

**BRUNSWICK COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING AGENDA**

June 7, 2021

3:00 PM

I. Call to Order

II. Invocation/Pledge of Allegiance

III. Adjustments/Approval of Agenda

IV. Public Comments

V. Approval of Consent Agenda

1. Administration - Award of Coronavirus Local Fiscal Recovery Funds - American Rescue Plan (ARP)

Request that the Board of Commissioners approves and authorizes the County Manager to make an application for Coronavirus State and Local Fiscal Recovery funds established under the federal American Rescue Plan Act (ARP) and approve a budget amendment and grant project ordinance designating the current estimate of \$27,741,111 to be used for County eligible projects.

2. Administration - Brunswick County Schools Waccamaw School Roof Replacement

Request that the Board of Commissioners approve and authorize the Chairman to sign AAR of North Carolina Inc. contract for roof replacement at Waccamaw K-8 Building in the amount of \$805,000.

3. Administration - Surplus Property Offers for Upset Bid Process

Request that the Board of Commissioners accept, subject to the upset bid process, offers that have been submitted for surplus parcels that meet the value parameters previously established by the Board.

4. Administration - Varnam Request for Deferred Payment Plan

Request that the Board of Commissioners approve a Deferred Payment Plan for ALL-IN, LLC and authorize the County Manager to execute the agreement. Payments will commence July 1, 2021 and shall be remitted to the Holder on or before the 20th day of each calendar month to be applied against the outstanding balance of the Deferral amount.

5. Brunswick BID - Building Reuse Grant - Contract Amendment - Pacon Manufacturing

Request that the Board of Commissioners approve an amendment to the NC Department of Commerce Rural Development Building Reuse Grant Agreement (Grant #2019-121-3201-2587) associated with Pacon Manufacturing Corporation.

6. Clerk to the Board - Meeting Minutes

Request that the Board of Commissioners approve the draft minutes from the May 17, 2021 Regular Meeting.

7. Code Administration - Hazard Mitigation Grant Program 4393DR-State Centric Opt In

Request the Board of Commissioners approve County participation in the Hazard Mitigation Grant Program 4393DR-State Centric Opt In Option for management of the Hazard Mitigation Grant for Hurricane Florence.

8. County Attorney - Amend Contract and Purchasing Policy

Request that the Board of Commissioners approve amendments to the Brunswick

County Contract and Purchasing Policy.

9. Emergency Services - RACE-CARS Clinical Research Sub-award

Request that the Board of Commissioners approve Brunswick County EMS' participation in an "out of hospital cardiac arrest cases" study with Duke University.

10. Finance - Fiscal Items

Request that the Board of Commissioners approve Budget Amendments, Capital Project Ordinances and Fiscal Items of a routine nature on the consent agenda.

-Environmental Health Budget Amendment

Appropriate \$104,600 of local fee revenues for Environmental Health projection of actual salary and fringe needs through year end.

-Airport Grant 36244.58.12.2 Budget Amendment and CPO

Appropriate \$150,000 of additional state funding awarded from North Carolina Department of Transportation for use in airport grant 36244.58.12.2.

-FY21 JCPC Funding Plan Amendment

Request the Board of Commissioners to approve updated FY21 JCPC Funding Plan for Brunswick County. Appropriate an additional \$29,560 for Teen Court/Communities In Schools to support training for the entire CIS team across the state. Funds will also benefit Brunswick County CIS/Teen Court. Brunswick County JCPC approved discretionary funding at May 20, 2021 meeting. The Funding Plan also increases Brunswick County's cash match for the Restitution Program for replacement of hoop house heaters. Total amount is \$3,588 for capital outlay which includes a required 20% cash match. Match of \$717 will be covered by Cooperative Extension's approved FY21 budget.

-Airport Grant 36244.58.13.1 Budget Amendment and CPO

Appropriate \$3,254,231 of state grant funds from the NC Department of Transportation Division of Aviation for the award of grant funding for the West Apron Expansion Phase II project and transfer of local match of \$361,582 to the project.

-DSS Revenues GASB 84 Budget Amendment

Appropriate \$175,000 of DSS Representative Payee Revenue to corresponding expenditure line for the implementation of GASB 84 for the required elimination of agency funds for fiduciary activities.

-Sheriff's Office GASB 84 Budget Amendment

Appropriate \$275,000 of Sheriff Trust revenue and \$105,000 Sheriff Seizure restricted revenues to be used in corresponding expenditure lines for the implementation of GASB 84 for the required elimination of agency funds for fiduciary activities.

-Brunswick County Schools GASB 84 Budget Amendment

Appropriate \$250,000 of miscellaneous revenues and \$50,000 of NSF Check Penalties revenue for Brunswick County Schools expenditures for the implementation of GASB 84 for the required elimination of agency funds for fiduciary activities.

-Family Health Personnel Salary Budget Amendment

Appropriate \$50,000 of clinic fees and \$40,000 of Medicare revenues associated with administrative fees for vaccines to salary in Family Health Personnel.

11. GIS - First Reading and Schedule Public Hearing on June 21, 2021 For Street Name Adoptions
Request that the Board of Commissioners approve the first reading of the street names and set the date of the Public Hearing for June 21, 2021.
12. IT - Courthouse Data & AV Changes
Request that the Board of Commissioners approve the submitted changes and associated cost for additional data drops and Courtroom audio/visual and authorize County Manager to execute contract amendment upon approval of County Attorney.
13. Operation Service - Solid Waste & Recycling - NC CWRAR Grant Agreement
Request that the Board of Commissioner approve the NC Community Waste Reduction and Recycling Grant Agreement.
14. Utilities - McKim & Creed West Brunswick Regional Water Reclamation Facility Capacity Study
Request that the Board of Commissioners approve the contract amendment with McKim & Creed to extend the term of the contract for engineering services associated with the Capacity Study of the West Brunswick Regional Wastewater System Water Reclamation Facility (WBR-WRF).
15. Utilities - USGS Well Monitoring Program
Request that the Board of Commissioners approve the Joint Funding Agreement with the U.S. Geological Survey for continued monitoring of groundwater levels in Brunswick County and authorize the Chairman to sign the agreement on behalf of the county.

VI. Public Hearing

1. Administration - Public Hearing to Receive Comments on the FY 2021-2022 Brunswick County Budget, Fees, and Capital Improvement Plan (Randell Woodruff, County Manager)
Request that the Board of Commissioners hold a public hearing on the Manager's FY 2021-2022 Recommended Budget, Proposed Fees and Five Year Capital Improvement Plan.

VII. Board Appointments

1. Board Appointment - Health & Human Services Advisory Board - Nurse Position
Request the Board of Commissioners consider appointing Cynthia Carver to the Health & Human Services Advisory Board - Nurse Position for a 3-year term beginning July 1, 2021 and expiring June 30, 2024.
2. Board Appointment - Zoning Board of Adjustments - District 4
Request that the Board of Commissioners reappoint Mr. Clayton Rivenbark to the Zoning Board of Adjustments, representing District 4, for a 3-year term expiring June 30, 2024.

VIII. Other Business/Informal Discussion

1. Governing Body - NACo Voting Delegate
Request that the Board of Commissioners appoint a voting delegate to represent Brunswick County at the 2021 NACo Annual Business Meeting on July 12, 2021.
2. Governing Body - NCACC Voting Delegate
Request that the Board of Commissioners designate a voting delegate and an alternate to represent Brunswick County at the NCACC Annual Conference for the General Business Session on August 14, 2021.

IX. Closed Session

1. Closed Session - Approve Closed Session Minutes and Discuss Personnel

Request that the Board of Commissioners enter into Closed Session pursuant to N.C.G.S. 143-318.11(a)(1) to approve closed session minutes and 143-318.11(a)(6) to discuss personnel.

X. Adjournment



Brunswick County Board of Commissioners

ACTION AGENDA ITEM

June 7, 2021

From:
Randell Woodruff

Action Item # V. - 1.

Administration - Award of Coronavirus Local Fiscal Recovery Funds - American Rescue Plan (ARP)

Issue/Action Requested:

Request that the Board of Commissioners approves and authorizes the County Manager to make an application for Coronavirus State and Local Fiscal Recovery funds established under the federal American Rescue Plan Act (ARP) and approve a budget amendment and grant project ordinance designating the current estimate of \$27,741,111 to be used for County eligible projects.

Background/Purpose of Request:

Counties are authorized to apply now for their first tranche (1/2 of the allocation) directly from the federal government. The Board of Commissioner's must accept the grant funds. The state law that allows a local government to accept the ARP grant funds is G.S. 160A-17.1.

US Treasury has published the Interim Final Rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act (Interim Final Rule). Under the ARP, allowable funding comprises four main expenditure categories are:

1. Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
2. Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

The federal law specifies that the funds will remain available through December 31, 2024. (According to US Treasury guidance, ARP funds must be obligated by this date.) Any unallocated ARP funds will comprise a restricted fund balance until they are budgeted by the Board of Commissioners. It is recommended that local officials are well-advised to wait to spend proceeds until we receive final guidance from the applicable federal and state agencies on compliance requirements

Fiscal Impact:

Budget Amendment Required, Capital Project/Grant Ordinance Required, Reviewed By Director of Fiscal Operations

Budget Amendment and the associated grant project ordinance appropriates \$27,741,111 in the Grants Project Funds designating the funds to be used for eligible expenditures related to the American Rescue Plan

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners approves and authorizes the County Manager to make an application for Coronavirus State and Local Fiscal Recovery funds established under the federal American Rescue Plan Act (ARP) and approve a budget amendment and grant project ordinance designating the current estimate of \$27,741,111 to be used for County eligible projects.

ATTACHMENTS:

Description

- ▣ Brunswick County - AcceptanceOfAwardTerms ARP 6-7-21.pdf
- ▣ 20210607 Budget Amendment Coronavirus Local Recovery ARP.pdf
- ▣ 20210607 CPO American Rescue Plan.pdf

OMB Approved No.:1505-0271
Expiration Date: 11/30/2021

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND

Recipient name and address: Brunswick County PO Box 249 Bolivia, North Carolina 28422-0249	DUNS Number: 091571349 Taxpayer Identification Number: 566000278 Assistance Listing Number and Title: 21.019

Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient:

Authorized Representative:
Title: *County Manager*
Date signed:

U.S. Department of the Treasury:

Authorized Representative:
Title:
Date signed:

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. Use of Funds.

- a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.

3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.

4. Maintenance of and Access to Records

- a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
- c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.

7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.

8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

- a. Recipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

- v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Recipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."
14. Debts Owed the Federal Government.
- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS
ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the "Recipient") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient's program(s) and activity(ies), so long as any portion of the Recipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Recipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient's programs, services, and activities.
3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.
4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal

financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.

7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.
9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.
10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

Brunswick County
Recipient

Date

Signature of Authorized Official

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Request Info	
Type	Budget Amendment
Description	Coronavirus Local Recovery ARP
Justification	Board Meeting 06/07/2021-Appropriate \$27,741,111of Coronavirus State and Local Fiscal Recovery funds in the American Rescue Plan project.
Originator	Tiffany Rogers

Items						
Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
230010	331049	American Rescue Plan	American Rescue Plan	27741111	Increase	Credit
230010	464052	American Rescue Plan	American Rescue Plan	27741111	Increase	Debit

Total	
Grand Total:	55482222

COUNTY OF BRUNSWICK, NORTH CAROLINA
CAPITAL PROJECT ORDINANCE
American Rescue Plan
(230010)

Be it ordained by the Board of County Commissioners of Brunswick County that pursuant to Section 13.2 of the General Statutes of North Carolina, the following ordinance is hereby adopted:

Section 1. The following amounts are hereby appropriated in the Brunswick County Grants Fund:

American Rescue Plan

Revenues:

American Rescue Plan Revenue

27,741,111

Total Grant Fund Revenues

\$ 27,741,111

Expenditures:

American Rescue Plan Expenditure

27,741,111

Total Grant Fund Expenditures

\$ 27,741,111

Section 4. This Grant Ordinance shall be entered into the minutes of the June 7, 2021 meeting of the Brunswick County Board of Commissioners.



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

From:

Julie A. Miller

Action Item # V. - 2.

Administration - Brunswick County Schools Waccamaw School
Roof Replacement

Issue/Action Requested:

Request that the Board of Commissioners approve and authorize the Chairman to sign AAR of North Carolina Inc. contract for roof replacement at Waccamaw K-8 Building in the amount of \$805,000.

Background/Purpose of Request:

Brunswick County Board of Education approved the contract on 05/18/2021 and staff recommends the contract with AAR of North Carolina Inv. in that amount of \$805,000 be executed by the Board of Commissioners. The contract is fully funded with 2016 bond proceeds.

Fiscal Impact:

Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations
Funded with GO Bond Proceeds

Approved By County Attorney:

Yes

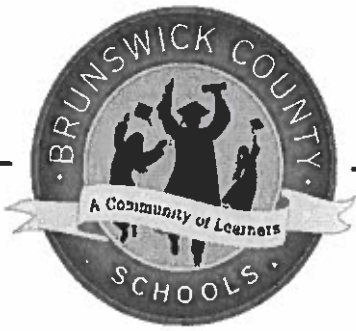
County Manager's Recommendation:

Recommend the Board of Commissioners approve and authorize the Chairman to sign AAR of North Carolina Inc. contract for roof replacement at Waccamaw K-8 Building in the amount of \$805,000.

ATTACHMENTS:

Description

- ❑ 20210607 - Attach BCS Waccamaw School roof memo approved.pdf
- ❑ Waccamaw School - Roofing Contract



BRUNSWICK COUNTY SCHOOLS

35 Referendum Drive • Bolivia, North Carolina 28422 • Phone: 910-253-2900 • Fax: 866-291-7891

☐ Board Presentation	☒ Approved
☐ Report to the Board	☐ Denied
☐ Consent Agenda	☐ Deferred
☒ Action Agenda	
☐ Discussion Agenda	Attest: Clerk to the Board
☐ Confidential Agenda	<u>USB</u>
☐ Information Item	Date <u>5/18/21</u>
☐ Announcement	

To: Operations Committee
From: Susan Rutledge
Date: May 4, 2021
Subject: Waccamaw K-8 roofing contract

Background Information

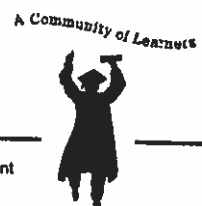
The 2016 Bond included funds for roof replacement on selected areas at Waccamaw K-8. Request for bids was advertised and bids for this project were received on May 4, 2021.

