminally diseased, present an imminent threat to any person or to livestock or domestic pets, or are harassing and threatening persons, and cannot be apprehended without extraordinary effort;~~

~~then the director shall be authorized to cause deadly force to be used to humanely euthanize said dogs or wild animals. Prior to making such a determination, in the case of wild dogs, the director shall have documented that persistent and repeated efforts to apprehend such dogs through use of traps, baited food, and tranquilizer darts have been ineffective. After making such a determination, the animal control director may:~~

- (1) ~~Authorize any animal control officer that has, in the discretion of the animal control director, received appropriate training and certification in firearms to use deadly force; or~~
- (2) ~~Request assistance from the Sheriff or from appropriate municipal police authorities in order that the application of deadly force shall be effected by a sworn law enforcement officer that has a marksman rating and/or qualification; or~~
- (3) ~~Seek the services of any private business, corporation, organization or other governmental organization or agency as may be approved by the county manager for the application of deadly force.~~

~~If such deadly force is proposed to be effected, the animal control director shall take every precaution to assure the safety of persons and property in the area within which the dogs or animals are running wild.~~

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

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

- (a) ~~No more than three dogs more than five months of age shall be owned, possessed, kept, harbored, or maintained at any premises located in any area with a zoning classification for single-family, residential lots of 20,000 square feet or less (R20 or less).~~
- (b) ~~No more than two dogs more than five months of age shall be owned, possessed, kept, harbored, or maintained at any premises located in any area with a zoning classification for multifamily residential housing.~~
- (c) ~~In any area in which the applicable zoning regulations are more restrictive as to the keeping of dogs than the requirements of this section, the zoning regulations shall control.~~
- (d) ~~This section shall not be construed to limit the right of any landlord to impose more restrictive limits on the number of pets which may be possessed at any leased premises.~~
- (e) ~~All dogs which have been listed with the Cumberland County Tax Administrator for an annual Cumberland County privilege license for the calendar year 2012 by the date this revised chapter becomes effective shall be exempt from this section.~~

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

Sec. 3-27. - Sanitation.

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

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

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

Sec. 3-28. - ~~Breeding/advertising/transfer~~ [BAT] Litter permit.

Anyone owning or harboring a dog or cat shall not allow their animal(s) to produce a litter of one or more puppies or kittens without purchasing a litter permit from Animal Services prior to the birth of the litter. Any person convicted of violating the provisions of this section shall be punished by a fine of not less than \$300.00 or by imprisonment in the county jail for not more than 30 days.

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Owners who wish to breed their dog or cat and meet the requirements of the breeding/advertising/transfer [BAT] permit as outlined in subsection (2) of this section, may apply for such permit through the animal control division. The holder of the [BAT] permit would be authorized to breed, sell, trade, advertise, receive for any compensation, give away or transfer ownership of no more than one litter per licensed animal, per household, per year.

(1) Under no circumstances shall a [BAT] permit be issued:

- a. For any dog or cat not currently licensed as required in section 3-50 of this Code unless such person lives outside the county limits.
- b. To any person who has ever been convicted by any court of a charge relating to animal cruelty or neglect or has such a charge[s] pending until outcome of charges has been determined.

(2) A [BAT] permit must be obtained by, but not limited to:

- a. Any person wishing to breed their dog or cat;
- b. Each breeding pair, dog or cat, before breeding shall take place;
- c. Any person who intentionally or unintentionally causes or allows the breeding of dogs or cats.

(3) Any person convicted of violating the provisions of subsection (2) of this section shall be punished by a fine of not less than \$300.00 or by imprisonment in the county jail for not more than 30 days.

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

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

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

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

ARTICLE III. - DANGEROUS DOGS

Sec. 3-30. - Definitions.

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

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

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

*Dangerous dog* means any of the following dogs:

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

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

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

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

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

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

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

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

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

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

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

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

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

The provisions of this article do not apply to:

- (1) A law enforcement dog or guard dog being used by a law enforcement officer or a bona fide professional security guard while in the performance of official duties or professional responsibilities;
- (2) A dog being used in a lawful hunt;
- (3) A dog where the injury or damage inflicted by the dog was sustained by a domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the

property of, or under control of its owner, and the damage or injury was to a species or a type domestic animal appropriate to the work of the dog; or

- (4) A dog where the injury inflicted by the dog was sustained by a person who at the time of the injury, was tormenting, abusing, or cruelly treating the dog, or had tormented, abused, or cruelly treated the dog, or was committing or attempting to commit a crime.

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

Sec. 3-32. - Reporting requirements.

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

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

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

- (a) *Generally.* Upon receipt of a report submitted in accordance with section 3-32, or upon the receipt of any other complaint, or when he has reasonable suspicion that a dog is potentially dangerous, the director or his designee shall make a determination whether or not such dog is a potentially dangerous dog. Any determination that a dog is potentially dangerous shall be made in a writing stating the facts relied upon by the director to make his determination. The written declaration shall be personally delivered to the owner of the subject dog or shall be mailed by certified mail, return receipt requested, to the owner. If the determination is made that the subject dog is potentially dangerous, the written determination shall order compliance with the appropriate provisions of this article and the director may impose reasonable conditions to maintain the public health and safety. The director may pursue such other civil or criminal penalties and remedies as authorized by this chapter or state law.
- (b) *[Determination by director.]* If, at any time after the receipt of any report or complaint made pursuant to section 3-32, the director determines that the conditions under which the subject dog is being kept or confined do not adequately protect the public health or safety, the director shall require that the subject dog be impounded at the department's shelter until completion of the investigation and any appeal of the decision of the director.
- (c) *Appeals from determinations.*
  - (1) The owner of any dog determined by the director to be potentially dangerous may appeal the decision of the director to the appeal board within three business days of receiving notice of the determination. Appeal to the appeal board may be taken by filing written objections to the director's determination with the clerk for the appeal board.
  - (2) The appeal board shall schedule and hear such appeal within ten days of the filing of the written objections or at such later time as the appellant consents.

- (3) The vote of the appeal board shall be taken, and the announcement of its decision shall be made, in an open public meeting. A written statement of the decision of the appeal board shall be delivered to the director and the appellant. The notice shall be sent by certified mail, return receipt requested, and filed concurrently with the director and the Cumberland County Attorney.
- (d) *[Conduct of appeal.]* An appeal hearing before the appeal board shall be conducted as follows:
- (1) The hearing shall be subject to the open meetings law, and the required notice shall be posted and given as applicable;
  - (2) The chairperson of the appeal board shall preside at the hearing;
  - (3) The director shall be represented by the county attorney;
  - (4) The county attorney shall present the director's case;
  - (5) The appellant may be represented by an attorney;
  - (6) The director and the appellant may make any statements, present any evidence, or offer any witnesses on their behalf, on any relevant issue;
  - (7) The chairperson of the appeal board shall rule on the admissibility of any evidence and on any procedural issues that might arise;
  - (8) The director and the appellant shall be entitled to cross-examine any witnesses;
  - (9) The hearing shall be quasi-judicial in nature and all testimony shall be under oath;
  - (10) The appellant shall be entitled to obtain a transcript of the proceeding at his own cost;
  - (11) The appeal board shall announce its decision at an open meeting and render it in writing as expeditiously as possible at or following the hearing. Its decision shall contain findings of fact and conclusions in support of its decision.
- (e) *[Purpose of appeal.]* The purpose of the hearing before the appeal board shall be to determine whether or not the determination of the director is in the best interests of the public health, safety and welfare.
- (f) *[Function of appeal board.]* The function of the appeal board shall be to affirm, reverse, or modify the determination of the director which has been appealed. Any conditions imposed by the appeal board shall be reasonable, relevant to the issues in the matter, and have the effect of promoting the public health, safety and welfare.
- (g) *[Hearing.]* The hearing shall be administrative in nature and the decision of the appeal board shall be final.

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

Sec. 3-34. - Registration required.

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

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

Sec. 3-35. - Permit required.

- (a) *Generally.* After registration of a dangerous dog or after a final determination that such dog is potentially dangerous in accordance with this chapter or Chapter 67 of the General Statutes, no person shall own such dog thereafter within the territorial jurisdiction of this chapter without applying for and obtaining a permit from the ~~animal control~~[Animal Services](#) department.
- (b) *Issuance of permit.* The ~~animal control~~[Animal Services](#) department shall issue a permit for a dangerous dog only upon submission of a complete, verified application, payment of the permit fee and a finding by the director or his designee that:
  - (1) The required conditions for keeping and housing the dog and other public health and safety protective measures are in effect; and
  - (2) The dog for which a permit is issued does not pose an unreasonable threat to the public health, safety and general welfare if the owner shall comply with the provisions of this article and the conditions of the permit.
- (c) [*Condition of issuance.*] Issuance of a permit shall be conditioned on continued compliance with the provisions of this article and other provisions of state law, on continued compliance with and maintenance of the conditions for housing the dog and public safety set forth in the permit, and any special conditions the director may deem reasonably necessary to protect the public health, safety and welfare in view of the particular circumstances and history of the dog for which the permit is issued.
- (d) ~~*Temporary permits.* Following the registration of a dangerous dog or the impoundment of a dog declared to be potentially dangerous, upon application therefor and for good cause, the director may issue a temporary permit allowing the owner of a registered dangerous dog or a dog declared to be potentially dangerous to retain possession of such dog or to confine such dog at a veterinary facility or kennel approved by the director. The director may also issue a temporary permit to allow the transport of a dangerous or potentially dangerous dog from the territorial jurisdiction of this chapter. A temporary permit shall be issued subject to the same conditions to which a regular permit is subject and to any other conditions the director may deem necessary to protect the public health, safety and welfare consistent with the provisions of this article. A temporary permit shall be valid only until the earlier of its expiration, revocation or the issuance or denial of a permit under the provisions of this section.~~
- (e) *Term of permits and renewal thereof.* No permit shall be issued under this section for a term of more than three years but may, in the director's discretion, be issued for a shorter period. Permits must be renewed, subject to the same terms and conditions required for initial permits.
- (f) *Revocation of permits.* The director may, upon notice and hearing and for good cause shown, revoke any permit or modify any terms, conditions or provisions thereof. If the director deems it necessary to protect the public health or safety from any imminent threat or danger thereto, he may, without hearing, revoke any permit or any portion thereof. Good cause for revocation or modification of a permit shall include, without limitation, violation of or failure to comply with any provision of this article or with any term, condition or provision of a permit.
- (g) *Inspections.* The director shall cause periodic inspections to be made of the premises of the owner of a permitted dangerous or potentially dangerous dog to assure compliance with the provisions of this article and the applicable permit.
- (h) *Insurance.* Every person owning a dangerous dog, as determined in accordance with this article or Chapter 67 of the General Statutes, shall purchase and maintain a policy of liability insurance covering any injury or property damage caused by the dog. Minimum policy limits shall be \$50,000.00 for personal injury or property damage, per occurrence. Such owner shall cause a certificate or declaration of insurance to be furnished to the director annually. Every day that the required insurance is not in full force and effect shall constitute a violation of this article.

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

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

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

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

BEWARE OF DOG  
THIS DOG IS DANGEROUS  
STAY AWAY!

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

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

- (a) *Apprehension and surrender.* Upon an initial determination of a dog as potentially dangerous or upon registration of a dog to be dangerous, or if the director has reasonable suspicion to believe that a dangerous, or potentially dangerous dog is being kept or harbored within the territorial jurisdiction of this chapter in violation of it or of a permit issued hereunder, ~~animal control~~[Animal Services](#) officers and law enforcement officers of Cumberland County and of any municipality subject to this chapter shall impound such dog. It shall be a violation of this article to fail or refuse to surrender such dog to such officers upon their lawful demand. The officer impounding such a dog shall deliver the same to the department's shelter.
- (b) *Surrender.* Hiding, removing or failing to surrender a dangerous or potentially dangerous dog, or impeding any investigation concerning the same, shall be a violation of this article.

(c) *Confinement.* A dog impounded by or surrendered to an ~~animal-control~~[Animal Services](#) officer or law enforcement officer as provided herein shall be confined in the department's shelter or, upon request of the owner hereunder, and at such person's expense, at a private veterinary facility or kennel approved by the director, subject to the following conditions:

- (1) *Costs of impoundment.* Impoundment shall be at the expense of the owner of the dog. Costs of impoundment at the department's shelter shall be paid by the person liable therefore at the daily rate. The costs of impoundment at a veterinary facility or kennel shall be paid by the person liable therefore pursuant to the terms of the agreement between such person and the proprietor of such facility or kennel. In no event shall Cumberland County or any municipality subject to this chapter be liable for or pay for impoundment at such private facility or kennel.
- (2) *Release from impoundment.* No such dog shall be released from impoundment as provided herein except upon registration of such dog and issuance of a permit or temporary permit allowing such release. No such dog shall be released from the department's shelter until costs of confinement of such dog, any registration and permit fees for such dog, and any civil penalties assessed in connection with such dog have been paid in full.
- (3) *Disposition of unclaimed or abandoned dogs.* The following dogs impounded at the department's shelter pursuant to this article shall be deemed abandoned and shall be disposed of in accordance with the provisions of this chapter and the rules and regulations of the department:
  - a. Any dog which remains unclaimed by its owner for a period more than ten days or a period of lawful quarantine, whichever is longer; and
  - b. Any dog claimed by its owner which is confined for a period in excess of ten days, or a period of lawful quarantine, whichever is longer, during which no application has been made for a permit or temporary permit; provided, however, the director shall extend such time upon a showing of justifiable delay in such action by the owner.

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

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

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

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

Sec. 3-39. - Administrative provisions.

- (a) *Responsibility.* The director shall administer and enforce this article and shall promulgate rules and regulations for such administration and enforcement as may be necessary or desirable to such end.

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

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

#### ARTICLE IV. - RABIES CONTROL AND ANIMAL BITES

##### Sec. 3-40. - Rabies control.

- (a) *Enforcement authority.* The ~~animal control~~Animal Services director and the Cumberland County Health Director are authorized to enforce the rabies control provisions in Part 6 of Chapter 130A of the North Carolina General Statutes and are further authorized to implement any reasonable administrative procedures necessary to enforce this state law locally.
- (b) *Impoundment term.* The impoundment period for animals held pursuant to this section shall be 72 hours, excluding Sundays and legal holidays.
- (c) *Compliance with rabies law.* It shall be unlawful for any animal owner or other person to fail to comply with the state laws relating to the control of rabies.
- (d) *Provisions supplementary to state law.* It is the purpose of this section to supplement the state laws by providing a procedure for the enforcement of state laws relating to rabies control, in addition to the criminal penalties provided by the state law.
- (e) *Vaccination required.* It shall be unlawful for an owner or keeper to fail to provide proof of current vaccination against rabies (~~hydrophobia~~) for any dog, cat or ferret four months of age or older.

Should the county health director deem it necessary that other pets be vaccinated in order to prevent a threatened rabies epidemic or control an existing rabies epidemic, it shall be unlawful for an owner or keeper to fail to provide vaccination for that pet.

- (f) *Vaccination schedule.* A rabies vaccination shall be deemed current for a dog, cat or ferret if the first two doses of vaccine are administered 12 months apart and each subsequent booster dose of vaccine is administered according to the manufacturer's recommended schedule.
- (g) *Persons to administer; issuance of a certificate.* All rabies vaccines shall be administered by a licensed veterinarian, a registered veterinary technician under the direct supervision of a licensed veterinarian, or a certified rabies vaccinator. A person who administers a rabies vaccine shall complete a rabies vaccination certificate in such form as is approved by the ~~animal control~~[Animal Services](#) director pursuant to the regulations of the Commission for Public Health. An original rabies vaccination certificate shall be given to the owner of the animal that receives the rabies vaccine. A copy of the rabies vaccination certificate shall be retained by the licensed veterinarian or the certified rabies vaccinator. A copy shall also ~~sent to Animal Services.~~ [be given to the animal control director.](#)
- (h) *Owner or keeper to be issued rabies tag.* Upon vaccination pursuant to this section, the owner or keeper of the dog, cat or ferret that has been vaccinated shall be issued a rabies tag stamped with a number and the yard for which issued and a rabies vaccination certificate.
- (i) *Unlawful for dog, cat or ferret not to wear rabies tag.* It shall be unlawful for any dog, cat or ferret owner or keeper to fail to provide the dog, cat or ferret with a collar or harness to which a current rabies tag issued under this section is securely attached. The collar or harness, with the attached tag, must be worn at all times the animal is off its owner's property.
- (j) *Untagged dog, cat or ferret subject to impoundment.* In addition to all other penalties prescribed by law, a dog, cat or ferret may immediately be impounded in accordance with the provisions of this section if it is found off its owner's or keeper's property not wearing a currently valid rabies tag.
- (k) *Unlawful to switch rabies tag.* It shall be unlawful for any person to use for any animal a rabies vaccination tag [or certificate](#) issued for an animal other than the one assigned the tag [or certificate](#).
- (l) *Dogs, cats or ferrets brought into county.* All dogs, cats or ferrets shipped or otherwise brought into the territorial jurisdiction of this chapter, except for exhibition purposes where the dogs, cats or ferrets are confined and not permitted to run at large, shall be securely confined and vaccinated within one week after entry, and shall remain confined for two additional weeks after vaccination, unless accompanied by a certificate issued by a licensed veterinarian showing the dog, cat or ferret is apparently free from rabies and has not been exposed to rabies and that the dog or cat has received a proper dose of rabies vaccine not more than six months prior to the date of issuing the certificate.
- (m) *Animals exposed to rabies.*
  - (1) If the ~~animal control~~[Animal Services](#) director determines that an animal has not ~~ever~~ been vaccinated against rabies ~~or received its only rabies vaccine less than at least~~ 28 days prior to being exposed to rabies from a suspected rabid animal, the animal shall be immediately euthanized unless the owner or keeper agrees to strict isolation of the animal at a veterinary hospital for a period of ~~four~~[six](#) months at the owner's or keeper's expense.
  - (2) If the ~~animal control~~[Animal Services](#) director determines that an animal with a current rabies vaccination ~~or proof of previous rabies vaccination that has since expired~~ has been exposed to rabies from a suspected rabid animal, it shall be revaccinated and returned to the owner or keeper who shall be responsible for the cost of the rabies vaccination. [The owner or keeper is required to monitor the health of the animal for 45 days and report any illness to Animal Services.](#)
- (n) *Health director may declare quarantine.* When reports indicate a positive diagnosis of rabies, to the extent that the lives of persons are endangered, the county health director may declare a county-wide quarantine for such period of time as he deems necessary. Once such emergency quarantine is declared, no dog, cat or ferret may be taken or shipped from the county without written permission of

the county health director. During such quarantine, the county health director, the ~~animal control~~[Animal Services](#) director, law enforcement officers, or other persons duly authorized by the county health director or ~~animal control~~[Animal Services](#) director may seize and impound any dog, cat or ferret running at large in the county. During the quarantine period, the county health director shall be empowered to provide for a program of mass immunization by the establishment of temporary emergency rabies vaccination facilities strategically located throughout the county. If additional confirmed cases of rabies occur during the quarantine period, the county health director in his discretion may extend the quarantine period.

- (o) *Carcass to be surrendered to ~~health~~[Animal Services](#) department.* The carcass of any animal suspected of dying of rabies, or dying while under observation for rabies, shall be submitted to the ~~county health~~[Animal Services](#) department for the implementation of appropriate diagnostic procedures as advised by the NC Department of Health and Human Services Public Health Veterinarians.
- (p) *Unlawful to kill or release animal under observation.* It shall be unlawful for any person to kill or release any animal under observation for rabies, any animal under observation for biting a human, or to remove such animal from the county without written permission from the county health director, provided that a licensed veterinarian or the county health director or other person duly authorized by the county health director may authorize any animal to be killed for rabies diagnosis.
- (q) *Unlawful to fail to surrender animal.* It shall be unlawful for any person to fail or refuse to surrender any animal for confinement or destruction as required in this article, when demand is made therefore by the county health director, the ~~animal control~~[Animal Services](#) director or any law enforcement officer.
- (r) *Unlawful to fail to provide proof of vaccination.* It shall be unlawful for any person to fail or refuse to provide proof of rabies vaccination for any animal that they own or control when request is made therefore by the ~~animal control~~[Animal Services](#) director or his designee, the county health director or his designee, or any sworn law enforcement officer.
- (s) *Animals subject to impoundment.* Any animal which appears to be lost, stray, unwanted, ~~not wearing a currently valid tax tag or a currently valid rabies vaccination tag as required by state law or this section,~~ or not under restraint in violation of this chapter, may be seized, impounded and confined in a humane manner in the department's shelter. Any dog or cat that has bitten or scratched a human must be quarantined for ten days from the date of the bite or scratch, either at the home of its owner or keeper, if an ~~animal control~~[Animal Services](#) officer determines that the public health and safety shall be reasonably maintained by such quarantine, or otherwise in the department's shelter or in a veterinary hospital at such owner's or keeper's expense. If such dog, cat or ferret is quarantined at the home of its owner or keeper and escapes, any ~~animal control~~[Animal Services](#) officer shall impound such dog, cat or ferret at the department's shelter for ten days from the date of the bite or scratch.
- (t) *Owner liable.* Impoundment of such animal shall not relieve the owner/keeper thereof from any penalty which may be imposed for violation of this section.
- (u) *[Disposition of infected animals.]* The County Health Director shall direct the disposition of any animal found to be infected with rabies.

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

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

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

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

Sec. 3-42. - Records.

The ~~animal-control~~[Animal Services](#) director shall keep or cause to be kept:

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

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

Sec. 3-43. - Interference.

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

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

Secs. 3-44—3-49. - Reserved.

~~ARTICLE V. - LICENSING OF DOGS AND CATS~~

~~Sec. 3-50. - License for dogs and cats.~~

- ~~(a) It shall be unlawful for any person to own, possess or have under his control any dogs or cats, or any combination thereof, over four months of age, without obtaining an annual privilege license for each such animal from the veterinarian administering the rabies vaccination for the animal or the Cumberland County Animal Control Department, as provided in this article.~~
- ~~(b) The annual privilege license shall be assigned the same number as the rabies vaccination certificate for each animal and shall be registered with the animal control department at the time of each annual rabies vaccination for the animal. The annual privilege license fee shall be paid to the animal control department at the time of each rabies vaccination. For rabies vaccinations of three years' duration, the annual privilege license fee shall be due on the annual anniversary date of the vaccination. It shall be the responsibility of the animal control department to notify owners with privilege license fees due in the second and third year of a three-year rabies vaccine.~~
- ~~(c) All veterinarians administering rabies vaccinations shall issue the privilege license and collect the privilege license fee at the time of the vaccination and remit the registration and fee to the Cumberland County Animal Control Department with the rabies vaccination certification in accordance with such procedures and using such forms as established by the animal control director from time to time. A participating veterinarian shall retain an administrative fee as established by the Cumberland County Board of Commissioners from time to time.~~
- ~~(d) The animal control director shall be responsible for the administration of the privilege licensing of dogs and cats and for the collection of all privilege license fees not collected and/or remitted by participating veterinarians.~~

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

~~Sec. 3-51. Terms of license; exemption.~~

- ~~(a) The license issued under this article shall be renewed every year, upon proof of rabies vaccination.~~
- ~~(b) County residents who are 65 years of age or older may obtain a permanent license for up to three cats or dogs, or any combination thereof, at no cost; provided that this permanent license shall be limited to no more than three animals per household. County residents may obtain a permanent license at no cost for a bona fide seeing-eye or aid dog.~~

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

~~Sec. 3-52. Issuance of records.~~

- ~~(a) The rabies vaccination tag shall constitute the privilege license tag for all dogs and cats registered for the privilege license and for which the privilege license fee has been paid. The tag shall be of durable material and shall be designed to be easily fastened or riveted to the animal's collar or harness. The tag number shall be registered with the animal control department.~~
- ~~(b) The animal control department shall maintain records of licensed dogs and cats and such records shall be open to public inspection.~~

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

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

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

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

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

~~Sec. 3-54. License fee in addition to other fees.~~

~~The privilege license fee shall be in an amount established by the Cumberland County Board of Commissioners from time to time and shall be in addition to any fee in the fee schedule adopted pursuant to this chapter.~~

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

~~Sec. 3-55. Use of revenues collected from license fees.~~

~~The revenues collected for the licensing or adoption of dogs and cats shall be specifically expended for physical improvements to the animal shelter or the equipment of the animal control department, for the cost of administration and enforcement of this chapter, and for costs associated with public education programs and activities.~~

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

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

- ~~(a) —When ownership of a dog or cat is transferred within the county's jurisdiction, the new owner will have 30 days to obtain a new privilege license for the animal.~~
- (b) When ownership of a dog which has been declared dangerous or potentially dangerous under article III of this chapter is transferred within the county's jurisdiction, the previous owner shall within three business days notify the [animal control/Animal Services](#) department and provide the name and address of the new owner. The new owner shall:
- (1) Immediately register the dog with the [animal control/Animal Services](#) department; and
  - (2) Ensure that the requirements of this chapter for maintaining a dangerous or potentially dangerous dog are complied with prior to the dog being relocated to the new owner's property.

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

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

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

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

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

ARTICLE VI. - INJURED ANIMALS; [ANIMAL MEDICAL STABILIZATION FUND](#)

Sec. 3-60. - Control of injured animals; [Animal Medical Fund stabilization fund](#).

- (a) Any [Animal Services/animal control](#) officer or law enforcement officer is authorized to take possession of any seriously injured ~~dog, cat, wildlife, livestock, bird or other~~ animal which ~~has suffered a painful and potentially mortal injury and which~~ is found in any location open or accessible to the public, any public or private vehicular right of way, or apparently off the property of its owner. ~~Any such animal which does not have a current rabies tag or identification tag shall be conclusively presumed abandoned for purposes of this article.~~
- (b) Any [Animal Services/animal control](#) officer or law enforcement officer finding any such animal shall make reasonable efforts to locate the owner of any such animal. ~~If the owner is promptly located, the owner shall immediately seek veterinary care of the animal or shall authorize such officer to humanely euthanize such animal.~~ If the owner cannot be promptly located or contacted, the animal ~~services/control~~ officer or law enforcement officer is authorized, in his or her discretion, to humanely euthanize such animal in an emergency situation where safe, humane transport of the animal is not possible, or promptly transport such animal to a veterinarian ~~participating in the injured animal stabilization fund~~ for stabilization of such animal's injuries. Every owner of any animal so found shall conclusively be presumed to have irrevocably appointed any such officer, or veterinarian ~~participating in the injured animal stabilization fund~~, his or her authorized agent for any purposes under this article. Every such owner also shall be deemed to have released any officer, or veterinarian ~~participating in the injured animal stabilization fund~~, from any cause of action or claim arising out of or related to any action such officer or veterinarian may take under this article, except for actions which constitute gross negligence.
- (c) ~~Each animal control officer or law enforcement officer acting under this article shall within a reasonable time report to the animal control director the nature and extent of the injuries of each such animal and the disposition thereof. The animal control department shall maintain a record of the nature and extent of each such animal's injuries and of the disposition thereof.~~

(cd) There is hereby established the Cumberland County Animal Medical Fund ~~Injured Animal Stabilization Fund~~, to which contributions, grants, donations, or restitution may be made for the purpose of providing outside veterinary care for animals in the possession of Animal Services. ~~reimbursing veterinarians agreeing to participate with the fund in stabilizing the injuries of injured animals transported to them for stabilization under this article.~~ The director may solicit or raise funds for the fund. The fund shall be administered by a committee which shall include the Cumberland County Finance Officer or his or her designee and a veterinarian designated by the Cumberland County Animal Control Board. Funds shall be disbursed from the fund by the finance officer under guidelines established by the committee.

(de) The Animal Services Department shall maintain a record of the nature and extent of each such animal's injuries and of the disposition thereof. ~~Any animal control officer or law enforcement officer, or any veterinarian to which an injured animal may be transported under this article for stabilization of injuries, shall be deemed to be an authorized agent of and acting on behalf of Cumberland County and its animal control department pursuant to the authority of this article. Any such officer or veterinarian acting pursuant to this article shall be entitled to all the defenses, immunities and rights afforded by law or available to Cumberland County and its officers, employees or agents.~~

(f) ~~If any owner of an animal transported under this section to a veterinarian participating in the injured animal stabilization fund shall subsequently be identified by the animal control department, he or she shall make restitution to the fund of the amount disbursed by it to the participating veterinarian.~~

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

Secs. 3-61—3-69. - Reserved.

#### ARTICLE VII. - MISCELLANEOUS

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

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

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

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

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

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

Sec. 3-72. - Grazing animals.

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

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

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

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

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

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

It is unlawful to sell, auction, trade, barter, and display for commercial purposes or give away any live animal within the right of way of any public highway, commercial parking lot, garage sale, flea market, festival, park, community center, public vehicular area, public sidewalk, public property or street within Cumberland County. The ~~animal control~~Animal Services department may immediately take custody of and impound any live animals found ~~being sold~~ in violation of this section. This section shall not apply to any animal welfare organization or humane society qualified under section 501(c)(3) of the Internal Revenue Code ~~and approved to remove animals from the Cumberland County Animal Shelter through their standard approval process, acting pursuant to a permit issued by the animal control director, which permit may be conditioned on reasonable conditions to assure the health, welfare and safety of the animals being sold, auctioned, traded, bartered, displayed or given away.~~

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

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

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

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

Secs. 3-76—3-79. - Reserved.

#### ARTICLE VIII. - ENFORCEMENT

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

- (a) The primary responsibility for the enforcement of this chapter shall be vested in the ~~animal control~~[Animal Services](#) department.
- (b) Any person authorized to enforce this chapter may do so by issuing a notice of violation or civil penalty citation, or by applying to the General Court of Justice for a temporary restraining order, a preliminary injunction, a permanent injunction or an order to abate a nuisance, as may be appropriate in the circumstances.
- ~~(c) Upon information made known to or complaint lodged with the animal control department that any owner, possessor, or custodian of any dog or animal is in violation of this chapter, an animal control officer may investigate the complaint to determine whether to issue a notice of violation (civil citation) requiring the owner, possessor or custodian of the dog or animal to pay the stated civil penalty and abate the nuisance specified or whether to take such other enforcement action as may be authorized under this chapter.~~
- ~~(d) If the owner, possessor or custodian of any dog or animal is not known and the dog or animal is upon the public streets, alleys, sidewalks, school grounds or other public places or premises, or another's property without that property owner's permission, in violation of this chapter, the dog or animal shall be impounded in the animal shelter.~~
- (ce) Any decision of the ~~animal control~~[Animal Services](#) director or his designee to seize or impound any animal, other than a decision made pursuant to the provisions of article III, may be appealed to the ~~animal control~~[Animal Services](#) board for review and final decision upon the owner or keeper of such seized or impounded animal giving written notice of appeal within three business days of receiving notice of the director's decision. The ~~animal control~~[Animal Services](#) board shall afford the opportunity for a hearing to any person giving notice of appeal and shall conduct the hearing for the purpose of either affirming, reversing, or modifying the decision of the director.

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

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

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

~~(e) The penalty for a dog biting a human causing injury which requires professional medical or hospital treatment shall be \$500.00 for the first offense.~~

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



**PLANNING AND INSPECTIONS DEPARTMENT**

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: RAWLS HOWARD, DIRECTOR OF PLANNING AND INSPECTIONS**

**DATE: 4/12/2021**

**SUBJECT: TEXT AMENDMENT TO CHAPTER 4, ARTICLE IV - MINIMUM HOUSING CODE**

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

**Presenter(s): RAWLS HOWARD, DIRECTOR OF PLANNING AND INSPECTIONS**

**BACKGROUND**

The Planning and Inspections Department has received an application for appeal of a minimum housing order from our Code Enforcement staff. Per Chapter 4, Article IV of the County's Code of Ordinances, a citizen has the right to appeal the decision to the Housing Appeals Board of the County.

Upon review, the Housing Appeals Board is currently unfilled and non-operational. In an effort to streamline workflow, reduce administrative burden, and better focus energies of the appointed boards, staff is recommending a text amendment to the County Code of Ordinances to move the duties of the Housing Appeals Board to the County's Board of Adjustment.

Moving housing appeals to the Board of Adjustment has a number of benefits. The department receives these appeals very sporadically. Staff believes there is not enough workload to justify a separate board. Additionally, these appeal hearings are quasi-judicial in nature and based on findings. As the land use, quasi-judicial appeal body for the County, these housing appeal cases can very easily be assimilated into the Board of Adjustment's work plan.

Planning staff has reviewed the proposed action and text amendment with the County Attorney's office. The duties of the Board of Adjustment were modified as part of the recent 160D Zoning Ordinance adoption to begin accommodating this shift. However, in order to finalize the shift in duties, Section 4-70 of the County

Code of Ordinances needs to be amended.

**RECOMMENDATION / PROPOSED ACTION**

Staff recommends the Board of Commissioners move this item forward to the May 17, 2021 Regular Meeting and approve the proposed text amendment after holding a public hearing on the item.

**ATTACHMENTS:**

Description	Type
Minimum Housing Code Proposed Amendment	Backup Material
Sec. 4-84 Right to Appeal to Housing Appeals Board	Backup Material
Legal Ad	Backup Material

**Text Amendment:**

**Chapter 4 – Buildings and Building Regulations**

**Article IV – Minimum Housing Code**

**Division 1. – Generally**

**Sec. 4-70. – Board of Adjustment to serve as Housing appeals board.**

(a) ~~There is hereby created a housing appeals board~~ The Cumberland County Board of Adjustment shall serve as the body to which appeals may be taken from decisions or orders of the public officer inspectors as provided in section 4-84. ~~The board shall consist of five members to serve for three-year staggered terms. The board shall have power to elect its own officers; to fix the times and places of its meetings; to adopt necessary rules of procedure; and any other rules and regulations which may be necessary for the proper discharge of its duties.~~ The board shall perform the duties prescribed by this division and shall keep an accurate record of all its proceedings.

~~(b) — The board of county commissioners shall appoint the five regular members of the housing appeals board for the terms specified above. The board of county commissioners shall also appoint five alternate members at large to serve on the housing appeals board in the absence of any regular member. Alternate members shall be appointed to serve three-year staggered terms. Each alternate member, while attending any regular or special meeting of the housing appeals board and serving in the absence of any regular member, as provided in the rules of procedure of such board, shall have and exercise all the powers and duties of any regular member absent from the meeting.~~

Sec. 4-84. - Right of appeal to housing appeals board.

- (a) Any owner or person who is aggrieved with the ruling or decision of the hearing officer in any manner relative to the interpretation or enforcement of any of the provisions of the minimum housing code of the county may appeal from any such decision to the housing appeals board.
- (b) An appeal from any decision or order of the hearing officer may be taken by any person aggrieved thereby or by an officer, board or commission of the county. Except from appeals for an extension of time within which to comply with the decision or order of the hearing officer, any appeal from the hearing officer shall be taken within ten days from the rendering of the decision or service of the order, and shall be taken by filing with the inspector, hearing officer or secretary to the housing appeals board a notice of appeal, on forms supplied by the inspection department, which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the secretary shall transmit to the board all the papers constituting the record upon which the decision being appealed was made. When an appeal is from a decision of the hearing officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the hearing officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the inspector certifies to the board that such suspension would cause imminent peril to life or property, in which case the requirement shall not be suspended.
- (c) An appeal for an extension of time within which to comply with the decision or order of the hearing officer may be taken in the manner set forth in subsection (b) above, at any time not less than 14 days prior to the expiration of time to comply. An extension of time shall be granted only if the appellant has commenced lawfully the corrective work or acts directed by the inspector and completed a minimum of 25 percent of the required work or acts, calculated as a percentage of the total of the required work or acts as the housing appeals board may deem reasonable under the circumstances. The board shall not grant an extension of time for compliance with a decision or order of the hearing officer to correct or abate a condition of habitation which poses an imminent threat of serious bodily injury. The board shall grant an extension of time only for such period it finds is reasonably necessary to complete the corrective work or acts required and may attach such conditions to the extension that it deems necessary to assure orderly progression of such work and acts. The board shall not grant an extension of time for more than six months following the expiration of the time to comply directed by the hearing officer.
- (d) The housing appeals board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person, or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order as in its opinion ought to be made in the matter, and to that end, it shall have all powers of the inspector, but the concurrent vote of four members of the board shall be necessary to reverse or modify any decision or order of the inspector. The board shall have the power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the article, to adapt the application of the article to the necessities of the case to the end that the spirit of the article shall be observed, public safety and welfare secured, and substantial justice done.
- (e) In case any dwelling is erected, constructed, altered, repaired, converted, maintained or used in violation of this article or any valid order or decision of the inspector or board made pursuant to this article, the inspector or board may institute any proceedings or appropriate action to prevent such unlawful erection, construction, reconstruction, or alteration, or to prevent any illegal act, conduct or use in or about the premises of the dwelling.