Current Status

Six bids were received. Bids were evaluated by Staff and REI Engineers. REI Engineers and staff recommend acceptance of the low bid in the amount of \$805,000 from AAR of North Carolina, Inc.

Recommendation

Staff recommends this contract in the amount of \$805,000 with AAR of North Carolina, Inc. be forwarded to the County for Approval. This will allow the roofing project to start in July.



OWNER-CONTRACTOR AGREEMENT

SCHOOL NAME: **Waccamaw K-8**

THIS AGREEMENT, in One (1) copy, made this 4th day of May, Two Thousand and Twenty-One by and between County of Brunswick, North Carolina (herein referred to as the "Owner"), whose mailing address is 30 Government Center Dr., NE, Bolivia, NC 28422 and AAR of North Carolina, Inc., (herein referred to as the "Contractor"), whose mailing address is 655 Peddycord Rd., Kernersville, NC 27284. Correspondence, submittals, and notices relating to or required under this Contract shall be sent in writing to the above addresses; unless either party is notified in writing by the other, of a change in address.

WITNESSETH:

WHEREAS, it is the intent of the Owner to obtain the services of the Contractor in connection with the metal roof replacement at Waccamaw K-8 (hereinafter referred to as the "Project" or the "Work"); and

WHEREAS, the Contractor desires to perform such construction in accordance with the terms and conditions of this Agreement,

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable consideration, the following terms and conditions are hereby mutually agreed to, by and between the Owner and Contractor:

Article 1

DEFINITIONS

- 1.1 All terms in this Agreement which are defined in the Information for Bidders and the General Conditions shall have the meanings designated therein.
- 1.2 The Contract Documents are as defined in the General Conditions. Such documents form the Contract, and all are as fully a part thereof as if attached to this Agreement or repeated herein.

Article 2

STATEMENT OF THE WORK

- 2.1 The Project is the Work identified in the plans and specifications prepared by REI Engineers dated April 20, 2021 for Brunswick County Board of Education, including the following addenda:

Addendum 1 dated 4/29/21

A listing of the plans and specifications included in the Contract Documents is attached as Exhibit A.

- 2.2 The Parties agree that the Project shall include the following alternates:

Alternate 1: Provide roof replacement as specified on Roof Area F \$222,600

- 2.3 The Parties agree to the following modifications to the Project's plans and specifications, including the noted value engineering items: *None*

- 2.4 The Parties agree that the following allowances are included in the Contract Sum in Section 5.1 below:

Contingency Allowance	\$30,000
Repair 2000 SF of Corroded Steel Deck with Coating	
Repair 500 SF of Steel Deck with Steel Plates	
Overlay 500 SF of Deteriorated Steel Deck with New Steel Deck	
Replace 500 SF of Deteriorated Steel Deck	
Replace 1000 BF of Deteriorated Wood Blocking	
Replace 200 SF Deteriorated Plywood	

- 2.5 The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work, as required by the Contract Documents.

- 2.6 The Contractor shall further provide and pay for all related facilities described in any of the Contract Documents, including all work expressly specified therein and such additional work as may be reasonably inferred therefrom, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor. The totality of the obligations imposed upon the contractor by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the "Work".

Article 3

DESIGN CONSULTANT

- 3.1 The Design Consultant (as defined in the General Conditions) shall be REI Engineers whose address is 1927 JN Pease Place, Ste 201, Charlotte, NC 28262, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its Design Consultant and so advising the Contractor in writing, at which time the person or organization so designated shall be the Design Consultant for purposes of this Contract.

Article 4

TIME OF COMMENCEMENT AND COMPLETION

- 4.1 The Contractor shall commence the Work promptly upon the date established in the Notice to Proceed. If there is no Notice to Proceed, the date of commencement of the Work shall be the date of this Agreement or such other date as may be established herein.
- 4.2 Time is of the essence. The Contractor shall achieve Final Completion, as defined in the General Conditions on or before the date established for Final Completion in the Supplemental Conditions.
- 4.3 The Supplemental Conditions contains certain specific dates that shall be adhered to and are the last acceptable dates unless modified in writing by mutual agreement between the Contractor and the Owner. All dates indicate midnight unless otherwise stipulated. The only exceptions to this schedule are defined in the General Conditions under 7.2 DELAYS AND EXTENSIONS OF TIME.
- 4.4 Should the Contractor fail to complete the Work on or before the dates stipulated for Substantial Completion and/or Final Completion, or such later date as may result from an extension of time granted by the Owner, he shall pay the Owner, as liquidated damages the sums set forth in the General and Supplemental Conditions.

Article 5

CONTRACT SUM

- 5.1 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the Owner shall pay to the Contractor, in current funds and at the time and in the installments hereinafter specified, the sum of eight hundred five thousand Dollars (\$805,000) herein referred to as the "Contract Sum". This amount includes the base bid and the Alternates in Section 2.2
- 5.2 The Contract Sum includes the value engineering items and other contract modifications noted in Section 2.3 above that total \$0.00.

5.3 Unit Prices are established as follows for the Project:

Unit Price No. 1	Repair corroded steel deck with coating	\$3.00 SF
Unit Price No. 2	Repair steel deck with steel plates	\$7.00 SF
Unit Price No. 3	Overlay of deteriorated steel deck with new steel deck	\$8.00 SF
Unit Price No. 4	Replace deteriorated steel deck	\$2.00 SF
Unit Price No. 5	Replace deteriorated wood blocking	\$4.00 BF
Unit Price No. 6	Replace deteriorated plywood	\$4.00 SF

Article 6

PROGRESS PAYMENTS

- 6.1 The Contractor hereby agrees that on or about the First day of the month for every month during the performance of the Work he will deliver to the Owner's Project Manager an Application for Payment in accordance with the provisions of Article 8 of the General Conditions. This date may be changed upon mutual agreement, stated in writing, between the Owner and Contractor. Payment under this Contract shall be made as provided in the General Conditions. Payments due and unpaid under the Contract Documents shall not bear interest.

Article 7

OTHER REQUIREMENTS

- 7.1 The Contractor shall submit the Performance Bond, Labor and Material Payment Bond and Certification of Insurance as required by the Contract Documents.
- 7.2 The Owner shall furnish to the Contractor one **(1)** set of drawings and one **(1)** set of specifications, at no extra cost, for use in the Construction of the Work. Additional sets of drawings or specifications may be obtained by the Contractor by paying the Owner for the costs of reproduction, handling and mailing.
- 7.3 The Contractor shall make a good faith effort to utilize Historically Underutilized Businesses (HUB's) per N.C. Gen. Stat. 143-128.2, and as described in the construction documents.
- 7.4 The General Conditions, Supplemental Conditions and the plans and specifications, including any addenda, are incorporated herein by reference.

- 7.5 This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

IN WITNESS WHEREOF, County of Brunswick, North Carolina (hereinbefore called the "Owner") has caused these presents to be signed and its corporate seal to be hereunto affixed, attested by its Chairperson and Secretary, and AAR of North Carolina, Inc. (hereinbefore called "Contractor") has caused these presents to be signed by its President and its Corporate seal to be hereunto affixed, as hereinafter attested, all as of the day and year first above written.

COUNTY OF BRUNSWICK, NORTH CAROLINA

Chairman Board of Commissioners

ATTEST:

Clerk to the Board of Commissioners

This contract was approved by the Board on the 7th day of June, 2021

AAR OF NORTH CAROLINA, INC

By: Brad Kurth

Brad Kurth, Vice-President

ATTEST:

Michelle Sied
Corporate Secretary

This Instrument Has Been Pre-audited In The Manner Required By The School Budget And Fiscal Control Act	This Instrument Has Been Pre-audited In The Manner Required By The Local Government Budget And Fiscal Control Act
<u>Freyja Cahill</u>	<u>Julie A. Miller</u>
Freyja Cahill, Finance Officer Brunswick County Schools	Julie A. Miller, Director Of Fiscal Operations, County of Brunswick, North Carolina

4.9003.696.529.344.838.00

APPROVED AS TO FORM

Bryan W. Batton
Brunswick County Attorney/Asst Attorney

SECTION GC
GENERAL CONDITIONS
OF THE
CONTRACT FOR CONSTRUCTION
FOR ROOFING PROJECTS

TABLE OF ARTICLES

1. CONTRACT DOCUMENTS
 2. OWNER
 3. CONTRACTOR
 4. SUBCONTRACTORS
 5. WORK BY OWNER OR BY SEPARATE CONTRACTORS
 6. MISCELLANEOUS PROVISIONS
 7. TIME
 8. PAYMENTS AND COMPLETION
 9. INSURANCE
 10. CHANGES IN THE WORK
 11. UNCOVERING AND CORRECTION
 12. TERMINATION OF THE CONTRACT
- APPENDIX A – Contractor's Sales Tax Report
APPENDIX B-1 – Change Proposal Form (Time & Materials or Unit Price)
APPENDIX B-2 – Change Proposal Form (Fixed Price)

ARTICLE 1

CONTRACT DOCUMENTS

1.1 GENERAL

- 1.1.1 The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order issued pursuant to the provisions of Article 10, (3) a written interpretation issued by the Design Consultant, or (4) a written order for a minor change in the Work issued pursuant to this contract.
- 1.1.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.
- 1.1.3 All Drawings, Specifications and copies thereof furnished by the Design Consultant are and shall remain his property. They are to be used only with respect to this Project and are not to be used on any other project.
- 1.1.4 The Contractor will be furnished with one set of drawings and specifications at no cost. Additional copies may be purchased.

END OF ARTICLE 1

ARTICLE 2

OWNER

2.1 INFORMATION, SERVICES AND RIGHTS OF THE OWNER

- 2.1.1 The Owner shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
- 2.1.2 The Owner shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. This requirement applies continuously throughout contract performance and is not limited to regular working hours.
- 2.1.3 The Owner will have authority to require special inspection or testing of the work whether or not such Work is then fabricated, installed, or completed. However, neither the Owner's authority to act under Subparagraph 2.2.4, nor any decision made by the Owner in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Owner to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 2.1.4 The Owner shall have the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors, and the Design Consultant, to discuss such matters as procedures, progress, problems, and scheduling.
- 2.1.5 The Owner and Design Consultant shall not be responsible or liable to Contractor for the acts, errors or omission of the Contractor, any separate Subcontractor, any separate contractor or any contractor's or subcontractor's agents or employees, or any other persons performing any of the Work.

- 2.1.6 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid unreasonable delay in the orderly progress of the Work.
- 2.1.7 The parties acknowledge that the Owner may perform all or part of its obligations pursuant to this Agreement through the Superintendent or his designee.
- 2.1.8 The foregoing rights are in addition to other rights of the Owner enumerated herein and those provided by law.
- 2.2 OWNER'S RIGHT TO STOP OR TO SUSPEND THE WORK
- 2.2.1 If the Contractor fails to correct defective Work or fails to carry out the Work or supply labor and materials in accordance with the Contract Documents, the Owner by a written order may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.
- 2.2.2 The Owner may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the Owner.
- 2.2.3 If the performance of all or any part of the Work (including the work of the Contractor and its subcontractors) is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Owner or the Design Consultant in the administration of this Contract, or by failure of any one of them to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for an increase in the actual time required for performance of the Work by the Contractor, due solely to such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no claim shall be made under this Subparagraph for any suspension, delay, or interruption pursuant to Subparagraph 2.3.1, or for which claim is provided or excluded under any other provision of this Contract. No claim under this Subparagraph shall be allowed on behalf of the Contractor or its subcontractors, unless within 10 days after the act or failure to act involved, and for continuing or ongoing acts or failures to act within 10 days of the first day of the act or failure to act the Contractor submits to the Owner a written statement setting forth, as fully as then practicable, the extent of such claim, and unless the claim is asserted in writing within 20 days after the termination of such suspension, delay, or interruption. For continuing or ongoing acts or failures to act, the Contractor shall update its written statement every 15 days until the suspension, delay or interruption is terminated. The Contractor shall waive any and all claims not filed in strict conformance with this paragraph. The Contractor shall indemnify, defend and hold the Owner harmless from any claim by a Subcontractor that is waived because it is not filed in strict conformance with this paragraph or any other provision of this Agreement regarding claims.
- 2.2.4 In the event of a suspension of work or delay or interruption of work, the Contractor will and will cause his subcontractors to protect carefully his, and their, materials and work against damage or injury from the weather and maintain completed and uncompleted portions of the work as required by the Contract Documents. If, in the opinion of the Owner, any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect same, such work and materials shall be removed and replaced at the expense of the Contractor.
- 2.2.5 No claim by the Contractor shall be allowed if asserted after final payment under this Contract or if it is not asserted in strict conformance with Subparagraph 2.2.
- 2.3 OWNER'S RIGHT TO CARRY OUT THE WORK
- 2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within ten days after the date written notice is mailed by the Owner to commence and continue remedy of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedy he may have, make good such deficiencies and may further elect to complete all Work thereafter through such means as the Owner may select, including the use of a new contractor. In such case the Owner shall issue a Change Order deducting from the payments then or thereafter due the Contractor the cost of correcting such

deficiencies, including compensation for the Design Consultant's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Design Consultant. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner. Notwithstanding the Owner's right to carry out a portion of the work, warranty, maintenance and protection of the work remains the Contractor's responsibility. Further, the provisions of this paragraph do not affect the Owner's right to require the correction of defective or non-conforming work in accordance with this contract.