(Ord. of 6-15-98)

**FAYETTEVILLE PUBLISHING COMPANY**  
 458 Whitfield Street, Fayetteville, NC 28306  
 Phone (910) 678-9000 Toll Free 1-800-345-9895 Fax (910) 323-1451

**Order Confirmation**

**PUBLIC NOTICE**

The Cumberland County Board of Commissioners will meet at 6:45 p.m. on May 17, 2021 in room 118 of the County Courthouse at 117 Dick Street to hear the following:

P21-21 rezoning 1.20 +/- ac A1 to RR or more restrictive zoning 6285 & 6291 Braxton Rd owner Marcus G. McLean

P21-22 rezoning 0.71 +/- ac A1 to R30 or more restrictive zoning 3618 Gabe Smith Rd owner Louretha K. McKethan

P21-23 rezoning 1.95 +/- ac R6A to C2(P)/CZ trade contracting & retail or more restrictive zoning N side Cumberland Rd owner Gary Duane McGuire Jr

P21-24 rezoning 72.60 +/- ac A1 to R10 or more restrictive zoning e side W Reeves Bridge Rd owner Margaret Collier Heirs

P21-25 rezoning 1 +/- ac A1 & RR to RR or more restrictive zoning 2952 & 2958 Blossom Rd owners William D. & Sylvia Warren

SN0479 consideration of renaming Farmers Road to N Farmers Rd and S Farmers Rd

Amend. to Cumberland County Code of Ord. Ch. 4, Article IV - Minimum Housing Code; Board of Adjustment to serve as housing appeals board.  
 5/3, 10 5244311

<u>Ad Order Number</u>	<u>Customer</u>		
0005244311	CUMB CO JOINT PLANNING		
<u>Sales Rep.</u>	<u>Customer Account</u>		
0090	003661000		
<u>Order Taker</u>	<u>Customer Address</u>		
0001	130 Gillespie Street, Attn: Laverne Howard, FAYETTEVILLE NC 28301 USA		
<u>Order Source</u>	<u>Customer Phone</u>		
Telephone	910-678-7600		
<u>Order Invoice Text</u>			
CCBoC - 5/17/21 meeting			
<u>Payor Customer</u>	<u>PO Number</u>		
CUMB CO JOINT PLANNING			
<u>Payor Account</u>	<u>Ordered By</u>		
003661000			
<u>Payor Address</u>	<u>Customer Fax</u>		
130 Gillespie Street, Attn: Laverne Howard, FAYETTEVILLE NC 28301 USA	910-678-7631		
<u>Payor Phone</u>	<u>Customer EMail</u>		
910-678-7600	lhoward@co.cumberland.nc.us		
	<u>Special Pricing</u>		
	None		
<u>Net Amount</u>	<u>Tax Amount</u>	<u>Total Amount</u>	<u>Amount Due</u>
\$288.04	\$0.00	\$288.04	\$288.04
	<u>Payment Method</u>	<u>Payment Amount</u>	
		\$0.00	

<u>Ad Number</u>	<u>Ad Type</u>	<u>Ad Size</u>	<u>Color</u>
0005244311-01	CL Legal Line	: 1.0 X 38 cl	<NONE>

<u>Product</u>	<u>Placement/Classification</u>	<u>Run Dates</u>	<u># Inserts</u>	<u>Cost</u>
FO::	401 - Legals	5/3/2021, 5/10/2021	2	\$276.64
OL::	401 - Legals	5/3/2021, 5/10/2021	2	\$11.40



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

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: TRACY JACKSON, ASST. COUNTY MANAGER/ENVIRONMENTAL & COMMUNITY SAFETY**

**DATE: 5/4/2021**

**SUBJECT: COMMISSIONERS' MEETING ROOM UPDATE**

**Requested by: BOARD OF COMMISSIONERS**

**Presenter(s): JERMAINE WALKER, COUNTY ENGINEER**

**BACKGROUND**

At the April 8, 2021 Board of Commissioners' Agenda Session, a representative from the Wooten Company presented two meeting room concepts to the Board. After the presentation, the Board instructed staff to arrange visits with the architect to the Historic Courthouse for the Commissioners and to bring the item back for further discussion at the next Agenda Session. Wooten reached out to the Board and arranged a visit to the Historic Courthouse Courtroom on April 16, 2021 at which time the proposed meeting room concept was explained in greater detail. Two commissioners attended that meeting (Commissioners Keefe and Lancaster).

To recap, the Wooten Company has identified the following costs associated with the proposed renovation:

- Historic Courthouse Courtroom: \$2,573,000
- Cumberland County Courthouse - Rooms 118 & 119: \$2,235,500

The above cost estimate for the Historic Courthouse does not include:

- Elevator Modernization Costs (proposed in FY22 CIP at \$250,000)
- 2<sup>nd</sup> floor bathroom renovations and ADA up-fit
- Addition of an Executive Meeting Room
- Technology Infrastructure Improvements

If renovated, this will lead to significant plumbing upgrades and a major difference in the appearance of the

Historic Courthouse from one floor to the next due to a major renovation of most of the second floor.

Attached to this memo is a proposal from the Wooten Company to complete an additional scope of work, determining the above costs associated with renovations at the Historic Courthouse, in the amount of \$4,775.00 and to be completed in 28 days after approval of the proposal.

The Engineering and Infrastructure Department is also in the process of distributing a Request for Qualifications (RFQ) for a General Government Services Building Space Utilization and Site Analysis Study focusing on the departments located in the Judge E. Maurice Braswell Courthouse, the old Highsmith-Rainey Hospital, and the Historic Courthouse. Funding for this study is included in the FY21 Budget, but likely would not start until August or September if approved by the Board of Commissioners.

### **RECOMMENDATION / PROPOSED ACTION**

Staff is seeking guidance from the Board of Commissioners. Does the Board wish to move forward with the expanded scope of work for the Wooten Company regarding the Historic Courthouse as we begin the General Government Services Building Space Utilization and Site Analysis Study.

### **ATTACHMENTS:**

Description	Type
Wooten Expanded Scope Proposal	Backup Material



April 22, 2021

Ms. Amy H. Cannon  
County Manager  
Cumberland County  
117 Dick St.  
Fayetteville, NC 28301

**Re: Proposal for Historic Courtroom Expanded Concept**

Dear Ms. Cannon:

In response to your request, The Wooten Company is pleased to submit a fee proposal to provide professional services which expand the scope of our conceptual design for the Commissioner's Room in your Historic Courthouse in the Cumberland County. The following summary is our understanding of the objectives and scope of work.

**Project Understanding**

A conceptual design will be developed to allow the Commissioners to understand the related building renovations required to support the use of the Courtroom at the Historic Cumberland County Courthouse at 130 Gillespie St, Fayetteville as the Commissioners' Room. Items added to our previous concept include: restoration of the balcony and the seating area under the balcony; accessible restrooms at the new Commissioners' Room level; an Executive Session Room; and a complete modernization of the larger of the two elevators. The revised concept will provide a basis for planning and budgeting.

**Scope of Work**

***Interviews***

- The scope was determined in discussions with key County employees and elected officials at a meeting in the subject building on Friday, March 16<sup>th</sup>.
- Develop an understanding of the area required and specific related building systems improvements needed for the above noted functions to support the Commissioners' Room adaptive reuse in the Historic Courthouse.

***Facility and Assessment***

- Evaluate developmental constraints that the Historic Courthouse presents relative to the configuration of the rooms proposed to support the Commissioners Room.

120 North Boylan Avenue  
Raleigh, NC 27603-1423

919.828.0531  
Fax 919.834.3589

[www.thewootencompany.com](http://www.thewootencompany.com)

### **Analysis**

- Generate a schematic floor plan indicating the demolition and new work.
- Generate schematic floor plans indicating room furnishings, fixtures, and finishes.
- Revise estimated construction costs to include expanded scope.

### **County's Responsibility**

- Designate a person to act as the County's representative with respect to the work to be performed under this agreement. Such person shall be the primary contact to transmit instructions, receive information, and to interpret and define County policies.
- Provide timely review and comment on design issues.
- Elected officials and key employees to meet with Architect at times of mutual convenience.

### **Fee**

Based on the scope of the project, we propose to provide the services outlined above at a fixed fee of Four Thousand Seven Hundred Seventy-Five Dollars (\$4,775.00). We do not anticipate any reimbursable expenses associated with these efforts, however, if the need for any such expenses should arise, we will seek approval from the County before proceeding.

### **Schedule**

We estimate that 28 days after execution of the agreement will be required to complete additional scope of the study.

Please review our proposal and do reach out if you have any questions.  
If you find our proposal acceptable, please indicate the County's approval by signing in the appropriate space below and returning a single copy of the agreement to our office.

We appreciate the opportunity that this exciting project affords us to be of continued service to Cumberland County. You have our assurance that The Wooten Company will make every effort to deliver quality service in a timely manner.

Sincerely,

THE WOOTEN COMPANY



Robert E. Egan  
Building Systems Group, Director

Accepted and Approved  
Cumberland County

\_\_\_\_\_  
Amy H. Cannon

\_\_\_\_\_  
Date

rdp



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

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021  
AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

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

**DATE: 4/19/2021**

**SUBJECT: RENEWAL OF A LEASE AGREEMENT WITH EASTER SEALS UCP OF  
NORTH CAROLINA AND VIRGINIA, INC.**

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

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

**BACKGROUND**

Easter Seals UCP of North Carolina and Virginia, Inc. provides support and services for children with intellectual developmental disabilities at the Dorothy Spainhour Center where specially trained teachers and therapists work with local clients and families. The lease agreement (copy attached with this memo) for this 12,310 square foot facility will expire June 30, 2021, and Easter Seals wishes to renew the lease for the same terms which primarily are as follows:

- 3-year term
- \$1 rent/year
- No security deposit required
- Lessee solely responsible for all utility costs
- Lessee solely responsible for all maintenance

**RECOMMENDATION / PROPOSED ACTION**

Staff requests this item be placed on the Consent Agenda for the May 17, 2021 Regular Meeting and recommends approval of 1) the initial resolution of intent to lease certain real property and 2) the required 30-day advertising as per N.C.G.S. 160A-272.

**ATTACHMENTS:**

Description

Current Lease

Type

Backup Material

**STATE OF NORTH CAROLINA**

**COUNTY OF CUMBERLAND**

**LEASE AGREEMENT**

*Notice Advertised in the Fayetteville Observer May 16, 2018*

*Approved by the Board of Commissioners June 18, 2018*

This Lease Agreement, to be effective July 1, 2018, by and between **Easter Seals UCP of North Carolina and Virginia, Inc.**, a North Carolina non-profit corporation with a place of business at 223 Hull Road, Fayetteville, North Carolina, hereinafter referred to as "LESSEE", and the **County of Cumberland**, a body politic and corporate of the State of North Carolina, hereinafter referred to as "LESSOR".

**W I T N E S S E T H:**

WHEREAS, the Cumberland County Board of Commissioners finds that the services provided by the LESSEE at the leased premises are critical in nature, there is no alternative resource for these specialized services, and these services were previously provided under the umbrella of the County.

NOW THEREFORE, in consideration of the mutual promises hereinafter contained and subject to the terms and conditions hereinafter set forth, LESSOR does hereby lease and demise to LESSEE that building known as the "Dorothy Spainhour Facility" located at 223 Hull Road, Fayetteville, North Carolina, and being the same space already occupied by Lessee.

TO HAVE AND TO HOLD the leased premises, together with all privileges and appurtenances thereto belonging including easements of ingress and egress, to the said LESSEE, under the terms and conditions hereinafter set forth:

1. **TERM:** The Lease shall commence the July 1, 2018, and unless sooner terminated, continue for three years to June 30, 2021.
2. **RENT:** The rent shall be at an annual rate of \$1.
3. **DEPOSIT:** LESSOR shall not require a security deposit from the LESSEE.
4. **UTILITIES:** LESSEE shall be solely responsible for all utility costs.
5. **MAINTENANCE:** LESSEE shall be solely responsible for all ongoing maintenance of the facility to include the building and grounds; HVAC, plumbing, electrical and telephone systems; parking lots; playground and fencing. Any replacement of mechanical equipment or proposed renovation must be coordinated through the LESSOR. LESSEE shall be responsible to maintain the premises to meet all requirements necessitated by ADA and OSHA requirements. All maintenance shall be done to the LESSOR'S standard.
6. **PARKING:** LESSEE shall have the right to use all parking lots associated with the building and located on the premises.

7. **INSPECTIONS:** The leased premises shall be subject to periodic inspections by LESSOR upon reasonable notice provided to LESSEE. LESSOR shall give LESSEE written notice of any deficiencies with respect to maintenance after inspection and LESSEE shall correct such deficiencies within a reasonable time after receiving such notice.

8. **USE AND OCCUPANCY:** LESSEE must continue to provide the same developmental day programs and services it has provided at the facility for the past several years. If LESSEE proposes to change any services, it must provide the LESSOR thirty days' advance written notice of such change and the reason for the proposed change.

9. **FINANCIAL STATEMENTS:** LESSEE shall provide LESSOR copies of its annual financial statements prepared in the ordinary course of business.

10. **ASSIGNMENT OR SUB-LEASE:** The lease is made for the specific purpose of LESSEE'S continuation of the services it currently provides in the facility. LESSEE shall not assign this lease or sublet the leased premises or any part thereof, without the written consent of the LESSOR.

11. **CONDITION OF PREMISES:** LESSEE shall return the premises to LESSOR at the termination hereof in as good condition and state of repair as the same was at the commencement of this lease except for loss, damage, or depreciation occasioned by reasonable wear and tear or damage by fire or other casualty.

12. **DESTRUCTION OF PREMISES:** In the event the facility is damaged or destroyed by fire or any other casualty so as to materially affect the use of the building and premises, this lease shall automatically terminate as of the date of such damage or destruction, provided, however, that if such building and premises are repaired so as to be available for occupancy and use within sixty (60) days after such damage, then this lease shall not terminate. The decision as to whether or not make repairs shall be LESSOR'S and LESSOR shall have no obligation to make repairs.

13. **CONDEMNATION:** If during the term of this lease or any renewal period thereof, the whole of the leased premises, or such portion thereof as will make the leased premises unusable for the purpose leased, be condemned by public authority for public use, then in either event, the term hereby granted shall cease as of the date of the vesting of title in such public authority, or when possession is given to such public authority, whichever event occurs last. The LESSOR shall be entitled to reasonable compensation for such taking except for any statutory claim of the LESSEE for injury, damage or destruction of the LESSEE'S business accomplished by such taking. If a portion of the leased premises is taken or condemned by public authority for public use so as not to make the remaining portion of the leased premises unusable for the purposes leased, this lease will not be terminated but shall continue. In no event shall the LESSOR be liable to the LESSEE for any interruption of business, diminution in use or for the value of any unexpired term of this lease.

14. **INSURANCE:** LESSOR will be responsible for insuring its interest in the building and LESSEE will be responsible for insuring its personal property within the leased premises. LESSEE shall at all times during the term hereof, at its own expense, maintain and keep in force a policy or policies of general and premises liability insurance against claims for bodily injury, death or property damage occurring in, on, or about the demised premises in a coverage amount of no less than \$500,000 per occurrence and naming LESSOR as an additional named insured. Proof of such insurance shall be provided to LESSOR annually.

**15. PERSONAL PROPERTY AND IMPROVEMENTS:** Any additions, fixtures, or improvements placed or made by the LESSEE in or upon the leased premises, which are permanently affixed to the leased premises and which cannot be removed without unreasonable damage to said premises shall become the property of the LESSOR and remain upon the premises as a part thereof upon the termination of this Lease. All other additions, fixtures, or improvements to include trade fixtures, office furniture and equipment, and similar items, which can be removed without irreparable damage to the leased premises, shall be and remain the property of the LESSEE and may be removed from the leased premises by the LESSEE upon the termination of this lease. LESSEE shall bear the expense of any repairs of the leased premises, other than fair wear and tear caused by such removal.

**16. TAXES:** LESSEE will list and pay all business personal property taxes, if any, on its personal property located within the demised premises.

**17. NOTICE:** Any notices to be given by either party to the other under the terms of this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by hand, with written acknowledgement of receipt, or mailed by certified mail, return receipt requested, or delivered by receipt controlled express service, to the other party at the following addresses or to such other addresses as either party hereafter from time to time designates in writing to the other party for the receipt of notice:

**LESSEE:**

Easter Seals UCP  
Attn: Mark Germann  
223 Hull Road  
Fayetteville, NC 28303-5912

**LESSOR:**

Cumberland County  
Attn: County Manager  
P. O. Box 1829  
Fayetteville, NC 28302-1829

Such notice, if mailed, shall be deemed to have been received by the other party on the date contained in the receipt.

**18. ORDINANCES AND REGULATIONS:** LESSEE shall comply with all the rules and regulations of the city, county or state having jurisdiction over the leased premises, and with all ordinances and regulations or governmental authorities wherein the leased premises are located, at LESSEE'S sole cost and expense.

**19. INDEMNIFICATION:** LESSEE will indemnify LESSOR and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury or damage to property occurring in or about, or arising out of, the demised premises, and occasioned wholly or in part by any act or omission of LESSEE, its agents, licensees, concessionaires, customers or employees. In the event LESSOR shall be made a party to any litigation, commenced by or against LESSEE, its agents, licensees, concessionaires, customers or employees, then LESSEE shall protect and hold LESSOR harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by LESSOR in connection with such litigation, unless such litigation arises out of an injury or injuries claimed as a result of some defective condition existing on the premises for which LESSOR has responsibility to maintain or repair under the terms of this lease and to which LESSOR has been put on notice by LESSEE.

**20. MERGER CLAUSE:** This instrument is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this lease agreement.

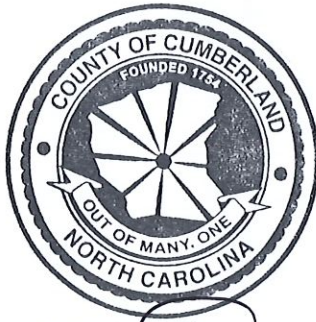
IN WITNESS WHEREOF, the LESSOR and LESSEE have caused this lease to be executed in duplicate originals by their duly authorized officers, to be effective the date and year first above written.

LESSEE: **Easter Seals UCP of North Carolina and Virginia, Inc.**

ATTEST:

BY: \_\_\_\_\_  
Secretary

BY: Wanne Welch  
Wanne Welch, President/CEO



ATTEST:

BY: Candice White  
Candice White, Clerk

LESSOR: **County of Cumberland**

BY: Amy Cannon  
Amy Cannon, County Manager

Approved for Legal Sufficiency

W. Morefield  
County Attorney's Office  
( ) Renewable  
( ) Non-renewable  
Expiration Date: June 30, 2020



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

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

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

**DATE: 4/19/2021**

**SUBJECT: RENEWAL OF A LEASE AGREEMENT WITH CUMBERLAND COUNTY COMMUNICARE, INC.**

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

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

**BACKGROUND**

Cumberland County Communicare, Inc., a local not-for-profit agency that assists people in overcoming mental health problems, substance abuse/chemical dependency, and the trauma of sexual victimization and abuse, wishes to enter into a lease agreement with Cumberland County for 13,994 square feet of office space located at 109 Bradford Avenue in Fayetteville. This agreement contains terms that mirror the prior agreement (attached) between Communicare and Cumberland County and will take the place of that agreement which will expire June 30, 2021. The agreement also continues to recognize the in-kind services that Communicare provides to the County. The rent is proposed at an annual rate of \$41,308 and will be for a three-year term.

**RECOMMENDATION / PROPOSED ACTION**

Staff requests this item be placed on the Consent Agenda for the May 17, 2021 Regular Meeting and recommends approval of 1) the initial resolution of intent to lease certain real property and 2) the required 30-day advertising as per N.C.G.S. 160A-272.

**ATTACHMENTS:**

Description

Type

Current Lease

Backup Material

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

LEASE AGREEMENT

Notice of Intent published in the *Fayetteville Observer* on May 16, 2018

Approved by the Board of Commissioners on August 6, 2018

This Lease Agreement, made and entered as of the 6<sup>th</sup> day of August, 2018, by and between **Cumberland County Communicare, Inc.**, a non-profit North Carolina corporation with a place of business at 109 Bradford Avenue, Fayetteville, North Carolina, hereinafter referred to as "LESSEE", and the **County of Cumberland**, a body politic and corporate of the State of North Carolina, hereinafter referred to as "LESSOR".

**W I T N E S S E T H:**

THAT for and in consideration of the mutual promises hereinafter contained herein and subject to the terms and conditions hereinafter set forth or referred to, LESSOR does hereby lease and demise to LESSEE that certain space consisting of 13,994 square feet of office space located at 109 Bradford Avenue, Fayetteville, NC, and being the same space already occupied by Lessee.

TO HAVE AND TO HOLD said property, together with all privileges and appurtenances thereto belonging including easements of ingress and egress, to the said LESSEE, under the terms and conditions hereinafter set forth:

1. **TERM**: The Lease shall commence the 1<sup>st</sup> day of July, 2018, and unless sooner terminated, continue for three (3) years to June 30, 2021.
2. **RENT**: The rent shall be at an annual rate of FORTY-ONE THOUSAND THREE HUNDRED EIGHT DOLLARS (\$41,308). The rent shall be payable in quarterly installments beginning on July 1st each year.
3. **DEPOSIT**: LESSOR shall not require a security deposit from the LESSEE.
4. **SERVICES**: LESSOR covenants and agrees to furnish the leased premises with electrical service suitable for the intended use as general office space (including dedicated ground circuits for computer operation), including fluorescent tube and ballast replacements, heating and air conditioning for the comfortable use and occupancy of the leased premises, plus supplying and maintaining building common areas and restroom facilities, including hot and cold water, and sewage disposal in the building in which the leased premises are located. If the premises have a security system, Lessor will maintain it in good working order.
5. **PARKING LOT**: LESSEE shall have the right of shared use and enjoyment of the building's parking areas at no charge to the LESSEE.
6. **ASSIGNMENT OR SUB-LEASE**: The LESSEE shall not assign this lease or sublet the leased premises or any part thereof, without the written consent of the LESSOR. Such written consent will not be unreasonably withheld by LESSOR.

7. **USE AND POSSESSION:** It is understood that the leased premises are to be used for general office purposes and for no other purposes without prior written consent of LESSOR. LESSEE shall not use the leased premises for any unlawful purpose or so as to constitute a nuisance. LESSEE shall return the premises to LESSOR at the termination hereof in as good condition and state of repair as the same was at the commencement of the term hereof, except for loss, damage, or depreciation occasioned by reasonable wear and tear and damage by accidental fire or other casualty.
8. **DESTRUCTION OF PREMISES:** In the event that said building is damaged by fire, windstorm, or an act of God, so as to materially affect the use of the building and premises, this Lease shall automatically terminate as of the date of such damage or destruction, provided, however, that if such building and premises are repaired so as to be available for occupancy and use within sixty (60) days after said damage, then this lease shall not terminate, provided further that the LESSEE shall pay no rent during the period of time that the premises are unfit for occupancy and use.
9. **CONDEMNATION:** If during the term of this lease or any renewal period thereof, the whole of the leased premises, or such portion thereof as will make the leased premises unusable for the purpose leased, be condemned by public authority for public use, then in either event, the term hereby granted shall cease and come to an end as of the date of the vesting of title in such public authority, or when possession is given to such public authority, whichever event occurs last. Upon such occurrence the rent shall be apportioned as of such date and any rent paid in advance at the due date for any space condemned shall be returned to the LESSEE. The LESSOR shall be entitled to reasonable compensation for such taking except for any statutory claim of the LESSEE for injury, damage or destruction of the LESSEE'S business accomplished by such taking. If a portion of the leased premises is taken or condemned by public authority for public use so as not to make the remaining portion of the leased premises unusable for the purposes leased, this lease will not be terminated but shall continue. In such case, the rent shall be equitably and fairly reduced or abated for the remainder of the term in proportion to the amount of leased premises taken. In no event shall the LESSOR be liable to the LESSEE for any interruption of business, diminution in use or for the value of any unexpired term of this lease.
10. **INTERRUPTION OF SERVICE:** LESSOR shall not be or become liable for damages to LESSEE alleged to be caused or occasioned by or in any way connected with or the result of any interruption in service, or defect or breakdown from any cause whatsoever in any of the electric, water, plumbing, heating, or air conditioning systems. However, upon receipt of actual notice of any such interruption, defect or breakdown, LESSOR will take such steps as are reasonable to restore any such interrupted service to remedy any such defect.
11. **LESSOR'S RIGHT TO INSPECT:** The LESSOR shall have the right, at reasonable times during the term of this lease, to enter the leased premises, for the purposes of examining and inspecting same and of making such repairs or alterations therein as the LESSOR shall deem necessary.
12. **INSURANCE:** LESSOR will be responsible for insuring its interest in the building and LESSEE will be responsible for insuring its personal property within the leased premises. LESSEE shall at all times during the term hereof, at its own expense, maintain and keep in

force a policy or policies of general and premises liability insurance against claims for bodily injury, death or property damage occurring in, on, or about the demised premises in a coverage amount of no less than \$500,000 per occurrence and naming LESSOR as an additional named insured.

13. **MAINTENANCE OF STRUCTURE:** LESSOR shall be responsible for the maintenance and good condition of the roof and supporting walls of the building leased hereunder and for maintenance in good working condition of all mechanical equipment (including but not limited to heating and air conditioning equipment) installed and provided by the LESSOR. The LESSEE shall be responsible for the maintenance in good condition of interior surfaces, floors, doors, ceilings, and similar items except that the LESSEE shall not be responsible for fair wear and tear or for major damage or destruction of such walls, grounds, surfaces, or any structural component of the premises.
14. **HEATING AND AIR CONDITIONING; JANITORIAL SERVICES:** LESSOR shall provide and maintain heating and air conditioning in good working condition. Temporary stoppages of heating services for the purposes of maintaining or repairing heating equipment and facilities shall not constitute a default by LESSOR in performance of this Lease, provided that the LESSOR exercises due diligence and care to accomplish such maintenance and repair and such stoppages do not continue to an unreasonable length of time. LESSOR shall be responsible for commercially reasonable janitorial service and trash removal from leased premises.
15. **PERSONAL PROPERTY AND IMPROVEMENTS:** Any additions, fixtures, or improvements placed or made by the LESSEE in or upon the leased premises, which are permanently affixed to the leased premises and which cannot be removed without unreasonable damage to said premises shall become the property of the LESSOR and remain upon the premises as a part thereof upon the termination of this Lease. All other additions, fixtures, or improvements to include trade fixtures, office furniture and equipment, and similar items, which can be removed without irreparable damage to the leased premises, shall be and remain the property of the LESSEE and may be removed from the leased premises by the LESSEE upon the termination of this lease. LESSEE shall bear the expense of any repairs of the leased premises, other than fair wear and tear caused by such removal.
16. **TAXES:** LESSEE will list and pay all business personal property taxes, if any, on its personal property located within the demised premises.
17. **NOTICE:** Any notices to be given by either party to the other under the terms of this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by hand, with written acknowledgement of receipt, or mailed by certified mail, return receipt requested, or delivered by receipt controlled express service, to the other party at the following addresses or to such other addresses as either party hereafter from time to time designates in writing to the other party for the receipt of notice:

**LESSEE:**

Cumberland County, Communicare, Inc.  
Attn: Executive Director  
P.O. Box 87830  
Fayetteville, NC 28304-0030

**LESSOR:**

Cumberland County  
Attn: County Manager  
P. O. Box 1829  
Fayetteville, NC 28302-1829

Such notice, if mailed, shall be deemed to have been received by the other party on the date contained in the receipt.

18. **ORDINANCES AND REGULATIONS:** The LESSEE hereby covenants and agrees to comply with all the rules and regulations of the Board of Fire Underwriters, officers and boards of the city, county or state having jurisdiction over the leased premises, and with all ordinances and regulations or governmental authorities wherein the leased premises are located, at the LESSEE'S sole cost and expense, but only insofar as any of such rules, ordinances, and regulations pertain to the manner in which the LESSEE shall use the leased premises, the obligation to comply in every other case, and also all cases where such rules, regulations, and ordinances require repairs, alterations, changes or additions to the building (including the leased premises) or building equipment, or any part of either, being hereby expressly assumed by the LESSOR and LESSOR covenants and agrees promptly and duly to comply with all such rules, regulations and ordinances with which LESSEE has not herein expressly agreed to comply.
19. **INDEMNIFICATION:** LESSEE will indemnify LESSOR and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury or damage to property occurring in or about, or arising out of, the demised premises, and occasioned wholly or in part by any act or omission of LESSEE, its agents, licensees, concessionaires, customers or employees. In the event LESSOR shall be made a party to any litigation, commenced by or against LESSEE, its agents, licensees, concessionaires, customers or employees, then LESSEE shall protect and hold LESSOR harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by LESSOR in connection with such litigation, unless such litigation arises out of an injury or injuries claimed as a result of some defective condition existing on the premises for which LESSOR has responsibility to maintain or repair under the terms of this lease and to which LESSOR has been put on notice by LESSEE.
20. **REPAIR:** The premises shall meet all requirements necessitated by the ADA and OSHA Inspection Guidelines. Should it be necessary during the term of this Lease to repair the roof structure; exterior walls; or structural members or the building because of defect or failure, the LESSOR shall make such repairs or replacements at its sole cost and expense, within a reasonable time after demand is made in writing to the LESSOR to do so by the LESSEE. The LESSOR shall keep the premises, including all improvements, in good condition and repair and in a good, clean, and safe condition at all times during the term of this Lease Agreement.
21. **WARRANTY:** The LESSOR warrants that all plumbing, electrical, heating, and air conditioning units and facilities are in good working order at the commencement of this Lease.
22. **REMEDIES:** If either party shall be in default with respect to any separate performance hereunder, and shall have remained in default for ten (10) days after receipt of notice of default, there shall be a breach of this lease. The defaulting party shall remain fully liable for performing its remaining obligations under this lease. The defaulting party shall be liable for reasonable damages as provided by law and for all costs and expenses, including reasonable attorneys fees, incurred by the other party on account of such default, except as otherwise provided herein. Waiver by either party of any breach of the other's obligation shall not be

deemed a waiver of any other or subsequent breach of the same obligation. No right or remedy of any party is exclusive of any other right or remedy provided or permitted by law or equity, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by state or otherwise any may be enforced concurrently or from time to time.

23. **SUCCESSOR AND ASSIGNS:** This lease shall bind and inure to the benefit of the successors, assigns, heirs, executors, administrators, and legal representatives of the parties hereto.
24. **ALTERATIONS AND PARTITIONS:** The LESSEE may make reasonable alterations and partitions to the interior of the premises to enhance their suitability for the uses contemplated in this Lease Agreement, provided prior written approval of the graphic plan for alterations and partitions shall be obtained from the LESSOR, who shall not unreasonably withhold such approval.
25. **UTILITIES:** Electrical power, water, and sewer services to serve the leased premises shall be at LESSOR'S expense. LESSOR shall not be liable for any failure of any public utility to provide utility services over such connections and such failure shall not constitute a default by LESSOR in performance of this Lease. LESSEE shall be prudent in its use of utilities and compliant with the LESSOR'S practices and policies related to utilities.
26. **RISKS OF LOSS:** As between the LESSOR and the LESSEE, any risk of loss of personal property placed by the LESSEE in or upon the leased premises shall be upon and a responsibility to the LESSEE, regardless of the cause of such loss.
27. **DESTRUCTION OF PREMISES:** If the leased premises should be completely destroyed or damaged so that more than fifty percent (50%) of the leased premises are rendered unusable, this Lease shall immediately terminate as of the date of such destruction or damage.
28. **TERMINATION:** If the LESSEE shall fail to pay any installment of rent when due and payable as heretofore provided or fail to perform any of the terms and conditions heretofore set forth and shall continue in such default for a period of fifteen (15) days after written notice of default, LESSOR, at its discretion, may terminate this Lease and take possession of the premises without prejudice to any other remedies allotted by law; and/or, if the LESSOR SHALL fail to perform any of the terms and conditions heretofore set forth and shall continue in such default thirty (30) days after written notice of such default, the LESSEE, at its discretion shall terminate this Lease and vacate the leased premises without further obligation to pay rent as theretofore provided from date of said termination, without prejudice to any other remedies provided by law.
29. **OCCUPANCY AND QUIET ENJOYMENT:** LESSOR promises that LESSEE shall have quiet and peaceable possession and occupancy of the above leased premises in accordance with the terms set forth herein, and that LESSOR will defend and hold harmless the LESSEE against any and all claims or demands of others arising from LESSEE'S occupancy of the premises or in any manner interfering with the LESSEE'S use and enjoyment of said premises.

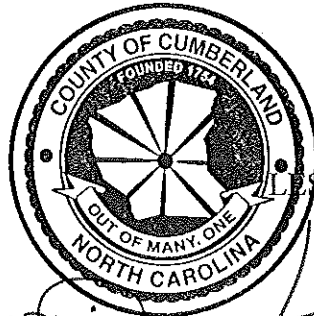
30. **MODIFICATION:** This Agreement may be modified only by an instrument duly executed by the parties or their respective successors.
31. **MERGER CLAUSE:** This instrument is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

IN WITNESS WHEREOF, the LESSOR and LESSEE have caused this Lease Agreement to be executed in duplicate originals by their duly authorize officers, the date and year first above written.

LESSEE: CUMBERLAND COUNTY  
COMMUNICARE, INC

ATTEST:

BY: *Gene Howell* BY: *Sarah Hallack*  
Secretary Executive Director



ATTEST:

LESSOR: COUNTY OF CUMBERLAND

BY: *Candice White* BY: *Larry Lancaster*  
Candice White, Clerk Larry Lancaster, Chair  
Board of Commissioners

STATE OF NORTH CAROLINA

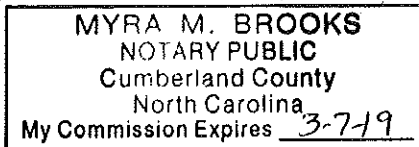
COUNTY OF CUMBERLAND

I, Myra M Brooks, a Notary Public in and for the County and State aforesaid, do hereby certify that Candice White, personally appeared before me this day and acknowledged that she is the Clerk to the Cumberland County Board of Commissioners; that ~~Kenneth Edge~~ is the Chair of the Cumberland County Board of Commissioners; that the seal affixed to the foregoing is the Corporate Seal of said Board; that said instrument was duly passed at a regular meeting of the Board of Commissioners as therein set forth and was signed, sealed, and attested by the said Clerk on behalf of said Board, all by its authority duly granted; and that said Candice White acknowledged the said instrument to be the act and deed of the said Board.

WITNESS MY HAND and seal this the 21 day of August, 2018.

Myra M Brooks  
Notary Public

My Commission Expires: 3/7/19



NORTH CAROLINA

CUMBERLAND COUNTY

I, CORINNE A BYRNE, a Notary Public of the County and State aforesaid, certify that GENE HOWELL personally appeared before me this day and acknowledged that he/she is Secretary of Cumberland County Communicare, Inc., a nonprofit North Carolina corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its Executive Director, sealed with its corporate seal and attested by him/her as its Secretary.

Witness my hand and official stamp or seal, this the 16 day of AUGUST, 2018.

Corinne A Byrne  
Notary Public

My Commission Expires: 5/22/2020

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

n/a  
Vicki Evans, Finance Officer

Approved for Legal Sufficiency

Thyllis D. Jones  
County Attorney's Office  
( ) Renewable  
( ) Non-renewable  
Expiration Date: June 30, 2021



## **COMMUNITY DEVELOPMENT**

### **MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021 AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

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

**DATE: 5/4/2021**

**SUBJECT: PROFESSIONAL SERVICES AGREEMENT WITH INNOVATIVE  
EMERGENCY MANAGEMENT TO ADMINISTER THE EMERGENCY  
RENTAL ASSISTANCE PROGRAM**

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

**Presenter(s): DEE TAYLOR, DIRECTOR OF COMMUNITY DEVELOPMENT**

### **BACKGROUND**

Cumberland County and the City of Fayetteville issued a joint Request for Proposal (RFP) to seek a qualified firm to administer the Emergency Rental Assistance Program (ERAP) in accordance with the scope of services outlined in Exhibit I and Exhibit II of the agreement attached.

With the County and City using the same firm to administer the program, this will allow residents to apply for assistance through a single application system. Using the same firm will ensure the County achieves the following goals:

- Residents will have a less complex and stressful application process;
- Residents will not have to determine the jurisdiction they live in prior to applying for assistance;
- Assistance is provided to the residents in a timely manner;
- The program is managed by a firm that has the capacity and experience; and
- Funds are obligated by the deadline established by the U.S. Department of Treasury.

Five proposals were received in response to the RFP. The selection committee, which consisted of three City employees and three County employees, reviewed all proposals and selected the most responsible bidder. Innovative Emergency Management (IEM) Inc. has agreed to administer the program for the County for 8%

of the total amount of program funds. The estimated total amount of program funds is \$3,735,545.

The City has proceeded to contract with IEM. Cumberland County Community Development Department desires to enter into an agreement with IEM with the term beginning May 18, 2021 ending December 31, 2021.

**RECOMMENDATION / PROPOSED ACTION**

Cumberland County Community Development Department recommends and requests that the Board of Commissioners approve the professional agreement with IEM as per the attached Professional Services Agreement.

**ATTACHMENTS:**

Description	Type
Professional Services Agreement - Innovative Emergency Management, Inc.	Backup Material

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
COUNTY OF CUMBERLAND  
AND  
INNOVATIVE EMERGENCY MANAGEMENT, INC.**

**THIS AGREEMENT**, entered into this \_\_\_\_\_ day \_\_\_\_\_ of, **2021** by and between the COUNTY OF CUMBERLAND (hereinafter referred to as COUNTY), a body politic and corporate of the State of North Carolina, and Innovative Emergency Management, Inc., a Louisiana corporation registered with the North Carolina Secretary of State and conducting business as a consulting firm located at 2801 Slater Road Suite 200, Morrisville, NC 27560 hereinafter referred to as CONTRACTOR;

**WHEREAS**, the COUNTY, was awarded funding by the U.S. Department of Treasury to implement the Emergency Rental Assistance Program (the "Program") established by section 501 of Division N of the consolidated Appropriations Act, 2021, Pub. L. No 116-260 (December 27, 2020).