END OF ARTICLE 2

ARTICLE 3

CONTRACTOR

3.1 DEFINITION

- 3.1.1 This entire Contract is not one of agency by the Contractor for Owner but one in which Contractor is engaged independently in the business of providing the services and performing the Work herein described as an independent contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS

- 3.2.1 Before placing his proposal to the Owner, and continuously after execution of the Contract, the Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission he may discover, including any requirement which may be contrary to any law, ordinance, rule, regulation or order of any public authority bearing on the performance of the Work. If the Contractor has reported in writing an error, inconsistency or omission, has promptly stopped the affected work until otherwise instructed, and has otherwise followed the instructions of the Owner, the Contractor shall not be liable to the Owner or the Design Consultant for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without Contract Documents and, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.
- 3.2.2 All designs, drawings, specifications, design calculations, notes and other works provided for this contract are the sole property of the Owner and may not be used on any other design or construction project. The use of the design, including tracings and specifications, by any person or entity, for the purpose other than the Project, shall be at the full risk of such person or entity

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and all statutory or legal requirements. This requirement applies continuously throughout contract performance and is not limited to regular working hours.
- 3.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and Sub- subcontractors, suppliers, their agents and employees, and other persons performing any of the Work and for their compliance with each and every requirement of the Contract Documents, in the same manner as if they were directly employed by the Contractor.
- 3.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the acts, failures to act or duties of the Owner or the Design Consultant in their

administration of the Contract, or by inspections, tests or approvals (or the lack thereof) required or performed under Paragraph 6.5 by persons other than the Contractor.

- 3.3.4 The Contractor shall verify all grades, lines, levels and dimensions as indicated and shown on the plans and specifications prior to beginning the work and shall immediately report in writing any errors or inconsistencies to the Design Consultant before commencing the work.
- 3.3.5 Contractor shall protect existing surfaces, finishes and adjacent facilities from damage during construction. Any damage shall be repaired by Contractor at his own expense prior to completion of the Project. Prior to construction start, Contractor and Owner shall perform an inspection to record existing conditions, damaged and undamaged.
- 3.4 LABOR AND MATERIALS
- 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, supplies, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary or proper for or incidental to the execution and completion of the Work required by and in accordance with the Contract Documents and any applicable code or statute, whether specifically required by the Contract Documents or whether their provision may reasonably be inferred as necessary to produce the intended results, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Final payment will not be made until the Work is so completed.
- 3.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The Owner may, by notice in writing, require the Contractor to remove from the work any employee the Owner deems incompetent, careless or otherwise objectionable. All agents and workers of the contractor and its subcontractors shall wear identification badges provided by the Contractor at all times they are on the Owner's property. The identification badges shall at a minimum display the company name, telephone number and employee's picture and name and must be worn in plain view at all times. Additionally, once school staff occupies the building, all contractors and their respective subcontractors shall be required to sign in and out of the visitor's log each day they are performing services. They must also wear a visitor's pass which will indicate to staff that they have met this requirement which applies to anyone performing services anywhere on the school property.
- 3.4.3 The Contractor shall be responsible for ensuring that the work is completed in a skillful and workmanlike manner.
- 3.4.4 All equipment, apparatus and/or devices of any kind to be incorporated into the work that are shown or indicated on the drawings or called for in the specifications or required for the completion of the work shall be entirely satisfactory to the Owner and the Design Consultant as regards operations, capacity and/or performance. No approval, either written or verbal, of any drawings, descriptive data or samples of such equipment, apparatus and/or device shall relieve the Contractor of his responsibility to turn over the same in good working order for its intended purpose at the completion of the Work in complete accordance with the Contract Documents. Any equipment, apparatus and/or device not fulfilling these requirements shall be removed and replaced by proper and acceptable equipment, etc. or put in good working order satisfactory to the Owner and Design Consultant without additional cost to the Owner.
- 3.4.5 All materials and Work shall meet North Carolina Building Codes. Should there be any discrepancies between design and code, the more stringent requirement shall apply. All materials shall comply with standards (or approved products) as set by the specifications. Unless otherwise specified, NO ASBESTOS CONTAINING MATERIALS SHALL BE INSTALLED. BY DEFINITION, INSTALLATION OF ASBESTOS MATERIALS WILL BE CONSIDERED CONTRACTOR'S NEGLIGENCE AND THE CONTRACTOR SHALL PERFORM ALL NECESSARY WORK TO REMOVE THE ASBESTOS AND RESTORE THE SITE TO THE 'PRE-CONTRACT' CONDITION. Contractor shall assume all facilities built prior to 1979 have lead-based paint. Any paint removal shall be in accordance with OSHA standard pertaining to lead (29 CFR 1915.1025).

3.5 WARRANTY

- 3.5.1 The Contractor warrants to the Owner and the Design Consultant that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all workmanship will be of first class quality, free from faults and defects and in conformance with the Contract Documents and all other warranties and guaranties specified therein. Where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner or the Design Consultant, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 11.
- 3.5.2 The warranties set forth in this Paragraph 3.5 and elsewhere in the Contract Documents shall survive Final Completion of the Work.
- 3.5.3 If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract documents, the Contractor shall correct it within five (5) working days or such other period as mutually agreed, after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice with reasonable promptness after discovery of the condition. For items, which remain incomplete or uncorrected on the date of Substantial Completion, the one-year warranty shall begin on the date of Final Completion of the Work. If the Contract Documents include painting work, the one year warranty period in this section shall be extended to two years.
- 3.5.4 If at any time deficiencies in the Work are discovered which are found to have resulted from fraud or misrepresentation, or an intent or attempt to or conspiracy to defraud the Owner by the Contractor, any Subcontractor or Supplier, the Contractor will be liable for replacement or correction of such Work and any damages which Owner has incurred related thereto, regardless of the time limit of any guarantee or warranty.
- 3.5.5 The Contractor shall bear the cost of making good all work of the Owner, separate contractors or others, destroyed or damaged by such correction or removal required under this Article 3, Article 11 or elsewhere in the Contract Documents.

3.6 TAXES

- 3.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.
- 3.6.2 The Contractor shall provide a completed Contractor's Sales Tax Report (attached hereto as Appendix A) with each application for payment for all items provided by the Contractor or any Sub-Contractors and incorporated into this project. The Contractor shall account for at least 2% of the total contract amount in sales tax or provide justification satisfactory to the Owner that the actual sales tax paid is less than 2%. In the event the Contractor does not provide adequate justification to support the shortfall, the Contractor shall pay the Owner the difference between the amount accounted for and the 2% minimum. Such compensation shall not be deemed a penalty, but reimbursement of funds the Owner would otherwise be entitled to recover from the State.
- 3.6.3 Sales and Use Tax. Contractor shall be responsible for complying with any applicable sales and use tax obligations imposed by Chapter 105, Article 5 of the North Carolina General Statutes. Where Contractor has been contracted with to oversee "new construction" or "reconstruction" as defined in G.S. 105-164.4H, Contractor shall be responsible for issuing and maintaining an Affidavit of Capital Improvement.

3.7 PERMITS, FEES AND NOTICES

- 3.7.1 The Contractor shall secure and pay for the building permit and for all other permits and governmental fees necessary for the proper execution and completion of the Work. Costs for service and final service connections by public utilities will be reimbursed to the Contractor by the Owner. The Owner shall not be responsible for the cost of any temporary utilities.
- 3.7.2 Each Contractor will pay for his own license and reinspection fees for his part of the work necessary for the proper execution and completion of the work.
- 3.7.3 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

3.8 PROGRESS SCHEDULE

- 3.8.1 The Contractor shall prepare and submit to the Owner for the Owner's review and approval an estimated progress schedule for the Work. This schedule shall be in accordance with any general requirements included in the specifications for this project.

3.9 RESPONSIBILITY FOR COMPLETION

- 3.9.1 The Contractor shall furnish such manpower, materials, facilities and equipment and shall work such hours, including night shifts, overtime operations and Sundays and holidays, as may be necessary to ensure the performance of the Work within the Milestone and Completion dates specified in the Owner-Contractor Agreement.
- 3.9.2 If the actions taken by the Contractor are not satisfactory, the Design Consultant or Owner may direct the Contractor to take any and all actions necessary to ensure completion within the required Milestone and Completion dates, without additional cost to the Owner. In such event, the Contractor shall continue to assume responsibility for his performance and for completion within the required dates.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

- 3.10.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be delivered to the Owner upon completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 3.11.1 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data, Manuals and Samples required by the Contract Documents.
- 3.11.2 Do not order materials until receipt of written approval. Furnish materials equal in every respect to approved samples.
- 3.11.3 By approving and submitting Shop Drawings, Product Data, Manuals and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall adhere to any supplementary processing and scheduling instructions pertaining to Shop Drawings, which may be issued by the Design Consultant.

- 3.11.4 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Design Consultant's review of Shop Drawings, Product Data, Samples or Manuals under unless the Contractor has specifically informed the Design Consultant in writing of such deviation at the time of submission and the Design Consultant has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples, or Manuals by the Design Consultant's review thereof.
- 3.11.5 The Contractor shall make corrections required by the Design Consultant and shall resubmit the required number of corrected copies of Shop Drawings or new Product Data or Samples. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Design Consultant on previous submittals. Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not be cause for extension of Contract Time, and any costs associated with the processing of these resubmittals shall be paid by the Contractor.
- 3.11.6 No portion of the Work requiring submission of Shop Drawings, Product Data, Samples or Manuals shall be commenced until the submittal has been approved by the Design Consultant. All such portions of the Work shall be in accordance with approved submittals.

3.12 EQUAL PRODUCTS AND SUBSTITUTIONS

- 3.12.1 All materials, supplies and articles furnished under this Contract shall, whenever specified and otherwise practicable, be the standard products of recognized, reputable manufacturers. Unless otherwise specifically provided in the Contract Documents, the naming of a certain brand, make, manufacturer or article, device, product, material, fixture or type of construction shall convey the general style, type, character and standard of quality of the article desired and shall not be construed as limiting competition. The Contractor, in such cases, may with Owner approval, use any brand, make, manufacturer, article, device, product, material, fixture, form or type of construction which in the judgment of the Design Consultant is equal to that specified. An item may be considered equal to the item so named or described if, in the opinion of the Owner and Design Consultant (1) it is at least equal in quality, durability, appearance, strength, and design; (2) it will perform at least equally the specific function imposed by the general design for the work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. Approval by the Owner and Design Consultant will be granted based upon considerations of quality, workmanship, economy of operation, suitability for the purpose intended, and acceptability for use on the Project.
- 3.12.2 Contractor must provide evidence that proposed substitution does not require revisions to the Contract Documents, that is consistent with Contract Documents, and will produce the indicated results, and is comparable with other portions of the Work. Contractor must provide a detailed comparison of significant qualities or proposed substitution with those of the Work Specified, including but not limited to the following significant qualities: performance, weight, size, durability, visual effect, sustainable design features, warranties, and any specific features and requirements indicated in Contract Documents. An annotated copy of applicable Specification Section and point-by-point comparison between specified product and the proposed substitution describing each point of compliance, non-compliance, and variance between the specified and proposed product shall be provided.
- 3.13 USE OF SITE
- 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, easements, right-of-way agreements and the Contract Documents. The Contractor shall not unreasonably encumber the site, in the opinion of the Owner, with any materials, equipment or trailers nor shall he block the entrances or otherwise prevent reasonable access to the site, other working and parking areas, completed portions of the Work and/or properties, storage areas, areas of other facilities that are adjacent to the worksite. If the Contractor fails or refuses to move said material, equipment or trailers within 24 hours of notification by the Owner, to so do, the Owner shall have the right, without further notice, to remove, at the Contractor's expense, any material, equipment and/or trailers which the Owner deems are in violation of this paragraph.

3.14 CUTTING AND PATCHING OF WORK

3.14.1 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation.

3.14.2 Existing structures and facilities including but not limited to building, utilities, topography, streets, curbs, walks, etc., that are damaged or removed due to required excavations or other construction work, shall be patched, repaired or replaced by the Contractor to satisfaction of the Design Consultant and the Owner of such structures and facilities and authorities having jurisdiction.

3.15 CLEANING UP

3.15.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. If the Contractor fails to clean up during or at the completion of the Work, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 INDEMNIFICATION

3.16.1 To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense, indemnify, defend, and hold harmless the Owner and the Design Consultant and their agents, representatives, and employees from and against all claims, actions, judgments, costs, liabilities, penalties, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or caused by any negligent act, error or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The above obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described in this Paragraph 3.16. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N.C. Gen. Stat. § 6-21.2. The parties also specifically acknowledge that the Owner is a public body and it is the intent of the parties that the Owner not incur any expenses when the Contractor is solely responsible for the claims.

3.16.2 In any and all claims against the Owner or the Design Consultant or any of their agents, representatives, or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 3.16 shall not be limited in any way by Contractor's insurance coverage required herein.

3.16.3 No provision of this Paragraph 3.16 shall give rise to any duties on the part of the Design Consultant or the Owner, or any of their agents, representatives, or employees.

3.18 CONDITIONS AFFECTING THE WORK

3.18.1 The Contractor shall be responsible for taking all steps necessary to ascertain the nature and location of the Work and the general and local conditions, which can affect the Work or the cost thereof. The Owner assumes no responsibility for any understanding or representation about conditions affecting the Work made by any of his officers, employees, representatives, or agents prior to the execution of the Contract, unless such understandings or representations are expressly stated in the Contract Documents.

3.19 MISCELLANEOUS.

3.19.1 The Contractor shall provide documentation acceptable to the Owner showing the amount of MBE participation (including a complete list of all subcontractors and their final subcontract amounts) and sales tax paid by the Contractor and its subcontractors for materials purchased for Projects completed under this contract.

3.20 APPLICABLE LAWS.

3.20.1 This Contract and the relationship of the parties shall be governed by the laws of the state of North Carolina.

3.20.2 Contractor shall comply with all applicable laws and regulations in providing services under this Contract. Contractor shall not employ any individuals to provide services to the Owner who are not authorized

by federal law to work in the United States. Contractor represents and warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Contract by any governmental department or agency. Contractor must notify Owner within thirty (30) days if debarred by any government entity during this Contract. The Contractor represents that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system. The Contractor further warrants that it will use the E-Verify system to verify employment eligibility of all its employees throughout the term of this Contract, and that it will remain in compliance with all I-9 requirements throughout the term of this Contract. The Contractor shall also ensure that any subcontractors use the E-Verify system at all times while providing subcontracted services in connection with this Contract. Contractor is responsible for providing affordable health care coverage to all of its full-time employees providing services to the school system. The definitions of "affordable coverage" and "full-time employee" are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.