**WHEREAS**, the local community has been negatively impacted by the COVID-19 pandemic causing economic hardship;

**WHEREAS**, the COUNTY is in need services from a Contractor to administer the Emergency Rental Assistance Program in accordance with the statutes, program policies and procedures;

**WHEREAS**, the CONTRACTOR has the required experience and skill in providing such services;

**WHEREAS**, the COUNTY and the CONTRACTOR desire to enter into a Professional Services Agreement for the provision of these services by the CONTRACTOR to the COUNTY for a fee; and

**WHEREAS**, funds are available in the FY 2021 COUNTY budget for such independent CONTRACTOR services.

**NOW THEREFORE**, the parties agree to the following terms and conditions:

1. **AGREEMENT:** The COUNTY agrees to purchase, and CONTRACTOR agrees to provide specific services on the terms set forth herein.
2. **TERM OF AGREEMENT:** This agreement shall begin **May 18, 2021** and end **December 31, 2021**, unless sooner terminated. The COUNTY, in its discretion, may terminate this contract at any time prior to its normal expiration date upon 30 days advance written notice to the CONTRACTOR.
3. **SERVICES TO BE PERFORMED:** CONTRACTOR agrees to perform and provide the services as outlined in Exhibit I. CONTRACTOR agrees to notify the Director of Cumberland County Community Development Department in writing immediately of any change in the type or level of services to be performed, or the individuals involved in the provision of said services.
4. **PAYMENT:** CONTRACTOR will be paid a fee for its administrative services in the amount of 8% of the total amount of assistance CONTRACTOR provides to eligible subrecipients under the Program. The estimated total amount of Program funds is \$3,735,545, to include the amount of the administrative fee and assistance funds. CONTRACTOR shall submit invoices and supporting documentation to Cumberland County Community Development for services rendered and completed in accordance with the CONTRACTOR'S proposal attached as Exhibit II and incorporated herein (to the extent they apply to the County). This Section 4 supersedes any provision contained in Exhibit II which is inconsistent

with the language herein.

5. **ASSIGNMENT:** The CONTRACTOR shall not assign all or any part of its contract rights under this Agreement, or delegate any performance, or subcontract, without first obtaining the COUNTY'S written approval.
6. **COMPLIANCE WITH LAW:** CONTRACTOR agrees to comply with all requirements of any government or agency thereof which now governs or may hereafter govern any performance under this Agreement, including, but not limited to, the provisions of the Fair Labor Standards Act of 1938, equal employment and non-discrimination laws, and any other applicable law.
7. **MODIFICATION:** This Agreement may be modified only by an instrument duly executed by the parties or their respective successors.
8. **INDEPENDENT CONTRACTOR:** CONTRACTOR is an independent contractor. CONTRACTOR is not an agent, officer, or employee of the COUNTY and shall have no authority to act as an agent of the COUNTY, nor enter any Agreement for or on behalf of the COUNTY.
9. **INDEMNITY:** CONTRACTOR agrees to defend, hold harmless and indemnify the COUNTY and its officers, agents, and employees against any claims, charges, damages, costs, expenses (including counsel fees), fines, judgments, penalties, liabilities, or losses of any kind or nature whatsoever resulting from, arising out of, related to, or in connection with injury to any person or damage to any property caused, by the CONTRACTOR's acts or failure to act in performing its obligations under this Agreement.
10. **NON-APPROPRIATION CLAUSE:** If grants and appropriations of money to conduct and administer the programs under this Agreement are lawfully reduced, terminated, or not executed, or it is deemed in the public interest and necessary for the health, safety, or welfare of the public to so reduce, terminate, or not execute these programs and services, the COUNTY, at its option, has the right to terminate this Agreement effective the day notice of termination is delivered to CONTRACTOR. The COUNTY shall give the CONTRACTOR written notice of a termination under the provisions of this paragraph immediately upon receipt of actual notice by the COUNTY of a reduction, termination, or decision not to execute the grants or appropriations of money for the scheduled programs and services, or any other necessity to reduce, terminate, or not execute the services. Following the effective date of such termination the COUNTY shall have no further obligation to make payments to CONTRACTOR except for services completed by CONTRACTOR for which payment was outstanding at the time of termination.
11. **DEBARRED, SUSPENDED OR INELIGIBLE CONTRACTORS.** CONTRACTOR agrees to and shall comply with the federal requirements found at 2 CFR Part 2424 on prohibiting the use of debarred, suspended, or ineligible contractors.
12. **DRUG FREE WORKPLACE.** CONTRACTOR agrees to implement and comply with HUD's regulations at 2 CFR Part 2429, pertaining to The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.), in its performance of this contract.
13. **CONFLICT OF INTEREST.** No Member, Officer, or Employee of the CONTRACTOR, any Member of a Local Governing Body of the locality in which the program is situated, or any other public official of such locality or localities, who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any financial interest, either directly or indirectly, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials shall be similarly barred from having any financial interest in the program. The CONTRACTOR shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a

provision prohibiting such interest pursuant to the purpose of this section.

14. **NONDISCRIMINATION ON THE BASIS OF DISABILITY.** As required by Section 504 of the Rehabilitation Act of 1973, as amended, no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from this contract.
15. **NONDISCRIMINATION ON BASIS OF AGE.** As required by the Age Discrimination Act of 1975, as amended, no qualified person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity, which receives or benefits from federal financial assistance.
16. **NONDISCRIMINATION CLAUSE – SECTION 109, HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974.** No person in the United States shall on the grounds of race, color, national origin, familial status, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this Title.
17. **ACCESS TO RECORDS AND RECORD RETENTION CLAUSE.** In general, all official project records and documents must be maintained during the operation of this project and for a period of five (5) years following close out in compliance with 4 NCAC 19L.0911, Record keeping. The Secretary of the Department of Commerce, the Secretary of the Department of Housing and Urban Development, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the COUNTY which are pertinent to the execution of this agreement, for the purpose of making audits, examinations, excerpts, and transcriptions, in compliance with the above rule.
18. **NOTICES:** Any notices to be given by either party to the other under this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by email, with receipt acknowledged by a return email from the recipient; by hand, with written acknowledgment of receipt; or mailed by certified mail return receipt requested to the other party at the following addresses or to such other addresses as either party hereafter from time to time designates in writing to the others.

**COUNTY:**

Delores "Dee" Taylor, Director  
Cumberland County Community Development  
707 Executive Place  
Fayetteville, NC 28305  
Telephone: (910) 323-6112  
Fax: (910) 323-6114

**CONTRACTOR:**

Ryan Ausman, Manager of Contract Administration  
Innovative Emergency Management, Inc.  
2801 Slater Road, Ste. 200  
Morrisville, NC 27560  
Telephone: (919) 990-8191  
Fax: (919) 237-7468

Such notice, if mailed, shall be deemed to have been received by the other party on the date contained in the receipt.

19. **INSURANCE:** CONTRACTOR shall maintain Business Auto Liability and, Commercial Umbrella Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of the operation of an auto, including owned, hired, and non-owned autos.
20. **AMENDMENTS:** The COUNTY or CONTRACTOR may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed

by a duly authorized representative of both organizations, and approved by the COUNTY's governing body. Such agreements will not invalidate this Agreement, nor relieve or release the COUNTY or CONTRACTOR from its obligations under this Agreement.

The COUNTY may, at its discretion, amend this Agreement to conform with Federal, State, or local government guidelines, policies, and available funding amounts, or for other reasons. If such amendment results in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by the written amendment signed by both County and CONTRACTOR.

- 21. SUSPENSION AND TERMINATION:** Either party may terminate this contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination.

In the event of any termination, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports, or other materials prepared by CONTRACTOR under this Agreement will, at the option of the COUNTY, become the property of the COUNTY, and CONTRACTOR will be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination. The County may also suspend or terminate this Agreement, in whole or in part, if CONTRACTOR materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the COUNTY may declare CONTRACTOR ineligible for any further participation in the COUNTY's contracts, in addition to other remedies as provided by law.

- 22. SEVERABILITY:** If any provision of this Agreement is held invalid, the remainder of this Agreement will not be affected thereby, and all other parts of this Agreement will nevertheless be in full force and effect.

- 23. IRAN DIVESTMENT ACT CERTIFICATION:** Contractor hereby certifies that Contractor, and all subcontractors, are not on the Iran Final Divestment List ("List") created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.55-69. Contractor shall not utilize any subcontractor that is identified on the List.

- 24. E-VERIFY:** Contractor shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

- 25. INCORPORATED DOCUMENTS:** The following documents or Exhibits to this contract are hereby made a part of this Contract and fully incorporated herein by reference, and compliance with the applicable provisions of these documents or Exhibits is a condition of this Contract.

- Exhibit I: Scope of Services.
- Exhibit II: Innovative Emergency Management, Inc. - Proposal for Emergency Rental Assistance Program Administration Services (applicable to the extent it applies to the County)
- Exhibit III: Certification Regarding Lobbying; and
- Exhibit IV: Federal Contracting Requirements.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, by their respective duly authorized representatives.

COUNTY OF CUMBERLAND

**ATTEST:**

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

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

CHARLES EVANS, BOARD CHAIR

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

[COUNTY SEAL]

**INNOVATIVE EMERGENCY MANAGEMENT, INC.**

**ATTEST:**

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

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

RYAN AUSMAN, MANAGER OF CONTRACT ADMIN.

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

**PRE-AUDIT CERTIFICATE:**

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

**APPROVED FOR LEGAL SUFFICIENCY:**

By: \_\_\_\_\_

Finance Director Date

By: \_\_\_\_\_

County Attorney

Date \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

I, \_\_\_\_\_, a Notary Public in and for the County and State, do hereby certify that \_\_\_\_\_, personally came before me this day and acknowledged that she/he is an \_\_\_\_\_ of **Innovative Emergency Management, Inc.**, a corporation of the State of \_\_\_\_\_ and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_, sealed with its corporation seal and attested by her as its employee.

WITNESS my hand and notarial seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:\_\_\_\_\_.

**EXHIBIT I**  
**SCOPE OF SERVICES**

The local community has been negatively impacted by the COVID-19 pandemic causing economic disruption. The City of Fayetteville and County of Cumberland is seeking proposals from qualified, licensed, and insured entities to administer the Emergency Rental Assistance Program in accordance with the statutes, program policies and procedures, and the Scope of Work outlined in this section. The selected firm must demonstrate it has the capacity to manage a high volume of applications submitted from local residents. The selected firm must also have the capacity to perform required task that will involve application intake, eligibility determination, assessments of need for assistance, counseling and case management, payment processing, record-keeping and reporting, and provide training to staff to complete these tasks.

The selected firm will be expected to:

**A. Implement the Program**

- Set up a call center and have the ability to train staff;
- Create an online and mail-in application process using a template that captures all required information needed to determine eligibility;
- Implement an effective outreach and marketing plan to ensure residents throughout the geographic service area are able to access assistance;
- Conduct initial briefings;
- Conduct intake appointments (remote and in-person) for prospective applicants seeking assistance, including application eligibility screening, income calculation and document verification;
- Assist applicants with submission of documentation;
- Work closely with landlords, utility companies, and other partnering agencies and referral agencies;
- Process reexaminations, including collection and review of required documentation, income calculation, calculation of tenant;
- Respond to client questions according to applicable regulation and local policies;
- Assist landlords and other entities with the process when submitting applications on behalf of the household;
- Accurately documenting all processes and communications in the appropriate electronic file;
- Have adequate financial system to process payments expeditiously, track and monitor transactions and meet reporting and auditing requirements;
- Maintain records of transactions and program participants assisted;
- Create and maintain a City and County funding stream, tracking expenditures, and payment progress;
- Generate and submit weekly progress reports to the City and County staff that includes, but not limited to: household demographic information, services rendered, cost of services rendered, and number of households served in the City and County;
- Apply program guidelines when making payments to the landlords, owners, and utility companies on behalf of the eligible household; and
- Submit to routine audits to ensure that all program guidelines are being followed as outlined by federal and local government agencies.

## **B. Determine Household Eligibility**

Program funds must be used for rent, rental arrears, utilities and home energy costs, utilities and home energy arrears, and other expenses related to housing incurred directly or indirectly due to the pandemic. A portion (10%) of the funds may be used for housing stability services, including case management or other services related to the COVID-19 pandemic, and the administration of the program. Program funds must benefit eligible households that meet the following criteria:

- Household income must be at or below 80% of the Area Median Income (AMI) established by the U.S. Department of Housing and Urban Development;
- At least one individual in each household qualifies for unemployment benefits, or experienced a reduction in income, or has incurred significant costs, or experienced other financial hardship due directly or indirectly to the COVID-19 pandemic;
- Can demonstrate a risk of experiencing homelessness or housing instability which may include:
  - A past due utility/rent notice or an eviction notice;
  - Unsafe or unhealthy living conditions;
  - Any other evidence of such risk as determined by the grantee;
- Households whose income is at or below 50 percent of the AMI or where persons have been unemployed for the 90 days prior to application will be given priority; and
- Households must be checked for duplication of benefits to ensure there is an unmet need.

## **C. Use an Application Process and Grant Management System**

The selected firm must develop and utilize an application process that meets statutes and program requirements. In addition, the firm will be expected to:

- Utilize a software system that specializes in application processing and grant management and that will be able to generate the required reports;
- Collect household and other data to include, but not be limited to:
  - Number of applications received for the City and County;
  - Household demographics such as gender, race, and ethnicity;
  - Address of the rental unit;
  - Name, address, social security number, tax identification number or DUNS number, as applicable, for landlord and utility provider;
  - Amount and percentage of monthly rent covered by the program;
  - Amount and percentage of separately-stated utility and home energy costs covered by the program;
  - Total amount of each type of assistance (e.g. rent, rental arrears, utilities, etc.) provided to each household;
  - Amount of outstanding rental arrears for each household;
  - Number of months of rental payments and number of months of utility payments for which assistance is provided; and
  - Household income and number of individuals in the household.

All services shall be provided in accordance with all applicable laws and in a manner consistent with industry best practices.

**EXHIBIT II**

**INNOVATIVE EMERGENCY MANAGEMENT, INC.**

**PROPOSAL FOR EMERGENCY RENTAL ASSISTANCE PROGRAM ADMINISTRATION SERVICES**

FEBRUARY 22, 2021 | RFP 21-21-CD

A Proposal for:

Fayetteville Economic and Community  
Development Department, and:

Cumberland County Community Development  
Department

# Emergency Rental Assistance Program Administration Services



P.O. Box 110265 Durham, NC 27709 (919)

990-8191 or (800) 977-8191

[www.iem.com](http://www.iem.com)

# Emergency Rental Assistance Program Administration Services

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A Proposal for:

Fayetteville Economic Community Development  
Department, and:

Cumberland County Community Development  
Department

RFP #21-21-CD

February 26, 2021

Submitted by:



P.O. Box 110265

Research Triangle Park, NC 27709

(919) 990-8191 or (800) 977-8191

[www.iem.com](http://www.iem.com)



2801 Slater Road, Suite 200 Morrisville, NC 27560

Mailing Address: P.O. BOX 110265 Research Triangle Park, NC 27709

1.800.977.8191 919.990.8191 www.iem.com

February 26, 2021

Fayetteville ECDD and Cumberland CCDD, c/o  
Cumberland Count Community Development Department  
707 Executive Place  
Fayetteville, NC 28305

RE: RFP #21-21-CD Emergency Rental Assistance Program Administration Services

Dear Procurement Manager:

IEM is pleased to submit the attached proposal in support of Cumberland County and the City of Fayetteville's RFP for Emergency Rental Assistance Program Management Services.

Headquartered in Morrisville, North Carolina, IEM is committed to helping North Carolinians and disaster-affected Americans throughout the nation respond to and recover from the ill impacts of the current pandemic. For 36 years, IEM has been at the forefront of supporting the nation's most significant efforts in emergency response, public health, disaster preparedness, mitigation, and recovery efforts. Our employees oversee complex recovery programs – putting boots on the ground – to restore and rebuild communities stronger.

In the wake of the COVID-19 pandemic, IEM has been supporting Federal, state, county and local governments respond and protect communities. We offer our experience and the lessons learned in recent months as the country has come to grips with the far-reaching impacts of COVID 19—from personal and public health to economic impacts and the need to secure housing for vulnerable populations.


As Cumberland County and the City of Fayetteville continue to address the challenges of responding to the unprecedented public health crisis caused by the COVID-19 pandemic, IEM is positioned to immediately assist the County with administering emergency rental assistance services. We have the necessary size and capacity, employ accountable pricing methods to reduce cost and increase value, and methods that have resulted in the fastest delivery of grant funding to beneficiaries in the country. Cumberland County residents in need of rental assistance will benefit from IEM's commitment to deliver services in an expedited fashion, while still maintaining the highest standards of compliance.

*I Think ∴ IEM*

We are eager to serve Cumberland County and the City of Fayetteville once again and provide critical oversight and delivery of rental assistance services from program intake to closeout. All in an effort to better serve the County and City's most vulnerable populations. IEM is well situated to *immediately* begin helping the County and City's at-risk citizens with their housing security during this unprecedented disaster event. We will administer and manage this program with a strong community-oriented vantage from our corporate headquarters in Morrisville.

**With respect to this effort, we are simultaneously bringing our national-level expertise to bear alongside a passion for helping our own neighbors in our own region of North Carolina.**

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Lemcke', with a large, sweeping flourish extending to the right.

Ted Lemcke,  
Chief Operating Officer

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## 1.0 FIRM INFORMATION

IEM Quick Facts	
Company Headquarters	Innovative Emergency Management, Inc. 2801 Slater Road, Ste. 200 Morrisville, NC 27560
Proposer Entity	Innovative Emergency Management (dba IEM) is responding to RFP 21-21-CD as a single corporate entity, not as a partnership or joint venture, and will provide services as such.
Foundation, Business Type, Ownership	<ul style="list-style-type: none"> <li>• Founded by current President and CEO, Madhu Beriwal, in 1985.</li> <li>• Largest woman-owned corporation of its kind.</li> <li>• Dedicated emergency management and related services firm.</li> </ul>
IEM Principal, Corporate Officers	<ul style="list-style-type: none"> <li>• Madhu Beriwal, Owner, President, and Sole Director</li> <li>• Ted Lemcke, Secretary</li> <li>• Dan Michael, Treasurer</li> </ul>
Person Authorized to Execute Contract	Ryan Ausman, Manager of Contract Administration. Tel: (919) 990-8191.
Financial Health and Stability	IEM is fiscally solvent, viable, and has continually operated without interruption for its 36-year history, with continued growth and expansion of services.
IEM Service Areas	Disaster preparedness, response, and recovery, homeland defense, counter terrorism, biothreats, public health, cybersecurity, public agency performance, transportation & air operations, and emergency relief services related to the ongoing COVID-19 pandemic as provided through the CARES Act and Consolidated Appropriations Act of 2021.
Client Facts	400+ clients at the national, state, and local level in 15 countries and 53 US states & territories, with 74% repeat business.
Employees	415 total FTEs staffing office and customer sites, plus an additional 89 full time remote workers.
US Offices	11 full-service offices (including HQ) and 19 satellite offices providing coast-to-coast services.

### 1.1 ABOUT IEM

Throughout our 36-year history, IEM has remained dedicated to its charge to create a "Safe, Secure, Resilient World". IEM has maintained its current structure, a testament to stability and support for our clients and disaster survivors. While IEM's management structure remains unchanged, the firm is evolving to embrace the growth necessary to meet client needs

Headquartered in Morrisville, North Carolina, IEM has been at the forefront of supporting the nation's most significant public health, emergency management, homeland security, and disaster preparedness, mitigation, and recovery efforts. Having managed billions of dollars in federal funding following six of the nation's worst natural disasters - Hurricane Katrina in Mississippi, Superstorm Sandy in New York and New Jersey, Flooding in Louisiana, and Hurricanes Maria, Irma, and Harvey - IEM has served as a trusted, national resource for recovery solutions.

In the wake of the COVID-19 pandemic, IEM deployed technical and program management resources immediately to assist federal, state and county agencies respond to the economic impact of this new reality – including management of the Small Business Administration’s Economic Injury Disaster Loan (EIDL) program.

IEM is a national leader in policy, planning, and program administration, and has supported federal, state, county, and local government clients - as well as the private sector and international concerns in conceptualizing, building, and executing their missions to build a Safe, Secure, Resilient future. These include all 50 U.S. states, three territories, and major urban areas across the country, including Raleigh, Baton Rouge, New York City, Boston, Los Angeles, San Francisco, Houston, Dallas, Atlanta, Tallahassee, Jacksonville, Orlando, Miami, Chicago, Baltimore, New Orleans, and Washington, D.C.

## 2.0 HISTORY, QUALIFICATIONS, AND EXPERIENCE

IEM offers Cumberland County Community Development Department and the City of Fayetteville Economic Community Development Department access to a team of well-trained management professionals, spearheaded by project leadership dedicated to speed, technical excellence, transparency, compliance, accountability, and results. **IEM's mission when serving the public, through support of our public agencies, is to stand up operations immediately and deliver grant funding compliantly with blazing speed.** This is the best form of customer service we can provide—delivery of vital resources in the most efficient manner possible.

IEM's expert staff members have been assisting homeowner and renter populations since 2005 – including the administration and management of multi-scale CDBG-DR housing deliveries in New York, New Jersey, Louisiana, Texas, North Carolina, Florida, and Puerto Rico. Similar to COVID-19 Emergency Rental Assistance and Eviction Prevention Programs, Small Rental Housing programs across the country have been designed to prevent the potential for homelessness among tenant populations.

Examples of income-based and other housing programs for which IEM has provided intake, eligibility, income, and benefit verification and disbursements services for homeowners and/or renters include:

- **NY Rising – Superstorm Sandy Housing Recovery.** IEM provided recovery services in both New York and New Jersey. Services included application intake, income qualification, award calculation and disbursement. Projects required identification of tenants, tenant needs, and prevention of homelessness through compliance with temporary rental assistance guidelines or URA requirements, as applicable. Key features of this program relevant to the requirements for Emergency Rental Assistance included the Small Rental Assistance and the Interim Mortgage Assistance (IMA) Programs – assisting homeowners with mortgage payments on a recurring basis within caps to assist homeowners currently renting as a result of being displaced from their primary residences.
- **New Jersey Rehabilitation, Reconstruction, Elevation, & Mitigation (RREM) Program – Superstorm Sandy.** IEM was contracted by New Jersey's Department of Community Affairs (DCA) to assist completing the housing recovery phase in the aftermath of Superstorm Sandy – including a pathway for verifying program eligibility for home improvement, elevation, or construction projects eligible to LMI homeowners only.
- **Restore Louisiana – Great Floods of 2016 Housing Recovery.** This program was the fastest large-scale housing recovery in US history – including 40,000 homes from nearly all corners of the State of Louisiana. A total of 27, 255 awards and 21,835 disbursements were made throughout IEM's tenure. IEM provided outreach, intake, application completion, application and eligibility review, income certification, award calculation and notification, and disbursement. Additionally, Temporary Housing Assistance, Relocation, and Reimbursement Programs were included components of this delivery. Projects further required identification of tenants, tenant needs and qualifying benefits, and prevention of homelessness through compliance with URA requirements.
- **Puerto Rico Home Repair, Reconstruction, or Relocation (R3).** IEM is providing intake, eligibility, income certification, and award services. We qualified 2,500 households in just 90 days.
- **Rebuild Florida – Hurricane Irma Housing Recovery.** IEM is currently providing comprehensive design and implementation services for Florida's \$1.3B Hurricane Irma Disaster Recovery program – including design of policy-compliant program management services that include income verification and assistance for homeowners and tenants. In 30 days, IEM stood up nine geographically- dispersed intake centers. As part of this delivery, IEM has provided outreach, intake, application completion, application and eligibility review, income qualification, award calculation and notification, and disbursement coordination with State

financial services. This program also features Temporary Housing Assistance, Temporary and Permanent Relocation, Small Rental, and Multifamily Housing Assistance Programs. Projects further required identification of tenants, tenant needs and qualifying benefits, and prevention of homelessness through compliance with temporary rental assistance guidelines or URA requirements, as applicable.

- **Rebuild NC – Hurricane Matthew Housing Recovery.** For Hurricane Matthew Housing recovery, IEM Stood up four additional intake centers in just 7 days. We worked with residents of NC to verify and calculate income. Various income levels dictated which services a homeowner may be eligible for. Homeowners under 120% of the AMI were permitted to receive reimbursement for home construction already completed and eligible under program guidelines, where other elements of the program – e.g. flood insurance assistance, required homeowners to fall below the 80% LMI requirement. Services for this program outreach, intake, eligibility review, income certification, award calculation, and award notification.
- **Texas GLO Homeowner Assistance Program (HAP) – Hurricane Harvey.** IEM was selected to manage Texas' largest post-disaster housing-focused recovery program in the State's history, which involved a challenging effort to identify, locate, and successfully reach out to the program's most vulnerable and hardest to reach populations. Within the first 90 days, IEM had arranged more than 53 grassroots public outreach events, mailed program information to more than 18,000 households, arranged the distribution of information in utility bill inserts for 462,500 households, engaged over 430 nonprofit groups and partners, and placed paid advertising in more than 11 local media outlets. The success of the program was described by the Texas GLO as "Extraordinary."

## 3.0 PERSONNEL

IEM will deliver the Cumberland County and City of Fayetteville Emergency Rental Assistance Program (ERAP) an effective staff organization strategy, characterized by a flat structure and clear lines of authority. This project's organization is mission-focused and avoids extraneous positions that create unnecessary costs and administrative burdens.

IEM tailored team sizes based on our extensive experience and lessons learned in previous grant disbursement programs, as well as input from Cumberland County and the City of Fayetteville's impact assessments for CARES emergency rental assistance programs at the local level. Workflows, work artifacts, and levels of staff are scaled appropriately, as compared with other programs of varying complexity.

Figure 1 below shows the key staff by name in the critical managerial and supervisory positions over their respective teams. We focus the project organization to specifically achieve success with all Business Functional Requirements presented in the RFP.

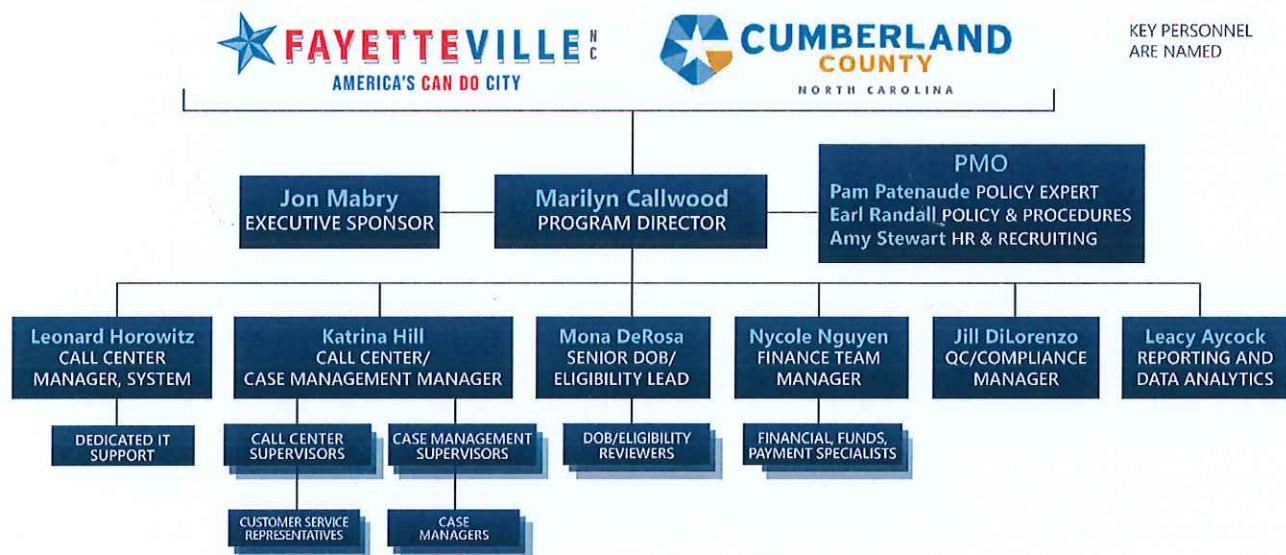


Figure 1: IEM's Project Organization with clear lines of authority to maximize speed and efficiency.

**All of IEM's proposed management personnel, including our Program Director, are seasoned IEM full time employees.** Our rationale is that this provides the best continuity, speed, and ability to hit the ground running—critical for a rapid launch, high output program like ERAP. The collective experience and critical knowledge of our proposed management team will be invaluable for delivering a fast paced, high volume grant program such as this, in addition to securing early wins and overall program success to the County and the City. Most of all, we're fully confident in this team's ability to positively impact the lives of program participants in need of assistance.

## IEM WILL FOCUS ON LOCAL STAFFING

**As a North Carolina-local emergency management firm with a national reach, IEM is ideally equipped to implement a staffing strategy that will prioritize local employment opportunities, and increase staff resources wherever needed to keep the program moving.**

Customer Service Representatives, Case Managers, Call Center and Case Management Supervisors will all be staffed locally in North Carolina. IEM has an existing relationship with Aerotek, Inc., a high-volume staffing vendor in the area that has direct experience with rapid staffing of call center and case management centric projects at or exceeding the scale of the County and City's program. In addition, they have actual experience staffing for local emergency rental assistance programs for the first CARES Act allocation. With demonstrated ability to staff effective, multi-lingual call center and case management agents at numbers exceeding 500 personnel in 1-2 weeks, IEM has high confidence that this vendor will deliver staff against the timeline in our project schedule.

IEM has standing relationships with a number of other national staffing firms that we used effectively in the past to source call center agents, case managers, QC reviewers and financial/accounting staff for multiple active grant management projects. IEM uses these additional relationships to augment staffing capacity at project startup and beyond so there is not a single point of failure with respect to staffing. Use of staffing firms maximizes our ability to use local employees – citizens of North Carolina, thereby allowing IEM, Cumberland County and the City of Fayetteville to "give back what was given" with respect to gainful employment and skills development for North Carolinians. The model served IEM well with successful grant program management deliveries in six states or territories, as our resume in grants management continues to grow.

## 4.0 PROJECT APPROACH

### 4.1 EMERGENCY RENTAL ASSISTANCE PROGRAM COMPONENTS

#### INTAKE AND CASE MANAGEMENT

Deploying an army of customer service-focused agents, we have coordinated with landlords, homeowners, and renters and assisted in the completion of applications and collection and certification of compliant, supporting documentation while also providing individual educational and supportive services for the populations we've served. Most recently in Puerto Rico, IEM provided intake and eligibility services resulting in the qualification of 2,500 residents within just 90 days. We did this through the implementation of our data-driven production system that allows us to work in assembly line fashion and ensure we are getting our applicants to the finish line as fast as possible, while remaining in compliance with program rules and standards.

#### ELIGIBILITY, INCOME, AND BENEFIT VERIFICATION

Eligibility and income verification and certification are primary requirements for receiving HUD- assisted funding and other federal and state benefits. Using federal guidance and tools, we have honed eligibility and income verification to a science, ensuring that the most vulnerable populations are prioritized and served with urgency. IEM has provided policy-compliant eligibility and income reviews in all of our deliveries – which includes use of the household and rental income charts published by HUD in order to document program income eligibility and serve the priority groups outlined by HUD based on Area Median Income (AMI) level and any other factor identified by our clients. Additionally, our past deliveries have required the verification and documentation of property ownership and residency for program applicants.

These programs also involve large-scale benefit verification through the calculations of duplicative third-party benefits pursuant to Stafford Act regulations, as well as all eligible award calculations – something IEM has provided to our clients for the past decade. Our team has been responsible for the calculation of assistance and coordinating disbursements with our state and county-level partners. The rental assistance available in these programs includes temporary housing, temporary relocation, and permanent relocation and is based on assisting low- to moderate-income individuals and families. Each of these housing options requires the calculation of an eligible benefit payment, segregation of duties in verification and disbursement, and coordination of benefit disbursement.

#### COVID-19 OPERATIONS

IEM is currently assisting multiple government agencies with COVID-19 Emergency Operations Center support needs, pandemic planning, grants management, and response operations. For over 15 years, IEM has supported The United States Department of Health and Human Services (HHS) in their planning and modeling for pandemics. Within the current socio-economic landscape, IEM's COVID-19 response and reconstitution planning efforts have been active since December 2019 - including intensive work with agencies in both rural and urban, high-density areas.

Our planning efforts for COVID-19 are based on research and integration of best practices as well as development of guidelines and response strategies targeted at the specific needs of customers and stakeholders. IEM works with local stakeholders and community leaders from diverse organizations, foundations, and agencies to ensure an equity lens is applied to all the important work and guidance we provide to our valued clients.

IEM is currently supporting the U.S. Small Business Administration (SBA) through the provision of supplemental legal staffing to process applications from small businesses seeking COVID-19 financial assistance through the Economic Injury Disaster Loan (EIDL) program. The following table (Figure 2) lists the number of EIDLs approved and cumulative loan amount by state as of November 23, 2020.

 Loans Approved: 3,645,556			 Dollars Approved: \$194,374,549,652		
STATE	APPROVED	DOLLARS	STATE	APPROVED	DOLLARS
ALABAMA	44,658	\$2,007,815,630	NEW HAMPSHIRE	11,211	\$667,026,121
ALASKA	7,555	\$450,997,500	NEW JERSEY	121,530	\$7,162,253,545
ARKANSAS	21,259	\$1,028,359,509	NEW MEXICO	14,535	\$798,883,823
ARIZONA	60,893	\$3,225,547,768	NEW YORK	303,911	\$17,631,112,948
CALIFORNIA	554,181	\$34,509,270,933	NORTH CAROLINA	90,944	\$4,305,083,358
COLORADO	56,463	\$3,201,450,557	NORTH DAKOTA	6,050	\$383,535,750
CONNECTICUT	35,056	\$2,110,777,365	OHIO	82,652	\$4,125,712,362
DELAWARE	9,565	\$507,391,900	OKLAHOMA	31,842	\$1,722,482,740
FLORIDA	457,469	\$20,311,752,476	OREGON	38,038	\$2,112,262,390
GEORGIA	179,412	\$7,805,004,984	PENNSYLVANIA	97,231	\$5,142,627,444
HAWAII	18,474	\$1,007,397,199	RHODE ISLAND	10,599	\$563,332,500
IDAHO	12,174	\$680,709,000	SOUTH CAROLINA	47,352	\$2,187,464,942
ILLINOIS	141,548	\$7,018,156,722	SOUTH DAKOTA	7,598	\$463,532,793
INDIANA	39,410	\$1,994,974,005	TENNESSEE	53,474	\$2,529,221,917
IOWA	17,096	\$1,033,588,649	TEXAS	310,846	\$16,600,293,950
KANSAS	18,669	\$1,079,797,349	UTAH	22,221	\$1,388,973,957
KENTUCKY	24,525	\$1,275,566,300	VERMONT	6,310	\$345,615,010
LOUISIANA	66,731	\$3,185,823,714	VIRGINIA	72,587	\$3,930,965,594
MAINE	10,416	\$597,133,800	WASHINGTON	65,030	\$3,891,189,943
MARYLAND	65,521	\$3,415,802,885	WEST VIRGINIA	7,850	\$420,169,900
MASSACHUSETTS	60,512	\$3,537,613,954	WISCONSIN	37,540	\$1,932,372,601
MICHIGAN	85,372	\$4,489,690,340	WYOMING	5,286	\$319,222,594
MINNESOTA	40,764	\$2,294,473,336	AMERICAN SAMOA	161	\$10,581,700
MISSISSIPPI	30,863	\$1,294,370,516	DISTRICT OF COLUMBIA	9,855	\$602,140,939
MISSOURI	41,629	\$2,101,460,075	GUAM	1,322	\$78,445,000
MONTANA	9,948	\$540,609,900	NORTHERN MARIANA	272	\$17,422,000
NEBRASKA	14,264	\$837,100,143	PUERTO RICO	23,674	\$1,263,376,100
NEVADA	39,460	\$2,142,700,122	U.S. VIRGIN ISLANDS	1,748	\$93,911,100

Figure 2: EIDLs and cumulative loan amount by state as of Nov. 23, 2020

The Consolidated Appropriations Act of 2021 provides updated guidance on the use of emergency rental assistance funding with 90% of all funding designated to rent, utility, and home energy costs – current or in arrears, as well as other housing expenses resulting from the pandemic. Additionally, 10% of all funding may be allocated to agency services – such as case management and administrative costs. IEM has thoroughly reviewed the updated guidance provided in the new relief bill to build and execute a program design that expedites assistance to applicants and complies with all federal eligibility and prioritization requirements.

## 4.2 PROPOSED SERVICES AND WORK PLAN

### 4.2.1 STAFFING

IEM's experience in delivering program success in similar disaster and public health-related initiatives underscores the necessity of developing local resources who understand the impacted communities first-hand and, most importantly, are empathetic to the individuals and families whose housing is at-risk. Our staffing structure for this program involves a single Program Director that will be dedicated to this project for the full-term of the engagement. The Program Director will be fully authorized to access whatever corporate resources, including staffing, equipment, or information technology, necessary to support the success of the project and provide additional wins for Cumberland County, the City of Fayetteville, and its residents.

The IEM team provides access to a deep bench of specialists and experts on all aspects of 2 CFR 200 guidance, programs, policies, and regulations related to disaster and pandemic management, response, and recovery. IEM has provided detailed information about the experience and qualifications of our Key Personnel below.

### KEY STAFF BIOGRAPHIES

#### **Marilyn Callwood** Program Director

Ms. Callwood thoroughly understands the complex budgetary principles and regulatory environment of federal and state grants and housing programs. As a Federal and State grant administrator and manager with experience providing direct oversight and support for multiple teams, Ms. Callwood is an ideal resource for Iowa. Her extensive program experience includes Housing and Urban Development (HUD), Federal Emergency Management Agency (FEMA), Community Development Block Grant (CDBG and CDBG-DR Disaster Recovery), Home Investment Partnership Program (HOME) and State Housing Initiatives Partnership (SHIP) compliance and project management. A team builder with exceptional written and oral communication skills, creativity, and flexibility, Ms. Callwood is not only well versed in regulatory requirements, federal laws, rules, and trends, but possesses a demonstrated effectiveness collaborating and communicating with government agencies, clients, and colleagues.

#### **Leonard Horowitz** Call Center Manager (System)

Mr. Horowitz is an experienced call center and customer operations manager with more than 12 years of experience working with organizations to increase their customer service capacities. Mr. Horowitz possesses strong team leadership, motivational, and coaching skills. He has worked with government agencies during emergencies to manage contact centers, managing intake coordinators, and acting as the main point of contact with emergency services. Mr. Horowitz is skilled in performing quality checks, performance reports, and implementing measures to meet project objectives.

**Katrina Hill**  
Call Center/Case  
Management Manager

Ms. Hill began her 9-year career in project management, construction management, and disaster relief as an AmeriCorps member, where she focused on community disaster response and safety education in the US Pacific region, built homes for low-income families with Habitat for Humanity in Sacramento, and renovated and restored structures damaged by Hurricane Sandy in New Jersey. After AmeriCorps, she served as a Housing Advisor for the reNewJerseyStronger program, where she managed construction projects, budgets, training, and assisted program applicants with grant documentation, and as a Construction PM for Northeast Homes, where she oversaw crews managing multiple projects. Since 2017, Ms. Hill has provided project management at IEM to assist disaster-affected survivors, helping them rebuild their lives and continue recovery progress by resolving issues and aligning efforts among individual homeowners, trades, and municipal representatives.

**Mona DeRosa**  
Senior DOB/Eligibility  
Lead

Ms. DeRosa has served nearly seven years as a Project Manager responsible for DOB/Applicant Eligibility and Quality Control on some of IEM's largest and most complex grant-funded recovery programs, including the RestoreLouisiana (ReLA) and New York Rising initiatives. Personable and professional, Ms. DeRosa brings extensive technical experience with public grant programs along with an investigative mindset, making her an ideal candidate for compliance-oriented project delivery. Ms. DeRosa earned her Bachelors of Science in Criminal Justice and Paralegal Certificate from the John Jay College of Criminal Justice, New York City.

**Nycole Nguyen**  
Finance Team Manager

Ms. Nguyen has over 15 years of experience with Financial Analyses, Accounts Payable, Trade and Finance, and performing detailed reviews of accounts to ensure that they are accurate, and complete. Ms. Nguyen currently serves as the Financial Analyst for CB&I, where she responds to internal and external audit requests, as well as DCAA Inquires.

**Jill DiLorenzo**  
Quality  
Control/Compliance  
Manager

Ms. DiLorenzo is a highly motivated operations and management professional with a field-tested and proven ability to develop, implement, and oversee administrative procedures that increase productivity and efficiency. She has excellent organizational and leadership skills with a proven track record of advancement based on performance and dedication. Ms. DiLorenzo currently provides program quality control, eligibility, and duplication of benefits verification for the Restore Louisiana Program.

## **ADDITIONAL STAFF**

In addition to our well-rounded compliment of grant management professionals, IEM commits to hiring county and city residents to fill job openings. Our projects are opportunities to provide high-quality jobs in the local market and boost local economies. In the current environment, this is critical support desperately needed – especially for those who are unemployed because of the COVID-19 pandemic. IEM firmly commits to the county and the city that our staffing selection process will prioritize local residents and Section 3 hires, for new job opportunities that arise from this project.

The applicant representative case management team will be comprised of five (5) to ten (10) Case Managers, with capacity to increase based on intake volume, who will assist with income and benefit verification. Case managers work with program applicants to explain program rules and options, assists with application completion and document verification, and provide considerable, timely, and ongoing follow-up to each applicant with respect to case status, timelines, and other expectations. This group will review applications for completeness prior to submitting to eligibility review and will remain each applicant's singular point of contact for the applicant's time in the program.

This team will be led by two (2) Case Management Leads with proven experience serving applicants seeking housing recovery, rental, or interim mortgage assistance. These featured staff will provide the backbone of our Emergency Rental Assistance program support team, ensuring that all work is completed with Cumberland County and the City of Fayetteville outcomes in mind and in compliance with agreed upon SOPs, performance standards, County, City and Federal regulations.

Our case management team will be supported by back-office specialists assisting with eligibility and program disbursement quality control reviews. This team is comprised of four (4) eligibility reviewers and two (2) funding QC specialists. Rounding out our team, additional program support will be provided for Financial Management and Accounting, Information Technology, and Reporting.

## **4.2.2 IMPLEMENTATION**

IEM has a demonstrated success record of developing impactful teams for grant management and administrative services initiatives similar to Cumberland County and City of Fayetteville's Emergency Rental Assistance Program throughout the nation. Having delivered services for programs totaling more than \$10 Billion and benefiting more than 100,000 households, with a record of doing it faster than any other firm in the nation, IEM welcomes the opportunity to support County and City applicants in the most urgent need of emergency rental assistance.

IEM is committed to starting the Cumberland County and City of Fayetteville Emergency Rental Assistance Program starting Day 1 – with full operations underway within 7 days of contract signature. And this speed is a promise IEM will deliver, supported by our team's operational startup of other programs within the same timeframe – including our CDBG-DR Housing deliveries in Florida and North Carolina.

IEM's delivery is schedule-driven, outcome-focused, and puts the County and City's residents first. This value system that fuels and inspires us to do more for our clients and deliver quality at each step of the programs we run. The unwavering commitment to these values at all levels empowers our team to deliver tailored, innovative, and effective solutions that assist communities in these uncertain times.

## PROGRAM INITIATION AND PLANNING

IEM proposes holding a project kickoff meeting with Cumberland County, City of Fayetteville, and key stakeholders within 24 hours of contract signature to identify immediate and long-term objectives, needs, and opportunities. We will discuss program priorities and desired outcomes, along with preferred communication methods and quality expectations to ensure all stakeholders agree on program goals and outcomes. IEM offers technical assistance in navigating eligible activities specified in this new round of funding to execute the vision of strategic plans already considered by the County and the City. With the development of another round of prospective funding already under review by the Federal government, the IEM team will also lend support to the county and city's development and administration of a comprehensive plan for future initiatives and funding in full compliance with all program and federal requirements.

**Immediate, Sustainable Capacity with Non-Profit Coordination:** IEM affords immediate capacity to begin and sustain operations, as well as provide technical knowledge for the design and implementation of public benefit programs and activities that prevent future displacement of Cumberland County and City of Fayetteville residents suffering a loss of income as a result of the COVID-19. IEM will conduct outreach to local non-profits, tenant counseling and social services organizations, and other safety net and volunteer organizations in the County and City area. The IEM team understands the multiple layers of ongoing non-profit assistance already being provided in affected locations – including local and county-wide health, financial, and food security initiatives – that may impact the ability to provide additional resources to the communities being served. In light of this, IEM will work in coordination with these organizations and community groups to build partnerships that leverage existing and ongoing participation with in-kind programs and initiatives without affecting those organization's own bandwidth or capacity. This will not only help generate positive support for the program, but also increase the speed and efficiency with which the program can identify and reach eligible residents.

We fully understand the need to identify applicants and qualify them for program benefits quickly; imminent eviction is as time sensitive as it gets. IEM will begin work upon notice of award, prior to contract execution, to ensure that the tenants can breathe a little easier knowing that their rental assistance will be delivered timely. With two different target stakeholders, tenants and their landlords, this program will need to be tackled on both fronts simultaneously. Our operational model allows for us to manage both lanes seamlessly.

**Strategic Prioritization and Community Outreach:** The pandemic's economic and health impacts are exacerbating the nation's affordable housing and homelessness crises—adding more low-income renters to the millions already experiencing housing instability and at risk of eviction and homelessness. As states and localities allocate emergency rental assistance funds to help renters avoid losing their homes, local leaders must decide where to prioritize their resources.

To help inform those decisions, IEM will assist Cumberland County and City of Fayetteville by developing a community-based process to target areas where resources for residents are likely to have the greatest impact on reducing housing instability and homelessness. Within the basic eligibility requirements outlined by the Federal government for states, counties, and localities participating in direct funding to households seeking emergency rental assistance, the funding bill identifies three tiers of prospective applicants as priorities for assistance:

1. Households with incomes less than 50% of the Area Median Income (AMI)
2. Households with one or more unemployed individuals as of the date of application and not employed for the 90 days prior to application, and
3. Any additional priority criteria established by the Program.

IEM commits to executing this program to ensure program funds are spent in accordance with all Federal statutes and regulations in conjunction with the County and City's Emergency Action and Citizen Participation plans, and that households meeting priorities for assistance are documented in and reportable out of the program system of record.

**Regular Meetings and Reporting:** IEM proposes regular meetings facilitated by our Program Director in coordination with county and city staff as well as stakeholders to discuss program progress, lessons learned, and additional recommendations to address short and long-term community needs. Additionally, progress reports will be provided to county and city staff to measure production against goals.

## PROGRAM EXECUTION

Speed and efficiency are engrained in IEM's DNA. We believe that effective program management moves eligible residents rapidly through our programs, helping Cumberland County and City of Fayetteville's most-vulnerable and at-risk citizens stay in their homes, participate in financial planning to sustain their households in these trying, uncertain times, and gain peace of mind.

**System of Record:** IEM offers expert management of the rental assistance funding made available through this program with our innovative web-based software application, RentAssistIQ™. RentAssistIQ™ is our proprietary application management tool to process Emergency Rental Assistance Program funds applied for by landlords and tenants through the application, eligibility, and funds disbursement processes. RentAssistIQ™ provides applicant-facing modules to complete applications and review case status, as well as program-facing workflow modules to complete eligibility and award calculation reviews – supporting document uploads and regular notification of application status to program applicants.

### RentAssistIQ™ offers:

- A secure, compliant system (e.g., HIPAA, FedRAMP) that is web/mobile accessible, 508 compliant, and meets data privacy and security requirements for protecting Personally Identifiable Information (PII) as required in section 501(g)(4) of Division N of the Act
- Visually rich dashboards that provide end-to-end reporting and workflow support from application through closeout
- Real-time reporting to track where funding is being disbursed and distributed
- Built-in fraud controls, including the latest AI-based fraud detection technologies, to ensure monies reach the intended individuals in need
- Live chat, individualized applicant landing pages, and application status tracking
- Role-based access that is auditable down to the field level
- Robotic process automation capability

Additionally, RentAssistIQ™ manages program data through structured reporting that fulfills US Department of Treasury reporting requirements pursuant to section 501(g) of Division N of the Act and its ongoing monitoring and oversight responsibilities.

Our system's architecture provides for the collection and reporting of the following – at a minimum:

- Address of the rental unit
- Name, address, social security number, tax identification number or DUNS number, as applicable, for landlord and utility provider
- Amount and percentage of monthly rent covered by ERAP assistance
- Amount and percentage of separately stated utility and home energy costs covered by ERAP assistance
- Total amount of each type of assistance (i.e., rent, rental arrears, utilities, and home energy costs, utilities and home energy costs arrears) provided to each household
- Amount of outstanding rental arrears for each household

- Number of months of rental payments and number of months of utility or home energy cost payments for which ERAP assistance is provided
- Household income and number of individuals in the household
- Gender, race, and ethnicity for the primary applicant for assistance
- Number of applications received to report acceptance rate of applicants for assistance
- Any other information required to fulfill oversight and monitoring requirements

The following screenshots provide views of the applicant landing page and application portal, along with an executive dashboard that program management will use to track and monitor progress for the life of the program.

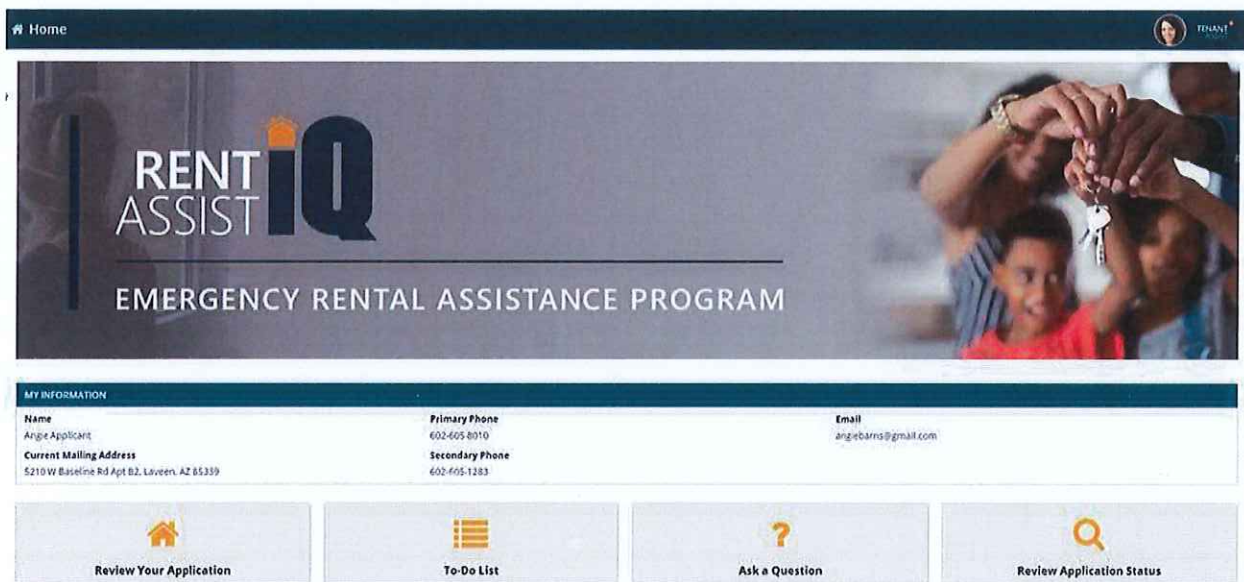


Figure 3: Applicant landing page for RentAssistIQ™



Figure 4: Executive Dashboard

**Application Process and Document Intake Operations:** The IEM team will employ a multi-faceted approach to extending coverage to residents across Cumberland County and the City of Fayetteville. Case managers work with program applicants and their housing providers to explain program rules and options, assist with application completion, document eligibility and benefit verification, and provide considerable, timely, and ongoing follow-up to each applicant with respect to case status, timelines, and other expectations.

Landlords may assist renters in applying for the program or apply on behalf of renters. With the integration of RentAssistIQ™, applicants are provided the option to create an account and complete an application using the online self-service portal; applicants who need assistance in completing their application may contact the program – where a program representative will assist them through the process.

IEM will work directly with applicants to ensure the conditions outlined in the Consolidated Appropriations Act are met and documented in the system of record – including:

- Obtaining Tenant Signatures for the Application.
- Providing Documentation of Application to the Tenant.
- Using Payments Received to Satisfy Tenant Rental Obligations.
- Compliance with All Other Program Regulations.

Particularly in light of the novel coronavirus and the impediments to traditional intake caused by the ongoing pandemic, IEM will integrate online teleconferencing services to support intake operations through grant closing to the maximum extent feasible. This option will be available to residents attending on-site meetings, or who have opted to complete and continue their program enrollment from home.

IEM also proposes the use of other non-traditional, value-added customer service features available to residents within the application completion and intake coordination processes – such as mobile outreach events, home visits, and curbside pickups – that maximizes residents' involvement and brings the program to homeowners who are in most urgent need of these services. For residents who are elderly, disabled, infirmed, immobile, or otherwise require special accommodations, the IEM team offers home visits and curbside pickups of required documentation to ensure the maximum speed of service to residents most in need. In working with assigned

residents, case managers will schedule home visits to applicants to complete applications or receive required documentation to complete their program enrollment. Assigned case managers will coordinate the pick-up of needed or outstanding documentation from homeowners – prioritizing applicants who are immobile, infirmed, disabled, or in need of immediate, emergency assistance. The assigned case manager will provide an exhaustive list of outstanding documents. When a homeowner is ready to provide those documents via curbside pickup, a dedicated team of outbound outreach specialists will interface with homeowners to coordinate receipt of those documents through scheduled pickup dates and times.

Homeowners who have responded to application questions that indicate potential ineligibility for assistance will be triaged and handled by a strike team solely dedicated to the ineligible review for these applicants. This allows our case management team to focus our prospective eligible and priority populations fast and early upon homeowner application completion, while providing targeted support in order to assist more complex cases.

After completing applications and conducting interviews, the case management team will then review applications for eligibility and completeness and will serve as a singular point of contact for residents throughout the duration of the program.

**Eligibility and Award Calculation Reviews:** Updated federal guidance stipulates a new set of thresholds and conditions to be eligible for emergency rental assistance.

The following table, Table 1, identifies these regulatory requirements and the methods employed by the IEM team to document compliance within the system of record:

**Table 1: Eligible Households**

Eligible Households (as defined in Federal Guidance)	
One or more household members must be qualified for unemployment benefits or have directly or indirectly experienced loss of income, significant costs, or other financial hardship resulting from the pandemic.	<p>Applicants may submit proof of unemployment benefits first received on or after March 13, 2020.</p> <p>Additionally, applicants may provide income documentation prior to and after the start of the pandemic, a self-certification of financial hardship, or any other financial documentation to be evaluated by the Program.</p>
One or more household members are at risk for experiencing homelessness or housing instability.	<p>Applicants may provide past due utility bills, rent notices, or eviction notices.</p> <p>Applicants may also provide any other evidence of such risk to be evaluated by the Program.</p>
Household income may not exceed 80% of the Area Median Income based on total income for 2020 or demonstrated monthly income at the time of program application.	<p>Applicants must provide documentation to allow the program to calculate their total annual income for 2020 or monthly income at time of application in compliance with the annual income definition provided by HUD in 24 CFR 5.609 and using adjusted gross income as defined for purposes of reporting under IRS Form 1040 Series for individual Federal annual income tax purposes.</p> <p>For determining annual income, applicants will provide policy-approved source documentation evidencing annual income (e.g. wage statement, interest statement, unemployment compensation statement) or a copy of Form 1040 as filed with the IRS.</p> <p>For monthly income, applicants may provide income source documentation for the two months prior to the submission of the program application for assistance. Income documentation must be provided for all household members over the age of 18.</p>

In addition to these requirements, IEM will document eligibility for each of the following thresholds, or as otherwise prescribed by the County and City's program policy, in RentAssistIQ™ to validate program eligibility and calculate assistance amounts:

- ✓ **Property Ownership of Landlord:** IEM will verify property ownership of each tenant's landlord through a review of the 2020 Property Tax Records. If the program team is unable to verify ownership through the tax rolls, landlords may also provide one of the following to verify ownership: warrant deed, fee simple title, life estate or trust documents, proof of mortgage, or act of donation.
- ✓ **Rent/Utility Calculations:** IEM will collect and validate documentation regarding the amount of rent – in arrears and current – to complete the program award calculation and document the electronic file. Federal guidance stipulates that assistance is capped at 12 months, plus an additional three months, if necessary, to secure housing stability.
- ✓ **Utility Calculations:** IEM will collect and validate documentation regarding the amount of utility and home energy costs – in arrears and current – to document the program's award calculation and document the electronic file. US Department of Treasury guidance, issued on January 19, 2020, define "utilities and home energy costs" as separately stated charges related to the occupancy of rental property. Accordingly, utilities include separately stated electricity, gas, water and sewer, trash removal and energy costs, such as fuel oil. Telecommunication services (telephone, cable, Internet) delivered to the rental dwelling are not considered to be utilities and will not be eligible for program awards. Utilities that are covered by the landlord within rent will be treated as rent.
- ✓ **Documentation of Prior Rental Assistance Funding:** Pursuant to section 501(k)(3)(B) of Subdivision N of the Act and 2 CFR 200.403, when providing ERA assistance, the grantee must review the household's income and sources of assistance to confirm that the ERA assistance does not duplicate any other assistance, including federal, state, and local assistance provided for the same costs. IEM will verify and document any prior duplicative assistance to complete the program award calculation.
- ✓ **Any other program eligibility requirements stipulated by Cumberland County and City of Fayetteville in the program's policy guidelines.**

Upon submission of all required documentation, the IEM team commits to providing enrolled households with an eligibility decision and calculation of grant amounts for final approval by the County or City within one to three business days. Case Managers will document eligibility and award calculations using automated checklists within RentAssistIQ™ that document the times and statuses of each review decision supporting audit-compliant level verification of benefits. All program eligibility checklists and award calculations undergo a rigorous quality control process implemented by IEM QC staff members that will be documented in RentAssistIQ™ throughout each program phase.

As outlined by federal guidance for this new funding, agencies will make payments to landlords or utility providers on behalf of eligible households; if a landlord or utility provider is unwilling to participate, the agency may provide funding directly to eligible households. IEM will make every reasonable effort to obtain the cooperation of landlords and utility providers to accept payments from the ERA program. To document compliance of these efforts, IEM will make at least three attempts by phone, email, or in writing – by certified mail, to request landlord or utility provider participation. All efforts will be documented in RentAssistIQ™. If the landlord or utility provider do not respond to the request within 21 calendar days, the program will move forward with issuing rental assistance funding directly to eligible households.

**Established Mechanisms to Issue Payment:** IEM works with our government clients to provide flexible solutions for grant funding disbursement. IEM has established accounts for grant funding and disbursement for multi-

billion-dollar grant allocations where funding was distributed to program applicants, program vendors and contractors. Additionally, we have maintained applicant funding accounts for projects where applicants are required to contribute their own dollars prior to the program delivering any benefits.

Complete with tight financial controls, including an absolute segregation of duties, and multiple verification steps prior to any disbursements, as well as monthly, quarterly, and yearly reconciliations on the account, IEM's Corporate Controller and Finance Team are the custodians of the accounts. We have operated these accounts in different ways depending upon client preference—funding the account completely with IEM funds, making approved payments on behalf of our client, and then obtaining reimbursement for the eligible, documented expenses; or, our client funds the account as a pass through for funding requests submitted to the client's finance and accounting department. In either case, we open non-interest-bearing accounts with the following protocols:

- Accounts controlled by the Controller and Director of Operations with signature authority for checks
- Monitored by Financial Management Team
- Separate accounts for separate purposes
- Use of Safe Repurchase Agreements (Repos) - sweeps, invested in overnight Repurchase Agreements of investment grade backed securities paying 0% interest to the accounts. This "Safe Repo" product is used for clients that need to protect their deposit balances over the FDIC insured coverage, but do not want or cannot earn interest on the funds (such is the case with federal grant funds).
- Seek banks that use the IBM® Security Trusteer Rapport™ software
- Use of security tokens issued by financial institution to access accounts via banking website
- Positive Pay to help identify and prevent fraudulent, altered, and counterfeit checks
- ACH Block to ensure only checks are issued on behalf of the program and prevent a fraudster from using the routing and account numbers visible on physical checks to make purchases or send money via the ACH process. If paper checks are preferred, all checks are locked in a safe accessible only with two keys, both of which must be present to access the check stock.
- Should ACH be preferred, IEM uses ACH Positive Pay where similar to the paper check detail uploads, ACH positive pay files are uploaded for ACH payments, including the payee name, amount of payment and banking information. These transactions can be reviewed and released by a second person to ensure proper payment.

IEM has conducted these activities most recently in Louisiana for housing recovery operations resulting from the 2016 floods. From April 2017 through April 2020, \$460M in CDBG funds flowed through the CDBG Checking Account and all funds were disbursed within the time allowed by HUD for disbursement to homeowners (72 hours). IEM's Accounting System, Deltek Costpoint, in conjunction with a Bank of America bank account, can handle numerous types of payments needed. We can issue paper checks as well as ACH/EFT directly to landlord accounts.

## PROGRAM MONITORING: QUALITY ASSURANCE AND CONTROL

IEM minimizes risk through quality control processes integrated at each task level. Our Quality Assurance and Control testing across our projects yields powerful insight into project progress and compliance. IEM's QA/QC philosophy, which permeates every one of our housing projects, is that quality must be invested in each step and every team member must be accountable for producing quality deliverables. Emphasis on initial deliverable production accuracy is key and we support our staff through additional reviews prior to product submission to the county's system of record. Each producer, manager, QC reviewer and approver in our organization is held to our quality control and quality analysis standard operating procedures.

The IEM Team's approach is an ongoing, fluid-monitoring approach, creating the proper mechanisms and controls to ensure an audit-compliant application while detecting and preventing problems as they may arise. We require

peer (one-over-one) reviews of every applicant file – including a thorough review throughout the application intake, eligibility, award, funding (landlord or household disbursements), and file closeout checkpoints documented in the system of record. As case managers identify applications ready for pre-award QC review, team leads will review applications prior to submission for completeness and accuracy within RentAssistIQ™. This mechanism will allow case management leads to identify issues at the case management level and ensure those issues are addressed in ongoing team trainings. At the intake level, the lead will also be tasked with processing and assigning cases identified for triage by case managers. This triage will re-associate complex or face-value ineligible residents to a dedicated strike team that specializes in processing ineligible applicants.

Once a file has been identified for pre-award quality control, a full-file, one-over-one review will take place at the verification state in order to review and confirm all information and documentation provided is in accordance with program, state, and federal policies and guidelines. This review also establishes the accuracy and consistency of information, along with the proper coding and execution of certifications, authorizations, and other program-submitted documentation.

For eligible applicants receiving funding, the IEM QC team will also confirm the award calculation through a document-to-calculation matching protocol, which requires QC reviewers re-review the documentation provided for the accuracy and completeness of financial inputs to permit audit-compliant benefit calculations and disbursement outputs.

IEM employs former Internal Auditors and experienced financial management specialists and accountants. They have disbursed over \$1 billion in funds for multiple housing programs and clients. We enforce tight and rigorous fiscal controls and will use real-time data analytics and sophisticated algorithms to monitor for indicators of fraud. We will have detailed accounting reports to reconcile cash balances with cash disbursements. Any indication of fraud will be vigorously investigated, and documentary evidence provided to the County and the City.

IEM's QA/QC team maintains these compliance controls such that they provide performance tracking and a basis for individual, team, and program training and re-training at the case level. These controls prevent duplication of effort and biased reviews, which incrementally reduces costs over the duration of the program and minimizes procedural errors as identified by the QA/QC team in a manner that ensures the most responsible allocation of State funding.

IEM utilizes the project management Plan-Do-Check-Act (PDCA) cycle for monitoring and controlling our programs. This ongoing assessment supports the continuous improvement of processes to deliver our programs with the highest degrees of speed and quality for the benefit of the people and clients we service. We work with our clients to develop strategic plans for delivering their vision to their residents, and we execute on them. Throughout the execution phase of the program, we review our data and processes, test them, analyze the results, and identify areas to maximize program benefits, identify problems or root causes, and document lessons learned. We will make data-driven and supported recommendations to the County and City based on what we learned in each study step, how that knowledge supports reconsideration of ongoing policies and processes, and mapping any suggested policy or program recommendations using our team's expert knowledge of best practices utilized in prior and current housing and coronavirus aid administration programs.

## 5.0 PROPOSED SCHEDULE

KEY MILESTONE/ DELIVERABLE	DAYS (AFTER CONTRACT AWARD)	NOTES
Contract Executed	n/a	
Key Staff Available and Trained	5	Milestone
Call Center Operational, Numbers Assigned, Dual Language CSR and SMS Scripts Ready for Review by County & City, Commence Stress and Reliability Testing	5	Milestone
Call Center Training Plan for Review by County & City	7	Milestone
Case Management Training Plan for Review by County & City	7	Milestone
Application Review Procedures and Process Flows Ready for Review by County & City	10	Milestone
Deliver BCP and DRP for RentAssistIQ and CC System	10	Service Deliverable
Software Release Management Plan	10	Service Deliverable
Help Desk Service Plan	10	Service Deliverable Milestone, continuous activity follows
CSR and CSR Supervisors on Board and Trained	10	Call Center Coordinator/Manager on board with key staff
Case Managers, DOB Reviewers, Finance Team and Compliance on Board and Trained	10	Associated team management on board with key staff
Training for Contractor and State Staff on RentAssistIQ Intake/Application System	14	
Training Materials and Desktop Aids Available	14	Milestone
Inquiry Log and Procedures Ready to Implement	14	Milestone
End User Training in Webinar Media Ready	14	Service Deliverable
Go Live for Initial Intake/Application by Landlords and Tenants via FirstPhase RentAssistIQ MVP	14	Early Commence Pipeline Ready, Milestone
Bank Account(s) with Access and Fraud Controls Established, Ready to Receive First Advance Funds from County & City	15	
Training Status Reports	17	First milestone, bi-weekly activity follows
Commence Pipeline for First Program Phase, Open Application Portal in RentAssistIQ for Landlords and Tenants	18	Critical Milestone
Call Center Staff Initiates Answering Calls	18	Continuous activity through year 1 end, 7 days/12 hours
Case Management Staff Initiates Activity	18	Continuous activity through year 1 end, 6 days/12 hours
Surge Staffing with Addition of Required Call Center and RentAssistIQ Seats	Week 4 through 8	As required or at direction of County & City to handle initial application spikes
First Required Daily Metrics Report	18	Milestone, daily activity follows
First Daily Case Manager Performance Report	18	Milestone, daily activity follows
Initiate Hypercare Support	18	Service Deliverable Milestone
First Daily Production Brief	18	Service Deliverable Milestone, daily and weekly activity follow
All Required Background Checks Complete and Validation Provided to County & City	20	Milestone, exception for surge staff added

KEY MILESTONE/ DELIVERABLE	DAYS (AFTER CONTRACT AWARD)	NOTES
All Non-Disclosure Statements and Validation of PII Training Provided to County & City	20	Milestone, exception for surge staff added
IEM Prepared to Host Team Meetings and BP Sessions	21	Milestone, continuing activity follows
Written Policies Produced for County & City Review for Case Management, QC, Fraud Detection, Collection of Landlord Documents, Appeals, Other	21	Milestone
First Weekly Payment File Prepared	21	Milestone
Commence First Electronic Payments to Applicants	TBD	In accordance with County & City phasing plan, continuous thereafter
First Weekly Program Budget/Disbursement Report	21	Milestone, weekly activity follows
Conduct DR Test and Correction Plan	28	Service Deliverable
First Monthly Reports: Operations and Maintenance, Help Desk Performance	30	Service Deliverable Milestones, monthly activity follows
Conduct First Pen Test, Remediation Report	30	Service Deliverable Milestone, quarterly activity follows
Deliver Phase 2 (second sprint) Functionality in RentAssistIQ Production Environment	32	
Deliver Phase 3 (third sprint) functionality in RentAssistIQ Production Environment	46	Targeting full functionality against all requirements 6 to 8 weeks ACA
Additional RentAssistIQ Sprints as Requested by County & City	TBD	Optional based on perceived evolution of need for additional functionality
65% of ERAP Allocation Obligated	200	Critical Milestone, based on US Treasury requirement
Produce Year End Production Report and Recommendations for County & City	281	If Program funding is 100% distributed prior to this Milestone, prepare deliverable at time funds are fully depleted
100% of ERAP Allocation Expended	291 (Dec 30, 2021)	Critical Milestone, US Treasury requirement
End Performance	291	

## 6.0 ESTIMATED COSTS

On the following page, please find a table of hourly rates and estimated costs.

**IEM**

Submitted for:

**Emergency Rental Assistance Program Administration Services**

Submitted to:

**Fayetteville Economic and Community Development Department, and: Cumberland County Community Development Department**

Labor Category	Hourly Rate *	Task 1		Task 2		Task 3		Total Hours	Total Estimated Costs
		4.1.A Implement the Program		4.1.B Determine Household Eligibility		4.1.C Use an Application Process and Grant Management System			
Program Director	\$ 187.31	165	\$ 30,906.15	165	\$ 30,906.15	170	\$ 31,842.70	500	\$ 93,655.00
Call Center Manager	\$ 103.93	108	\$ 11,224.44	108	\$ 11,224.44	108	\$ 11,224.44	324	\$ 33,673.32
Call Center / Case Management	\$ 97.00	165	\$ 16,005.00	165	\$ 16,005.00	170	\$ 16,490.00	500	\$ 48,500.00
Senior DOB / Eligibility Lead	\$ 103.92	133	\$ 13,821.36	133	\$ 13,821.36	134	\$ 13,925.28	400	\$ 41,568.00
QC / Compliance Manager	\$ 131.22	106	\$ 13,909.32	106	\$ 13,909.32	106	\$ 13,909.32	318	\$ 41,727.96
Finance Team Manager	\$ 112.27	68	\$ 7,634.36	68	\$ 7,634.36	68	\$ 7,634.36	204	\$ 22,903.08
Reporting & Data Analytics	\$ 107.01	68	\$ 7,276.68	68	\$ 7,276.68	68	\$ 7,276.68	204	\$ 21,830.04
Payment Specialists	\$ 68.44	68	\$ 4,653.92	68	\$ 4,653.92	68	\$ 4,653.92	204	\$ 13,961.76
Call Center Agent	\$ 31.38	1,000	\$ 31,380.00	1,000	\$ 31,380.00	1,000	\$ 31,380.00	3,000	\$ 94,140.00
Call Center Supervisor	\$ 35.26	1,000	\$ 35,260.00	1,000	\$ 35,260.00	1,000	\$ 35,260.00	3,000	\$ 105,780.00
Case Manager	\$ 38.73	1,000	\$ 38,730.00	1,000	\$ 38,730.00	1,000	\$ 38,730.00	3,000	\$ 116,190.00
Case Manager Supervisor	\$ 46.32	1,000	\$ 46,320.00	1,000	\$ 46,320.00	1,000	\$ 46,320.00	3,000	\$ 138,960.00
Dedicated IT Support	\$ 107.01	68	\$ 7,276.68	68	\$ 7,276.68	68	\$ 7,276.68	204	\$ 21,830.04
DOB / Eligibility Reviewers	\$ 68.44	68	\$ 4,653.92	68	\$ 4,653.92	68	\$ 4,653.92	204	\$ 13,961.76
Subtotal IEM Labor Hours/Costs		5,017	\$269,051.83	5,017	\$269,051.83	5,028	\$ 270,577.30	15,062	\$ 808,680.96
Total ODC			\$ -		\$ -		\$ -		\$ -
Total Travel **			\$ -		\$ -		\$ -		TBD
Total Estimated Costs		5,017	\$269,051.83	5,017	\$269,051.83	5,028	\$ 270,577.30	15,062	\$ 808,680.96

\* Hourly Rates include overhead and profit per RFP Section 4.2.6.

\*\* Any pre-approved IEM travel will be invoiced according to GSA per diems in effect at that time.

## 7.0 SUBCONTRACTORS

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IEM does not propose any subcontractors for this effort.

## 8.0 REFERENCES

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Please find the following reference letters (and reference contact information) on the pages that follow:

- City of Shreveport – 1/20/2021
- Orange County Housing and Community Development – 1/12/2021
- Fayetteville PWC – 1/31/2020
- Fayetteville PWC – 10/20/2017



## CITY OF SHREVEPORT

P.O. BOX 31109 SHREVEPORT, LA 71130 • 505 TRAVIS STREET SHREVEPORT, LA 71101  
Website: [www.shreveportla.gov](http://www.shreveportla.gov)

January 20, 2021

To Whom It May Concern

RE: Letter of Reference for IEM

This letter provides my recommendation of IEM to support your agency and jurisdiction with Housing and Urban Development (HUD) Community Planning and Development (CPD) and COVID-19 recovery programs, specifically in providing technical assistance and training for staff and subrecipients. IEM has provided guidance to Shreveport in the wake of COVID-19 and members of their consultant team, namely Earl Randall, Kathie Clark and Jared Jakubowski have provided exemplary technical assistance and program oversight for our HUD formula programs, Community Development Block Grant (CDBG), Emergency Solutions Grant (ESG), Home Investment Partnership (HOME), Housing Opportunities for Persons with AIDS (HOPWA), and several other cross-cutting areas over the years.

IEM is an experienced contractor and industry leader in Community Development Block Grant Disaster Recovery (CDBG-DR) programs. I know IEM by the caliber of leaders assigned to communities, and the names above are three of the best for this type of assignment. Earl Randall and Kathie Clark have guided Shreveport in the administration of our HUD CPD portfolio for many years as CPD representative during their tenure with HUD. Earl also worked with our community after devastating floods and helped us to leverage our HUD CPD funding to create strong public/private partnerships that included our entire HUD portfolio (CPD, Multifamily, Public Housing and Secretarial Initiatives). Jared Jakubowski served the community of Moore, Oklahoma as Director of Community Development and was my counterpart and a peer that willingly shared knowledge and experience.

IEM's knowledge and expertise with HUD regulations and their agency relationships will be very helpful, and I believe that IEM would provide excellent customer service to you and your grantees. I recommend IEM as a valuable partner who will demonstrate quality service outcomes to you, your programs, and your stakeholders.

If you need anything further, please do not hesitate to contact me at 318-673-5901 or [bonnie.moore@shreveportla.gov](mailto:bonnie.moore@shreveportla.gov).

Sincerely,

A handwritten signature in cursive script that reads "Bonnie Moore".

Bonnie Moore  
Director



DYLAN WRIGHT  
DIRECTOR  
OC COMMUNITY RESOURCES

CYMANTHA ATKINSON  
ASSISTANT DIRECTOR  
OC COMMUNITY RESOURCES

ROGER UMINSKI II  
DIRECTOR  
ADMINISTRATIVE SERVICES

MIKE KAVIANI  
DIRECTOR  
OC ANIMAL CARE

JULIA BIDWELL  
DIRECTOR  
OC HOUSING & COMMUNITY  
DEVELOPMENT

RENEE RAMIREZ  
DIRECTOR  
OC COMMUNITY SERVICES

STACY BLACKWOOD  
DIRECTOR  
OC PARKS

SHERRY TOTH  
ACTING COUNTY LIBRARIAN  
OC PUBLIC LIBRARIES

# OC Community Resources

January 12, 2021

To Whom it may Concern

## Letter of Recommendation for IEM

The County of Orange California has been working with Innovative Emergency Management Inc. since June of 2020. IEM has been a consulting partner providing guidance to multi departments in then County and provides grant management and project management services for HUD CDBG Programs including but not limited to assisting with the program design, pre-application and application process, project development, bidding and pre-construction, construction and closeout associated with the Programs. IEM has also provided guidance to the County to prepare for, respond to and recover from the COVID-19 pandemic projects though out the Urban county program participating cities as well as County programs.