- 3.20.3 The Contractor also acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. The Contractor shall conduct or arrange to have conducted, at its own expense, sexual offender registry checks on each of its employees, agents, ownership personnel, or contractors ("contractual personnel") who will engage in any service on or delivery of goods to school system property or at a school-system sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office, provided that such office is not located at a school site; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For the Contractor's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>. The Contractor shall provide certification on the Sexual Offender Registry Check Certification Form that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. The Contractor shall conduct a current initial check of the registries (a check done more than 30 days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, the Contractor agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. The Contractor further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. The Contractor shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the listed registries. The Contractor agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the Owner upon request. The Contractor specifically acknowledges that the Owner retains the right to audit these records to ensure compliance with this section at any time in the Owner's sole discretion. Failure to comply with the terms of this provision shall be deemed a material breach of the Agreement. In addition, the Owner may conduct additional criminal records checks at the Owner's expense. If the Owner exercises this right to conduct additional criminal records checks, the Contractor agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by the Owner for all contractual personnel who may deliver goods or perform services under this Agreement. The Contractor further agrees that it has an ongoing obligation to provide the Owner with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. The Owner reserves the right to prohibit any contractual personnel of the Contractor from delivering goods or providing services under this Agreement if the Owner determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.
- 3.20.4 Anti-Nepotism. Contractor warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement are immediate family members of any member of the Board of Education or of any principal or central office staff administrator employed by the Board. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law

relationships. Should Contractor become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, Contractor shall immediately disclose the family relationship in writing to the Superintendent of the Schools. Unless formally waived by the Board, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to Contractor.

3.20.5 Restricted Companies Lists. Contractor represents that as of the date of this Contract, Contractor is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Contractor also represents that as of the date of this Contract, Contractor is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.

3.21 COMPLIANCE WITH BOARD POLICIES AND PROCEDURES

The Contractor agrees to comply with the all of the Owner's policies at all times that the Contractor, its subcontractors and employees are on the Owner's property. The Contractor acknowledges that Board policies are available for review at the Owner's website and agrees to comply with the policies. The Contractor also agrees to comply with the following provisions:

3.21.1 The Contractor, its Subcontractors and employees shall not possess or carry, whether openly or concealed, any gun, rifle, pistol, or explosive on any property owned by the Owner. This includes firearms locked in containers, vehicles or firearm racks within vehicles. The Contractor, its Subcontractors and employees shall not cause, encourage or aid a minor, who is less than 18 years old to possess or carry, whether openly or concealed, any weapons on any property owned by the Owner.

3.21.2 The Contractor, its Subcontractors and employees, are prohibited from profane, lewd, obscene or offensive conduct or language, including engaging in sexual harassment.

3.21.3 The Contractor and its Subcontractors shall not manufacture, transmit, conspire to transmit, possess, use or be under the influence of any alcoholic or other intoxicating beverage, narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana or anabolic steroids, or possess, use, transmit or conspire to transmit drug paraphernalia on any property owned by the Owner.

3.21.4 The Contractor and its Subcontractors may not at any time use or display tobacco or nicotine-containing products, including but not limited to electronic cigarettes (e-cigarettes), on school premises, both indoor and outdoor. The prohibition of the display of tobacco or nicotine products shall not extend to a display that has a legitimate instructional or pedagogical purpose. For purposes of this Contract, "tobacco product" is defined to include cigarettes, cigars, blunts, bidis, pipes, chewing tobacco, snuff, and any other items containing or reasonably resembling tobacco, tobacco products, or any facsimile thereof. "Tobacco use" includes smoking, chewing, dipping, or any other use of tobacco products.

3.21.5 The Contractor, its Subcontractors and employees shall not solicit from or sell to students or staff within the Owner's facilities or campuses, and shall not give gifts of any value to school system employees.

3.21.6 Operators of all commercial vehicles on any property owned by the Owner shall be subject to post-accident, random, reasonable suspicion and follow-up testing for drugs and alcohol.

3.21.7 The Contractor, its Subcontractors and employees are prohibited from using access to the site pursuant to this Agreement as a means to date, court, or enter into a romantic or sexual relationship with any student enrolled in the School System. The Contractor agrees to indemnify the Owner for claims against the Owner resulting from relationships which have occurred or may occur between a student and an employee of the Contractor or Subcontractor.

END OF ARTICLE 3

ARTICLE 4

SUBCONTRACTORS

4.1 DEFINITION

- 4.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor may be referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any Separate Contractor or his subcontractors.
- 4.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site or who contracts to perform or supply any of the Work under the scope of a Subcontractor's subcontract. The term Sub-subcontractor may be referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.
- 4.1.3 Nothing contained in the Contract Documents is intended to, nor shall it create, any contractual relationship between the Owner, the Design Consultant, or any of their agents, consultants, employees, independent contractors, or representatives and any Subcontractor, Sub-subcontractor, Supplier or Vendor of the Contractor, except the relationship between Owner and Contractor, but the Owner shall be entitled to performance of all obligations intended for his benefit, and to enforcement thereof.
- 4.1.4 The Owner and Design Consultant will not deal directly with any Subcontractor, Sub-subcontractor or Material Supplier. Communication will be made only through the Contractor. Subcontractor, Sub-subcontractors or Material Suppliers shall route requests for information or clarification through the Contractor to the Design Consultant.

4.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 4.2.1 The Contractor, in compliance with the requirements of the Contract Documents and within ten (10) days after the Notice to Proceed, shall furnish in writing to the Owner the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner to reply within a reasonable time shall constitute notice of no reasonable objection. The Contractor understands and agrees that no contractual agreement exists for any part of the Work under this Contract between the Owner and any of the Contractor's Subcontractors or Sub-subcontractors. Further, the Contractor understands and agrees that he alone is responsible to the Owner for the Work under this Contract and that any review of Subcontractors or Sub-subcontractors by the Owner will not in any way make the Owner responsible to any Subcontractor, nor responsible for the actions or failures of any Subcontractor or Sub-subcontractor.
- 4.2.1.1 The Contractor shall identify in the list of names of the Subcontractors proposed, those Subcontractors that are Historically Underutilized Businesses (HUB's) and indicate the portion of the Work that each Subcontractor will perform.
- 4.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable objection under the provisions of Paragraph 4.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.
- 4.2.3 If the Owner has reasonable objection to any proposed person or entity under Paragraph 4.2.1, the Contractor shall name a substitute to whom the Owner has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall

be issued, subject to an audit of said difference by the Owner; provided, however, that no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by Paragraph 4.2.1 and the original proposed Subcontractor was: (i) able to carry out his work under his proposed subcontract, (ii) able to comply with all applicable laws, (iii) was an ongoing business in the field of his proposed subcontract, and (iv) had a labor force, capital and a means of supply compatible with the scope of his proposed subcontract.

4.2.4 If the Owner requires a change of any proposed Subcontractor or person or organization previously accepted by him on the Project, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued, subject to an audit by Owner.

4.2.5 The Contractor shall notify the Owner and the Design Consultant of any substitution for any Subcontractor identified in accordance with Subparagraph 4.2.1.1. The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or the Design Consultant makes reasonable objection to such substitution. Also, Contractor may make no substitution of Subcontractors in violation of applicable law.

4.2.6 If during the duration of the Project, the Contractor effects a substitution for any Subcontractor per Paragraph 5.2.5, or if additional subcontract opportunities become available, the Contractor shall make a good faith effort to utilize Historically Underutilized Businesses (HUB's).

4.3 SUBCONTRACTUAL RELATIONS

4.3.1 By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Contract Documents, assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the agreement between the Contractor and Subcontractor, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Section 4.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Contract Documents available to his Sub-subcontractors.

4.3.2 The provisions herein regarding Subcontractor approvals shall in no way affect the liability of the Contractor to the Owner regarding performance of all obligations by or payment of Subcontractors. Approval to subcontract with any given Subcontractor shall not to any degree relieve the Contractor of his obligation to perform or have performed to the full satisfaction of the Owner the Work required by this Contract.

4.3.3 The Contractor shall submit Notice to the Owner of any Claims by Subcontractors for which the Owner is believed to be responsible, in strict conformance with the same time requirements and other procedures established for the submission of the Contractor's Claims to the Owner.

4.4 QUALIFICATION SUBMITTALS

4.4.1 Specific qualification submittals may be required of Subcontractors, installers and suppliers for certain critical items of the Work. Required qualification submittals are set forth in detail in the Specifications and shall be collected and submitted by the Contractor for review and approval by the Design Consultant. All information required of a single Subcontractor, installer or supplier shall be contained in a single, complete submittal. The Contractor shall submit the required qualification information within ten (10) days after receipt of the Design Consultant's request.

- 4.4.2 The Owner and Design Consultant shall reject any proposed Subcontractor, installer or supplier, or any qualification submittals related thereto, for the following reasons:
- .1 The Contractor's failure to submit requested information within the specified time; or
 - .2 The Contractor's failure to provide all of the requested information; or
 - .3 The Contractor's submission of a Subcontractor, installer or supplier, or qualifications thereof, which are unacceptable in the judgment of the Owner or Design Consultant.
- 4.4.3 Should the Owner or Design Consultant have reasonable objection to any proposed Subcontractor, installer or supplier, the Contractor shall submit another person or firm who are reasonably acceptable to the Owner and Design Consultant.
- 4.5 **PREPARATORY WORK**
- 4.5.1 Before starting a portion of the Work, the Contractor and the responsible Subcontractor shall carefully examine all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to proper contours, planes and levels. He shall promptly notify the Contractor and the Design Consultant of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of his work. Absence of such notification will be construed as an acceptance of preparatory work and later Claims of defects therein will not be recognized.
- 4.5.2 Under no conditions shall a portion of the Work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials rests solely with the Contractor, who shall maintain coordination control at all times.

END OF ARTICLE 4

ARTICLE 5

WORK BY OWNER OR BY SEPARATE CONTRACTORS

- 5.1 **OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**
- 5.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract.
- 5.2 **MUTUAL RESPONSIBILITY**
- 5.2.1 Should the Contractor cause damage to the work or property of the Owner or of any separate contractor on the Project, or to other work on the Site, or delay or interfere with the Owner's work on ongoing operations or facilities or adjacent facilities or said separate contractor's work, the Contractor shall be liable for the same; and, in the case of another contractor, the Contractor shall attempt to settle said claim with such other contractor prior to such other contractor's institution of litigation or other proceedings against the Contractor.
- 5.2.2 Should a separate contractor cause damage to the Work or to the property of the Contractor or cause delay or interference with the Contractor's performance of the Work, the Contractor shall present directly to said separate contractor any claims it may have as a result of such damage, delay or interference (with an information copy to the Owner) and shall attempt to settle its claim against said separate contractor prior to the institution of litigation or other proceedings against said separate contractor.

- 5.2.3. In no event shall the Contractor seek to recover from the Owner or the Design Consultant, and the Contractor hereby waives any claims against the Owner and Design Consultant relating to any costs, expenses (including, but not limited to, attorney's fees) or damages or other losses incurred by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused by any separate contractor.

5.3 COORDINATION OF THE WORK

- 5.3.1 By entering into this contract, Contractor acknowledges that there may be other contractors on the site whose work will be coordinated with that of his own. Contractor expressly warrants and guarantees that he will cooperate with other contractors and will do nothing to delay, hinder or interfere with the work of other separate contractors, the Owner or Design Consultant. Contractor also expressly agrees that, in the event his work is hindered, delayed, interfered with or otherwise affected by a separate contractor, his sole remedy will be a direct action against the separate contractor as described in this Article 5. Contractor will have no remedy, and hereby expressly waives any remedy, against the Owner and/or the Design Consultant on account of delay, hindrance, interference or other event caused by a separate contractor.

END OF ARTICLE 5

ARTICLE 6

MISCELLANEOUS PROVISIONS

6.1 GOVERNING LAW

- 6.1.1 This contract shall be governed by the law of the State of North Carolina. The Contractor and Owner agree that the county where the Project is located shall be the proper venue for any litigation arising out of this Agreement.
- 6.1.2 Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly or fully inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

6.2 CLAIMS AND DAMAGES

- 6.2.1 Should the Contractor or any of its Subcontractors suffer injury or damage to person or property because of any act or omission of the Owner or Design Consultant, or of any of their employees, agents or others for whose acts either is legally liable, the claim on behalf of the Contractor or its subcontractors shall be made in writing to the Owner within 10 days after the first observance of such injury or damage; otherwise, the Contractor shall have waived any and all rights he may have against the Owner or the Design Consultant, or their employees, representatives and agents. The Contractor shall indemnify, defend and hold the Owner harmless from any claim by a Subcontractor that is waived because it is not filed in strict conformance with this paragraph or any other provision of this Agreement regarding claims.

6.4 RIGHTS AND REMEDIES

- 6.4.1 The duties and obligations of the Contractor imposed by the Contract Documents and the rights and remedies of the Owner available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 6.4.2 Except as may be specifically agreed in writing, the failure of the Owner or the Design Consultant to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Contract, or to exercise any right herein contained or provided by law, shall not be construed as a waiver or

relinquishment of the performance of such provisions or right(s) or of the right to subsequently demand such strict performance or exercise such right(s), and the rights shall continue unchanged and remain in full force and effect.

6.4.3 The Contractor agrees that he can be adequately compensated by money damages for any breach of this Contract which may be committed by the Owner and hereby agrees that no default, act, or omission of the Owner or the Design Consultant, except for failure to make progress payments as required by the Contract Documents, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract or (unless the Owner shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which he might otherwise be or become entitled, save only his right to money damages.

6.4.4 Contractor and Owner acknowledge that the Contract Documents shall not be construed against Owner due to the fact that they may have been drafted by Owner. For purposes of construing the Contract Documents, both Contractor and Owner shall be considered to have jointly drafted the Contract Documents.