The IEM Team is a welcome partner and I highly recommend their services.



Craig Fee  
County of Orange Community Development Manager  
1501 E St Andrew Place  
Santa Ana CA 92705  
(949) 527-0599  
[Craig.Fee@occr.ocgov.com](mailto:Craig.Fee@occr.ocgov.com)

OC HOUSING &  
COMMUNITY DEVELOPMENT  
1501 E. ST. ANDREW PLACE, 1<sup>ST</sup> FLOOR  
SANTA ANA, CA 92705  
PHONE: 714.480.6534  
FAX: 714.480.2978

DARSWEIL L. ROGERS, COMMISSIONER  
WADE R. FOWLER, JR., COMMISSIONER  
EVELYN O. SHAW, COMMISSIONER  
D. RALPH HUFF, III, COMMISSIONER  
DAVID W. TREGO, CEO/GENERAL MANAGER



FAYETTEVILLE PUBLIC WORKS COMMISSION  
955 OLD WILMINGTON RD  
P.O. BOX 1089  
FAYETTEVILLE, NORTH CAROLINA 28302-1089  
TELEPHONE (910) 483-1401  
WWW.FAYPWC.COM

1/31/2020

Innovative Emergency Management  
2601 Slater Road, Suite 200  
Morrisville, NC 27560

**RE: IEM Reference Letter**

PWC is an Electric Water and Wastewater utility that is considered a Legal Utility Authority in the State of NC. We are in Fayetteville NC and employ nearly 650 employees. Fayetteville is known for Fort Bragg which is the one of the worlds largest Army bases. PWC serves nearly 300,000 customers 80,000.

Fayetteville is located uniquely west of I-95 which is viewed as the hurricane central. Over the years we have been devastated by natural disasters included Fran in 1996, Matthew in 2017 and Florence in 2019. In total we have incurred nearly 50million in losses due to hurricanes since 1996. As a result, we take great pride in responding to and be prepared for Hurricanes. Part of our plan is to identify and contract with response partners that fit our philosophy. IEM is one of those partners. Over the past 4 years we have counted on IEM to perform in critical situations and they have not disappointed PWC. Some of the projects that they have performed include the following:

- Complete revision to our Emergency Response Plan (multiyear project to update current plans underway)
- Multiple Property Assessments using unique drone technology (several fly overs needed in emergencies)
- Public Assistance for FEMA claims (all FEMA filing due to 2 major hurricanes with values near \$15million)

PWC is an organization that believes in fair pricing, high quality, reliability and fair pricing. IEM understands these values and do a good job of meeting our objectives. They are also very open minded, customer centric, prompt and very skilled. They seem to understand exactly what we need as the customer and they don't try to up sale on unneeded items.

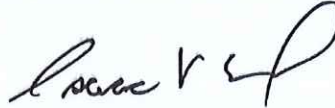
All in all, we are extremely pleased with IEM and we view them as long-term partners. They have gained the respect of our operations teams and executive staff. I can confidently speak for everyone here in saying that IEM and their team are top of class. I don't have a negative thing to say about their performance and if there was ever anything, I have full confidence that Don and his team would promptly address it.

Innovative Emergency Management  
January 31, 2020  
Page 2

If you have any questions regarding, they past performance do not hesitate to call me to further discuss.

Very truly yours,

PUBLIC WORKS COMMISSION




Isaac V. Copeland Director of Risk Management, Contracts and  
Procurement Fay PWC  
[Ike.copeland@faypwc.com](mailto:Ike.copeland@faypwc.com)  
955 Old Wilmington Road  
Fayetteville, NC 28301  
910-223-4116

NORTH CAROLINA – CUMBERLAND COUNTY

I, George V. Hamilton a Notary Public of <sup>Hoke</sup>~~Cumberland~~ County and said State, do hereby  
certify that **ISAAC V COPELAND** appeared before me this day and acknowledged that they voluntarily  
signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official seal this the 31<sup>st</sup> day of January, 2020.

  
Official Signature of Notary

My commission expires: 3/11/2022

(SEAL)



DARSWEIL L. ROGERS, COMMISSIONER  
WADE R. FOWLER, JR., COMMISSIONER  
EVELYN O. SHAW, COMMISSIONER  
D. RALPH HUFF, III, COMMISSIONER  
DAVID W. TREGO, CEO/GENERAL MANAGER



FAYETTEVILLE PUBLIC WORKS COMMISSION  
955 OLD WILMINGTON RD  
P.O. BOX 1089  
FAYETTEVILLE, NORTH CAROLINA 28302-1089  
TELEPHONE (910) 483-1401  
WWW.FAYPWC.COM

October 20, 2017

To Whom It May Concern:

Subject: Letter of Recommendation

PWC was severely impacted by Hurricane Matthew on October 10, 2016. To help us recover from this disaster, PWC had issued a Request form Proposal. Out of six companies that responded, Innovative Emergency Management (IEM) was contracted to assist us with the FEMA claim. IEM was on board and working with us by November 1. From the start, IEM worked with PWC by assisting in the preparation of our Request for Public Assistance, attending the State's Applicant Briefing with our main personnel, meeting with all of our department leads to go over the FEMA process and the various individual department claims, and attending the FEMA Kick-off meeting. IEM assisted our entire company with understanding the FEMA process and also helped us to identify and pull together the various claims. IEM also established a close and amicable working relationship with all of the FEMA personnel and in turn, IEM was able to provide clear and direct narratives to FEMA for our projects, as well as assist our departments with pulling together the appropriate backup documentation for the projects written.

As a public utility, the amount of damage within the PWC system was extensive. Within the first three weeks of the disaster, most of the 600 PWC employees were involved with our response and recovery efforts in one form or another; within the electric division alone, 130 employees charged time to the disaster. However, with the assistance of IEM, PWC anticipates recovering as much reimbursement as possible. IEM has been instrumental with the preparation of Reimbursement Requests made to the State of North Carolina Emergency Management (NCEM).

IEM has shown that they have the knowledge, experience and capabilities to help a company recover from a disaster. IEM prepared for us and in turn, has trained our internal personnel on how to update and submit these reports through Closeout. In addition, IEM worked with our internal engineers to understand FEMA Hazard Mitigation Proposals (HMP) and PWC was able to identify over \$1M in HMP measures. IEM also worked with our internal engineers to understand how Cost-Effective Hazard Mitigation Measures could be used for some of our large permanent repair projects. In addition, they've shown us how to utilize and incorporate Best Engineering/Best Construction Practices into the FEMA write-ups.

The use of all of these measures have been especially important for projects with our insurance carrier, who will cover the base costs on certain project to bring PWC back to pre-event condition. Similar to FEMA, one of the focal points of our insurer has been how PWC will work to ensure that these types of damages do not occur again in the future. Therefore, having these work-ups have been of great assistance for not only our FEMA claims, but our insurance claims as well.

IEM has provided PWC with weekly detailed Project Tracking Reports, which has been utilized not only by department managers and company management, but have further been customized throughout the process pursuant to our needs and specifications. These reports have been utilized by PWC Management who have used this information in our internal budgeting process; PWC Department Managers who used this information to keep track of their projects; and by PWC Finance who utilized this information in dealing with outside auditors.

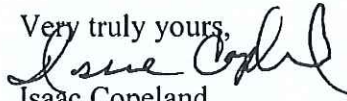
Due to the massive amount of critical infrastructure damaged during Hurricane Matthew, PWC needed assistance with quick and easy identification of debris and damage done to the access roads. Under this same recovery contract with IEM, PWC was able to utilize the IEM Air Ops division, which brought in two teams of certified drone operators. Working with the PWC GIS department and an internal PWC POC, IEM was able to perform both disaster damage related identifications, as well as map specific PWC locations. A beneficial aspect of the IEM drone teams was the fact that they could use various methods of photography; including standard high resolution 4k digital camera photography, and 2 and 3 dimensional orthomosaic mapping of digital pictures. They also used FLIR (Forward Looking Infrared) to visually inspect the electric stations for thermal hot spots, in order to help identify components of the electric power generation plant/system that may need maintenance in the near future. IEM Air Ops and PWC also discussed the possible use of the FLIR in the future to find failed electrical components or identify failed solar power panels.

PWC was able to provide our insurer with this drone footage of our high dollar projects, which was so clear and concise, that our insurer has made it a requirement going forward that should another disaster occur (whether or not it is a federally declared disaster), that PWC immediately deploy drones to assist with the identification of structural damage. The use of the drones under the IEM contract was not only beneficial to PWC, as it saved PWC man-hours that would have been expended to walk all of our ROWs, but the costs associated with the drones, were covered either by FEMA/State; for FEMA eligible non-insured projects, or by our insurer, for insured properties. The drone information was further uploaded to the PWC internal system for our future use should another disaster hit.

Letter of Recommendation  
October 20, 2017  
Page 3

IEM has brought a high level of experience and assistance to PWC and has ensured that the overall recovery process has run smoothly and effortlessly. PWC would certainly call on IEM to assist us in recovery efforts in the future should there be a need. PWC has already recommended IEM to other entities in the local area and State, and would highly recommend IEM as being knowledgeable and beneficial in the FEMA recovery process.

Very truly yours,



Isaac Copeland

Director of Legal Risk Procurement Services  
PUBLIC WORKS COMMISSION

cc: File

## 9.0 ATTACHMENT FORMS

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Please find the following attachments in the section that follows. All attachments are completed, signed, and/or notarized as required.

- **Attachment B:** Execution of Proposal
- **Attachment C:** Certification of Financial Condition
- **Attachment D:** Certification Regarding Lobbying
- **Attachment E:** Non-Collusion Affidavit

IEM also wishes to explicitly acknowledge receipt of Addendum I: Timeline Extension, and Addendum II: Questions and Answers.

RFP Number: 21-21-CD Emergency Rental Assistance Program Administration Services

**ATTACHMENT B: EXECUTION OF PROPOSAL****EXECUTION**

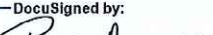
In compliance with this Request for Proposals (RFP), and subject to all the conditions herein, the undersigned vendor offers and agrees to furnish and deliver any or all items/services upon which prices are proposed. By executing this proposal, the undersigned vendor certifies that this proposal is submitted competitively and without collusion, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible from covered transactions by any Federal or State department or agency. Furthermore, the undersigned vendor certifies that it and its principals are not presently listed on the Department of State Treasurer's Final Divestment List as per N.C.G.S 147-86.55-69.

The potential Contractor certifies and/or understands the following by placing an "X" in all blank spaces:

- X   The City and County has the right to reject any and all proposals or reject specific proposals with deviated/omitted information, based on the City's and County's discretion if the omitted information is considered a minor deviation or omission. The City and County will not contact vendors to request required information/documentation that is missing from a proposal packet. Additionally, if the City and County determines it is in its best interest to do so, the City and County reserves the right to award to one or more vendors and/or to award only a part of the services specified in the RFP.
- X   This proposal was signed by an authorized representative of the Contractor.
- X   The potential Contractor has determined the cost and availability of all materials and supplies associated with performing the services outlined herein.
- X   All labor costs associated with this project have been determined, including all direct and indirect costs.
- X   The potential Contractor agrees to the conditions as set forth in this RFP with no exceptions.
- X   Selection of a contract represents a preliminary determination as to the qualifications of the vendor. Vendor understands and agrees that no legally binding acceptance offer occurs until the Fayetteville City Council and Cumberland County Board of Commissioners, or its designee, executes a formal contract and/or purchase order.

Therefore, in compliance with the foregoing RFP, and subject to all terms and conditions thereof, the undersigned offers and agrees to furnish the services for the prices quoted within the timeframe required. Vendor agrees to hold firm offer through contract execution.

**Failure to execute/sign proposal prior to submittal shall render the proposal invalid and it WILL BE REJECTED.**

VENDOR: Innovative Emergency Management, Inc.		
STREET ADDRESS: 2801 Slater Road, Suite 200	P.O. BOX: 110265	ZIP: 27709
CITY & COUNTY & ZIP: Morrisville, NC 27560	TELEPHONE NUMBER: 919-990-8191	TOLL FREE TEL. NO: 800-977-8191
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #10):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR: Ryan Ausman Manager of Contract Administration		FAX NUMBER: 919-237-7468
VENDOR'S AUTHORIZED SIGNATURE: 	DATE: 2/17/2021	EMAIL: contracts@iem.com

DocuSigned by:

EE575EB6159940F...

RFP Number: 21-21-CD Emergency Rental Assistance Program Administration Services

## ATTACHMENT C: CERTIFICATION OF FINANCIAL CONDITION

Name of Vendor: Innovative Emergency Management, Inc.

The undersigned hereby certifies that: [check all applicable boxes]

☒ The vendor is in sound financial condition and, if applicable, has received an unqualified audit opinion for the latest audit of its financial statements.

Date of latest audit: 12/31/2019

☒ The vendor has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.

☒ The vendor is current in all amounts due for payments of federal and County taxes and required employment-related contributions and withholdings.

☒ The vendor is not the subject of any current litigation or findings of noncompliance under federal or County law.

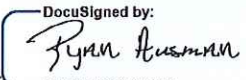
☒ The vendor has no findings in any past litigation, or findings of noncompliance under federal or County law that may impact in any way its ability to fulfill the requirements of this Contract.

☒ He or she is authorized to make the foregoing statements on behalf of the vendor.

**Note:** This is a continuing certification and vendor shall notify the Contract Lead within 15 days of any material change to any of the representations made herein.

**If any one or more of the foregoing boxes is NOT checked, vendor shall explain the reason in the space below:**

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DocuSigned by:  
  
EE575EB6159940F...

Signature \_\_\_\_\_ Date February 17, 2021

Ryan Ausman \_\_\_\_\_  
Printed Name Manager of Contract Administration Title

**[This Certification must be signed by an individual authorized to speak for the vendor]**

RFP Number: 21-21-CD Emergency Rental Assistance Program Administration Services

## **ATTACHMENT D: CERTIFICATION REGARDING LOBBYING**

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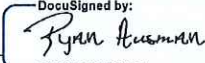
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Innovative Emergency Management, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

DocuSigned by:  
  
EE575EB6158940F  
\_\_\_\_\_  
Signature of Contractor's Authorized Official

Ryan Ausman, Manager of Contract Administration  
Name and Title of Contractor's Authorized Official

February 17, 2021  
Date

## ATTACHMENT E: NONCOLLUSION AFFIDAVIT

### NON-COLLUSION AFFIDAVIT

State of Louisiana  
County of East Baton Rouge

Brad Tiffie, being first duly sworn, deposes and says that:

1. He/She is the Director of Operations of Innovative Emergency Management, Inc., the proposer that has submitted the attached proposal.
2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal.
3. Such proposal is genuine and is not a collusive or sham proposal.
4. Neither the said proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer firm or person to submit a collusive or sham proposal in connection with the contract for which the attached proposal has been submitted or to refrain from proposing in connection with such contract, or has in any manner, directly or indirectly sought by agreement or collusion of communication or conference with any other proposer, firm or person to fix the price or prices in the attached proposal or of any other proposers, or to fix any overhead, profit or cost element of the proposal price of the proposal of any other proposer or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Cumberland or any person interested in the proposed contract; and
5. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature

Printed Name: Brad Tiffie

Title: Director of Operations

Date: 2/17/21

Subscribed and Sworn to Before Me,

This 17 day of February, 2021

Notary Public

My Commission Expires: death





SAFE. SECURE. RESILIENT.

## EXHIBIT III

### **CERTIFICATION REGARDING LOBBYING**

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Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

## EXHIBIT IV

### **Federal Contracting Requirements**

This attachment is incorporated into the Contract between the County and the Contractor/sub grantee. Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. All references to the "Contractor/sub grantee" or "Company" or "Vendor" or "Provider" shall be deemed to mean the Contractor/sub grantee.

This Contract may be funded in whole or in part with federal funding. As such, federal laws, regulations, policies and related administrative practices apply to this Contract. The most recent of such federal requirements, including any amendments made after the execution of this Contract shall govern the Contract, unless the federal government determines otherwise. The Contractor/sub grantee is responsible for complying with all applicable provisions, updates or modifications that occur in the future relating to these clauses.

To the extent possible, the federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.CFR Part 200, including any certifications and contractual provisions required by any federal statutes or regulation referenced therein to be included in this contract are deemed incorporated into this contract by reference and shall be incorporated into any sub-agreement or subcontract executed by the Contractor/sub grantee pursuant to its obligations under this Contract. The Contractor/sub grantee and its sub-Contractor/sub grantees, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the original contract then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to Work to be performed under this contract.

### **Drug Free Workplace Requirements**

Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All Contractor/sub grantees entering into federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988.

### **Contractor/sub grantee Compliance**

The Contractor/sub grantee shall comply with all uniform administrative requirements, cost principles, and audit requirement for federal awards.

### **Conflict of Interest**

The Contractor/sub grantee must disclose in writing any potential conflict of interest to the County of Cumberland or pass through entity in accordance with federal policy.

### **Mandatory Disclosures**

The Contractor/sub grantee must disclose in writing all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. **Energy Conservation** The Contractor/sub grantee and Sub Contractor/sub grantees agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq.

### **Federal Water Pollution Control Act**

For contracts in excess of \$150,000, the Contractor/sub grantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor/sub grantee agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The Contractor/sub grantee agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

### **Clean Air Act**

For contracts in excess of \$150,000, the Contractor/sub grantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Act as amended (33 USC § 1251-1387).

The Contractor/sub grantee agrees to report any violation to the County immediately upon discovery. The Contractor/sub grantee understands and agrees that the County will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. Contractor/sub grantee must include this requirement in all subcontracts that exceed \$150,000.

The Contractor/sub grantee agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### **Access to Records and Reports**

The Contractor/sub grantee must maintain an acceptable cost accounting system. The Contractor/sub grantee agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor/sub grantee which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor/sub grantee agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor/sub grantee agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

All Contractor/sub grantees and their successors, transferees, assignees, and Sub Contractor/Sub Grantees acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff.

### **No Obligation by Federal Government**

The County and the Contractor/sub grantee acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, the Contractor/sub grantee, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor/sub grantee agrees to include the above clause in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify the sub-Contractor/sub grantee who will be subject to its provisions.

#### **Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor/sub grantee acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor/sub grantee's actions pertaining to this contract. Upon execution of the underlying contract, the Contractor/sub grantee certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the Federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor/sub grantee further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor/sub grantee to the extent the Federal Government deems appropriate.

The Contractor/sub grantee also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor/sub grantee, to the extent the Federal Government deems appropriate.

The Contractor/sub grantee agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the sub-Contractor/sub grantees who will be subject to the provisions.

#### **Changes**

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. Contractor/sub grantee's failure to do so shall constitute a material breach of the contract.

#### **Termination**

***Termination Without Cause.*** The County may immediately terminate this Agreement at any time without cause by giving 30 days' written notice to the Contractor/sub grantee.

***Termination for Default by Either Party.*** By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or

The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Agreement if the default is not cured within the specified period.

***Additional Grounds for Default Termination by the County.*** By giving written notice to the Contractor/sub grantee, the County may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

The Contractor/sub grantee makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Contractor/sub grantee's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or

The Contractor/sub grantee takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

***Cancellation of Orders and Subcontracts.*** In the event this Agreement is terminated by the County for any reason prior to the end of the term, the Contractor/sub grantee shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Contractor/sub grantee shall submit a statement to the County showing in detail the services performed under this Agreement to the date of termination.

***No Effect on Taxes, Fees, Charges, or Reports.*** Any termination of the Agreement shall not relieve the Contractor/sub grantee of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve the Contractor/sub grantee of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Contractor/sub grantee from any claim for damages previously accrued or then accruing against the Contractor/sub grantee.

***Obligations Upon Expiration or Termination.*** Upon expiration or termination of this Agreement, the Contractor/sub grantee shall promptly (a) return to the County all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the County; (b) deliver to the County all Work Product; (c) allow the County or a new vendor access to the systems, software, infrastructure, or processes of the Contractor/sub grantee that are necessary to migrate the Services to a new vendor; and (d) refund to the County all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

***No Suspension.*** In the event that the County disputes in good faith an allegation of default by the Contractor/sub grantee, notwithstanding anything to the contrary in this Agreement, the Contractor/sub grantee agrees that it will not terminate this Agreement or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Contractor/sub grantee, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

***Authority to Terminate.*** The County Manager or their designee is authorized to terminate this Agreement on behalf of the County.

***Audit.*** During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Contractor/sub grantee necessary to evaluate Contractor/sub grantee's compliance with the terms and conditions of the Agreement or the County's payment obligations. The County shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Contractor/sub grantee. However, if non-compliance is found that would have cost the County in excess of \$5,000 but for the audit, then the Contractor/sub grantee shall be required to reimburse the County for the cost of the audit.

## **Remedies**

***Liquidated Damages:*** The County and the Contractor/sub grantee acknowledge and agree that the County may incur costs if the Contractor/sub grantee fails to meet the delivery times set forth in the Request for Proposal for the Products and Services. The parties further acknowledge and agree that: (a) the County may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the County might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor/sub grantee agrees to pay liquidated damages at the rates set forth in the Request for Proposal (if applicable). The parties agree that the liquidated damages set forth in the Request for Proposal shall be the County's exclusive remedy for loss of goodwill and administrative costs, attributable to a failure by the Contractor/sub grantee to meet such delivery times, but shall not be the remedy for the cost to cover or other direct damages.

***Right to Cover:*** If the Contractor/sub grantee fails to meet any completion date or resolution time set forth in this Agreement (including the Exhibits), and it fails to cure such default within one (1) business day after receiving written notice from the County of such failure, the County may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have:

Employ such means as it may reasonably deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Contractor/sub grantee is again able to resume performance under this Agreement; and

Deduct any and all reasonable expenses incurred by the County in obtaining or performing the Services from any money then due or to become due the Contractor/sub grantee and, should the County's reasonable cost of obtaining or performing the services exceed the amount due the Contractor/sub grantee, collect the difference from the Contractor/sub grantee.

***Right to Withhold Payment.*** If the Contractor/sub grantee materially breaches any provision of this Agreement, the County shall have a right to withhold all payments due to the Contractor/sub grantee with respect to the services that are the subject of such breach until such breach has been fully cured.

***Specific Performance and Injunctive Relief.*** The Contractor/sub grantee agrees that due to the potential impact on public health, monetary damages may not be an adequate remedy for the Contractor/sub grantee's failure to provide the Services required by this Agreement, and monetary damages may not be the equivalent of the performance of such obligation. Accordingly, the Contractor/sub grantee hereby agrees that the County may seek an order granting specific performance of such obligations of the Contractor/sub grantee in a court of competent jurisdiction within the State of North Carolina. The Contractor/sub grantee further consents to the County seeking injunctive relief (including a temporary restraining order) to assure performance in the event the Contractor/sub grantee breaches the Agreement in any material respect.

***Setoff.*** Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred as a result of the other party's breach of this Agreement, following any applicable cure periods, and provided such party has given notice of its intention to apply a setoff prior to making the payment deduction, together with documentary evidence demonstrating that such party has actually incurred the damages and/or expenses being setoff.

***Other Remedies.*** Except as specifically set forth in the main body of this Agreement, the remedies set forth above shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy

### **Debarment and Suspension**

A contract award (see CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor/sub grantee shall certify compliance.

This contract is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part. 3000. As such, the Contractor/sub grantee is required to verify that none of the Contractor/sub grantee, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

The Contractor/sub grantee is required to comply with 2 CFR Part 180, Subpart C and 2 CFR Part 3000, Subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proper certifies that:

This certification in this clause is a material representation of fact relied upon by the County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available by the County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, Subpart C and 2 CFR Part 3000, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

### **Equal Employment Opportunity**

During the performance of this contract, the Contractor/sub grantee agrees as follows:

1. The Contractor/sub grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor/sub grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor/sub grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

The Contractor/sub grantee will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/sub grantee, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3. The Contractor/sub grantee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor/sub grantee's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor/sub grantee will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by executive Order 11375, and with the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor/sub grantee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor/sub grantee's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or

suspended in whole or in part and the Contractor/sub grantee may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor/sub grantee will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor/sub grantee or vendor. The Contractor/sub grantee will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor/sub grantee becomes involved in, or is threatened with, litigation with a Subcontractor/sub grantee or vendor as a result of such direction by the administering agency the Contractor/sub grantee may request the United States to enter into such litigation to protect the interests of the United States.

#### **Davis-Bacon Requirements**

##### **Labor Wage Determination Number: N/A**

If applicable to this contract, the Contractor/sub grantee agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141-348).

##### ***1. Minimum Wages.***

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor/sub grantee and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1) (iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed

under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor/sub grantee and its sub-Contractor/sub grantees at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

The work to be performed by the classification requested is not performed by a classification in the wage determination.

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor/sub grantee and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor/sub grantee, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor/sub grantee shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor/sub grantee does not make payments to a trustee or other third person, the Contractor/sub grantee may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Contractor/sub grantee, that the applicable

standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor/sub grantee to set aside assets, in a separate account, for the meeting of obligations under the plan or program.

## **2. *Withholding.***

The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor/sub grantee under this contract or any other Federal contract with the same prime Contractor/sub grantee, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor/sub grantee, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor/sub grantee or any sub-Contractor/sub grantee the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Sponsor may, after written notice to the Contractor/sub grantee, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. *Payrolls and Basic Records.***

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor/sub grantee during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor/sub grantee shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractor/sub grantees employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor/sub grantee shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the Contractor/sub grantee will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Sponsor. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm) or its successor site. The prime Contractor/sub grantee is

responsible for the submission of copies of payrolls by all sub-Contractor/sub grantees. Contractor/sub grantees and sub-Contractor/sub grantees shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the Contractor/sub grantee will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Sponsor, the Contractor/sub grantee, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor/sub grantee to require a sub-Contractor/sub grantee to provide addresses and social security numbers to the prime Contractor/sub grantee for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor/sub grantee or Subcontractor/sub grantee or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor/sub grantee or sub-Contractor/sub grantee to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor/sub grantee or sub-contractor/sub grantee shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Sponsor, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor/sub grantee or sub-contractor/sub grantee fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor/sub grantee, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. *Apprentices and Trainees.*

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor/sub grantee to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor/sub grantee is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor/sub grantee's or sub-Contractor/sub grantee's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor/sub grantee will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee

performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor/sub grantee will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### ***5. Compliance with Copeland Act Requirements.***

The Contractor/sub grantee shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### ***6. Subcontracts.***

The Contractor/sub grantee or sub contractor/sub grantee shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Sponsor may by appropriate instructions require, and also a clause requiring the sub contractor/sub grantee to include these clauses in any lower tier subcontracts. The prime Contractor/sub grantee shall be responsible for the compliance by any sub contractor/sub grantee or lower tier sub contractor/sub grantee with all the contract clauses in 29 CFR Part 5.5.

Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a Contractor/sub grantee and a sub contractor/sub grantee as provided in 29 CFR 5.12.

#### ***8. Compliance with Davis-Bacon and Related Act Requirements.***

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

#### ***9. Disputes Concerning Labor Standards.***

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes' clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor/sub grantee (or any of its sub contractor/sub grantees) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### ***10. Certification of Eligibility.***

(i) By entering into this contract, the Contractor/sub grantee certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor/sub grantee's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

**Copeland "Anti-Kickback" Act**

*Contractor/sub grantee.* The Contractor/sub grantee must comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) and the requirements of 29 CFR Part 3 *as may be applicable*, which are incorporated by reference into this contract.

Contractor/sub grantee and sub-contractor/sub grantees are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor/sub grantee and each sub-contractor/sub grantee must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week

*Subcontracts.* The Contractor/sub grantee or sub-contractor/sub grantee shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the Subcontractor/sub grantees to include these clauses in any lower tier subcontracts. The prime Contractor/sub grantee shall be responsible for the compliance by any Subcontractor/sub grantee or lower tier Subcontractor/sub grantee with all of these contract clauses.

*Breach.* A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor/sub grantee and Subcontractor/sub grantee as provided in 29 CFR § 5.12."

**Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

1. Overtime requirements. No Contractor/sub grantee or Subcontractor/sub grantee contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor/sub grantee and any Subcontractor/sub grantee responsible therefor shall be liable for the unpaid wages. In addition, such Contractor/sub grantee and Subcontractor/sub grantee shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of

the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor/sub grantee or Subcontractor/sub grantee under any such contract or any other Federal contract with the same prime Contractor/sub grantee, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor/sub grantee, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor/sub grantee or Subcontractor/sub grantee for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontractor/sub grantees. The Contractor/sub grantee or Subcontractor/sub grantee shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontracts to include these clauses in any lower tier subcontracts. The prime Contractor/sub grantee shall be responsible for compliance by any sub-Contractor/sub grantees or lower tier Subcontractor/sub grantee with the clauses set forth in paragraphs (1) through (4) of this section.”

#### **Rights to Inventions Made Under a Contract or Agreement**

##### ***Patent and Rights in Data***

#### **CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

Except for its own internal use, the Purchaser or Contractor/sub grantee may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor/sub grantee authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. In accordance with 49 CFR § 18.34 and 49 CFR § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for

"Federal Government purposes," any subject data or copyright described in subsections (2)(b)(i) and (2)(b)(ii) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

Any subject data developed under that contract, whether or not a copyright has been obtained; and

Any rights of copyright purchased by the Purchaser or Contractor/sub grantee using Federal assistance in whole or in part.

When federal assistance is awarded for experimental, developmental, or research work, it is the general intention to increase knowledge available to the public rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless determined otherwise, the Purchaser and the Contractor/sub grantee performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agree to make available to the public, either the license in the copyright to any subject data developed in the course of that contract or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor/sub grantee's use whose costs are financed in whole or in part with Federal assistance.

Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor/sub grantee agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor/sub grantee of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor/sub grantee shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

Nothing contained in this clause regarding rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

Data developed by the Purchaser or Contractor/sub grantee and financed entirely without the use of Federal assistance that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor/sub grantee identifies that data in writing at the time of delivery of the contract work.

Unless determined otherwise, the Contractor/sub grantee agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor/sub grantee 's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor/sub grantee agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

The Contractor/sub grantee also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor/sub grantee agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor/sub grantee 's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor/sub grantee agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

The Contractor/sub grantee also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

#### **Procurement of Recovered Materials**

Contractor/sub grantee and Subcontractor/sub grantee must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor/sub grantee and Subcontractor/sub grantees are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

1. The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
2. The Contractor/sub grantee has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

Section 6002(c) establishes exceptions to the preferences for recovery EPA-Designed products if the Contractor/sub grantee can demonstrate the item is:

- Not reasonably available within a timeframe providing for compliance with the contract performance schedule.
- Fails to meet reasonable contract performance requirements; or
- Is only available at an unreasonable price.

Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>."

**Safeguarding Personal Identifiable Information:**

Contractor/sub grantee will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable federal, state, and/or local laws regarding privacy and obligations of confidentiality.

**DHS Seal, Logo, and Flags**

The Contractor/sub grantee shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.



## **COMMUNITY DEVELOPMENT**

### **MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021** **AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

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

**DATE: 5/4/2021**

**SUBJECT: FUNDING AGREEMENT WITH KINGDOM COMMUNITY DEVELOPMENT CORPORATION**

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

**Presenter(s): DEE TAYLOR, DIRECTOR OF COMMUNITY DEVELOPMENT**

#### **BACKGROUND**

At the Board of Commissioners meeting held on February 15, 2021, the Board approved a funding agreement with Kingdom Community Development Corporation for the organization to use Community Development funds for land acquisition, site clearance, and infrastructure and improvements on eight lots as part of a multi-phased affordable housing development project. The site is located on Elizabeth Street and Lee Street in Spring Lake. Kingdom Community Development Corporation is expected to complete this phase of the development and is preparing for Phase II which will involve construction of four single-family units.

As required by the U.S. Department of Housing and Urban Development (HUD), Cumberland County Community Development has set aside at least 15 percent of its HOME Investment Partnerships Program (HOME) allocation for specific projects to be undertaken by a private nonprofit, community-based organization called a Community Housing Development Organization (CHDO). The CHDO must meet certain requirements such as: maintaining a certain legal status, organizational structure, and capacity and experience. Kingdom Community Development Corporation has served as the CHDO for Cumberland County for many years and has been involved in expanding new affordable housing for both homebuyers and renters.

Community Development desires to enter into an agreement with Kingdom Community Development Corporation to construct the affordable housing units. Community Development funds in the amount up to

\$500,000 are available for construction (Phase II) of this project. Once completed, the project will serve households with an income at or below 80% of the area median income.

### **RECOMMENDATION / PROPOSED ACTION**

Community Development Staff recommends and requests that the following item be placed on the May 17th Board of Commissioners agenda as a consent item:

- Approve the funding agreement with Kingdom Community Development Corporation in the amount not to exceed \$500,000.

### **ATTACHMENTS:**

Description	Type
Funding Agreement with Kingdom Community Development Corporation	Backup Material

**FUNDING AGREEMENT BETWEEN  
CUMBERLAND COUNTY COMMUNITY DEVELOPMENT  
AND  
KINGDOM COMMUNITY DEVELOPMENT CORPORATION**

**THIS AGREEMENT** entered this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between Cumberland County (herein called the "**County**") and Kingdom Community Development Corporation, a Community Housing Development Organization (herein called the "**CHDO**") located at 127 N. Main Street, Spring Lake, North Carolina.

**WHEREAS**, the County has received funds from the Department of Housing and Urban Development under the Home Investment Partnerships Program (HOME); and,

**WHEREAS**, the County wishes to engage the Community Housing Development Organization (CHDO) to assist the County in utilizing such funds;

**NOW, THEREFORE**, it is agreed between the parties hereto that:

**I. SCOPE OF SERVICES**

**A. Activities**

The CHDO will be responsible for administering funds in a manner satisfactory to the County and consistent with any standards required as a condition of providing these funds. Funds granted to the CHDO under the CHDO set-aside must meet the "own, develop, or sponsor" requirement in 24 CFR Part 92.

1. Phase II: Construction – HOME funds will be utilized for the construction of four single-family homes located on the property of Elizabeth and Lee Streets in Spring Lake, North Carolina as part of a multi-phased affordable housing development project. The dwelling units will be occupied by low to moderate income households.
2. Development of Other Eligible CHDO Projects. Any funds remaining from the CHDO set-aside, entitlement and match funds that are not used on the development of the project described above may be used by the CHDO to assist in the development of one or more eligible projects as the CHDO and the County may mutually agree in writing in an Addendum to this Agreement. The funds may be used to a) acquire and/or rehabilitate rental housing; b) newly construct rental housing; c) acquire and/or rehabilitate homebuyer properties; or d) newly construct homebuyer properties. It is understood that the CHDO will provide a specific working budget and realistic timetable as it relates to acquisition, construction/rehabilitation, soft costs, development fees and other allowable costs/activities prior to any fund usage, identifying all sources and uses of funds and allocate HOME and non-HOME funds to activities. The CHDO will ensure that all activities conducted under this Agreement will comply with the project requirements in 24 CFR 92, subpart F and the affirmative marketing requirements in accordance with 24 CFR 92.351.

**B. Property Standards**

The CHDO will ensure that all properties acquired, improved, or constructed with grant funds will meet the property standards identified in 24 CFR Part 92.251, the lead-based paint requirements in 92.355 and 24 CFR Part 35 upon completion of the project. In addition, the CHDO must construct all new homes using HUD's Energy Star Standards to lower utility bills, improve comfort, increase project value and reduce air pollution and improve the environment. The CHDO must also ensure that all projects be reviewed by an independent Energy Star Home Rater for each project completed as part of the certification process.

**C. Performance Monitoring**

The County will monitor the performance of the CHDO in accordance with the goals and performance standards required in the funding agreement. Substandard performance as determined by the County will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the CHDO within thirty (30) days after being notified by the County, contract suspension or termination procedures will be initiated.

**II. TIME OF PERFORMANCE**

All construction activities shall be completed no later than December 31, 2022. A final accounting for the expenditure of all County funds shall be submitted no later than January 31, 2023. Any funds that were not expended in accordance with the final accounting shall be remitted with the final accounting.

**III. PAYMENT OF EXPENSES**

**A. Project Expenses**

Project expenses shall be paid based on invoices for actual expenses incurred or paid. Requests for payment must be submitted by the CHDO on forms specified by the County, and adequate and proper documentation of eligible costs incurred in compliance with 24 CFR 92.206 and necessary for HUD Integrated Disbursement Information System (IDIS) requirements. All such expenses shall be in conformance to the approved project budget. A budget revision and approval shall be required prior to payment of any expense not conforming to the approved project budget.

**IV. BANKING REQUIREMENTS**

The CHDO must maintain separate non-interest-bearing checking accounts for management of CHDO set-aside funds and project proceeds. The set-aside account should be called the HOME Investment Trust Account. The project proceeds account should be called the HOME Proceeds Account. In no way are these funds to be commingled with other resources/revenue of Kingdom Community Development Corporation.

**V. FUNDING TERMS**

**A. Project Development Costs**

The County will allocate up to \$500,000 in HOME funds for the development of eligible projects. These funds will be provided as a grant to the CHDO to assist in the multi-phased development of eligible affordable housing projects, as further described in Paragraph I Scope of Services of this Agreement. The CHDO agrees to ensure that the properties acquired, improved, or constructed with HOME funds will meet the affordability standards as further described in Paragraph VIII.B of this agreement.

**TOTAL CONTRACT AMOUNT NOT TO EXCEED: \$500,000**

**B. Future HOME Set-Aside Funds**

Continued funding to the CHDO for HOME eligible projects will be evaluated on an annual basis.

**VI. PROCEEDS**

**A. Sale Proceeds**

1. **Grantee Share:** Thirty percent (30%) of the net sales proceeds from units developed or improved with HOME funds shall be returned to the Grantee. The CHDO shall return thirty percent (30%) of said proceeds to the Grantee within thirty (30) days from the date of closing.
2. **CHDO Share:** The CHDO shall retain seventy percent (70%) of the proceeds from the sale of any property developed or improved by the CHDO with HOME funds. The balance of the sales proceeds retained must be used for HOME eligible activities for low-income families, pursuant to 24 CFR 92.205 (Eligible Activities) and 24 CFR 92.206 (Eligible Project Costs) of the HOME Investment Partnership Program Final Rule. The CHDO further agrees that the proceeds derived from the sale of any property developed or improved by the CHDO with HOME funds shall be expended within 24 months after receipt on HOME eligible activities. All proceeds not expended 24 months after receipt will revert back to the County. All unused proceeds will be returned to the County within 30 days following termination of this agreement.

**B. Rental Proceeds**

The CHDO will retain all proceeds from the rental properties for the purpose of maintenance of the affordable housing units. The CHDO will provide annually an income expense pro forma for each year and in total during the affordability period of the rental project.

## VII. NOTICES

Communications and details concerning this Agreement will be directed to the following contract representatives:

Delores (Dee) Taylor, Director  
Cumberland County Community Development  
P.O. Box 1829  
Fayetteville, NC 28302  
(910) 323-6112  
(910) 323-6114 FAX

James C. Manning, Executive Director  
Kingdom Community Development Corporation  
127 N. Main Street  
Spring Lake, NC 28390  
(910) 436-2426  
(910) 436-2429 FAX

## VIII. PROJECT REQUIREMENTS

A. The CHDO will ensure that all activities undertaken meet the HOME funding requirements as spelled out in 24 CFR Part 92.

B. The CHDO will take full responsibility for ensuring that housing assisted with HOME funds meets the affordability requirements of 24 CFR Part 92.252 (Qualifications as affordable housing: Rental Housing) and 24 CFR Part 92.254 (Qualifications as affordable housing: Homeownership), as applicable. The period of affordability is based on the amount of HOME funds invested in the property, as indicated below:

<b>Rental Housing Activity</b>	<b>Minimum period of affordability in years</b>
Rehabilitation or acquisition of existing housing per units amount of HOME funds: Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000 or rehabilitation involving refinancing	15
New Construction or acquisition of newly constructed housing	20
<b>Homeownership Assistance Home Amount per unit</b>	<b>Minimum period of affordability in years</b>
Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15

The CHDO will ensure that the properties continue to meet the affordability period by including a Declaration of Deed Restriction and Written Recapture Agreement in all documents transferring ownership of the property. If the project is owner-occupied, the CHDO shall ensure that any Promissory Notes and Mortgages recorded for homebuyers shall be in compliance with 24 CFR 92.254 and that the CHDO will monitor each unit for principal residency in compliance with 24 CFR 92.254(a)(3). If the property acquired/improved with HOME funds fails to meet the affordability period as described above, the County will implement its Recapture Provision, as further described in Exhibit I to this Agreement and incorporated herein by reference. If the property is sold through a lease-purchase agreement, the CHDO will ensure compliance with 24 CFR 92.254(a)(ii)(7).

C. The CHDO agrees that the properties not sold to an eligible homebuyer within six months of construction completion by receiving a certificate of occupancy will be converted to a HOME rental unit that complies with all HOME requirements for the period of affordability applicable to such rental units. The CHDO agrees to enforce the period of affordability in accordance with 24 CFR 92.252.

The County shall provide the CHDO with the initial rents to be charged. Any increase in initial rents and any subsequent increases during the time of term of the affordability period must be approved in writing by the County prior to implementation. The County reserves the right to reduce the contract rents in the event that the HOME Program Rent Limits are lowered during the term of affordability period. Gross rents must at all time remain below the maximum HOME Program Rent Limits established annually by HUD, as required pursuant to 24 CFR 92.252. If the CHDO does not meet the conversion and affordability requirements as stated, the CHDO shall be required to repay HOME funds.

D. The CHDO certifies that the activities carried out with CDBG funds, if applicable, shall meet the CDBG Program's National Objective of providing principal benefit to low/moderate income persons, as defined in 24 CFR

570.208(a)(2)(C). As a part of meeting this National Objective, the CHDO shall ensure that it verifies the income of each of its clients in a manner consistent with the Section 8 definition of income, as defined in 24 CFR 570.3.

E. The CHDO will conduct annual on-site maintenance inspections of any rental housing acquired with CHDO funds to determine compliance with the Section 8 Housing Quality Standards (HQS) and the HOME Program requirements. These inspections will be conducted for each unit until expiration of the period of affordability for the HOME assisted unit. Community Development Housing Services staff will perform inspections until such time as CHDO staff has been properly trained by Community Development staff in conducting Section 8 HQS inspections. Following training, inspections shall be the responsibility of the CHDO but will only be relinquished to the CHDO when the Community Development Director has reasonably determined that CHDO staff has been adequately trained.

F. The CHDO will be responsible for complying with the provisions of this Agreement even when the CHDO designates a third party or parties to undertake all or any part of the program. All third parties must be bound in writing to the same provisions as required by this Agreement.

G. The CHDO will comply with all lawful requirements of the County necessary to ensure that the program is carried out in accordance with the CHDO's certifications including certifications of assumption of labor standards responsibilities outlined in 24 CFR Part 92.

H. The employees, agents, or officials of the CHDO, including members of the governing body, who exercise any function or responsibility with respect to the program, or their immediate family members, during the tenure of the subject person or for one year thereafter, will have no direct or indirect financial interest in any contract, subcontract or the proceeds thereof for work to be performed in connection with the program assisted under this Agreement. The same prohibition will be incorporated in all such contracts and subcontracts.

I. The assistance provided under this Agreement will not be used by the CHDO to pay a third party to lobby the County for funding approval, approval of applications for additional assistance, or any other approval or concurrence of the County required under this Agreement. However, HOME funds may be used to pay reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitations, if these services are eligible as program costs. No fees for these services will be paid until invoices are submitted by the CHDO and reviewed for approval by the Community Development Director.

J. The CHDO will reimburse the County for any amount of HOME funds determined by the County to have been improperly expended.

K. The CHDO will notify the County in writing of any changes in its 501(c)(3) tax exempt status throughout the specified period of affordability, or any other change to the nonprofit which alters the organization such that it no longer meets the definition of a CHDO as provided under 24 CFR Part 92. Any change in effective control of the ownership or management of the CHDO shall require prior written approval of the County. The CHDO will not be relieved of any of the requirements, duties or obligation of this Agreement unless the County consents in writing.

L. The CHDO agrees to repay, remit or return to the County any amount of remaining HOME funds provided under this Agreement, if the County determines that the CHDO does not have the capacity to carry out its HOME program on schedule or in a timely matter. The CHDO will have thirty (30) days to cure identified deficiencies or to submit a plan of corrective action acceptable to Community Development. Upon failure of the CHDO to comply, the County will provide a written determination of capacity to the CHDO ten (10) days prior to any request to remit, return or repay the HOME funds.

M. The CHDO must meet the per unit subsidy limits as required by 24 CFR 92.250.

N. The CHDO will comply with the conditions of 24 CFR 92.257 regarding primary religious organizations.

## **IX. GENERAL CONDITIONS**

### **A. General Compliance**

The CHDO agrees to comply with the requirements of 24 CFR Part 92 [the HOME Investment Partnership Program (HOME)] as well as 24 CFR Part 570 [Community Development Block Grant CDBG) Program, if applicable. The CHDO also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies

governing the funds provided under this contract. The CHDO further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

**B. Independent Contractor**

Nothing contained in this Agreement is intended to, or will be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The CHDO will at all times remain an "Independent Contractor" with respect to the services to be performed under this Agreement. As an independent contractor, the CHDO will comply with all legal requirements for payment of unemployment compensation, FICA, workers compensation insurance, and retirement, life and/or medical insurance as applicable for the CHDO's employees, and the County will have, and assumes, no responsibility or liability, therefore.

**C. Hold Harmless**

The CHDO will hold harmless, defend and indemnify the County from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the CHDO's performance or nonperformance of the services or subject matter called for in this Agreement.

**D. Workers' Compensation**

The CHDO will provide Workers' Compensation Insurance for all of its employees involved in the performance of this contract.

**E. Insurance & Bonding**

The CHDO will carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum will purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the County. The CHDO will comply with the bonding and insurance requirements of 2 CFR Part 200.

**F. Debarred / Suspended**

The CHDO must not make any award or permit any award (subgrant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 CFR part 2424.

**G. County Recognition**

The CHDO will insure recognition of the role of the County in providing services through this contract. All activities, facilities and items utilized pursuant to this contract will be prominently labeled as to funding source. In addition, the CHDO will include a reference to the support provided herein in all publications made possible with funds under this Agreement.

**H. Amendments**

The County or the CHDO may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by the County's governing body. Such agreements will not invalidate this Agreement, nor relieve or release the County or CHDO from its obligations under this Agreement. The County may, at its discretion, amend this Agreement to conform with Federal, State or local government guidelines, policies and available funding amounts, or for other reasons. If such amendment results in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by the written amendment signed by both County and CHDO.

**I. Suspension or Termination**

Either party may terminate this contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial termination of the Scope of Service in Paragraph 1A above may only be undertaken with the prior approval of the County. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the CHDO under this Agreement will, at the option of the County, become the property of the County, and the CHDO will be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination. The County may also suspend or terminate this Agreement, in whole or in part, if the CHDO materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the County may declare the CHDO ineligible for any further participation in the County's contracts, in addition

to other remedies as provided by law. In the event there is probable cause to believe the CHDO is in noncompliance with any applicable rules or regulations, the County may withhold up to fifteen percent (15%) of said contract funds until such time as the CHDO is found to be in compliance by the County, or is otherwise adjudicated to be in compliance.

**J. Agency and Authority**

The COUNTY hereby designates the Director of Cumberland County Community Development as its exclusive agent with respect to this Agreement. The Director is authorized, on behalf of the COUNTY, to negotiate directly with the CHDO on all matters pertaining to this Agreement. The CHDO agrees that all of its dealings with the COUNTY in respect to the terms and conditions of this Agreement will be exclusively with the same Director. Further, the CHDO specifically agrees that it will not implement any requested modifications in the specifications of any of the services subject to this Agreement except in the manner described in the paragraph entitled MODIFICATION.

**X. ADMINISTRATIVE REQUIREMENTS**

**A. Financial Management**

**1. Accounting Standards**

The Subrecipient agrees to comply with the administrative requirements specified in 2 CFR part 200. The Subrecipient further agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary source documentation as necessary.

**2. Cost Principles**

The Subrecipient will administer its program in conformance with 2 CFR Part 230, "Cost Principles for Non-Profit Organizations"; 2 CFR Part 220, "Cost Principles for Educational Institutions"; 2 CFR Part 225, "Costs Principles for State and Local Governments" as applicable. These principles will be applied for all costs incurred whether charged on a direct or indirect basis.

**B. Documentation and Record-Keeping**

**1. Records to be Maintained**

The CHDO will maintain all records required by the Federal regulations specified in 24 CFR 92.508 and 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records will include but are not limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken are eligible under the HOME and CDBG programs;
- c. Records documenting long-term affordability;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with HOME and CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the HOME & CDBG program; and
- f. Financial records as required by 24 CFR Part 92 and 24 CFR Part 570, and 2 CFR Part 200.

**2. Retention**

The CHDO will retain all records pertinent to expenditures incurred under this contract for a period of five (5) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this contract will be retained for five (5) years after the CHDO has received final payment. Notwithstanding the above, if there is/are litigation, claims, audits, negotiations or other activities that involve any of the records cited and that have started before the expiration of the five (5) year period, then such records must be retained until completion of actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

**3. Property Records**

The CHDO will maintain a real property inventory that identifies properties purchased, improved or sold. Properties retained will continue to meet eligibility criteria and will conform to the affordability restrictions as specified in 24 CFR Part 92.252 or 92.254, as applicable.

#### **4. Close Outs**

The CHDO's obligation to the County will not end until all closeout requirements through the Integrated Disbursement and Information System (IDIS) are completed. Activities during this close-out period will include, but are not limited to, making final payments, tracking un-spent cash advances, proceeds balances, accounts receivable, and determining the custodianship of records.

#### **5. Audits & Inspections**

The Subrecipient agrees to have an annual agency audit conducted in accordance with 2 CFR part 200. If the Subrecipient does not meet the threshold requirements for an annual audit in accordance with 2 CFR part 200, the Subrecipient will have an annual audit conducted by an independent certified public accountant in accordance with generally accepted government auditing standards (GAGAS). All Subrecipient records with respect to any matters covered by this Agreement will be made available to the Grantee, grantor agency, its designees or the Federal Government, at any time during normal business hours, as often as the Grantee or grantor agency deems necessary, to audit, examine and make excerpts or transcripts of all relevant data. The Grantee will send written notice of any deficiencies to the Subrecipient within fifteen (15) days following audit/monitoring. Any deficiencies noted in monitoring reports must be fully cleared by the Subrecipient within thirty (30) days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above monitoring requirements will constitute a violation of this contract and may result in the withholding of future payments.

### **C. Reporting and Payment Procedures**

#### **1. Payment Procedures**

The County will pay the CHDO funds available under this contract based upon information submitted by the CHDO and consistent with the activities described in Paragraph I Scope of Services of this Agreement and the following standards:

- a. **Payment of Expenses:** The CHDO will be responsible for the collection of all necessary source documentation to substantiate all expenditures prior to submission to the County for payment. The CHDO's Executive Director will submit all requests for payment with a cover memorandum consistent with the County's policy and the following source documentation:
- b. **Payroll Expenses:** All requests for payment of eligible payroll expenses will include a copy of a timesheet (in the format specified by the County) signed and dated by both the employee and the employee's supervisor. To accompany the timesheet, the CHDO will submit a work progress report to correspond to the hours submitted for payment. The work progress report will include, at a minimum, a synopsis of the dates and times worked, the number of clients assisted, the specific services that were provided to the clients, and/or the services that were performed for the program.
- c. **Other Expenses:** All requests for payment of eligible expenses will include a copy of the invoice or receipt for the expenditure as well as the date and check number documenting payment of the expense by the CHDO (or a copy of the check will suffice). The invoice / receipt should indicate the date the expense was incurred, the name of the CHDO (if applicable), and the amount of the expense.
- d. **Documentation of Expenditure of Proceeds:** To document the expenditure of CHDO proceeds committed to the eligible HOME projects of this Agreement, the CHDO will submit copies of all invoices for eligible expenses paid from the CHDO proceeds. These copies will be submitted to the County within 30 days after payment of the expense. A cover memorandum should accompany the documentation indicating the name of the project that the expense was made for in accordance with this agreement.
- e. **Frequency:** The CHDO will submit requests for payment of eligible expenditures incurred on behalf of the program to the Grantee at least on a monthly basis. The County reserves the right to liquidate funds available under this contract for costs incurred by the County on behalf of the CHDO.

**2. Progress Reports**

- a. Monthly Report(s) - The CHDO will submit to the County on a monthly basis a Program Income Report. This report will include the program income, if applicable, (rents, fees, etc.) collected for the month, the expenses that were paid from that income; and the balance on hand. The report should also have attached copies of bills paid for eligible expenses as supporting documentation.
- b. Other Reports - The CHDO will submit the following reports to the County on a quarterly basis:
  - (i) Project Inventory Report – This report will include the activities conducted to date to locate a project site, the number of units acquired/constructed, location of units acquired; the cost per unit, rehabilitation/construction costs, and the schedule for when the rehabilitation/construction will be completed and the unit leased/sold.
  - (ii) HOME Rental Project Activity Report for any project involving the acquisition or rehabilitation of rental housing;
  - (iii) Project Proceeds Report – This report details the amount of proceeds collected during the period, the amount currently on hand, and the amount expended on eligible home activities. This report should also include details on the nature of the expense and including copies of bills and/or invoices to document the expense.
  - (iv) Bank Statements showing all activity for the Project Proceeds bank account during the report period.
  - (v) Budget Activity Report.

All quarterly reports are due to the County by October 15<sup>th</sup>, January 15<sup>th</sup>, April 15<sup>th</sup> and July 15<sup>th</sup>. All monthly reports will be due to the County by the 15<sup>th</sup> of the month (i.e. July's report will be due August 15<sup>th</sup>).

**3. Project Set Up and Completion**

The CHDO will provide information to the County on the proposed activities of projects for set-up in IDIS, ten (10) days prior to CHDO obligation of any funds. The CHDO will provide project completion records to the County no later than fifteen (15) days after the final expenditure on the project has been made. The County will provide all required forms to the CHDO. The CHDO will spend its total allocation of HOME funds on eligible housing activities by the end of the fifth year or less after its project has been entered into IDIS or it must remit the remaining funds to the United States Treasury.

**D. Procurement**

**1. Compliance**

The CHDO will comply with current County policy concerning the purchase of equipment and will maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets, including but not limited to, unexpended proceeds, will revert to the County upon termination of this contract. If this Agreement is terminated during the first twelve (12) months, all personal property acquired with HOME funds will revert to the County.

**2. Other Standards**

The CHDO will procure all materials, property, or services in accordance with the requirements of 2 CFR Part 200, Procurement Standards, and will subsequently follow Subpart C, Sections .30-.37, Property Standards, as modified by 24 CFR 570.502(b)(3)(vi), covering utilization and disposal of property.

**E. Other Program Requirements**

The CHDO agrees to comply with the following requirements of 24 CFR Part 92, Subpart H:

1. The federal requirements regarding nondiscrimination established in 24 CFR 92.350;
2. If the project contains five (5) or more HOME assisted units, the CHDO agrees to comply with the Affirmative Marketing responsibilities as enumerated by the County in accordance with 24 CFR 92.351;

3. Any displacement, relocation, and acquisition requirements imposed by the County consistent with 24 CFR 92.353;
4. The employment and contracting requirements in 24 CFR 92.354;
5. The conflict-of-interest provisions prescribed in 24 CFR 92.356(f); and
6. The consultant activities provision prescribed in 24 CFR 92.358.

## **XI. MISCELLANEOUS**

### **A. Merger Clause**

This Agreement, including the exhibits and attachments made herein, is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. No course of prior dealings between the parties will be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

### **B. Non-appropriation Clause**

If appropriations of money to conduct and administer the presently scheduled program are lawfully reduced or terminated, or it is deemed in the public interest and necessity for the health, safety, or welfare of the public to so reduce or terminate this scheduled program, the Grantee, at its option, has the right to terminate this Agreement effective upon the end of the fiscal year. The County will give the CHDO written notice of termination under the provisions of this paragraph immediately upon receipt of actual notice by the Grantee of a reduction or termination of appropriations of money for the scheduled program, or any other necessity to reduce or terminate the program.

### **C. Environmental Review Clearance**

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by Cumberland County of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned on the County's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

### **D. Iran Divestment Act Certification**

Contractor hereby certifies that Contractor, and all subcontractors, are not on the Iran Final Divestment List ("List") created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.55-69. Contractor shall not utilize any subcontractor that is identified on the List.

### **E. E-Verify**

Contractor shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

## **XII. INCORPORATED DOCUMENTS**

The following documents or Exhibits to this contract are hereby made a part of this Contract and fully incorporated herein by reference, and compliance with the applicable provisions of these documents or Exhibits is a condition of this Contract.

- Exhibit I - Recapture Provision;
- Exhibit II – Certification Regarding Lobbying; and
- Exhibit III - Federal Contracting Requirements.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized representatives effective the day and year first above written.

**COUNTY OF CUMBERLAND, NC**

**ATTEST:**

By: \_\_\_\_\_  
Clerk to the Board of  
County Commissioners

By: \_\_\_\_\_  
CHARLES EVANS, Chair      Date

[OFFICIAL SEAL]

**ATTEST:**

**KINGDOM COMMUNITY  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Chair      Date

[SEAL]

**PRE-AUDIT CERTIFICATE:**

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

**APPROVED FOR LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
County Finance Director      Date

By: \_\_\_\_\_  
County Attorney's Office      Date  
Agreement Expires:  
(X) Renewable  
( ) Non-Renewable

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, personally appeared before me this day and acknowledged that he/she is (Assistant) Secretary of KINGDOM COMMUNITY DEVELOPMENT CORPORATION, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Chair, sealed with its corporate seal and attested by him/her as its (Assistant) Secretary.

WITNESS my hand and Notarial Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## **EXHIBIT I**

### **CUMBERLAND COUNTY COMMUNITY DEVELOPMENT RECAPTURE PROVISION**

Recapture provision allows a homebuyer to sell their property to any willing buyer, the sale of the property during the affordability period triggers repayment of any direct HOME subsidy received by the original homebuyer when he/she purchased the home.

In accordance with the applicable homeownership recapture provisions outlined in 24 CFR Part 92.254(a)(5)(ii), Cumberland County shall enforce recapture provisions where HOME funds are provided as a direct subsidy to the homebuyer as down payment and/or purchase price assistance. The County requires the recapture of the entire amount of its HOME-funded homeownership housing assistance from net sales proceeds when the original homebuyer sells the property during the affordability period. Net proceeds are the funds remaining from the sale of the property by the original homebuyer less the repayment of the outstanding balance on any superior mortgage and any closing costs. To the extent that the net proceeds are available at closing, the principal balance of the HOME funds is due and payable. Under no circumstances will the County recapture more than is available from the net proceeds of the sale. In the event that net proceeds exceed the amount necessary to repay the County HOME funds, excess proceeds may be paid to the original homebuyer once HOME funds have been repaid to the County.

The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD. The County may use purchase options, rights of refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. In these instances, additional HOME funds may be invested to acquire and/or rehabilitate the unit to ensure that its affordability is preserved. If during the original affordability period, the homebuyer obtains a redemptive ownership interest in the property the affordability restrictions will be revived according to the original terms.

The recapture provision will be enforced through a deed of trust, promissory note, deed restriction or land covenant, written recapture agreement, and/or other similar mechanisms.

## EXHIBIT II

### **CERTIFICATION REGARDING LOBBYING**

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Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

## EXHIBIT III

### **Federal Contracting Requirements**

This attachment is incorporated into the Contract between the County and the Contractor/sub grantee. Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. All references to the "Contractor/sub grantee" or "Company" or "Vendor" or "Provider" shall be deemed to mean the Contractor/sub grantee.

This Contract may be funded in whole or in part with federal funding. As such, federal laws, regulations, policies and related administrative practices apply to this Contract. The most recent of such federal requirements, including any amendments made after the execution of this Contract shall govern the Contract, unless the federal government determines otherwise. The Contractor/sub grantee is responsible for complying with all applicable provisions, updates or modifications that occur in the future relating to these clauses.

To the extent possible, the federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.CFR Part 200, including any certifications and contractual provisions required by any federal statutes or regulation referenced therein to be included in this contract are deemed incorporated into this contract by reference and shall be incorporated into any sub-agreement or subcontract executed by the Contractor/sub grantee pursuant to its obligations under this Contract. The Contractor/sub grantee and its sub-Contractor/sub grantees, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the original contract then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to Work to be performed under this contract.

### **Drug Free Workplace Requirements**

Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All Contractor/sub grantees entering into federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988.

### **Contractor/sub grantee Compliance**

The Contractor/sub grantee shall comply with all uniform administrative requirements, cost principles, and audit requirement for federal awards.

### **Conflict of Interest**

The Contractor/sub grantee must disclose in writing any potential conflict of interest to the County of Cumberland or pass through entity in accordance with federal policy.

### **Mandatory Disclosures**

The Contractor/sub grantee must disclose in writing all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. **Energy Conservation** The Contractor/sub grantee and Sub Contractor/sub grantees agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq.

### **Federal Water Pollution Control Act**

For contracts in excess of \$150,000, the Contractor/sub grantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor/sub grantee agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The Contractor/sub grantee agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

### **Clean Air Act**

For contracts in excess of \$150,000, the Contractor/sub grantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Act as amended (33 USC § 1251-1387).

The Contractor/sub grantee agrees to report any violation to the County immediately upon discovery. The Contractor/sub grantee understands and agrees that the County will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. Contractor/sub grantee must include this requirement in all subcontracts that exceed \$150,000.

The Contractor/sub grantee agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### **Access to Records and Reports**

The Contractor/sub grantee must maintain an acceptable cost accounting system. The Contractor/sub grantee agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor/sub grantee which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor/sub grantee agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor/sub grantee agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

All Contractor/sub grantees and their successors, transferees, assignees, and Sub Contractor/Sub Grantees acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff.

### **No Obligation by Federal Government**

The County and the Contractor/sub grantee acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, the Contractor/sub grantee, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor/sub grantee agrees to include the above clause in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify the sub-Contractor/sub grantee who will be subject to its provisions.

#### **Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor/sub grantee acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor/sub grantee's actions pertaining to this contract. Upon execution of the underlying contract, the Contractor/sub grantee certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the Federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor/sub grantee further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor/sub grantee to the extent the Federal Government deems appropriate.

The Contractor/sub grantee also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor/sub grantee, to the extent the Federal Government deems appropriate.

The Contractor/sub grantee agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the sub-Contractor/sub grantees who will be subject to the provisions.

#### **Changes**

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. Contractor/sub grantee's failure to do so shall constitute a material breach of the contract.

#### **Termination**

***Termination Without Cause.*** The County may immediately terminate this Agreement at any time without cause by giving 30 days' written notice to the Contractor/sub grantee.

***Termination for Default by Either Party.*** By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or

The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Agreement if the default is not cured within the specified period.

***Additional Grounds for Default Termination by the County.*** By giving written notice to the Contractor/sub grantee, the County may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

The Contractor/sub grantee makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Contractor/sub grantee's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or

The Contractor/sub grantee takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

***Cancellation of Orders and Subcontracts.*** In the event this Agreement is terminated by the County for any reason prior to the end of the term, the Contractor/sub grantee shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Contractor/sub grantee shall submit a statement to the County showing in detail the services performed under this Agreement to the date of termination.

***No Effect on Taxes, Fees, Charges, or Reports.*** Any termination of the Agreement shall not relieve the Contractor/sub grantee of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve the Contractor/sub grantee of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Contractor/sub grantee from any claim for damages previously accrued or then accruing against the Contractor/sub grantee.

***Obligations Upon Expiration or Termination.*** Upon expiration or termination of this Agreement, the Contractor/sub grantee shall promptly (a) return to the County all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the County; (b) deliver to the County all Work Product; (c) allow the County or a new vendor access to the systems, software, infrastructure, or processes of the Contractor/sub grantee that are necessary to migrate the Services to a new vendor; and (d) refund to the County all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

***No Suspension.*** In the event that the County disputes in good faith an allegation of default by the Contractor/sub grantee, notwithstanding anything to the contrary in this Agreement, the Contractor/sub grantee agrees that it will not terminate this Agreement or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Contractor/sub grantee, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

***Authority to Terminate.*** The County Manager or their designee is authorized to terminate this Agreement on behalf of the County.

***Audit.*** During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Contractor/sub grantee necessary to evaluate Contractor/sub grantee's compliance with the terms and conditions of the Agreement or the County's payment obligations. The County shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Contractor/sub grantee. However, if non-compliance is found that would have cost the County in excess of \$5,000 but for the audit, then the Contractor/sub grantee shall be required to reimburse the County for the cost of the audit.

## **Remedies**

***Liquidated Damages:*** The County and the Contractor/sub grantee acknowledge and agree that the County may incur costs if the Contractor/sub grantee fails to meet the delivery times set forth in the Request for Proposal for the Products and Services. The parties further acknowledge and agree that: (a) the County may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the County might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor/sub grantee agrees to pay liquidated damages at the rates set forth in the Request for Proposal (if applicable). The parties agree that the liquidated damages set forth in the Request for Proposal shall be the County's exclusive remedy for loss of goodwill and administrative costs, attributable to a failure by the Contractor/sub grantee to meet such delivery times, but shall not be the remedy for the cost to cover or other direct damages.

***Right to Cover:*** If the Contractor/sub grantee fails to meet any completion date or resolution time set forth in this Agreement (including the Exhibits), and it fails to cure such default within one (1) business day after receiving written notice from the County of such failure, the County may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have:

Employ such means as it may reasonably deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Contractor/sub grantee is again able to resume performance under this Agreement; and

Deduct any and all reasonable expenses incurred by the County in obtaining or performing the Services from any money then due or to become due the Contractor/sub grantee and, should the County's reasonable cost of obtaining or performing the services exceed the amount due the Contractor/sub grantee, collect the difference from the Contractor/sub grantee.

***Right to Withhold Payment.*** If the Contractor/sub grantee materially breaches any provision of this Agreement, the County shall have a right to withhold all payments due to the Contractor/sub grantee with respect to the services that are the subject of such breach until such breach has been fully cured.

***Specific Performance and Injunctive Relief.*** The Contractor/sub grantee agrees that due to the potential impact on public health, monetary damages may not be an adequate remedy for the Contractor/sub grantee's failure to provide the Services required by this Agreement, and monetary damages may not be the equivalent of the performance of such obligation. Accordingly, the Contractor/sub grantee hereby agrees that the County may seek an order granting specific performance of such obligations of the Contractor/sub grantee in a court of competent jurisdiction within the State of North Carolina. The Contractor/sub grantee further consents to the County seeking injunctive relief (including a temporary restraining order) to assure performance in the event the Contractor/sub grantee breaches the Agreement in any material respect.

***Setoff.*** Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred as a result of the other party's breach of this Agreement, following any applicable cure periods, and provided such party has given notice of its intention to apply a setoff prior to making the payment deduction, together with documentary evidence demonstrating that such party has actually incurred the damages and/or expenses being setoff.

***Other Remedies.*** Except as specifically set forth in the main body of this Agreement, the remedies set forth above shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy

### **Debarment and Suspension**

A contract award (see CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor/sub grantee shall certify compliance.

This contract is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part. 3000. As such, the Contractor/sub grantee is required to verify that none of the Contractor/sub grantee, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

The Contractor/sub grantee is required to comply with 2 CFR Part 180, Subpart C and 2 CFR Part 3000, Subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proper certifies that:

This certification in this clause is a material representation of fact relied upon by the County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available by the County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, Subpart C and 2 CFR Part 3000, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

### **Equal Employment Opportunity**

During the performance of this contract, the Contractor/sub grantee agrees as follows:

1. The Contractor/sub grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor/sub grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor/sub grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

The Contractor/sub grantee will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/sub grantee, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3. The Contractor/sub grantee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor/sub grantee's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor/sub grantee will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by executive Order 11375, and with the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor/sub grantee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor/sub grantee's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or

suspended in whole or in part and the Contractor/sub grantee may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor/sub grantee will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor/sub grantee or vendor. The Contractor/sub grantee will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor/sub grantee becomes involved in, or is threatened with, litigation with a Subcontractor/sub grantee or vendor as a result of such direction by the administering agency the Contractor/sub grantee may request the United States to enter into such litigation to protect the interests of the United States.

#### **Davis-Bacon Requirements**

##### **Labor Wage Determination Number: N/A**

If applicable to this contract, the Contractor/sub grantee agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141-348).

##### **1. *Minimum Wages.***

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor/sub grantee and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1) (iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed

under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor/sub grantee and its sub-Contractor/sub grantees at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

The work to be performed by the classification requested is not performed by a classification in the wage determination.

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor/sub grantee and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor/sub grantee, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor/sub grantee shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor/sub grantee does not make payments to a trustee or other third person, the Contractor/sub grantee may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Contractor/sub grantee, that the applicable

standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor/sub grantee to set aside assets, in a separate account, for the meeting of obligations under the plan or program.

## **2. *Withholding.***

The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor/sub grantee under this contract or any other Federal contract with the same prime Contractor/sub grantee, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor/sub grantee, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor/sub grantee or any sub-Contractor/sub grantee the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Sponsor may, after written notice to the Contractor/sub grantee, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. *Payrolls and Basic Records.***

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor/sub grantee during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor/sub grantee shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractor/sub grantees employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor/sub grantee shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the Contractor/sub grantee will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Sponsor. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm) or its successor site. The prime Contractor/sub grantee is

responsible for the submission of copies of payrolls by all sub-Contractor/sub grantees. Contractor/sub grantees and sub-Contractor/sub grantees shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the Contractor/sub grantee will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Sponsor, the Contractor/sub grantee, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor/sub grantee to require a sub-Contractor/sub grantee to provide addresses and social security numbers to the prime Contractor/sub grantee for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor/sub grantee or Subcontractor/sub grantee or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor/sub grantee or sub-Contractor/sub grantee to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor/sub grantee or sub-contractor/sub grantee shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Sponsor, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor/sub grantee or sub-contractor/sub grantee fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor/sub grantee, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. *Apprentices and Trainees.*

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor/sub grantee to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor/sub grantee is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor/sub grantee's or sub-Contractor/sub grantee's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor/sub grantee will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee

performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor/sub grantee will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### ***5. Compliance with Copeland Act Requirements.***

The Contractor/sub grantee shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### ***6. Subcontracts.***

The Contractor/sub grantee or sub contractor/sub grantee shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Sponsor may by appropriate instructions require, and also a clause requiring the sub contractor/sub grantee to include these clauses in any lower tier subcontracts. The prime Contractor/sub grantee shall be responsible for the compliance by any sub contractor/sub grantee or lower tier sub contractor/sub grantee with all the contract clauses in 29 CFR Part 5.5.

Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a Contractor/sub grantee and a sub contractor/sub grantee as provided in 29 CFR 5.12.

#### ***8. Compliance with Davis-Bacon and Related Act Requirements.***

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

#### ***9. Disputes Concerning Labor Standards.***

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes' clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor/sub grantee (or any of its sub contractor/sub grantees) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### ***10. Certification of Eligibility.***

(i) By entering into this contract, the Contractor/sub grantee certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor/sub grantee's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

#### **Copeland "Anti-Kickback" Act**

*Contractor/sub grantee.* The Contractor/sub grantee must comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) and the requirements of 29 CFR Part 3 *as may be applicable*, which are incorporated by reference into this contract.

Contractor/sub grantee and sub-contractor/sub grantees are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor/sub grantee and each sub-contractor/sub grantee must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week

*Subcontracts.* The Contractor/sub grantee or sub-contractor/sub grantee shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the Subcontractor/sub grantees to include these clauses in any lower tier subcontracts. The prime Contractor/sub grantee shall be responsible for the compliance by any Subcontractor/sub grantee or lower tier Subcontractor/sub grantee with all of these contract clauses.

*Breach.* A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor/sub grantee and Subcontractor/sub grantee as provided in 29 CFR § 5.12."

#### **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

1. Overtime requirements. No Contractor/sub grantee or Subcontractor/sub grantee contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor/sub grantee and any Subcontractor/sub grantee responsible therefor shall be liable for the unpaid wages. In addition, such Contractor/sub grantee and Subcontractor/sub grantee shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of

the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor/sub grantee or Subcontractor/sub grantee under any such contract or any other Federal contract with the same prime Contractor/sub grantee, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor/sub grantee, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor/sub grantee or Subcontractor/sub grantee for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontractor/sub grantees. The Contractor/sub grantee or Subcontractor/sub grantee shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontracts to include these clauses in any lower tier subcontracts. The prime Contractor/sub grantee shall be responsible for compliance by any sub-Contractor/sub grantees or lower tier Subcontractor/sub grantee with the clauses set forth in paragraphs (1) through (4) of this section.”

#### **Rights to Inventions Made Under a Contract or Agreement**

##### ***Patent and Rights in Data***

#### **CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

Except for its own internal use, the Purchaser or Contractor/sub grantee may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor/sub grantee authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. In accordance with 49 CFR § 18.34 and 49 CFR § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for

"Federal Government purposes," any subject data or copyright described in subsections (2)(b)(i) and (2)(b)(ii) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

Any subject data developed under that contract, whether or not a copyright has been obtained; and

Any rights of copyright purchased by the Purchaser or Contractor/sub grantee using Federal assistance in whole or in part.

When federal assistance is awarded for experimental, developmental, or research work, it is the general intention to increase knowledge available to the public rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless determined otherwise, the Purchaser and the Contractor/sub grantee performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agree to make available to the public, either the license in the copyright to any subject data developed in the course of that contract or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor/sub grantee's use whose costs are financed in whole or in part with Federal assistance.

Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor/sub grantee agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor/sub grantee of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor/sub grantee shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

Nothing contained in this clause regarding rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

Data developed by the Purchaser or Contractor/sub grantee and financed entirely without the use of Federal assistance that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor/sub grantee identifies that data in writing at the time of delivery of the contract work.

Unless determined otherwise, the Contractor/sub grantee agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor/sub grantee 's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor/sub grantee agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

The Contractor/sub grantee also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor/sub grantee agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor/sub grantee 's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor/sub grantee agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

The Contractor/sub grantee also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

#### **Procurement of Recovered Materials**

Contractor/sub grantee and Subcontractor/sub grantee must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor/sub grantee and Subcontractor/sub grantees are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

1. The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
2. The Contractor/sub grantee has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

Section 6002(c) establishes exceptions to the preferences for recovery EPA-Designed products if the Contractor/sub grantee can demonstrate the item is:

- Not reasonably available within a timeframe providing for compliance with the contract performance schedule.
- Fails to meet reasonable contract performance requirements; or
- Is only available at an unreasonable price.

Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>."

**Safeguarding Personal Identifiable Information:**

Contractor/sub grantee will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable federal, state, and/or local laws regarding privacy and obligations of confidentiality.

**DHS Seal, Logo, and Flags**

The Contractor/sub grantee shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.