6.4.5 In the event that Owner incurs attorney's fees or litigation expenses in connection with enforcing or protecting its rights under the Contract Documents or defending any claim or lawsuit brought against it arising out of the Work or the Contract Documents, Contractor shall reimburse Owner for such reasonable attorney's fees and expenses.

6.5 TESTS AND INSPECTIONS

6.5.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested, or approved, the Contractor shall give the Owner timely notice of its readiness so the Design Consultant and the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

6.5.2 Unless otherwise stipulated in other Contract Documents, the Contractor shall pay for all utilities required for testing of installed equipment of all of his work and work of each Subcontractor. Boiler fuel other than gas shall be provided by Subcontractor furnishing boilers. Labor and supervision required for making such tests shall be provided at no additional cost to the Owner.

6.5.3 If the Design Consultant or the Owner determines that any Work requires special inspection, testing, or approval which Subparagraph 6.5.1 does not include, the Owner will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 6.5.1. If such special inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including compensation for the Design Consultant's and Owner's additional construction management expenses made necessary by such failure.

6.6 UNENFORCEABILITY OF ANY PROVISION

6.6.1 If any provision of this Contract is held as a matter of law to be unenforceable or unconscionable, the remainder of the Contract shall be enforceable without such provision.

6.7 ATTORNEYS' FEES AND OTHER EXPENSES

6.7.1 The Contractor hereby agrees that he will not submit, assert, litigate or otherwise pursue any frivolous or unsubstantiated claims or claims he has specifically waived under the terms of the Contract Documents. In the event that the Contractor's or its Subcontractor's claims, or any separate item of a claim, is without substantial justification, the Contractor shall reimburse the Owner or Design Consultant for all costs and expenses associated with defending such claim or separate item, including but not limited to, attorneys' fees, audit costs,

accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction management expenses, or services and any other consultant costs.

6.7.2 If the Contractor breaches any obligation under the Contract Documents, the Contractor shall reimburse the Owner and Design Consultant for all costs and expenses incurred by the Owner relating to such breach, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction management expenses, and any other consultant costs.

6.7.3 If the Owner or Design Consultant prevails in a claim brought against the Contractor, including but not limited to, claims for fraud or misrepresentation, overpayment, defective work, delay damages, and recovery of termination expenses, the Contractor shall reimburse the Owner and Design Consultant for all costs and expenses incurred by them relating to such claim, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction management expenses, and any other consultant costs.

6.8 SUCCESSORS AND ASSIGNS

6.8.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner and the Contractor's Surety.

END OF ARTICLE 6

ARTICLE 7

TIME

7.1 DEFINITIONS

7.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial and Final Completion of the Work, as defined in Subparagraph 7.1.3 and 7.1.4, including any allowances and alternates. The Contractor shall complete his Work within Contract Time, unless the Contract Time is modified.

7.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein. The Contractor shall not commence Work or store materials or equipment on site until written Notice to Proceed is issued or until the Contractor otherwise receives the Owner's written consent.

7.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Design Consultant and the Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so the Owner can fully occupy and utilize the Work or designated portion thereof for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents. Only incidental corrective work and any final cleaning beyond that needed for the Owner's full use may remain for final completion. The issuance of a temporary or final certificate of occupancy shall not, in itself, constitute Substantial Completion. Educational operational systems such as voice, data, security cameras, security card readers, security motion detection systems and building automation systems including functional graphics at the site are required for Substantial Completion.

7.1.4 The date of Final Completion of the work is the date certified by the Design Consultant and the Owner when the Work is totally complete, to include punch list work, in accordance with the Contract Documents and the Owner may fully occupy and utilize the work for the use for which it is intended. The issuance of a temporary

or final certificate of occupancy shall not, in itself, constitute Final Completion.

7.2 DELAYS AND EXTENSIONS OF TIME

7.2.1 The time during which the Contractor or any of its subcontractors delayed in the performance of the Work by the acts or omissions of the Owner, Design Consultant or their employees or agents, acts of God, unusually severe and abnormal climatic conditions, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the Contractor's or its subcontractors' control and which the Contractor or its subcontractors could not reasonably have foreseen and provided against, shall be added to the time for completion of the Work (i.e., the Contract Time) stated in the Agreement; provided, however, that no claim by the Contractor for an extension of time for delays will be considered unless made in strict compliance with the requirements of this Article and other provisions of the Contract Documents.

7.2.1.1 For excessive inclement weather, the Contract time will not be extended due to reasonably anticipated inclement weather or for delays in the aftermath of inclement weather, reasonably anticipated or excessive. The time for performance of this Contract, as stated in the Contract Documents, includes an allowance for calendar days which may not be available for construction out-of-doors; for the purposes of this Contract, the Contractor agrees that the number of calendar days per month based on a five-year average shall be considered reasonably anticipated inclement weather and planned for in the construction schedule per the Contract. Unless the Contractor can substantiate to the satisfaction of the Owner that there was greater than the reasonably anticipated inclement weather considering the time from the Notice to Proceed until the date established for substantial completion using data from the national weather service station noted in the Supplemental General Conditions or a weather station acceptable to the Owner and that such alleged greater than reasonably anticipated inclement weather actually delayed the Work or portions thereof which had an effect upon the Contract time, the Contractor shall not be entitled to an extension of time.

Also, the Contractor agrees that the calculation of the number of excessive inclement weather days shall be the number of days in excess of the five-year average for each month, in which precipitation exceeded one tenth (.10) inch, or in which the highest temperature was 32 degrees For less as recorded at the approved weather station. Rain days from hurricanes and tropical storms not causing damage in the county where the Project is located shall be deemed inclement weather days.

If the total accumulated number of calendar days lost to excessive inclement weather, from the Notice to Proceed until the date established for substantial completion, exceeds the total accumulated number to be reasonably anticipated for the same period from the table above, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost. No extension of time will be made for days due to excessive inclement weather occurring after the date established for substantial completion. No change in Contract sum will be authorized because of adjustment of Contract time due to excessive inclement weather.

7.2.2 Should a time extension be granted for Substantial Completion the date for Final Completion shall be appropriately adjusted unless specifically stated otherwise.

7.2.3 Neither the Owner nor the Design Consultant shall be obligated or liable to the Contractor or its Subcontractors for, and the Contractor hereby expressly waives any claims against the Owner and the Design Consultant on account of any indirect or direct damages, costs or expenses of any nature which the Contractor, its Subcontractors, or Sub-subcontractors or any other person may incur as a result of any delays, interferences, changes in sequence or the like, which are reasonable, foreseeable, contemplated, or avoidable by Contractor, and it is understood and agreed that the Contractor's sole and exclusive remedy in any such events shall be an extension of the Contract Time in accordance with the Contract Documents, unless the delays, interferences, changes in sequence or the like arise solely from or out of any act or omission of the Owner or the Design Consultant, or their agents, employees, consultants or independent. The Contractor shall not be entitled to any damages pursuant to this section if there are any concurrent delays for which the Owner and/or the Design Consultant are not solely responsible.

7.2.4 Subject to other provisions of the Contract, the Contractor may be entitled to an extension of the Contract Time (but no increase in the Contract Sum) for delays arising from unforeseeable causes beyond the control and

without the fault or negligence of the Contractor, his Subcontractors or suppliers, unless caused solely by the Owner or Design Consultant.

- 7.2.5 The Contractor and its subcontractors shall not be entitled to and hereby expressly waives any extension of time resulting from any condition or cause unless said claim for extensions of time is made in writing to the Owner within ten (10) days of the first instance of delay.

END OF ARTICLE 7

ARTICLE 8

PAYMENTS AND COMPLETION

8.1 SCHEDULE OF VALUES

- 8.1.1 Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to the various portions of the Work.

8.2 APPLICATIONS FOR PAYMENT

- 8.2.1 Prior to the date for each progress payment established in the Owner-Contractor Agreement, the Contractor, shall submit to the Owner an itemized Application for Payment including a completed Contractor's Sales Tax Report (attached hereto as Appendix A) for all items provided by the Contractor or any Subcontractors included in the application. The Contractor shall also certify that he has paid all due and payable amounts for which previous certificates for payment were issued and payments received from the Owner and that the work for which payment is requested has been completed.

- 8.2.2 The Owner will retain funds from each progress payment to the maximum extent allowed by N.C. General Statute 143-134.1 until the Work is finally completed and accepted, whether or not the Owner has occupied any or all of the Project before such time. If a reduction in retainage has been made or the Owner stops withholding retainage for any reason, the Owner may increase or commence the retainage as authorized by N.C. Gen. Stat. 143-134.1.

- 8.2.3 Owner will be under no obligation to make payment to the Contractor on account of materials or equipment not incorporated in the Work. Materials once paid for by the Owner become the property of the Owner and may not be removed from the work site without the Owner's written permission.

- 8.2.4 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 8 as "liens".

- 8.2.5 All invoices shall show the following:

- .1 Total amount of contract
- .2 Amount of change orders
- .3 Total value of completed work
- .4 Amount retained by Owner
- .5 Amount due Contractor

8.3 CERTIFICATES FOR PAYMENT

- 8.3.1 By signing a Certificate for Payment, the Design Consultant shall not thereby be deemed to represent that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that it has reviewed the construction means, methods, techniques, sequences, or procedures, or that it has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on

account of the Contract Sum.

8.4 PROGRESS PAYMENTS

8.4.1 The Contractor shall promptly pay each Subcontractor (including suppliers, laborers, and material-men) performing labor or furnishing material for the Work, upon receipt of payment from the Owner.

8.4.2 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

8.4.3 The Contractor shall not submit more than one pay application during any 30-day period.

8.5 PAYMENTS WITHHELD

8.5.1 The Design Consultant may decline to certify payment and may withhold their Certificate in whole or in part, to the extent the Design Consultant deems necessary to reasonably protect the Owner from loss associated with unsatisfactory job progress, defective construction, disputed work, claims or any other similar issue. If the Design Consultant is unable to make representations to the Owner and to certify payment in the amount of the Application, it will notify the Contractor as provided herein. The Design Consultant may also decline to certify payment because of subsequently discovered evidence or subsequent observations that may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in its opinion to protect the Owner from loss.

8.6 FAILURE OF PAYMENT

8.6.1 Payments due and unpaid under the Contract Documents shall not bear interest.

8.7 SUBSTANTIAL COMPLETION

8.7.1 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Design Consultant and Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so Owner can fully occupy and utilize the Work for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents. Only incidental corrective work and any final cleaning beyond that needed for Owner's full use may remain for Final Completion. The Contractor shall be solely responsible for the cost to repair or replace any work damaged or destroyed prior to the Date of Substantial Completion.

8.7.2 When the Design Consultant and the Owner on the basis of an inspection jointly determine that the Work or designated portion thereof is substantially complete, they will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Contractor shall provide operation & maintenance manuals, and operation training to the Owner as required by the Contract Documents prior to Substantial Completion. The Owner's occupancy of incomplete work shall not alter the Contractor's responsibilities pursuant to this section.

8.7.3 The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor and its Subcontractors except those previously made in writing and identified by the Contractor as unsettled at the time the Contractor submits the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance. The Contractor shall indemnify and hold the Owner harmless against any claims by its Subcontractors that are waived because they were not made in writing and identified by the Contractor as unsettled when the Contractor submitted the Application for Payment for Substantial Completion.

8.7.4 The issuance of the Certificate of Substantial Completion does not indicate final acceptance of the project by the Owner, and the Contractor is not relieved of any responsibility for the project except as specifically stated in the Certificate of Substantial Completion.

8.7.5 There will be two inspections by the Design Consultant at Substantial Completion:

- .1 To generate a list of items to be completed or corrected before Owner takes possession of the Work.
- .2 To check that the list of items has been completed before issuing Final Payment.

Any additional inspections by the Design Consultant requested by Contractor to complete the Punch List shall result in money being withheld from the Final Payment to cover the cost of these additional inspections

8.8 FINAL COMPLETION AND FINAL PAYMENT

8.8.1 When the Design Consultant and the Owner find the Work acceptable under the Contract Documents and the Contract fully performed, they will approve a final Certificate of Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable, except for an amount mutually agreed upon for any work remaining incomplete or uncorrected for which the Owner is entitled a credit under the Contract Documents. If the Design Consultant and the Owner find the Work to be incomplete or unacceptable, the costs of reinspections shall be paid by the Contractor.

8.8.2 Final Payment shall not become due until the Contractor provides to the Design Consultant and Owner: three (3) copies of any of the following required:

- .1 Final Change Order
- .2 Final Application for Payment
- .3 Consent of Surety to Final Payment - AIA G707(if applicable)
- .4 Contractor's Affidavit of Release of Liens - AIA G706A
- .5 Contractor's Affidavit of Payment of Debts and Claims - AIA G706;
- .6 Certificate of Occupancy (if applicable)
- .7 Contractor's Warranty, notarized
- .8 Warranty Summary Sheet with Original Warranties (if not included in O & M Manuals)
- .9 Certification Letter from Contractor that no Asbestos-Containing Materials were used on the project
- .10 Final List of Subcontractors (name, address, phone, fax nos.)
- .11 Record Drawings (As-Built) - 1 set
- .12 Operation and Maintenance Manuals - 3 sets
- .13 Other project close-out submittals, as required by the Contract Documents.

8.8.3 Neither the final payment nor the remaining retained percentage shall become due until the Work is free and clear of any and all liens and the Contractor submits to the Owner:

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied;
- .2 if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner; and
- .3 As-built drawings, and other project closeout submittals, as required by the Owner.

8.8.4 The making of final payment shall constitute a waiver of all claims by the Owner against the Contractor except those arising from:

- .1 unsettled liens, and claims against the Owner or the Design Consultant, or their employees, agents, or representatives,
- .2 faulty, defective or non-conforming Work discovered or appearing after Substantial or Final Completion,
- .3 failure of the Work to comply with the requirements of the Contract Documents,
- .4 terms of any warranties contained in or required by the Contract Documents,
- .5 damages incurred by the Owner resulting from lawsuits brought against the Owner, the Design Consultant, or their agents, employees or representatives because of failures or actions on the part of the Contractor, his Subcontractors, Sub-subcontractors, or any of their employees, agents or representatives, or
- .6 fraud or bad faith committed by the Contractor or any subcontractor or supplier during performance of work but discovered by Owner after Final Payment.