**OFFICE OF THE COUNTY ATTORNEY**

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: COUNTY ATTORNEY**

**DATE: 5/4/2021**

**SUBJECT: POLICY PROHIBITING SALES OF SURPLUS PROPERTY TO BIDDERS WITH DELINQUENT PROPERTY TAXES**

**Requested by: ACTION OF BOARD OF COMMISSIONERS**

**Presenter(s): COUNTY ATTORNEY**

**BACKGROUND**

Commissioner Keefe has proposed the Board not to sell surplus real property to bidders who have delinquent property taxes. If the Board wishes to make that a policy, it can do so with the statutory authority to reject bids for surplus property sold subject to the upset bid process. Sometimes bidders make a bid on behalf of another party or assign their bid. For that reason, it will be necessary to require the bid to be made by the party to whom the deed will be made and prohibit the assignment of bids. Attached is a proposed amendment for this purpose to the Policy Establishing the Minimum Bid to Be Considered for the Purchase of Surplus Real Property adopted by the Board February 18, 2019.

**RECOMMENDATION / PROPOSED ACTION**

If the Board wishes to amend its policy for this purpose, the county attorney recommends the proposed amendment be adopted.

**ATTACHMENTS:**

Description	Type
Amended Minimum Bid Policy	Backup Material

Cumberland County Board of Commissioners  
Policy Establishing the Minimum Bid to Be Considered  
for the Purchase of Surplus Real Property

Whereas, the Board of Commissioners has established a procedure through the Office of the County Attorney for the sale of the County's surplus real property for the purpose of getting the property back on the tax roll as taxable property; and

Whereas, the Board of Commissioners finds it is contrary to the Board's purpose of getting this property back on the tax rolls to sell it to bidders who owe delinquent property taxes.

Therefore, the Board of Commissioners amends its Policy Establishing the Minimum Bid to be Considered for the Purchase of Surplus Real Property as follows:

1. The Board of Commissioners requests the tax office to review all surplus real property annually and adjust the tax value through the informal appeal process as determined by the review.
2. For foreclosures commenced after the February 18, 2019, in which the county becomes the purchaser, the Board of Commissioners elects, pursuant to N.C.G.S. § 105-376(b), to pay only that part of the purchase price that would not be distributed to it and other taxing units on account of taxes, penalties, interest, and such costs as accrued prior to the initiation of the foreclosure action; and the county shall hold the property for the benefit of all taxing units that have an interest in it.
3. The resale of properties acquired by the county through tax foreclosures shall be in accordance with N.C.G.S. § 105-376(c).
4. For the first five years after a property acquired by the county through a tax foreclosure is designated as surplus property, the minimum offer to be accepted for consideration by the Board of Commissioners shall be the amount of the foreclosure judgment or the tax value, whichever is less.
5. After five years on the surplus list, the minimum offer to be accepted for consideration by the Board of Commissioners shall be the estimated cost of advertising for the upset bid process, but not less than \$300.
6. All bids shall be made in the name of the person or entity intended to be the grantee in the deed for the property and bids shall not be assigned except with the consent of the Board of Commissioners.
7. No bid shall be accepted from any bidder who owes delinquent property taxes to the Cumberland County Tax Collector.
8. No sale shall be approved for any bidder who shall become delinquent in property taxes due to the Cumberland County Tax Collector after the bidder's bid has been accepted by the Board of Commissioners.
9. The County Attorney shall implement a procedure to determine whether any bidder has delinquent property taxes.

Adopted February 18, 2019, and May \_\_\_\_\_, 2021.

Cumberland County Board of Commissioners  
By:

\_\_\_\_\_  
Charles Evans, Chair

Attest:

\_\_\_\_\_  
Candice White, Clerk to the Board



**OFFICE OF THE COUNTY ATTORNEY**

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: COUNTY ATTORNEY**

**DATE: 5/4/2021**

**SUBJECT: GRANT OF UTILITY EASEMENT TO THE CITY OF FAYETTEVILLE**

**Requested by: CITY OF FAYETTEVILLE**

**Presenter(s): COUNTY ATTORNEY**

**BACKGROUND**

The County and the City acquired the property with PIN 9487-561-4777 at a tax foreclosure in 2008 by a deed recorded in Book 8018 at page 3. The County paid the City \$499.85 for its taxes in the foreclosure. The City requests a utility easement on this lot as shown on the plat and proposed easement document attached. This is a land-locked parcel for which the County paid the full amount of the foreclosure costs in the amount of \$2,257.53 in addition to the City's taxes. This parcel was never declared surplus or put on the surplus list. With it being landlocked, it is unlikely to sell except to an adjoining property owner.

**RECOMMENDATION / PROPOSED ACTION**

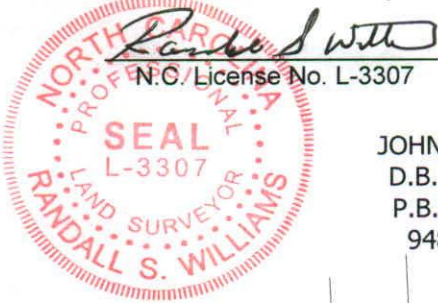
County attorney recommends:

- (1) offering this parcel to the City for \$500 to recover the amount paid to the City, which will relieve the County of responsibility for it; or
- (2) approving the easement and declaring the property surplus.

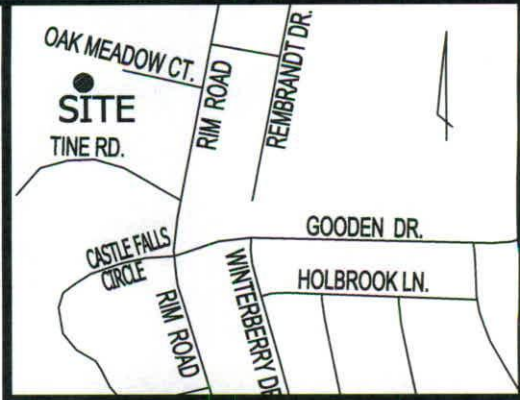
**ATTACHMENTS:**

Description	Type
Easement Plat	Backup Material
Easement Document	Backup Material

I, Randall S. Williams, certify that this plat was drawn under my supervision (deed description recorded in Book 8018, Page 0003); that the boundaries not surveyed are clearly indicated as drawn from information found in Book, Page (as shown on map); that the ratio of precision as calculated is 1:10,000; that this map meets the requirements of The Standards of Practice for Land Surveying in North Carolina (21 NCAC 56.1600). Witness my original signature, license number and seal this 4th day of September, 2019.



JOHNNIE C. DAVIS  
D.B. 643, PG. 219  
P.B. 139, PG. 98  
9487-52-6393



VICINITY MAP N.T.S.

EX. IRON  
N= 471,959.49  
E= 1,985,552.45

(TIE)  
S32°08'00"E  
50.55'

(TIE)  
S32°08'00"E  
17.59'

N02°29'38"W  
20.22'

COUNTY OF CUMBERLAND  
& CITY OF FAYETTEVILLE  
D.B. 8018, PG. 0003  
9487-51-4777

INES MELLO PARK &  
ADRIAN PARK  
D.B. 6360, PG. 0279  
9487-51-6985

JEFFERY CROOKS  
D.B. 9702, PG. 0023  
9487-51-6875

OAK MEADOWS  
P.B. 61, PG. 131

STEVE A. MUNNS &  
JULIA G. MUNNS  
D.B. 5020, PG. 0025  
9487-51-7745

MINNIE PEARL JUDD  
& RONALD EARL JUDD  
(unmarried)  
D.B. 6900, PG. 0403  
LOT 1 - P.B. 93, PG. 187  
9487-51-6627

JUDD  
D.B. 5789, PG. 0608  
9487-51-6597

N44°47'21"E  
34.35'

S58°10'45"W  
43.46'

GRAPHIC SCALE IN FEET  
0 50 100 150

ANNEXATION AREA 25  
EXHIBIT "A"

PERM. UTIL. ESM'T. AREA REQD. = 1,424 SQ. FT.  
TEMP. ESM'T. AREA REQD. = 0 SQ. FT.

LEGEND

- LINES SURVEYED
- - - LINES BY DEED/PLAT
- - - EX. ESM'T. LINE
- NEW ESM'T. LINE
- EX. IRON EX. PROP. CORNER
- DEED CORNER
- ESM'T. ANGLE POINT

Based on a partial survey by:  
MOORMAN, KIZER & REITZEL, INC.  
115 BROADFOOT AVE.  
FAYETTEVILLE, N.C. 28305

SYM	DESCRIPTION	BY
REVISIONS		
<b>PWC</b> FAYETTEVILLE PUBLIC WORKS COMMISSION		
UTILITY ESM'T. ACROSS PROPERTY OF COUNTY OF CUMBERLAND & CITY OF FAYETTEVILLE		
DRAWN BY	RSW	DATE SEPTEMBER 2019
CHECKED BY	D.V.	SCALE 1"= 50"
REVIEWED BY	mmm 10/8/19	AWS-15360FFF 1 of 1

NORTH CAROLINA  
CUMBERLAND COUNTY

UTILITY EASEMENT  
(WATER & SANITARY SEWER)  
PUBLIC WORKS COMMISSION  
*Parcel 16: Phase V Annexation, Area 25*  
PWC EASEMENT NO. \_\_\_\_\_

Prepared by and Return to: Fayetteville Public Works Commission  
Attn: Jim Autry

THIS INSTRUMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

By: COUNTY OF CUMBERLAND, a body Politic and Corporate of the State of North Carolina, & CITY OF FAYETTEVILLE, a North Carolina Municipal Corporation; herein called Grantor,

To: Grantee: The City of Fayetteville, a municipal corporation, by and through Fayetteville Public Works Commission, a public authority, in accordance with Chapter VIA of the Charter of the City of Fayetteville,

WITNESSETH THAT

Grantor, for one dollar (\$1.00) and other valuable consideration, hereby acknowledged as paid and received, has bargained and sold, and by these presents does grant, bargain, sell and convey to Grantee, its successors, licensees, and assigns, the perpetual right, easement and privilege to be exercised through the management and control of Fayetteville Public Works Commission (“FPWC”) in accordance with Sections 6A.7 and 6A.9 of Chapter VIA of the Charter of the City of Fayetteville, as amended, for Grantee and FPWC and each of their contractors and agents to go in and upon and build, construct, reconstruct, operate and maintain water, sanitary sewer and fiber optic (any or all) lines, with such pipes, connections, manholes, and other attachments, equipment and accessories necessary or desirable in connection therewith (collectively, “Utility Equipment”), to have full ingress and egress, thereto and therefrom over adjoining lands of Grantor (using paved areas and established pathways where practical as reasonably determined by FPWC), to patrol, inspect, alter, improve, repair, relocate, add to, remove and replace any or all of such Utility Equipment, within the easement area, to keep clear all trees, undergrowth and other encroachments located within ten (10’) feet of said lines (unless otherwise specified below) and to have all rights and privileges necessary or convenient for the full enjoyment or use of this easement, in, on, under, over, through and across certain land described as follows:

NORTH CAROLINA -- CUMBERLAND COUNTY – SEVENTY-FIRST TOWNSHIP

The following described easement lies within that certain parcel of land located to the west of Rim Road (60’ Right-of-Way) and north of Tine Road as described in the Deed of Record duly recorded in Deed Book 8018, Page 003 and being shown as a portion of that 1.21 acres on plat entitled “Survey for Gloria Mainor,” recorded in Plat Book 93, Page 165, both of the Cumberland County, North Carolina Registry.

Permanent Utility Easement

BEGINNING at a point in the eastern line of the subject property and the western line of Lot 6 of Oak Meadows as recorded in Plat Book 61, Page 131, said beginning point being located South 32 degrees 08 minutes 00 seconds East, 68.14 feet from an existing iron stake at the westernmost corner of Lot 7 of said Oak Meadows, said iron stake having N.C. Grid Coordinates (NAD83-2011) of N=471,959.49 and E=1,985,552.45 and running with said eastern line of the subject property and the western line of Lot 6 South 32 degrees 08 minutes 00 seconds East, 137.93 feet to the common easternmost corner of the subject property and the common rear (western) corner of Lots 5 and 6 of Oak Meadows; thence with the southeast line of the subject property South 58 degrees 10 minutes 45 seconds West, 43.46 feet to a point; thence leaving the property line and running North 44 degrees 47 minutes 21 seconds East, 34.35 feet to a point; thence North 32 degrees 08 minutes 00 seconds West, 112.35 feet a point; thence North 02 degrees 29 minutes 38 seconds West, 20.22 feet to the PLACE AND POINT OF BEGINNING. Being a permanent utility easement as shown on PWC Drawing AWS-15380FFF, a copy of which is attached and labeled Exhibit “A.”

**For title reference, see the following in Cumberland County, N.C. Registry:**  
Deed Book 8018, Page 003; Plat Book 93, Page 165; PWC Drawing No. AWS-15380FFF; Pin No. 9487-19-51-4777-;  
“Phase V Annexation, Area 25”

TO HAVE, TO HOLD, AND TO ENJOY said right, easement, and privilege as above fully defined and described in, on, under, over, through and across said land, and all privileges and appurtenances thereto belonging, to Grantee and Grantee’s successors, licensees, and assigns, forever. And the Grantor covenants with the Grantee that Grantor has done nothing to impair such title as Grantor has received, and Grantor will warrant and defend the title against the lawful claims of persons claiming by, under or through Grantor.

Grantor shall have the right to continue to use the land within said utility easement area(s) as described herein in any manner and for any purpose, including but not limited to the use of said easement area for access, ingress, egress, and parking, that does not obstruct or materially impair the actual use of the easement area(s) by Grantee or FPWC or any of each of their agents, and contractors.

Wherever used herein, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders as the context may require.

IN TESTIMONY WHEREOF, Grantor has signed and sealed this instrument,

COUNTY OF CUMBERLAND, a body politic and  
Corporate of the State of North Carolina

\_\_\_\_\_(SEAL)  
CHARLES EVANS, CHAIRMAN  
BOARD OF COMMISIONERS

ATTEST:

BY:\_\_\_\_\_  
CANDICE H. WHITE, CLERK

(SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

I, \_\_\_\_\_, a Notary Public in and for the State of North Carolina, certify that CANDICE H. WHITE personally appeared before me this day and acknowledged that she is the Clerk to the Board of Commissioners of Cumberland County; that CHARLES EVANS is the Chairman of the Board of Commissioners; that the seal affixed to the foregoing instrument is the Official Seal of the Board; that this instrument was signed and sealed by the Chairwoman and attested by her as Clerk on behalf of the Board, all by its authority duly granted; and that CANDICE H. WHITE acknowledged this instrument to be the act and deed of the Board of Commissioners.

WITNESS my hand and notarial seal, this the \_\_\_\_day of \_\_\_\_\_, 2021.

\_\_\_\_\_

Print Name: \_\_\_\_\_Notary Public

My Commission Expires: \_\_\_\_\_

(SEAL)

IN TESTIMONY WHEREOF, Grantor has signed and sealed this instrument,

CITY OF FAYETTEVILLE, a North Carolina  
Municipal Corporation

\_\_\_\_\_(SEAL)  
DOUGLAS J. HEWETT, ICMA-CM  
CITY MANAGER

ATTEST:

**BY:**\_\_\_\_\_  
PAMELA MEGILL, CITY CLERK

(SEAL)

\_\_\_\_\_  
STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_County, North Carolina, certify that PAMELA MEGILL personally came before me this day and acknowledged that she is the CITY CLERK of CITY OF FAYETTEVILLE, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal and attested by herself as its CITY CLERK.

WITNESS my hand and notarial seal, this the \_\_\_\_day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Print Name: \_\_\_\_\_Notary Public  
My Commission Expires: \_\_\_\_\_

(SEAL)



**OFFICE OF THE COUNTY ATTORNEY**

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: COUNTY ATTORNEY**

**DATE: 5/4/2021**

**SUBJECT: NCDOT NOTICE OF NECESSITY TO RELOCATE A GRAVE AT 7945  
CAMDEN ROAD, FAYETTEVILLE**

**Requested by: NCDOT**

**Presenter(s): COUNTY ATTORNEY**

**BACKGROUND**

NCDOT has requested the Board of Commissioners to direct the disinterment of a grave within the right of way of the Fayetteville Outer Loop and relocation of the grave to a different location on the same parcel. The Notice from NCDOT is attached, The property on which the grave is to be relocated has the address of 7945 Camden Road, Fayetteville. The map of the location of the grave on the parcel prepared by NCDOT is attached. N.C.G.S. § 65-106 requires that all grave removals be made under the supervision and direction of the county board of commissioners. The attached Resolution states the Board of Commissioners directs the relocation of the grave in accordance with the statutory requirements. One of the requirements is that a certificate of the facts of the removal of the grave be recorded in the Register of Deeds. The Resolution directs the NCDOT to provide a copy of the recorded certificate to the county attorney.

**RECOMMENDATION / PROPOSED ACTION**

County attorney recommends the Board approve the Resolution to relocate this grave.

**ATTACHMENTS:**

Description	Type
NOTICE FROM NCDOT	Backup Material

NCDOT MAP OF GRAVE LOCATION  
RESOLUTION TO DIRECT RELOCATION OF A GRAVE

Backup Material  
Backup Material

## Candice White

---

**Subject:** certified copy of the resolution in accordance with NC General Statute §65-106 for grave relocation is needed

**Attachments:** PIC KEY.pdf; FRM7-B.pdf

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**From:** Hayden, Elena V <[evhayden@ncdot.gov](mailto:evhayden@ncdot.gov)>

**Sent:** Tuesday, January 5, 2021 11:59 AM

**To:** Candice White <[cwhite@co.cumberland.nc.us](mailto:cwhite@co.cumberland.nc.us)>

**Subject:** certified copy of the resolution in accordance with NC General Statute §65-106 for grave relocation is needed

**Importance:** High



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

ROY COOPER  
GOVERNOR

JAMES H. TROGDON, III  
SECRETARY

Date 1/5/21

WBS: 34817.2.FR14  
TIP: U-2519BA  
COUNTY: Cumberland

DESCRIPTION: Fayetteville Outer Loop from South of SR 1003 (Camden Road) to South of SR 1104 (Strickland Bridge Road)

---

**SUBJECT:** Relocation of 1 grave from 7945 Camden Rd. Fayetteville NC

Cumberland County  
Board of Commissioners  
Attn: Candice White  
P. O. Box 1829  
Fayetteville, NC 28302-1829

Members of the Board:

This is to confirm that it will be necessary to disinter 1 grave from the above mentioned location (7945 Camden Rd. Fayetteville NC) in Cumberland County. This grave is located in the proposed right of way of State Project U-2519BA (Fayetteville Outer Loop) and will be relocated to the remnant of the same parcel.

Upon approval of the Cumberland County Board of Commissioners, regarding the necessity to disinter and re-inter the deceased with the mentioned site, please submit to this office a certified copy of the resolution in accordance with NC General Statute §65-106.

Should additional information be necessary, please contact me at 704-2021220 cell, ([evhayden@ncdot.gov](mailto:evhayden@ncdot.gov)).

Sincerely,



Elena Hayden  
Senior Right of Way Agent

**Elena Hayden**

*Senior Right of Way Agent  
Division 6 – Right of Way Office  
North Carolina Department of Transportation*

910-364-0605  
910-364-0529  
[evhayden@ncdot.gov](mailto:evhayden@ncdot.gov)

PO BOX 1150 (Mail)  
Fayetteville NC 28302

455 Transportation Dr. (Delivery)  
Fayetteville NC 28301-5027

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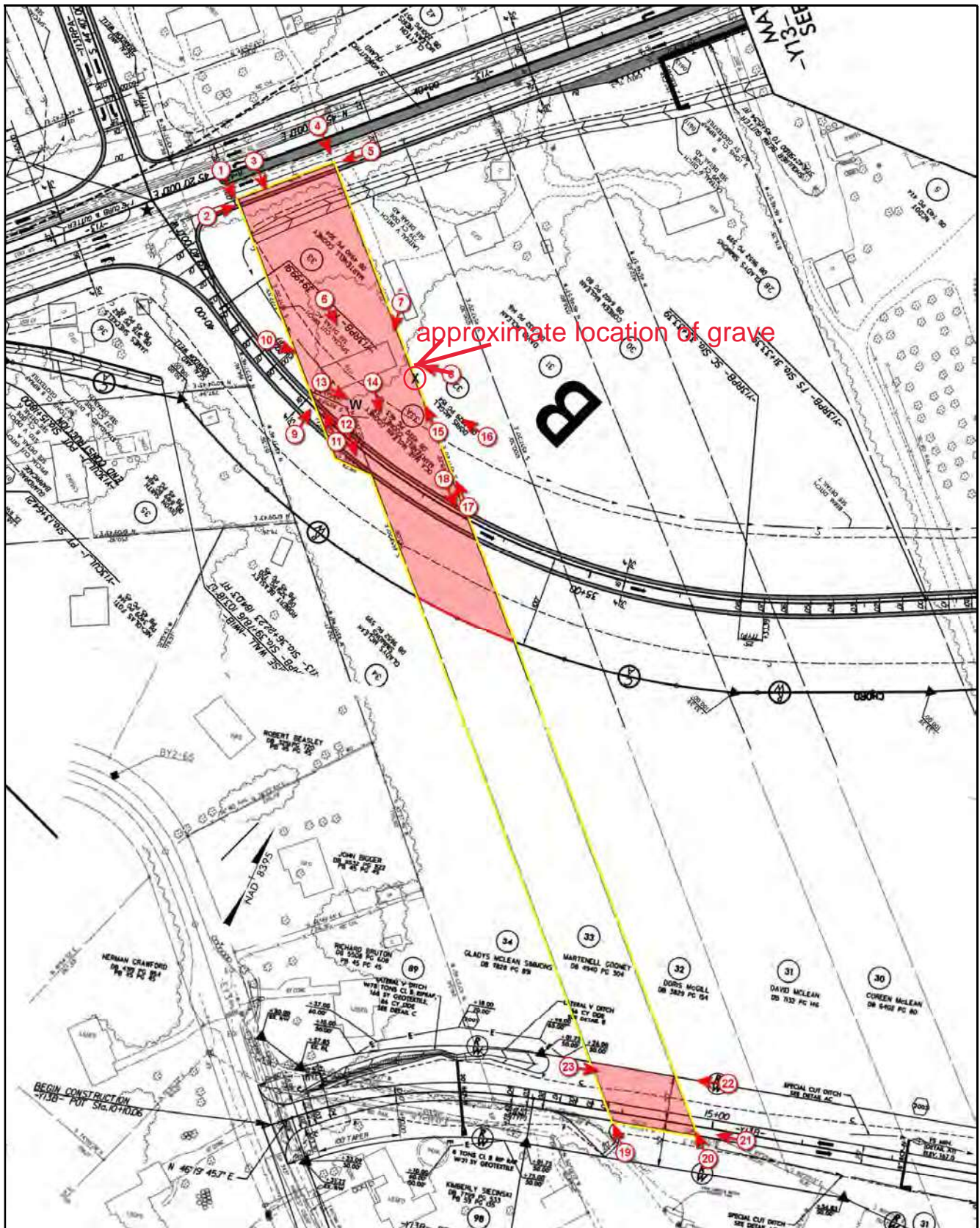
Email correspondence to and from this sender is subject to the N.C. Public Records Law and may be disclosed to third parties.

All correspondence to and from this address may be subject to the N.C. Public Records Law and may be disclosed to third parties.

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Email correspondence to and from this sender is subject to the N.C. Public Records Law and may be disclosed to third parties.

# PHOTOGRAPH LOCATION MAP



Cumberland County Board of Commissioners  
Resolution Directing the Removal of a Grave Located on the Parcel with the Address of  
7945 Camden Road, Fayetteville, by the North Carolina Department of Transportation  
in Accordance with N.C.G.S. § 65-106

Whereas, the North Carolina Department of Transportation (NCDOT) is an agency of the State of North Carolina with the authority to effect the disinterment, removal, and reinterment of graves pursuant to N.C.G.S. § 65-106(a)(1); and

Whereas, NCDOT has advised the Board of Commissioners of the necessity for NCDOT to disinter one grave lying within the proposed right of way of State Project U-2519BA (Fayetteville Outer Loop) on the parcel with the address of 7945 Camden Road, Fayetteville, and relocate the grave on the remnant of the same parcel, as shown in the Notice and Map attached hereto.

Be it resolved that the Board of Commissioners finds it is necessary for the NCDOT to disinter, remove, and reinter this grave as described in the Notice and Map referenced above.

Be it further resolved that the Board of Commissioners directs that the disinterment, removal, and reinterment of this grave shall be done in accordance with all the requirements of N.C.G.S. § 65-106 with a copy of the recorded certificate of the removal facts to be provided to the Cumberland County Attorney.

Adopted May \_\_\_\_\_, 2021.

Cumberland County Board of Commissioners  
By:

\_\_\_\_\_  
Charles Evans, Chair

Attest:

\_\_\_\_\_  
Candice White, Clerk to the Board



## **BOARD OF COMMISSIONERS' OFFICE**

### **MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021** **AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: KELLIE BEAM, DEPUTY CLERK TO THE BOARD**

**DATE: 5/7/2021**

**SUBJECT: CITY/COUNTY LIAISON COMMITTEE UPDATE**

**Requested by: CITY/COUNTY LIAISON COMMITTEE MEMBERS**

**Presenter(s): VICE CHAIRMAN GLENN ADAMS**

#### **BACKGROUND**

The Fayetteville-Cumberland County Liaison Committee met April 16, 2021. The City is represented by Mayor Mitch Colvin, Mayor Pro-Tem Kathy Jensen and Councilmember Tisha Waddell. Cumberland County is represented by Chairman Charles Evans, Vice Chairman Glenn Adams and Commissioner Toni Stewart. Vice Chairman Adams serves as the liaison committee chair.

The following topics and actions were discussed:

- Homeless Day Center. The City's Interim Community Development Director, Chris Cauley, will provide the Board of Commissioners a presentation on the proposed day center at the May 13 Agenda Session. At a later date, a visit to Oak City Cares in Raleigh will be scheduled for County officials.
- The liaison committee will begin meeting monthly to address mutual issues such as COVID relief federal funding (American Rescue Plan and Emergency Rental Assistance).
- Deputy Health Director Ashley Curtice provided a COVID-19 update and discussed the low number of young people being vaccinated. City officials suggested contacting the Millennial Council and the Fayetteville Cumberland Youth Council as part of marketing efforts.
- Justin Hembree, Executive Director of Mid Carolina Council of Governments, presented information about the upcoming transfer of Workforce Development to the COG.
- Installation of Sidewalk at the North Regional Branch Library
- Lowering the speed on Country Club Drive and increased traffic on Andrews Road due to new

construction.

- Drainage issue at Headquarters Library.
- Consideration of a joint city/county resolution to Cumberland County's N.C. General Assembly delegation seeking funding for a city and countywide water and sewer study.
- Joint City/County anti-litter campaign.

**RECOMMENDATION / PROPOSED ACTION**

For information purposes only.



## **ENGINEERING AND INFRASTRUCTURE DEPARTMENT**

### **MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021** **AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: JERMAINE WALKER, COUNTY ENGINEER**

**DATE: 5/4/2021**

**SUBJECT: HEADQUARTERS LIBRARY STORM DRAINAGE AND PARKING LOT REPAIRS UPDATE**

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

**Presenter(s): JERMAINE WALKER, COUNTY ENGINEER**

#### **BACKGROUND**

The Cumberland County Headquarters Library parking lot on Maiden Lane has been experiencing damage due to slope failures adjacent to Cross Creek. An area of significant failure has occurred around an 18" storm drainage pipe that effluents on to the bank next to Cross Creek. A wash out of this area occurred during Hurricane Matthew, was repaired, and experienced failure again during Hurricane Florence resulting in the slope being undermined and leading to a failure of the adjacent parking lot. The banks in the vicinity of the Library are not stable and appear to be eroding at the toe of the slope due to the nature of the creek alignment. A combination of high flow situations associated with hurricane and tropical storm events have resulted in the banks eroding.

The City of Fayetteville intends to cap off the existing storm drainage line running from Maiden Lane under the Library parking lot and reroute the stormwater to another location. This will allow the existing storm line under the Library parking lot to be taken out of service and thus allow for the stabilization and restoration of the slope and repair of the parking lot.

Moorman, Kizer & Reitzel, Incorporated (MKR) will perform the construction management work under the Board approved "On-Call List" for engineering services under the attached proposal for \$37,200. MKR has provided an initial cost estimate of \$168,000 for the actual construction and repair of the slope and parking lot.

## **RECOMMENDATION / PROPOSED ACTION**

No action is necessary. This is for information only.

## **ATTACHMENTS:**

Description

MKR CC HQs Library Proposal

Type

Backup Material

April 21, 2021

**Mr. Jermaine Walker**  
**Director, Engineering and Infrastructure Department**  
**Cumberland County, NC**  
**130 Gillespie Street, Room 214**  
**Fayetteville, NC 28301**

**REF: Design Services Proposal**  
**Storm Drainage and Parking Lot Repairs**  
**Main Library Facility Parking Lot off Maiden Lane**

Dear Mr. Walker,

Moorman, Kizer & Reitzel, Inc. (MKR) greatly appreciates you contacting this office in regards to preparing a proposal for the design of the repairs needed at the Main Library Parking Lot off of Maiden Land. As discussed during our meeting, a wash out occurred in this area during Hurricane Mathew, but this area was fixed back by the County. During Hurricane Florence, the same general area failed again, resulting in the storm drainage from the parking lot being undermined and ultimately a failure occurred in the adjacent parking lot as well.

The banks of Cross Creek in this area are not very stable, and appear to be eroding at the toe of the slope due to the nature of the creek alignment. This combined with the significant high flow situations associated with the hurricanes has resulted in the banks eroding and the existing vegetation along the banks starting to sluff off into the creek. Through time there has been some rip rap and concrete placed along the toe of the creek bank to help shore these areas up, but the large flow volumes and depths associated with the hurricanes has continued to impact and undermine the slopes.

In addition to the erosion from the creek itself, there are also several pipe penetrations coming out of the slope that effluent on to the creek bank and contribute to additional erosion issues. The pipes themselves have been further impacted by roots from the trees hanging onto the edge of the creek banks growing around and into the pipes themselves, thus compromising the integrity of the pipe joints. Through time, these joints have separated on one section of a storm line coming from Maiden Lane and allowed surrounding material to be removed from around the pipe. Ultimately, enough material has been removed to form voids that collapsed and undermined the parking lot and associated drainage above.

MKR has reviewed the available information in an attempt to determine how much potential work may be needed to formulate the necessary repair plans to fix the failed Parking Lot area at the Library Site. It is understood that the City plans to cap off the existing storm drainage line running from Maiden Lane under the Library Parking Lot, and reroute that stormwater to another location. This will allow the existing storm line under the Library Parking Lot to be taken out of service.

Based on this information, the anticipated repair work would consist of the removal of the existing failed sections of the storm drainage pipe line from Maiden Lane, and the grout filling of

the sections of that line that are not showing signs of joint failure per camera footage. Once these areas are repaired, the undermined parking lot area can be rebuilt along with the parking lot storm drainage line that has failed. In conjunction with this, the area along the bank of Cross Creek where the parking lot storm drainage pipe effluents will be shored up and stabilized to minimize the potential for erosion in this area.

It is anticipated that some of the existing vegetation on the slope along the bank of Cross Creek will need to be removed and the slopes graded back to allow for the installation of suitable slope stabilization measures. The slope stabilization methods that will be considered will include gabion baskets and or mattresses, concrete filled mattresses, and rip rap. Depending on the final grading that can be achieved on the creek bank and the alignment of the storm drainage pipe, different combinations of these types of measures may be needed.

While all efforts will be made to minimize any impacts into the wetlands associated with Cross Creek, it will more than likely be necessary to secure the slope and storm pipe outlet at the edge of the bank. In order to permit this, a wetlands consultant may be needed to assist in the delineation of the wetlands boundary and the processing of applicable permits. A soil testing firm will also be needed to analyze the soils along the creek bank for stability and to make recommendations on any necessary structural considerations if gabion walls are going to be used. Ultimately, a testing firm would be involved in certifying that the compacted soils in the parking lot subgrade, around the storm drainage piping and along the rebuilt creek banks meet applicable requirements per the specifications.

### **AGREEMENT & SCOPE OF SERVICE**

Based on the assessment of the project parameters provided above, MKR proposes to provide the following services:

1. Provide an onsite survey of the existing creek bank slope adjacent to the parking lot and storm drainage failure as well as in the area of the parking lot to be repaired. Once the field survey is completed, the collected data would be mapped to reflect the current conditions at the site. The survey will include the creek bank and slopes in the area of concern, the pipes that effluent on the banks in the area, the failed parking lot areas, the drainage system under and from the parking lot and the surrounding areas immediately adjacent to the area of concern.
2. Design plans will be prepared incorporating the work needed to reconstruct the washed out area on the bank of the creek, to rebuild the failed parking lot section, to repair the existing parking lot drainage, and to take out of service the underlying storm drainage pipe coming from Maiden Lane. The design plans will include technical information on the construction materials and requirements anticipated for the repair work.

3. Prepare and submit permit applications for the work in the stream and associated erosion control measures to NCDEQ and the Corps of Engineers. At this time, a no rise permit is not anticipated from FEMA. If a no rise permit is deemed necessary, MKR will consult with the County to determine the best approach to address this need since significant modelling may be needed to produce the required information.
4. Prepare an Engineers Opinion of Probable Construction Cost estimate and bid proposal form outlining the work required to repair and rebuild the parking lot and the adjacent creek bank slope.
5. Assist the County in preparing bid documents for the specified work.
6. Coordinate with an Environmental Consultant in the preparation and submittal of environmental surveys and permits if required.
7. Meet with County staff to discuss progress and obtain input throughout the design and permitting process.
8. Assist The County with managing the competitive bidding process to include Contract Document distribution, attending pre-bid conferences and provide meeting minutes, issuing addenda's and RFI's and certifying the bid tabulation summary.
9. Provide construction administration services to include material submittal reviews, issuing change orders, review of Contractor's pay applications, attend pre-construction conference, and periodic progress meetings and provide meeting minutes, etc.
10. Provide normal and customary construction staking and preparation of cut sheets for the Contractor. Replacing previously installed construction stakes is not considered normal or customary and will be considered as an Additional Service.
11. Perform construction observation as necessary to provide certification as required by NCDEQ, COE and the City of Fayetteville. The warranties or guarantees to workmanship or quality cannot be made with limited construction observations.
12. Perform the necessary after construction field survey and prepare a set of record drawings indicating the finished construction of the parking lot, drainage and creek bank slope.
13. To support the project construction and design, it may be necessary to have initial soil borings randomly in the work area. At this time, 4 to 6 borings are anticipated. The soil testing firm will make recommendations on the construction methods needed for slope stability and also how to handle any potential subsurface water encountered.

## **RESPONSIBILITIES OF THE CLIENT**

**THE COUNTY** will provide the requested items to assist in the analysis and design of the project as follows:

1. Provide **MKR** all drawings, files and other information necessary to the project design to include available maps of the existing drainage in the area and the conditions of any pipes that have been reviewed, tax maps, topo maps, utility maps, GIS System Data, etc. The **COUNTY** will assist in providing compatible digital transfer of data files and drawings.
2. Payment to cable locators or SUE to identify underground utilities (telephone, gas, power) that might be located in the area.
3. Provide and/or obtain easement/right-of-way acquisition and associated costs to include appraisals, negotiations, court costs and appearances, if applicable etc.
4. Provide property owner notification in accordance with the General Statutes if applicable.
5. The **COUNTY** shall pay all fees and costs related to the obtaining of any environmental permits to be performed by a third party under the supervision of the Consultant's representative.
6. The **COUNTY** shall review and comment on submittal plans and specifications within two (2) weeks from when such materials are submitted.
7. The **COUNTY** shall pay all fees and costs related to quality testing services performed by a third party to insure general compliance with the intent of the plans and specifications. Testing may include soils, concrete, asphalt and other services as determined by the Consultant's Representative. All invoices will be paid by the **COUNTY** in a separate agreement with the testing company.

### **ADDITIONAL SERVICES**

**MKR** shall request written confirmation and/or execute an additional Project Agreement describing any scope change before performing any work beyond the scope specified in this document. The confirmation shall identify any change in compensation and/or delay in completion which the scope changes entail and must be approved by the County. Any additional engineering services identified in this initial project will be negotiated in a new agreement with **MKR**.

### **SERVICES NOT PROVIDED**

Services not provided by **MKR**, but can be provided for an additional fee are as follows:

- 1) Permitting fees.
- 2) Subsurface Utility Explorations and payment to utility locator or other cable locators to identify underground utilities.
- 3) Mitigation measures and associated fees.
- 4) Redesign as may be required for environmental mitigation measures.
- 5) Wetlands Delineation surveys, mapping and permitting.

### **TERMINATION**

This Agreement may be terminated by either party upon not less than 30 days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. The **COUNTY** shall pay for all services performed and expenses incurred prior to the date of termination.

## **COMPENSATION**

**THE COUNTY** shall compensate **MKR** for providing the services set forth herein accordance with the terms of the Agreement. The not-to-exceed compensation (including travel) for this Agreement is \$37,200.00. This is not a guaranteed maximum amount but **MKR** shall not continue performing work in excess of this amount without further specific authorization. **THE COUNTY** will be billed for actual time worked and identified expenses. The breakdown of the cost are as follows:

### **SURVEY OF THE SITE**

-Survey the existing failed parking lot and adjacent areas	\$1,600.00
-Prepare mapping of the surveyed area	\$1,000.00
SUBTOTAL THIS PHASE	\$2,600.00

### **PLAN DESIGN, PERMITTING AND CONSTRUCTION DOCUMENTS**

-Prepare design plans and details for the reconstruction of the parking lot, storm and creek bank	\$8,000.00
-Perform geotechnical test borings and prepare a report (Sub consultant)(Est.)	\$5,000.00
-Prepare and submit permits to NCDEQ and COE if required (Consultant)(Est.)	\$3,000.00
-Perform an environmental survey on wetlands and streams (Consultant)(Est.)	\$5,000.00
-Prepare bid documents and solicit for qualified proposals for the work	\$3,000.00
-Reimbursable expenses (printing costs etc.)	\$2,000.00
SUBTOTAL THIS PHASE	\$26,000.00

### **PROJECT ADMINISTRATION, CONSTRUCTION STAKING, RECORD DOCUMENTS**

-Project administration and coordination	\$2,000.00
-Project observation	\$1,000.00
-Construction staking	\$4,000.00
-Record documents and certification	\$1,600.00
SUBTOTAL THIS PHASE	\$8,600.00

TOTAL	\$37,200.00
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## **SCHEDULE**

**MKR** shall begin the survey/design work immediately upon The County's Notice to Proceed and will complete the SURVEY AND ANALYSIS phase of the work within 60 days. Upon **THE COUNTY** reviewing and concurring with the report prepared by **MKR**, the PLAN DESIGN, PERMITTING AND CONSTRUCTION DOCUMENTS phase would begin with an anticipated completion within 90 days of starting this phase of the work assuming review agencies respond in a timely fashion. The PROJECT CONSTRUCTION, RECORD DOCUMENTS phase would begin upon **THE COUNTY** approving the plans for bid and all applicable permit reviews and approvals being obtained. The bidding phase is anticipated to take 2 months pending timely approvals by **THE COUNTY**. The construction and record document phase of the project is anticipated to take approximately 4 months once a notice to proceed has been provided to the selected contractor, but can be adversely affected by weather conditions.

### **ACCEPTED BY:**

**MOORMAN, KIZER & REITZEL, INC.**

BY: 

JAMES M. KIZER, JR., PE

TITLE: VICE PRESIDENT

DATE: 4/28/2021

### **AUTHORIZATION BY:**

**THE COUNTY OF CUMBERLAND, NC**

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

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

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

*Main Library Parking Lot and Storm Drainage Repairs  
Cumberland County Main Library  
Off of Maiden Lane*



Conceptual Opinion of Probable Cost Estimate 4-27-21

Item	Description	Quantity	Unit Price	Total
<b>Grading, Erosion Control</b>				
	Mobilization	1 LS	\$5,000.00	\$5,000.00
	Temp. Construction Entrance	1 EA	\$2,875.00	\$2,875.00
	Clearing & Grubbing (Haul from Site)	1.00 LS	\$8,000.00	\$8,000.00
	Silt Fence	320 LF	\$5.00	\$1,600.00
	Regrade Existing Slope	2,100 SF	\$2.00	\$4,200.00
	Install Gabion Baskets	100 EA	\$750.00	\$75,000.00
	Reinforced Silt Fence Outlets	1 EA	\$350.00	\$350.00
	Haul in Topsoil or Mulch and Spread (Assume 8" Depth)	40 CY	\$20.00	\$800.00
	Permanent Seeding	1 LS	\$3,000.00	\$3,000.00
	Temporary Seeding & Mulching	1.00 LS	\$2,500.00	\$2,500.00
	Select Fill	300 CY	\$25.00	\$7,500.00
	Erosion Control Maintenance	1 LS	\$5,000.00	\$5,000.00
	Remove Existing Asphalt and Base	240 SY	\$20.00	\$4,800.00
	Remove Existing Curb and Gutter	72 LF	\$15.00	\$1,080.00
	6" Stone Base	240 SY	\$15.00	\$3,600.00
	2" SF9.5B Surface Course	240 SY	\$25.00	\$6,000.00
	Install New Curb and Gutter	72 LF	\$25.00	\$1,800.00
	Base & Asphalt Testing	1 LS	\$2,500.00	\$2,500.00
	Class B Rip Rap	100 TN	\$80.00	\$8,000.00
	#57 Stone	100 TN	\$28.00	\$2,800.00
	Remove Existing 15" Storm	60 SY	\$30.00	\$1,800.00
	Remove Existing 24" Storm	50 LF	\$48.00	\$2,400.00
	Remove Existing Drop Inlet	1 EA	\$2,500.00	\$2,500.00
	Install Drop Inlet (0' - 6')	1 EA	\$3,000.00	\$3,000.00
	Install New Junction Box (6' - 8')	1 EA	\$4,500.00	\$4,500.00
	Install 15" RCP (8'-10')	60 LF	\$40.00	\$2,400.00
	Remove Existing 15" Headwall	1 EA	\$1,000.00	\$1,000.00
	Install New 15" Headwall	1 EA	\$2,500.00	\$2,500.00
	Remove Existing 24" Headwall	1 EA	\$3,000.00	\$3,000.00
	Grout Existing 24" Storm	127 LF	\$40.00	\$5,080.00
	Plug Existing 24" RCP	2 EA	\$1,000.00	\$2,000.00
	Stone Bedding for Storm Drain (Allowance)	50 TN	\$35.00	\$1,750.00
	Subtotal			\$178,335.00
	15% Contingencies			\$26,750.25
	<b>Total Grading, Paving &amp; Drainage</b>			<b>\$205,085.25</b>



**ASSISTANT COUNTY MANAGER GENERAL GOVERNMENT AND STEWARDSHIP**

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: AMY H. CANNON, COUNTY MANAGER**

**DATE: 5/7/2021**

**SUBJECT: GRANTS MANAGER POSITION**

**Requested by: COMMISSIONER JIMMY KEEFE**

**Presenter(s): ANGEL WRIGHT-LANIER, ASSISTANT COUNTY MANAGER**

**BACKGROUND**

Based on feedback from the Board during the April agenda session, the Management Team has decided to relocate Grants Manager Chrysoula Bantsolas to the County Manager's office. Starting May 17, 2021 Chrysoula will report directly to Assistant County Manager Wright-Lanier.

It is our belief that moving Ms. Bantsolas under Angel's supervision will allow Angel to work more closely with her. Our hope is that this move will streamline communications and help us lay the groundwork to allow us to successfully seek and win grants.

As was mentioned during the April agenda session, setting up a grants management line of business takes time, but we can assure you that we will move as quickly as possible to implement the infrastructure necessary to allow our efforts to reap rewards.

If there are any questions about this new arrangement, please feel free to email or call me.

**RECOMMENDATION / PROPOSED ACTION**

For informational purposes only.



## OFFICE OF THE COUNTY MANAGER

### **MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021** **AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: AMY H. CANNON, COUNTY MANAGER**

**DATE: 5/7/2021**

**SUBJECT: MANAGER'S UPDATE: BOARD PRIORITIES AND THE FY2022 RECOMMENDED BUDGET**

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

**Presenter(s): AMY CANNON, COUNTY MANAGER**

### **BACKGROUND**

The Board of Commissioners approved Priorities and Objectives for 2021-2022 on April 19, 2021. This is a brief update on action steps taken since the plan was approved.

**Performing Arts Center** – Working with Spectra in identifying a date for consultant to restart the market analysis and feasibility study which was paused due to COVID-19.

**Homelessness** – 625 responses were received for the Community Homelessness Survey. The provider survey deadline was extended. Stakeholder interviews are being conducted.

#### **Government Communication –**

- Veterans Services and Cooperative Extension have provided departmental updates and separate videos were created for each department for CCNC-TV and social media.
- Redesigned website is being finalized and demonstrated to commissioners. Seeking to change the domain name to cumberlandnc.gov.
- Health Department, Solid Waste Management and Animal Services presented information at the May 7, 2021, Mayors Coalition meeting.

**County Facility Assessment and Inventory** – The Request for Qualification (RFQ) for General

Government Services Building Space Utilization and Site Analysis Study was posted on the County's vendor self-service May 3. It closes on May 28 and bids will be open May 31.

**Continued Priority from FY2021:**

**Discussion about a new high school with Cumberland County Schools and Fort Bragg** – This topic has been discussed at two recent meetings. The vice chairman and county manager met with CCS and Fort Bragg officials in April and a virtual meeting was held on May 5 with the vice chairman, county management and Fort Bragg Garrison Commander Col. Scott Pence and his staff.

**RECOMMENDATION / PROPOSED ACTION**

For information purposes only.



**FINANCE OFFICE**

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021**  
**AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: VICKI EVANS, FINANCE DIRECTOR**

**DATE: 4/26/2021**

**SUBJECT: FINANCIAL REPORT**

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

**Presenter(s): NA**

**BACKGROUND**

The attached financial report shows results of the general fund for fiscal year 2021, March year-to-date. Additional detail has been provided on a separate page explaining percentages that may appear inconsistent with year-to-date budget expectations.

**RECOMMENDATION / PROPOSED ACTION**

No action needed - for discussion and information purposes only.

**ATTACHMENTS:**

Description

Monthly Financial Report

Type

Backup Material

**County of Cumberland  
General Fund Revenues**

REVENUES	FY19-20 AUDITED	FY20-21 ADOPTED BUDGET	FY20-21 REVISED BUDGET	YTD ACTUAL (unaudited) AS OF March 31, 2021	PERCENT OF BUDGET TO DATE	*
Ad Valorem Taxes						
Current Year	\$ 166,739,244	\$ 165,908,675	\$ 165,908,675	\$ 166,547,118	100.4%	(1)
Prior Years	817,964	897,000	897,000	1,368,718	152.6%	
Motor Vehicles	20,340,183	19,955,512	19,955,512	14,571,104	73.0%	(2)
Penalties and Interest	773,447	712,000	712,000	490,365	68.9%	
Other	835,588	1,025,000	1,025,000	716,637	69.9%	
Total Ad Valorem Taxes	189,506,426	188,498,187	188,498,187	183,693,942	97.5%	
Other Taxes						
Sales	47,282,838	41,542,711	41,542,711	26,758,183	64.4%	(3)
Real Estate Transfer	1,689,875	1,450,000	1,450,000	1,517,643	104.7%	
Other	909,559	959,000	959,000	360,161	37.6%	
Total Other Taxes	49,882,272	43,951,711	43,951,711	28,635,987	65.2%	
Unrestricted & Restricted Intergovernmental Revenues	61,437,895	68,389,413	76,145,472	40,185,400	52.8%	(4)
Charges for Services	14,524,383	13,072,456	13,072,456	8,153,599	62.4%	(5)
Other Sources (includes Transfers In)	3,048,166	1,710,608	1,820,337	1,158,402	63.6%	
Lease Land CFVMC	4,012,056	4,012,056	4,012,056	4,313,522	107.5%	
Total Other	7,060,222	5,722,664	5,832,393	5,471,924	93.8%	
<b>Total Revenue</b>	<b>\$ 322,411,198</b>	<b>\$ 319,634,431</b>	<b>\$ 327,500,219</b>	<b>\$ 266,140,851</b>	<b>81.3%</b>	
Fund Balance Appropriation		8,663,701	18,305,059	-	0.0%	
<b>Total Funding Sources</b>	<b>\$ 322,411,198</b>	<b>\$ 328,298,132</b>	<b>\$ 345,805,278</b>	<b>\$ 266,140,851</b>	<b>77.0%</b>	

**County of Cumberland**  
**General Fund Expenditures**

DEPARTMENTS	FY19-20	FY20-21	FY20-21	YTD ACTUAL	PERCENT OF	**
	AUDITED	ADOPTED BUDGET	REVISED BUDGET	(unaudited) AS OF March 31, 2021	BUDGET TO DATE	
Governing Body	\$ 612,702	\$ 674,975	\$ 693,619	\$ 461,866	66.6%	
Administration	1,682,579	1,814,947	1,835,664	1,134,658	61.8%	
Public Affairs/Education	661,051	885,902	898,331	517,595	57.6%	
Human Resources	1,009,126	1,009,875	1,028,519	708,603	68.9%	
Print, Mail, and Design	643,314	756,378	793,664	592,680	74.7%	
Court Facilities	114,371	156,220	156,220	40,649	26.0% <sup>(1)</sup>	
Facilities Maintenance	967,335	1,202,491	1,419,688	820,436	57.8%	
Landscaping & Grounds	690,227	702,394	727,182	491,647	67.6%	
Carpentry	211,909	228,058	234,273	150,952	64.4%	
Facilities Management	1,259,321	1,523,436	1,572,880	1,001,775	63.7%	
Public Buildings Janitorial	784,441	870,951	1,044,344	660,620	63.3%	
Central Maintenance	590,365	672,722	711,468	460,156	64.7%	
Information Services	5,552,864	5,323,420	6,073,408	3,587,155	59.1%	
Board of Elections	1,400,349	1,673,589	2,083,957	1,606,624	77.1%	
Finance	1,299,307	1,418,140	1,449,215	973,947	67.2%	
Legal	631,925	807,290	936,155	459,924	49.1% <sup>(2)</sup>	
Register of Deeds	2,435,628	2,526,950	3,015,363	1,596,864	53.0%	
Tax	5,625,153	6,271,825	6,466,523	4,043,125	62.5%	
General Government Other	2,976,609	7,003,558	10,417,019	5,071,649	48.7% <sup>(3)</sup>	
Sheriff	48,610,275	53,395,158	54,767,567	32,421,267	59.2%	
Emergency Services	3,655,978	4,310,596	4,550,957	2,952,869	64.9%	
Criminal Justice Pretrial	563,625	588,662	629,211	391,429	62.2%	
Youth Diversion	31,665	35,671	35,671	21,385	60.0%	
Animal Services	3,283,993	3,484,642	3,786,204	2,309,365	61.0%	
Public Safety Other (Medical Examiners, NC Detention Subsidy)	1,062,544	1,213,209	1,213,209	734,075	60.5%	
Health	21,068,569	24,301,667	27,738,777	15,713,044	56.6%	
Mental Health	5,316,988	5,519,255	5,524,489	3,997,962	72.4%	
Social Services	56,772,920	63,278,940	64,636,485	38,551,637	59.6%	
Veteran Services	426,127	452,713	465,142	300,306	64.6%	

**County of Cumberland  
General Fund Expenditures**

DEPARTMENTS	FY19-20 AUDITED	FY20-21 ADOPTED BUDGET	FY20-21 REVISED BUDGET	YTD ACTUAL (unaudited) AS OF March 31, 2021	PERCENT OF BUDGET TO DATE	**
Child Support	4,929,310	5,595,639	5,593,567	3,559,963	63.6%	
Spring Lake Resource Administration	29,503	34,542	34,542	18,128	52.5%	
Library	10,168,162	10,036,208	10,499,284	6,667,341	63.5%	
Culture Recreation Other (Some of the Community Funding)	260,568	260,569	260,569	244,782	93.9%	(4)
Planning	2,711,212	3,271,297	3,335,814	2,082,078	62.4%	
Engineering	978,925	585,162	592,711	245,304	41.4%	(5)
Cooperative Extension	558,569	799,384	809,742	450,890	55.7%	
Location Services	192,231	257,796	269,929	146,671	54.3%	
Soil Conservation	183,211	151,537	2,707,668	105,496	3.9%	(6)
Public Utilities	85,108	87,602	94,554	65,462	69.2%	
Economic Physical Development Other	20,000	20,000	20,000	20,000	100.0%	
Industrial Park	2,220	2,212	20,087	2,197	10.9%	(7)
Economic Incentive	402,406	461,947	709,947	384,910	54.2%	
Water and Sewer	20,287	250,000	400,189	122,465	30.6%	(8)
Education	94,408,174	94,411,029	94,411,029	69,929,107	74.1%	
Other Uses:						
Transfers Out	30,131,528	19,969,574	21,140,442	558,330	2.6%	(9)
<b>TOTAL</b>	<b>\$ 315,022,674</b>	<b>\$ 328,298,132</b>	<b>\$ 345,805,278</b>	<b>\$ 206,377,386</b>	<b>59.7%</b>	

Expenditures by Category	YTD ACTUAL				
	FY19-20 UNAUDITED	FY20-21 ADOPTED BUDGET	FY20-21 REVISED BUDGET	(unaudited) AS OF March 31, 2021	PERCENT OF BUDGET TO DATE
Personnel Expenditures	\$ 131,852,636	\$ 149,112,328	\$ 149,190,997	\$ 93,552,280	62.7%
Operating Expenditures	151,277,149	158,589,325	173,492,902	110,738,236	63.8%
Capital Outlay	1,761,361	626,905	1,980,937	1,528,539	77.2% <sup>(10)</sup>
Transfers To Other Funds	30,131,528	19,969,574	21,140,442	558,330	2.6% <sup>(9)</sup>
TOTAL	\$ 315,022,674	\$ 328,298,132	\$ 345,805,278	\$ 206,377,386	59.7%

## COUNTY OF CUMBERLAND

Fiscal Year 2021 - March Year-to-Date Actuals (Report Run Date: April 23, 2021)

### Additional Detail

#### General Fund Revenues

\*

- (1) **Current Year Ad Valorem 100.4%** - The bulk of revenues are typically recorded between November - January.
- (2) **Motor Vehicles 73.0%** - YTD Actual reflects 8 months of collections.
- (3) **Sales Tax 64.4%** - There is a three month lag. YTD Actual reflects 6 months of collections.
- (4) **Unrestricted/Restricted Intergovernmental 52.8%** - There is typically a one to two month lag in receipt of this funding.
- (5) **Charges for Services 62.4%** - The largest component of charges for services is revenue from the Board of Ed for security at 19% of budget. 57% of that revenue has been billed/collected to date. Many revenues for charges are underbudget due to the effects of COVID and some departments being closed to the public or not working at 100% capacity.

#### General Fund Expenditures

\*\*

- (1) **Court Facilities 26.0%** - Expenditures are in line with past fiscal year trends at this point in the fiscal year.
- (2) **Legal 49.1%** - Personnel costs are low as a result of multiple vacancies in the department earlier in the fiscal year.
- (3) **General Government Other 48.7%** - The revised budget includes expenditures allocating an additional \$4.7M of CARES Act funding to be utilized in this fiscal year.
- (4) **Culture Recreation Other 93.9%** - Payment to Airborne & Special Operations Museum is usually in 2 installments, but was paid as one in March.
- (5) **Engineering 41.4%** - Personnel costs are low as a result of vacancies in the department.
- (6) **Soil Conservation 3.9%** - Approximately \$2.1M in USDA Grant funds were budgeted recently and are unexpended. Over \$400k in remaining grant funds from the NC Division of Soil & Water Conservation were re-appropriated recently and are unexpended.
- (7) **Industrial Park 10.9%** - Approximately \$16.5k in funds were recently moved to this organization to repair a lighted sign and to cover an increase in PWC bills due to a leak with the irrigation system. These funds are unexpended.
- (8) **Water and Sewer 30.6%** - A re-appropriation was approved by the BOCC earlier in the fiscal year, but is not yet utilized.
- (9) **Transfers Out 2.6%** - Transfers are often prepared toward the end of the fiscal year.
- (10) **Capital Outlay 77.2%** - Most of these capital items are typically purchased in the second and third quarters of the fiscal year.



## **RISK MANAGEMENT**

### **MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021 AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

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

**DATE: 4/23/2021**

**SUBJECT: HEALTH INSURANCE UPDATE**

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

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

#### **BACKGROUND**

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

- Total health insurance claims plus the fully insured premium amount for FY21 are up 23.19% for the month of March as compared to the same month in FY20. To provide some perspective, below is the nine-month average for the past five fiscal years. This average represents the average monthly year-to-date claims for each fiscal year and includes the fully insured premium for fiscal years 2020 and 2021. Additionally, graphs are provided in the attachment to aid in the analysis.

Year to date claims and premium payment through March	\$14,702,411
Less year to date stop loss credits	<u>(\$436,260)</u>
Net year to date claims and premium payment through March	\$14,266,151

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

-  
FY17 \$1,502,409  
FY18 \$1,484,097  
FY19 \$1,805,766  
FY20 \$1,566,183  
FY21 \$1,633,601

**RECOMMENDATION / PROPOSED ACTION**

For information only – no action needed.

**ATTACHMENTS:**

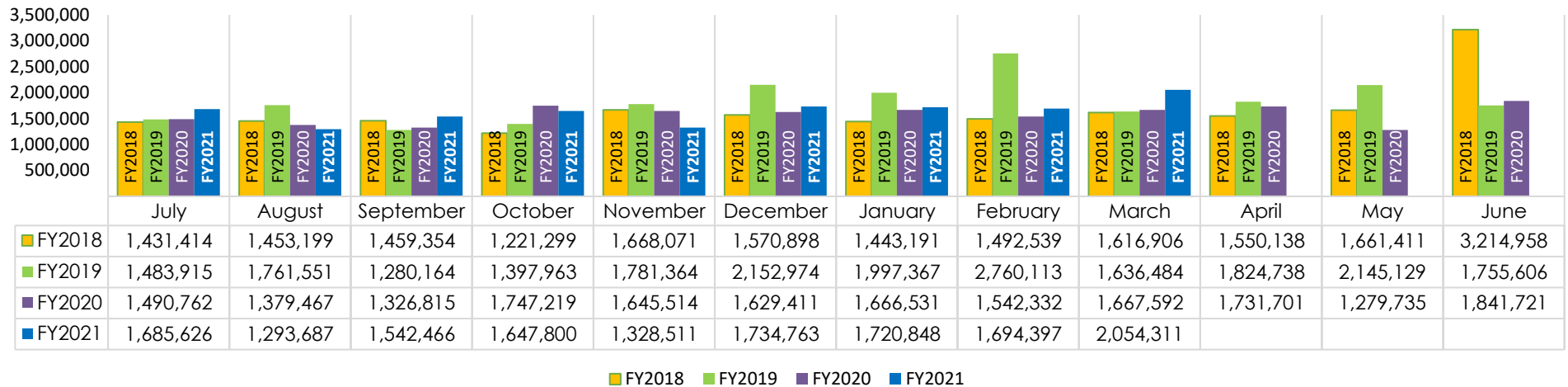
Description

Health Insurance Graphs

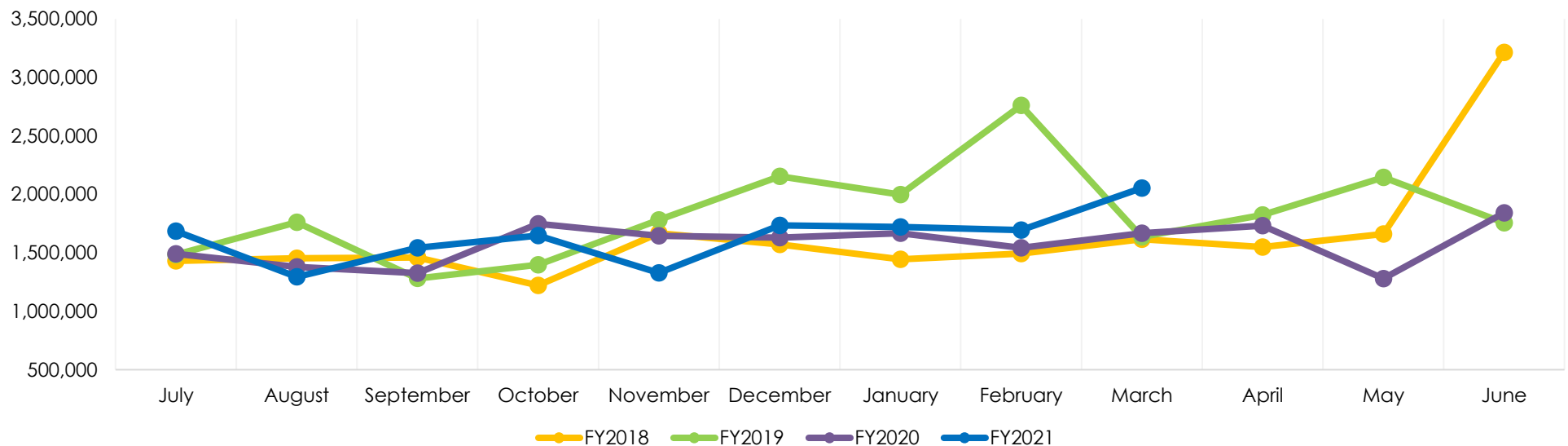
Type

Backup Material

## Monthly Insurance Claims FY18-FY19 Claims & Fully Insured Premium FY20-FY21



## Monthly Insurance Claims FY18 - FY19 Claims & Fully Insured Premium FY20-FY21





**OFFICE OF THE COUNTY MANAGER**

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021  
AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: DUANE T. HOLDER, DEPUTY COUNTY MANAGER**

**DATE: 5/3/2021**

**SUBJECT: CORONAVIRUS RELIEF FUNDS (CRF) PLAN UPDATE**

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

**Presenter(s): DUANE T. HOLDER, DEPUTY COUNTY MANAGER**

**BACKGROUND**

During the initial round of CARES Act funding, Cumberland County Government was the recipient of \$12,220,383 of Coronavirus Relief Funds (CRF). Per State of North Carolina mandate, the County was required to make \$3,055,096 of the total funds available for appropriation for any municipalities in the County requesting funding for eligible expenses. The County was able to pull down the balance of available funds through reimbursement of eligible expenses and activities.

At the September 8, 2020 regular meeting, the Board approved the County's Modified CRF Plan and also approved the expenditure of \$5,631,641 funding made available as the result of federal funds. Staff will provide a monthly update of expenditures for the approved projects.

**RECOMMENDATION / PROPOSED ACTION**

For information only - no action needed

**ATTACHMENTS:**

Description	Type
CRF Plan Update	Backup Material

**CORONAVIRUS RELIEF FUND (CRF)**  
**AUTHORIZED PROJECT STATUS**  
**AS OF March 31, 2021**

Approved Project	Original Budget	YTD Actual + Encumbrance	Alternate Expenditures	Total	Remaining
Protective Barriers	\$ 32,030	\$ 26,221	\$ -	\$ 26,221	\$ 5,809
Office/Workspace Modifications	693,929	473,366	19,233	492,598	201,331
Other Expenses	296,835	83,951	131,623	215,574	81,261
Public Health COVID Response	1,300,000	-	531,615	531,615	768,385
Technology	2,538,847	2,532,750	-	2,532,750	6,097
Virtual Learning Centers	270,000	219,937	-	219,937	50,063
Volunteer Fire Departments	500,000	500,000	-	500,000	-
<b>APPROVED PLAN TOTAL</b>	<b>\$ 5,631,641</b>	<b>\$ 3,836,225</b>	<b>\$ 682,471</b>	<b>\$ 4,518,696</b>	<b>\$ 1,112,945</b>



**FINANCE OFFICE**

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021**  
**AGENDA SESSION**

**TO:** BOARD OF COUNTY COMMISSIONERS

**FROM:** VICKI EVANS, FINANCE DIRECTOR

**DATE:** 4/26/2021

**SUBJECT:** SOUTHERN HEALTH PARTNERS, INC. QUARTERLY STATISTICAL  
REPORT ON INMATE HEALTH CARE

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

**Presenter(s):** NA

**BACKGROUND**

Through a contract with the Board of County Commissioners, Southern Health Partners, Inc. has been providing services to the inmates at the Cumberland County Detention Center since July, 2017.

The most recently updated quarterly statistical report of inmate healthcare as reported by Southern Health Partners, Inc. is provided in the attachment.

**RECOMMENDATION / PROPOSED ACTION**

For information purposes only. No action needed.

**ATTACHMENTS:**

Description	Type
SHP - Quarterly Report	Backup Material

**Southern Health Partners, Inc. Quarterly Statistics Report on Inmate Health Care**  
**July 1, 2017 - March 31, 2021**

Provided for the Cumberland County Board of Commissioners

Data Set	Description	Fiscal Year 2018				Fiscal Year 2019				Fiscal Year 2020				Fiscal Year 2021				Average over all Quarters
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
1	# of Hospital Admissions	7	5	6	9	6	4	4	3	3	4	2	3	2	5	8		5
2	# Sent to Emergency Room	20	16	20	29	18	16	11	8	10	16	6	9	6	15	29		15
3	# Outside Medical Visits (includes any specialty)	27	32	42	27	44	27	28	40	41	19	24	12	15	26	31		29
4	# of In-House X-Ray Services	38	50	82	88	78	54	69	95	75	78	105	45	195	88	51		79
5	# Seen On-Site By Mental Health	792	1188	461	461	1220	1403	1324	963	1043	859	1034	691	528	938	733		909
6	# Seen by Physician and/or Physician Providers	132	154	222	291	354	288	299	319	256	300	267	196	251	321	227		258
7	# Seen by Dentist (includes on-site & off-site)	56	77	66	63	53	42	56	69	63	51	48	54	54	52	20		55
8	# of Receiving Screens done by Medical Staff	340	0	0	0	0	2021	3500	2946	2924	2923	2836	1479	1959	1970	1895		1653
9	# Seen by Medical Staff for Sick Call	2029	2986	3612	3298	3512	3672	3739	3598	3507	4304	3513	3045	3553	2834	3350		3370
10	# of History and Physicals Performed	377	858	1163	1487	1365	1353	1296	1243	1721	1476	1418	925	1011	1064	933		1179
11	# of Rapid Plasma Reagin's performed (STD testing/syphilis)	331	399	549	513	538	489	486	440	342	415	312	0	0	0	0		321
12	# of Other Sexually Transmitted Diseases	6	13	13	16	12	6	18	14	7	13	6	8	5	8	22		11
13	# of Medical Refusals by Inmate	77	345	803	451	504	358	409	502	602	774	603	385	564	352	367		473
14	# of Inmate Blood Sugar Checks	2239	2145	1728	1554	2508	2100	4265	3455	3362	3993	4105	2651	1818	1633	1647		2614
15	# of Inmate Blood Pressure Checks	625	763	741	962	1193	1508	1705	2105	2510	2006	1776	1012	1036	1184	2112		1416
16	# of TB Screens and/or PPD Tests	274	858	1163	1487	1365	1353	1296	1250	1305	1476	1418	925	1011	1068	933		1145
17	# of Staph/MRSA Patients In-house	48	14	7	0	0	1	0	15	7	1	2	1	0	2	3		7
18	# of Pregnant Females	9	11	16	18	22	19	18	12	9	14	15	5	9	9	4		13
19	# of HIV Patients In-House	19	38	33	20	16	11	25	26	25	14	17	12	17	15	20		21
20	# of Inmates Placed on Suicide Watch	95	113	115	109	94	141	133	305	861	169	260	504	765	530	529		315
21	# of Inmate Deaths	1	0	0	3	0	0	0	0	2	1	0	0	1	0	0		1
22	# of Inmates on Detox Protocols	94	81	65	145	80	200	175	208	214	177	150	49	111	88	110		130
23	# of Diabetic Patients	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	41	19	30	31	30		30
24	# of Asthma Patients	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	33	12	21	15	23		21
25	# of Meds Administered	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	1858		1858
26	# of Medication Assisted Treatment	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	9	0	0	0	0		2
27	# of patients tested for COVID19	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	0	121	423	886	1194		525
28	# of patients testing positive for COVID19	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	0	20	9	16	98		29
	<b>Average Daily Population per Quarter:</b>	<b>775</b>	<b>740</b>	<b>763</b>	<b>746</b>	<b>751</b>	<b>725</b>	<b>697</b>	<b>649</b>	<b>680</b>	<b>714</b>	<b>674</b>	<b>537</b>	<b>501</b>	<b>472</b>	<b>452</b>		<b>658</b>

**ADDITIONAL INFORMATION ON OUTLIERS AS COMPARED TO AVERAGES:**

Gray highlighted cells show outliers as compared to quarterly averages. Per contact at SHP, those quarters' data were inaccurately counted and reported.

**Please note: HIPAA laws do not allow cause of death information to be released within the quarterly reports.**

Line 27 Per Dr. Jennifer Green, Cumberland County Public Health Director: All new inmates are being tested upon intake (~day 5 or 6 after arrival) and quarantined.

Line 28 Per Dr. Jennifer Green, Cumberland County Public Health Director: Some of the positive tests were among those that were tested upon intake and already in quarantine. There was one outbreak which was concluded in June 2020. No new outbreaks have been identified since then.



## **COMMUNITY DEVELOPMENT**

### **MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021 AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

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

**DATE: 5/4/2021**

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

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

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

#### **BACKGROUND**

Cumberland County, in partnership with the North Carolina Office of Recovery & Resiliency (N CORR), is implementing a project funded through the Community Development Block Grant Disaster Recovery Program. The attached report is an update on the status of the project (Robin's Meadow Permanent Supportive Housing) undertaken by Cumberland County.

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

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

#### **ATTACHMENTS:**

Description	Type
Cumberland County Disaster Recovery Programs Update	Backup Material

**CUMBERLAND COUNTY DISASTER RECOVERY PROGRAMS UPDATE**  
**FOR THE MAY 13, 2021**  
**BOARD OF COMMISSIONERS' AGENDA SESSION**

Status as of April 30, 2021:

Milestones/Activities (beginning with the most recent activity):

- The City of Fayetteville completed the final commercial review of the project. Within the next week, Cumberland County Community Development (CCCD) will post the invitation for bids for the construction of the project;
- On April 15, 2021, a virtual meeting was held between Tracey Colores (NCORR), Dee Taylor (CCCD), and Devon Newton (CCCD). Tracey provided an update on the status of the request for additional funds to support the project. NCORR is planning to provide additional funding. The additional funds requested by CCCD will only be eligible for construction activities. There were challenges with obtaining additional funding to assist with supportive services. The official letter and amended sub recipient agreement from NCORR is forthcoming. An updated Project Information Form will also need to be submitted;
- The Wooten Company submitted an updated project schedule. It is anticipated that construction will be completed June 2022;
- NCORR completed its review of the construction project manual;
- The construction project manual prepared by The Wooten Company was sent to NCORR for review. Invitation to Bid for the construction of the project are expected to be posted within the next month pending the City of Fayetteville's final commercial review and NCORR's final review of the construction project manual;
- NCORR held a technical assistance session with Community Development Staff (Sylvia McLean and Dee Taylor) on December 16, 2020 to ensure Community Development is carrying out the requirements of the agreement and the CDBG-DR program. NCORR staff included Dan Blaisdell, Bill Blankenship, Joe Brook, Mary Glasscock, Tracey Colores, and Kristina Cruz;
- A letter (dated July 28, 2020) was sent to NCORR requesting additional CDBG-DR funds in the amount of \$1,000,000 to cover construction and supportive services. A follow-up was made with NCORR regarding the status of the request and Community Development had to submit a revised letter (dated October 21, 2020) to clarify the amount requested. Community Development is still waiting to receive a response from NCORR regarding the status of the request;
- The Wooten Company submitted a revised project schedule. Community Development submitted a request to NCORR to extend the deadline to obligate funds to March 9, 2021;
- Robins Meadow Permanent Supportive Housing Project/Community Recovery Infrastructure - A/E Services – The Wooten Company is providing construction administration services and completing the construction document phase. The firm had submitted documents to City of Fayetteville Technical Review Committee and Engineering Review Committee to complete the final review process;
- DRA-17 & HMGP Projects – County completed acquisition and demolition of 10 properties;
- Robins Meadow Permanent Supportive Housing Project/Community Recovery Infrastructure – received project specific award letter January 23, 2020; and
- NCORR executed SRA with County December 17, 2019.

Current Staffing:

- State POC: John Ebbighausen – Director of Disaster Recovery Programs, NC Office of Recovery & Resiliency (NCORR); Mary Glasscock; Infrastructure Manager (NCORR)
- Cumberland County:
  - Sylvia McLean, P.T. Community Development (CD) Consultant



**ENGINEERING AND INFRASTRUCTURE DEPARTMENT**

**MEMORANDUM FOR THE AGENDA OF THE MAY 13, 2021  
AGENDA SESSION**

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: JERMAINE WALKER, COUNTY ENGINEER**

**DATE: 5/4/2021**

**SUBJECT: PROJECT UPDATES**

**Requested by: BOARD OF COMMISSIONERS**

**Presenter(s): JERMAINE WALKER, COUNTY ENGINEER**

**BACKGROUND**

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

**RECOMMENDATION / PROPOSED ACTION**

No action is necessary. This is for information only.

**ATTACHMENTS:**

Description

Monthly Project Report Update

Type

Backup Material

MONTHLY PROGRESS REPORT				
Project Location	Contract Amount	Project Status	Contract Start Date	Contract Duration
Spring Lake Library Pneumatic Controls	\$60,000.00	JCI is 90% complete with replacing the pneumatic controls with direct digital controls (DDC). Estimated completion date is May 28, 2021.	N/A	N/A
Spring Lake Family Resource Center, Pnuematic Controls	\$60,000.00	PO has been issued. JCI is scheduled to begin and complete the replacement of pneumatic controls with DDC controls after Spring Lake Library has been completed. Estimated completion date is mid-June, 2021.	N/A	N/A
Spring Lake Family Resource Center, Chiller Replacement	\$197,000.00	Project awarded to Boilermasters for \$197,000. Legal approved contract on April 23, 2021. Awaiting PO for construction to begin.	N/A	90 days
LEC Elevator Modernization Project	\$1,362,557.00	Work on all 3 elevators is complete. Additional DOL-identified deficiencies have been corrected. Waterproofing is the only work remaining. Estimated completion date is June 4, 2021.	4/6/2020	179 days
BMF, Bordeaux Library, West Regional Library	\$143,284.00	Project awarded for various improvements to all 3 buildings (BMF - recoat metal roof, Bordeaux - close gap in wood trim, seal windows, replace 1 window, West Regional - water repellant on glulam beams, decking repairs). Estimated completion date is May 28, 2021.	N/A	N/A
Crown Coliseum Cooling Tower Replacement	\$649,000.00	Conducted final load test on April 29, 2021. Awaiting final as-builts for drain line, warranty items and training. Estimated completion date is May 20, 2021.	5/18/2020	93 days
Crown Coliseum Parking Lot Improvement Project (Areas 1, 2, & 3)	\$714,979.70	Asphalt paving, sidewalk replacement, and handrail painting are all complete. Electrical (lamp) repairs outstanding. Estimated completion date is June 4, 2021.	3/16/2020	120 days
Crown Coliseum ADA Bathroom and Ticket Booth Renovations	\$541,217.00	Overall construction approximately 99% complete. Awaiting application of Zoloturn to interior wall surfaces. Estimated completion date is May 14, 2021.	9/14/2020	180 days