8.8.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment

8.9 LIQUIDATED DAMAGES

8.9.1 Should the Contractor fail to substantially complete the Work on or before the date stipulated for Substantial Completion (or such later date as may result from extension of time granted by Owner), he shall pay the Owner, as Substantial Completion liquidated damages the daily amount stated in the Supplementary Conditions for each consecutive calendar day that terms of the contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of the Contractor to complete work within time as stipulated; it being recognized by the Owner and the Contractor that the injury to the Owner which could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the Contractor.

8.9.2 For each consecutive calendar day that the Work remains incomplete after the date established for Final Completion, the Contractor shall pay or Owner will retain the daily amount stated in the Supplementary Conditions as Final Completion Liquidated Damages from the compensation otherwise to be paid to the Contractor. This amount is the minimum measure of damages the Owner will sustain due to the delay in the completion of all remedial work, the delay in the correction of the deficient work, the disruption to the school and the learning environment, the cost of contract management time and resources, administration time, and the inability to use the facilities fully. This amount is in addition to the liquidated damages prescribed above for Substantial Completion.

8.9.3 The amount of liquidated damages set forth above and in the corresponding Supplementary Conditions shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are as defined in the General Conditions. This provision for liquidated damages does not bar Owner's right to enforce other rights and remedies against Contractor, including but not limited to, specific performance or injunctive relief.

8.10 OWNER'S RIGHT TO OCCUPY INCOMPLETE WORK

8.10.1 Should the Project, or any portion thereof, be incomplete for Substantial or Final Completion at the scheduled date or dates, the Owner shall have the right to occupy any portion of the Project. In such an event, the Contractor shall not be entitled to any extra compensation on account of said occupancy by the Owner or by the Owner's normal full use of the Project, nor shall the Contractor interfere in any way with said normal full use of the Project. Further, in such an event, the Contractor shall not be entitled to any extra compensation on account of the Owner's occupancy and use of the Project, nor shall the Contractor be relieved of any

responsibilities of the Contract including the required times of completion. Such occupancy by the Owner shall not, in itself, constitute Substantial or Final Completion.

END OF ARTICLE 8

ARTICLE 9

INSURANCE AND BONDS

9.1.1 CONTRACTOR'S INSURANCE AND BONDS

The Contractor shall purchase and maintain in companies properly licensed by the Insurance Department of the State of North Carolina and acceptable to the Owner such insurance as will protect him, the Owner, and the Owner's agents, representatives, and employees from claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall include:

9.1.1.1 Worker's Compensation including Occupational Disease and Employer's Liability Insurance

- .1 Statutory - Amount and coverage as required by State of North Carolina Worker's Compensation laws
- .2 Employer's Liability
 \$1,000,000 Each Accident
 \$1,000,000 Policy Limit
 \$1,000,000 Each Employee

9.1.1.2 Commercial General Liability (Occurrence Form) - The Contractor shall provide during the life of this Contract such Commercial General Liability (Occurrence Form) Insurance as shall protect Contractor and any Subcontractor performing work under this Contract from claims for damages for Bodily Injury including accidental death, as well as from claims for Property Damage which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them. This insurance shall be on the Standard Insurance Services Office, Inc. (ISO) Commercial Liability Occurrence Form. The Contractor shall procure insurance coverage for direct operations, sublet work, elevators, contractual liability and completed operations with limits not less than those stated below:

A Combined Single Limit for Bodily Injury, Property Damage and Personal Injury of:

\$2,000,000	General Aggregate (except Products - Completed Operations) Limit
\$2,000,000	Products - Completed Operations Aggregate Limit
\$1,000,000	Personal and Advertising Injury Limit
\$1,000,000	Each Occurrence Limit
\$ 5,000	Medical Expense

9.1.1.3 Property Damages, including Broad Form Property Damage and Explosion, Collapse, Underground property damage coverages, and blasting, where necessary.

9.1.1.4 Completed Operations Liability: Continuous coverage in force for one year after completion of Work.

9.1.1.5 Commercial Automobile Insurance, including coverage for owned, non-owned and hired vehicles - with limits not less than a Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000.

9.1.1.6 Umbrella Liability Insurance: Policy to 'pay on behalf of the Insured' with Limits of Liability: \$1,000,000.

- 9.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the Owner. Failure to provide such notice shall not limit the liability of the Insurer, its agents or representatives.
- 9.3 All insurance policies required in this Article, except Worker's Compensation and Commercial Automobile, shall name the Owner as additional named insured for the insurance. The Owner shall be included in the definition of "insured" in the Commercial Automobile Policy.
- 9.4 Contractor shall not commence work under this Contract until he has obtained all the insurance and bonds required under Article 5 of this Contract and until such insurance and bonds have been approved by the Owner, nor shall Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Approval of the insurance by Owner shall not relieve or decrease the liability of Contractor hereunder.
- 9.5 The Commercial General Liability and Workers Compensation Policies provided by Contractor shall have endorsements waiving subrogation against Owner.
- 9.6 PROPERTY INSURANCE. Contractor shall provide the following property insurance:
- 9.6.1 Unless stated otherwise in the Supplemental Conditions, Contractor shall purchase and at all times maintain such insurance as will protect Contractor, Owner, Subcontractors and Sub-subcontractors from loss or damage to Work or property in the course of construction, including all machinery, materials and supplies on the premises or in transit thereto and intended to become a part of the finished work until Final Completion. This insurance shall be in the form of 'Builder's Risk Covered Cause of Loss Form' to include, but not limited to, theft, collapse, earth movement and flood. Any deductible provision in such insurance shall not exceed \$5,000.00. Notwithstanding any such deductible provision, Contractor shall remain solely liable for the full amount of any item covered by such insurance.
- 9.6.2 If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed to by Owner and Contractor, and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.
- 9.7 Owner shall be under no obligation to review any Certificates of Insurance provided by Contractor, or to check or verify Contractor's compliance with any and all requirements regarding insurance imposed by the Contract Documents. Contractor is fully liable for the amounts and types of insurance required herein and is not excused should any policy or certificate of insurance provided by Contractor not comply with any and all requirements regarding insurance imposed by the Contract Documents.
- 9.8 All insurance companies providing the above insurance shall be licensed by the Insurance Department of the State of North Carolina and maintain a rating by AM Best or a similar rating company with a minimum of an "A-" rating.
- 9.9 PERFORMANCE AND PAYMENT BONDS
- "If required by law, or in the Supplemental Conditions or the Contract Documents, Contractor must provide performance and payment bonds each in the amount of the Contract Sum. Such bonds shall be on forms acceptable to Owner and issued by surety companies licensed to do business in North Carolina and having a rating of at least AM Best "A" rating. Contractor may, at its option, make deposit in the form of certified check with Owner in lieu of the performance and payment bonds in an amount equal to the Contract Sum for each such bond, for a total of 200% of the Contract Sum."

END OF ARTICLE 9

ARTICLE 10

CHANGES IN THE WORK

10.1 CHANGE ORDERS

- 10.1.1 The Owner may, at any time, by written order designated or indicated to be a Change Order, make any change or modification in the Work or add to the Work within the general scope of the Contract.

10.2 OWNER DIRECTED CHANGES REQUIRING AN INCREASE IN CONTRACT SUM.

- 10.2.1 If the Change in the Work will result in an increase in the Contract Sum, the Owner shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described (the right of the Owner as aforesaid shall apply with respect to each such Change in the Work).

If the Owner elects to have the Change in the Work performed on a lump sum basis, its election shall be based on a lump sum Proposal which shall be submitted by the Contractor to the Owner within seven (7) days of the Contractor's receipt of a request therefore (but the Owner's request for a lump sum Proposal shall not be deemed an election by the Owner to have the Change in the Work performed on a lump sum basis). The Contractor's Proposal shall be itemized and segregated by labor and materials for the various components of the Change in the Work (no aggregate labor total will be acceptable) and shall be accompanied by signed Proposals of any Subcontractors who will perform any portion of the Change in the Work and of any persons who will furnish materials or equipment for incorporation therein. The Proposal shall also include the Contractor's estimate of the time required to perform said changes. The Contractor shall provide any documentation that may be requested by the Owner or Architect to support the change proposal, including but not limited to payroll records, insurance rates, material quotes, and rental quotes. The Change Proposal Forms attached as Appendix B shall be used to submit change proposals on the Project.

The portion of the Proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include reasonably anticipated gross wages of job site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime time, if overtime is anticipated, Social Security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such Subcontractor in connection with such labor) and up to fifteen percent (15%) of such anticipated gross wages, but not payroll costs, as overhead and profit for the Contractor or any such Subcontractor, as applicable (said overhead and profit to include all supervision except foremen). Payroll costs are limited to 39% of the net pay of the worker.

The portion of the Proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales and use taxes and up to fifteen percent (15%) of said direct material costs as overhead and profit for the Contractor or any such Subcontractor (said overhead and profit to include all small tools), and may further include the Contractor's and any of its Subcontractor's reasonably anticipated rental costs in connection with the Change in the Work (either actual or discounted local published rates), plus up to eight percent (8%) thereof as overhead and profit for the Contractor or any such Subcontractors, as applicable. The Contractor shall provide an itemized breakdown of all transportation and shipping costs, including receipts documenting the expenses. Notwithstanding the above, overhead and profit shall not be applied to any sales tax paid for any purpose or to any transportation or shipping costs incurred by the Contractor or any subcontractor. If any of the items included in the lump sum Proposal are covered by unit prices contained in the Contract Documents, the Owner may, if it requires the Change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum Proposal, in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

The lump sum Proposal may include up to eight percent (8%) of the amount which the Contractor will pay to any of its Subcontractors for Changes in the Work as overhead and profit for the Contractor. The Contractor shall not be reimbursed for the costs of the Subcontractors' Payment and Performance Bonds, as such bonding is not required by the Owner.

- 10.2.2 In the event that the Contractor fails to submit his Proposal within the designated period, the Owner may order the Contractor to proceed with the Change to the Work and the Contractor shall so proceed. The Owner shall unilaterally determine the reasonable cost and time to perform the Work in question, which determination shall be final and binding upon the Contractor. The Contractor may dispute such action in accordance with the Article 15.
- 10.2.3 In the event that the parties are unable to agree as to the reasonable cost and time to perform the Change in the Work based upon the Contractor's Proposal and the Owner does not elect to have the Change in the Work performed on a time and material basis, the Owner may choose to make a determination of the reasonable cost and time to perform the Change in the Work, based upon its own estimates, the Contractor's submission or a combination thereof. A Construction Change Directive shall be issued in this case for the amounts of cost and time determined by the Owner and shall become final and binding upon the Contractor, subject to Contractor's right to dispute such action in accordance with Article 10.9. Owner has the right to direct by Construction Change Directive a Change in the Work, which is the subject of such Change Order. Failure of the parties to reach agreement regarding the cost and time of the performing the Construction Change Directive, shall not relieve the Contractor from performing the Change in the Work promptly and expeditiously.
- 10.2.3.1 The Owner reserves the right to reject the Contractor's Proposal for a Change in the Work and to elect to perform said Work using a Separate Contractor. Under such circumstances, all provisions of Article 6 shall be in force.
- 10.2.4 If the Owner elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractors, at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendence of any nature whatsoever, including foremen, or the cost, use or rental of tools or plant), plus fifteen percent (15%) thereof as the total overhead and profit (except that said fifteen percent (15%) shall not be applied against any payroll costs, as set forth in Paragraph 10.2.1.) The Contractor shall submit to the Owner daily time and material tickets, on a daily basis to include the identification number assigned to the Change in the Work, the location and description of the Change in the Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not tools) and such other evidence of cost as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the Contractor to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any Claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgment by the Owner that the items thereon were reasonably required for the Change in the Work.
- 10.2.5 No overhead and profit will be paid by the Owner on account of a Change in the Work except as specifically provided in Section 10.2. Overhead and profit, as allowed under Section 10.2, shall be deemed to include all costs and expenses which the Contractor or any of its Subcontractors may incur in the performance of a Change in the Work and which are not otherwise specifically recoverable by them pursuant to Section 10.2.
- 10.3 CONTRACTOR NOTICE OF CHANGE
- 10.3.1 If the Contractor or any of its Subcontractors asserts that any event or occurrence has caused a change in or addition to the Work which change causes an increase or decrease in the Contractor's or its Subcontractors' cost or the time required for the performance of any part of the Work under the Contract, including Work not affected directly by the change, the Contractor shall, within ten (10) days of such event, give the Owner written

notice as herein required. Said notice shall include the instructions or circumstances that are the basis of the claim and the Contractor's best estimate of the cost and time involved.

10.3.2 If the Contractor intends to assert a claim under this Article, he must, within ten (10) days after receipt of a written Change Order under Subparagraph 10.2.1 above or the furnishing of a written notice under Subparagraph 10.3.1, submit to the Owner a written statement setting forth the specific nature and cost of such claim, unless this period is extended by the Owner. The statement of claim hereunder may be included in the notice under Subparagraph 10.3.1 above. The statement of claim shall include all direct, indirect and impact costs associated with the change, as well as the Contractor's estimate of the schedule impact of the change, if any. The Contractor and its subcontractors shall not be entitled to reimbursement for any claims that are not filed in strict conformance with this Article. The Contractor shall indemnify and hold the Owner harmless against any claims by Subcontractors that are waived because they are not filed in strict conformance with this Article.

10.3.3 If the parties are unable to agree to the reasonable cost and time to perform the Change, or are unable to agree as to whether a change occurred, the Owner shall make a unilateral determination as described in Article 10.2.2. The Contractor shall proceed pursuant to the provisions of that Article.

10.4 GENERAL PROVISIONS RELATED TO CHANGES

10.4.1 The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of Article 10, and which the Contractor, its Subcontractors or Sub-subcontractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the Work performed pursuant to this Article 10, unless the delay is caused solely by the Owner or its agent. It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be recovery of his direct costs as compensable hereunder and an extension of the Contract Time, but only in accordance with the provisions of the Contract Documents. The phrase "Owner or its agent" as used in this Agreement, does not include the Prime_Contractors or their Subcontractors.

10.4.2 No claim by the Contractor hereunder shall be allowed if asserted after final payment under this Contract. No claim relating to or flowing from a particular change shall be allowed after execution of the Change Order relating to that change or commencement of the change by the Contractor.

10.5 CHANGES REQUIRING A DECREASE IN CONTRACT SUM.

10.5.1 If the Change in the Work will result in a decrease in the Contract Sum, the Owner may request a quotation by the Contractor of the amount of such decrease for use in preparing a Change Order. The Contractor's quotation shall be forwarded to the Owner within ten (10) days of the Owner's request and, if acceptable to the Owner, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the Work, as determined by the Owner in its reasonable judgment, plus fifteen percent (15%) thereof as overhead and profit.

10.6 DISPUTES REGARDING CHANGES.

10.6.1 If any dispute should arise between the parties with respect to an increase or decrease in the Contract Sum or an expansion or contraction in the Contract Time as a result of a Change in the Work, the Contractor shall not suspend performance of a Change in the Work or the Work itself unless otherwise so ordered by the Owner in writing. The Owner shall, however, pay to the Contractor up to the Owner's reasonable estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work results in an increase in the Contract Sum; and the Owner shall have the right to decrease the Contract Sum up to the Owner's reasonable estimated

value of the Change in the Work, regardless of the dispute, if said Change in the Work results in a decrease in the Contract Sum.

10.7 MINOR CHANGES IN THE WORK

10.7.1 The Owner shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

10.7.2 The Contractor shall not perform any changes in the Work unless authorized in writing by the Design Consultant or Owner.

10.8 DIFFERING SITE CONDITIONS

10.8.1 Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications or differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract, he shall immediately give notice to the Owner of such conditions before they are disturbed. The Owner and the Design Consultant shall thereupon promptly investigate the conditions and if they find that they materially differ from those shown on the drawings or indicated in the specifications, they shall at once make such changes in the drawings and/or specifications as they may find necessary. Any increase or decrease of cost resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional work and changes. However, neither the Owner nor the Design Consultant shall be liable or responsible for additional work, costs or changes to the work due to material differences between actual conditions and any geotechnical, soils and other reports, surveys and analyses made available for the Contractor's review.

10.9 CLAIMS AND DISPUTE RESOLUTION

10.9.1 Definition. A Claim is a demand or assertion by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question from the Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the Contractor.

10.9.2 Time Limits on Claims. Claims by Contractor must be initiated within 10 days occurrence of the event giving rise to such Claim or within 10 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Design Consultant (if there is one) and the other party.

10.9.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as otherwise provided in the Contract Documents, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments in accordance with the Contract Documents.

10.9.4 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property when the giving of such notice would increase the risk of injury or damage to persons or property.

10.9.5 Claims for Additional Time. If the Contractor wishes to make Claim for an extension of the dates set for Substantial or Final Completion, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Contractor bears the burden of proving it is entitled to an extension of time. Unless Contractor meets this burden, Liquidated Damages shall be assessed automatically.

- 10.9.6 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the relevant period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.
- 10.9.7 Resolution of Claims and Disputes. Claims, including those alleging an error or omission by the Design Consultant, shall be referred initially to the Design Consultant for decision, if there is a Design Consultant with Contract Administration duties which include Claims resolution; otherwise, such Claims by Contractor shall initially be referred to the Owner. An initial decision by such Design Consultant (or Owner as applicable) shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Design Consultant (or Owner as applicable) with no decision having been rendered. The Design Consultant (or Owner as applicable) will not decide disputes between the Contractor and persons or entities other than the Owner.
- 10.9.8 The Design Consultant (or Owner as applicable) will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Design Consultant is unable to resolve the Claim if the Design Consultant lacks sufficient information to evaluate the merits of the Claim or if the Design Consultant concludes that, in the Design Consultant's sole discretion, it would be inappropriate for the Design Consultant to resolve the Claim.
- 10.9.9 Upon receipt of the response or supporting data, if any, the Design Consultant (or Owner as applicable) will either reject or approve the Claim in whole or in part.
- 10.9.10 The Design Consultant (or Owner as applicable) will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time, or both. The approval or rejection of a Claim by the Design Consultant (or Owner as applicable) shall be final and binding on the parties but subject to mediation and litigation.
- 10.9.11 When a written decision of the Design Consultant (or Owner as applicable) states that (1) the decision is final but subject to mediation and litigation and (2) a demand for mediation of a Claim (if required by Owner's Dispute Resolution Procedures) or the commencement of a lawsuit (if mediation is not required as a pre-condition to litigation in Owner's Dispute Resolution Procedures) covered by such decision must be made or done within 30 days after the date on which the party making the demand (or filing the lawsuit) receives the final written decision, then failure to demand mediation in writing (if required) or file the lawsuit within said 30 days' period shall result in the Design Consultant's (or Owner's as applicable) decision becoming final and binding upon the Owner and Contractor. If the Design Consultant (or Owner as applicable) renders a decision after litigation proceedings have been initiated, such decision may be entered as evidence, but shall not supersede litigation proceedings unless the decision is acceptable to all parties concerned.
- 10.9.12 In the event of a dispute, the Owner, Contractor, and other parties involved in the Project shall utilize the Dispute Resolution Procedures adopted by Owner pursuant to N.C.G.S. §143-128(g), if applicable. Owner's Dispute Resolution Procedures are as follows:

These Procedures are applicable to the resolution of disputes with amounts in controversy in excess of \$15,000.00 arising between or among any parties involved in Owner's construction and repair Projects, including the Design Consultant and the Contractors, and the first and lower tier subcontractors, on Claims arising out of the contract or construction process. In no event shall the Owner be subject to arbitration proceedings pursuant to these Procedures. Unless otherwise specified in these Procedures, if there is any conflict between these Procedures and the other provisions of the Contract Documents, the terms of these Procedures control.

Any Claim as defined in the Contract Documents or any dispute between parties to a construction contract involving the Project, other than the Owner's claims, except those Claims which are waived shall be subject to nonbinding mediation as a condition precedent to the institution of legal proceedings by any party, except that any party may institute legal proceedings in order to meet any applicable statute of limitations or similar deadlines prior to engaging in nonbinding mediation.

The parties shall endeavor to resolve their claims by nonbinding mediation, which, unless the parties mutually agree otherwise, shall be in accordance with rules established by Owner if Owner is a party to the mediation. If Owner is not a party to the mediation, the mediation shall be conducted in accordance with rules established by the parties to the mediation. The parties to the mediation shall share the cost of mediation equally. The mediation shall be held in the place where the project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- 10.9.13 All suits in law or equity between the Owner and the Contractor arising out of the Contract shall be heard in the appropriate court of justice in the county where the Project is located.

END OF ARTICLE 10

ARTICLE 11

CORRECTION OF WORK

11.1 CORRECTION OF WORK

- 11.1.1 The Contractor shall promptly reconstruct, replace or correct all Work rejected by the Design Consultant as defective or as failing to conform to the Contract Documents or as not in accordance with the guarantees and warranties specified in the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Design Consultant's and the Owner's additional construction management services made necessary thereby.
- 11.1.2 The Contractor, unless removal is waived by the Owner, shall remove from the site all portions of the Work which are defective or non-conforming, or if permitted or required, he shall correct such work in place at his own expense promptly after receipt of notice, and such rejected Work shall not thereafter be tendered for acceptance unless the former rejection or requirement for correction is disclosed.
- 11.1.3 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Owner, the Owner may either (1) by separate contract or otherwise replace or correct such Work and charge the Contractor the cost occasioned the Owner thereby and remove and store the materials or equipment at the expense of the Contractor, or (2) terminate this Contract for default as provided in Paragraph 12.3. If the Contractor does not pay the cost of such replacement or correction and the removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for additional services of the Design Consultant and the Owner made necessary thereby. If such proceeds of sale do not cover all costs, which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.
- 11.1.4 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.
- 11.1.5 Nothing contained in this Paragraph 11.1 shall be construed to establish a period of limitation with respect to any other obligation, which the Contractor might have under the Contract Documents, including Paragraph 3.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced,

nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

END OF ARTICLE 11

ARTICLE 12

TERMINATION OF THE CONTRACT

12.1 TERMINATION BY THE CONTRACTOR

- 12.1.1 If the Work is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon seven (7) additional days' written notice to the Owner and the Design Consultant, terminate the Contract and recover from the Owner payment on a quantum merit basis, for all Work executed. The Contractor shall not be entitled to collect and hereby expressly waives, any profit on work not performed or any damages related to that portion of the Contract, which has been terminated.

12.2 TERMINATION FOR CONVENIENCE OF THE OWNER

- 12.2.1 The Owner may, at any time upon ten (10) days' written notice to the Contractor which notice shall specify that portion of the Work to be terminated and the date said termination is to take effect, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the work for the convenience of the Owner. The Contractor's sole remedy, in the event of such termination, will be the allowable termination costs permitted by Article 12.4. Contractor shall include termination clauses identical to Article 12 in each of his Subcontracts.

12.3 DEFAULT TERMINATION

- 12.3.1 Subject to the provisions of Paragraph 2.3.1, ten (10) days after written notice is mailed to the Contractor, the Owner may terminate (without prejudice to any right or remedy of the Owner or any subsequent buyer of any portion of the Work) the employment of the Contractor and his right to proceed either as to the whole or any portion of the Work required by the Contract Documents and may take possession of the Work and complete the Work by contract or otherwise in any one of the following circumstances:
- .1 if the Contractor refuses or fails to prosecute the work or any separable part thereof with such diligence as will ensure the Substantial or Final Completion of the Work within the Contract Time or fails to complete the Work or remedy a default within said period;
 - .2 if the Contractor is in material default in carrying out any provisions of the Contract for a cause within his control;
 - .3 if the Contractor fails to supply a sufficient number of properly skilled workmen or proper equipment or materials;
 - .4 if the Contractor fails to make prompt payment to Subcontractors or for materials or labor, unless he otherwise provides the Owner satisfactory evidence that payment is not legally due;
 - .5 if the Contractor disregards laws, permits, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to follow the instructions of the Owner;
 - .6 if the Contractor substantially violates any provisions of the Contract Documents; or

- .7 if the Contractor refuses or fails to properly schedule, plan, coordinate and execute the Work, as specified herein, so as to perform the Work within the specified Milestone and Completion dates, or to provide scheduling or related information, revisions and updates as required by the Contract Documents.

12.3.2 If, after the Contractor has been terminated for default pursuant to Paragraph 12.3, it is determined that none of the circumstances set forth in Subparagraph 12.3.1 exist, then such termination shall be considered a termination for convenience pursuant to Paragraph 12.2. In such case, the Contractor's sole remedy will be the costs permitted by Article 12.4.

12.3.3 If the Owner so terminates the employment of the Contractor, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the compensation is to be paid to the Contractor hereunder shall exceed the expense of so completing the Work (including compensation for additional managerial, administrative, consultant and inspection services and any damages for delay) such excess shall be paid to the Contractor.

12.3.4 If such expenses shall exceed the unpaid balance, the Contractor shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the Work is partially or fully terminated, the Owner may take possession of and utilize in completing the Work such materials, appliances, supplies, plant and equipment as may be on the site of the terminated portion of the Work and necessary for the completion of the Work. If the Owner does not fully terminate the right of the Contractor to proceed, the Contractor shall continue to perform the part of the work that is not terminated.

12.4 ALLOWABLE TERMINATION COSTS

12.4.1 If the Owner terminates the whole or any portion of the Work pursuant to Paragraph 12.2, then the Owner shall only be liable to the Contractor for those costs reimbursable to the Contractor in accordance with Subparagraph 12.4.2, plus a markup of ten percent for profit and overhead on the actual fully accounted costs recovered under 12.4.2; provided however, that if there is evidence that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

12.4.1.1 After receipt of a Notice of Termination, the Contractor shall submit to the Owner his termination claim, in the form and with certification prescribed by the Owner. Such claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such three (3) month period or authorized extension thereof. However, if the Owner determines that the facts justify such action, he may receive and evaluate any such termination claim at any time after such three (3) month period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Owner may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

12.4.2 If the Owner terminates the whole or any portion of the Work pursuant to Paragraph 12.2, the Owner shall pay the Contractor the amounts determined by the Owner as follows:

- .1 an amount for supplies, services, or property accepted by the Owner pursuant to Clause 12.5.1.6 or sold or acquired pursuant to Clause 12.5.1.7 and not heretofore paid for, and to the extent provided in the Contract such amount shall be equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges; and
- .2 the total of:
 - (1) the cost incurred in the performance of the Work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under Clauses 12.4.2.1 or 12.4.2.2.(2);

- (2) the cost of settling and paying claims arising out of the termination of Work under Subcontracts or orders, pursuant to Clause 12.5.1.5, which are properly chargeable to the terminated portion of the Work (exclusive of amounts paid or payable on account of completed items of equipment delivered or services furnished by Subcontractors or vendors prior to the effective date of the notice of termination), which amounts shall be included in the costs payable under (1) above; and
- (3) the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Work and for the termination and settlement of Subcontracts thereunder, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocable to the Contract.

.3 Provided, however, that neither the Owner nor the Design Consultant will be liable for payments to subcontractors pursuant to Article 12.4.2.2 unless each subcontract contains termination provisions identical to those set forth in Article 12. The Owner and the Design Consultant will not be liable to the Contractor or any of his subcontractors for any costs associated with termination if the subcontract of the party involved does not include the proper termination clauses.

12.4.3 In arriving at any amount due the Contractor pursuant to Paragraph 12.4, there shall be deducted the following:

- .1 all unliquidated advance or other payments on account theretofore made to the Contractor applicable to the terminated portion of the Contract;
- .2 any claim which the Owner may have against the Contractor;
- .3 such amount as the Owner determines to be necessary to protect the Owner against loss because of outstanding or potential liens or claims; and
- .4 the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of Clause 12.5.1.7, and not otherwise recovered by or credited to the Owner.

12.4.4 The total sum to be paid to the Contractor under Paragraph 12.4 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made or to be made for Work not terminated and as otherwise permitted by the Contract. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, as provided in Subparagraph 12.4.2, the fair value, as determined by the Owner, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to Clause 12.5.1.7.

12.4.5 If the Owner terminates the whole or any part of the Work pursuant to Paragraph 12.3, the Owner may procure, upon such terms and in such manner as the Owner may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Owner for any excess costs for such similar supplies or services. The Contractor shall continue the performance of the Contract to the extent not terminated hereunder.

12.5 GENERAL TERMINATION PROVISIONS

12.5.1 After receipt of a notice of termination from the Owner, pursuant to Paragraph 12.2 or 12.3, and except as otherwise directed by the Owner, the Contractor shall:

- .1 stop Work under the Contract on the date and to the extent specified in the notice of termination;
- .2 place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
- .3 terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination;

- .4 at the option of the Owner, assign to the Owner in the manner, at the times and to the extent directed by the Owner, all of the rights in the contracts so terminated, in which case the Owner shall have the right, at his discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, with the approval or ratification of the Owner, to the extent he may require, which approval or ratification shall be final for all the purposes of this Article;
- .6 transfer title and deliver to the entity or entities designated by the Owner, in the manner, at the times and to the extent directed by the Owner to the extent specifically produced or specifically acquired by the Contractor for the performance of such portion of the Work as had been terminated, the following:
 - (1) the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and
 - (2) the completed or partially completed plans, drawings, information, releases, manuals and other property related to the Work and which, if the Contract had been completed, would have been required to be furnished to the Owner;
- .7 use his best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Owner, any property of the types referred to in Clause 12.5.1.6; provided, however, that the Contractor:
 - (1) shall not be required to extend credit to any buyer, and
 - (2) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract or shall otherwise be credited to the Contract Sum covered by the Contract or paid in such other manner as the Owner may direct;
- .8 complete performance of such part of the Work as shall not have been terminated by the notice of termination; and
- .9 take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Contract, which is in the possession of the Contractor, and in which the Owner has or may acquire an interest.

12.5.2 The Contractor shall, from the effective date of termination until the expiration of three (3) years after final settlement under the Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, but without direct charge to the Owner, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the Work terminated hereunder, or, to the extent approved by the Owner, photographs, micro-photographs or other authentic reproductions thereof.

12.5.3 If the termination, pursuant to Paragraph 12.2, be partial, the Contractor may file with the Owner a claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this Subparagraph must be asserted within six (6) months from the effective date of the notice of termination.

- 12.5.4 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under Paragraph 12.4.
- 12.5.5 The Contractor shall be entitled to only those damages and that relief from termination by the Owner as specifically provided in Article 12.

END OF ARTICLE 12
END OF GENERAL CONDITIONS

PROJECT: _____
FOR PERIOD FROM: _____
TO: _____

I hereby certify that, during the period stated above, all North Carolina sales and use taxes have been paid for the materials, supplies, fixtures, and equipment purchased during that period which have become a part of, or annexed to, a building or structure erected, altered or repaired for the Owner. I further certify that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina sales and use taxes paid thereon, and the cost of property withdrawn from warehouse stock and North Carolina sales or use taxes paid thereon are as set forth above during the time period noted above.

Title:

CHANGE PROPOSAL FORM
Time and Material / Unit Price Estimate

Project: _____
Contract: _____
Contractor: _____

Proposal #: _____
Project #: _____
Contractor #: _____

Description of change: _____

Materials & Labor

Estimated cost of labor & materials including shipping, overtime, payroll taxes and insurance, and overhead and profit.

Maintain accurate records for billing purposes.

SUBTOTALS

Unit Price Work

Estimated quantity of units required less allowance units not used, times the established unit cost.

Maintain accurate records for billing purposes. Third party records may be required.

Equipment Rental

Estimated cost of equipment rental including shipping, taxes and overhead and profit.

Maintain accurate records for billing purposes.

Subcontractors

Estimated cost of subcontracts including all subcontractor expenses.

Maintain accurate records for billing purposes.

Subtotal of Proposal

*** TOTAL NOT TO EXCEED CHANGE PROPOSAL ESTIMATE**

Time Extension Requests: ____day(s) Schedule Activity # Affected: _____

The Contractor agrees to perform the work outlined in this change proposal for an amount that shall not exceed the amount stated above and in accordance with the Contract documents if the work is authorized by the Owner. If the price to perform the work is expected to exceed the above stated amount, a new change proposal form for the additional work is required.

* Actual amount paid will be based on actual documented expenses.

Contractor's Signature: _____

Date: _____

Approval Recommended by Design Consultant: _____

Date: _____

Owner's Representative Approval: _____

Date: _____

CHANGE PROPOSAL FORM

Project: _____ **Proposal #:** _____
Contract: _____ **Project #:** _____
Contractor: _____ **Contractor #:** _____

Description of change: _____

Materials	(Attach list with Qty, Item, Unit \$, Unit mh, Total mh, OT mh, Total \$)	SUBTOTALS
1 Total Direct Cost of Materials	_____	
2 Overhead & Profit on Item 1.	_____	
(15% maximum, includes small tools & consumables)	_____	
3 Sales Tax	_____	
4 Shipping & Transportation	_____	
Labor	_____	
5 Total Manhours: _____ MH @ _____ /hr.	_____	
6 Overhead & Profit on Item 5.	_____	
(15% maximum on straight labor cost, not premium portion)	_____	
(O & P includes supervisor's time)	_____	
7 Payroll Taxes & Insurance _____ %	_____	
Equipment Rental (Include quotes)	_____	
8 Equipment Rental	_____	
9 Overhead & Profit on Item 8 (6% maximum).	_____	
Subcontractors (Include quotes with material & equipment backup)	_____	
10 Subcontractors	_____	
11 Overhead & Profit on Item 10 (6% maximum).	_____	
Subtotal of Proposal		_____

TOTAL OF CHANGE PROPOSAL _____

Time Extension Requests: _____ day(s) Schedule Activity # Affected: _____

The Contractor agrees to perform the work outlined in this change proposal for the amount specified above and in accordance with the Contract documents if the work is authorized by the Owner.

Contractor's Signature: _____ **Date:** _____

Approval Recommended by Design Consultant: _____ **Date:** _____

Owner's Representative Approval: _____ **Date:** _____

SECTION SC

SUPPLEMENTAL CONDITIONS

GENERAL CONDITIONS

Document GC, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, constitutes the General Conditions of this Contract, and is hereinafter called "General Conditions." The General Conditions are further revised and supplemented by the provisions of these Supplemental Conditions. The General Conditions and the Supplemental Conditions are applicable to all of the Work under this contract and shall apply to the Contractor and all Subcontractors and Sub-subcontractors.

SUPPLEMENTS:

The following supplements modify, change, delete, or add to the General Conditions. Where any article of the General Conditions is modified or any paragraph deleted, subparagraph or clause thereof is modified, or deleted by these supplements, the unaltered provisions of such article, paragraph, subparagraph or clause shall remain in effect. If there is a discrepancy between the General Conditions and these Supplemental Conditions, the Supplemental Conditions shall control.

ARTICLE 3 – CONTRACTOR

ADD THE FOLLOWING TO PARAGRAPH 3.21:

3.21 The Owner's policies are available for review at www.bcswan.net.

ARTICLE 7 – TIME

ADD THE FOLLOWING TO THE END OF THE FIRST PARAGRAPH IN 7.2.1.1:

The Parties agree that the weather station applicable to this Project shall be the one located at ILM, Wilmington, NC.

ARTICLE 8 – PAYMENTS AND COMPLETION

ADD THE FOLLOWING TO PARAGRAPH 8.9:

8.9.1 Substantial Completion Liquidated Damages shall be the sum of five hundred dollars (\$500) per calendar day, and this amount shall be assessed in accordance with Subparagraph 8.9.1 of the General Conditions.

8.9.2 Final Completion Liquidated Damages shall be the sum of five hundred dollars (\$500) per calendar day, and this amount shall be assessed in accordance with Subparagraph 8.9.2 of the General Conditions.

ADD THE FOLLOWING PARAGRAPH 8.11:

8.11.1 The schedule below contains certain specific dates in addition to date of Notice to Proceed and Time for Completion. These dates shall be adhered to and are the last acceptable dates unless modified by mutual agreement between the Contractor and the Owner. All dates indicate midnight unless otherwise stipulated. The only exceptions to this schedule are defined in the General Conditions under Paragraph 7.2 DELAYS AND EXTENSIONS OF TIME.

Notice of Intent to Award – May 5, 2021
Return of Owner Contractor Agreement by Contractor – May 10, 2021
Notice to Proceed – June 8, 2021
Substantial Completion – November 23, 2021
Completion of all Commissioning – November 30, 2021

- 8.11.2 The Owner reserves the right to withhold the issuance of Notice to Proceed by up to forty-five (45) days. For each day that Notice to Proceed is withheld pursuant to this Subparagraph, the dates established for Substantial Completion and Final Completion shall be adjusted. The contractor shall not be entitled to additional compensation if the owner withholds the issuance of Notice to Proceed pursuant to this Subparagraph.

ARTICLE 9 – INSURANCE AND BONDS

ADD THE FOLLOWING TO PARAGRAPH 9.9:

- 9.9 Separate performance and payment bonds in the total amount of the Contract are required for Contract amounts in excess of \$300,000.

ARTICLE 10 – CHANGES IN WORK

ADD THE FOLLOWING NEW PARAGRAPH 10.9.14:

- 10.9.14 Additional services and dispute resolution services by the Design Consultant shall be paid by the Contractor at the rate of two hundred and fifty dollars (\$250) per hour.

ADD THE FOLLOWING NEW PARAGRAPH 10.9.15:

- 10.9.15 The Owner's Dispute Resolution Policy required by N.C.G.S. § 143-128(f1) is contained in Policy 9020 (www.bcswan.net). The Dispute Resolution Policy is also included in the bid and contract documents.

END OF SUPPLEMENTAL CONDITIONS



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # V. - 3.

Administration - Surplus Property Offers for Upset Bid Process

From:

Steve Stone, Deputy County Manager

Issue/Action Requested:

Request that the Board of Commissioners accept, subject to the upset bid process, offers that have been submitted for surplus parcels that meet the value parameters previously established by the Board.

Background/Purpose of Request:

Parcel	Location	Size	Tax Value	Acquired	Cost	Bid
142HB019	Juniper Rd, BSL	.25 acre	\$4,400.00	9-13-2017	\$2,936.21	\$2,500.00
142OD007	Cottage LN, BSL	.18 acre	\$21,500.00	6-21-2000	\$979.06	\$6,250.00

Fiscal Impact:

Reviewed By Director of Fiscal Operations

Approved By County Attorney:

Yes

Advisory Board Recommendation:

Not Applicable

County Manager's Recommendation:

Recommend the Board of Commissioners accept, subject to the upset bid process, offers that have been submitted for surplus parcels that meet the value parameters previously established by the Board.

ATTACHMENTS:

Description

- ☐ Bid 142HB019
- ☐ Bid 142OD007

From: [Surplus Land Bid](#)
To: [Steve Stone](#)
Subject: Surplus Land Bid: Parcel # 142HB019
Date: Wednesday, May 26, 2021 8:51:59 AM

CAUTION: This email originated from outside of Brunswick County Government. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Adrian Neals
(803) 290-1853
adneals@gmail.com
107 Orleans Ct., Moncks Corner, SC, 29461, United States
Parcel # 142HB019
Bid Amount: \$2500
Optional Additional Comments:

From: [Surplus Land Bid](#)
To: [Steve Stone](#)
Subject: Surplus Land Bid: Parcel # 142OD007
Date: Friday, May 14, 2021 11:21:23 AM

CAUTION: This email originated from outside of Brunswick County Government. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Alexander Reese
(610) 451-1528
agtreese@gmail.com
1329 Lombard Street, #311, Philadelphia, PA, 19147, United States
Parcel # 142OD007
Bid Amount: \$6250
Optional Additional Comments:



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # V. - 4.

From: Administration - Varnam Request for Deferred Payment Plan
Randell Woodruff, County Manager

Issue/Action Requested:

Request that the Board of Commissioners approve a Deferred Payment Plan for ALL-IN, LLC and authorize the County Manager to execute the agreement. Payments will commence July 1, 2021 and shall be remitted to the Holder on or before the 20th day of each calendar month to be applied against the outstanding balance of the Deferral amount.

Background/Purpose of Request:

The Borrower is developing a commercial campground development to be known as Sea Breeze RV Park upon certain real property located in Brunswick County.

He requested that the County defer certain fees (*i.e.*, utility, capital recovery, system development...) payable to County with respect to the Development in the amount of One Hundred Seventeen Thousand Five Hundred Ten and No Hundredths Dollars (\$117,510.00).

The Borrower presented County staff with a site plan in June of 2018 for 115 campsites and was informed by County staff that the utility fees at that time would be \$1430.55 per site. In July of 2018, the Board of Commissioners changed the fee schedule in accordance with statutory requirements for system development fees. The current fees are \$2,452.38 per site. Because of the timing and confusion of the rate change, the Board agreed in this limited circumstance to allow payment of the difference over time instead of up front as otherwise required. The deferred payment total of \$117,510 specifically applies to the 115 camp sites requested. Any additional camp sites, buildings, or facilities related to this project are subject to current fees without any deferral provision.

Fiscal Impact:

Reviewed By Director of Fiscal Operations

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners approve a Deferred Payment Plan for ALL-IN, LLC. Payments will commence July 1, 2021 and shall be remitted to the Holder on or before the 20th day of each calendar month to be applied against the outstanding balance of the Deferral amount.

ATTACHMENTS:

Description

- ▣ Varnam Fee Deferral Agreement and Note and Guaranty 6-7-2021.pdf

FEE DEFERRAL AGREEMENT

THIS FEE DEFERRAL AGREEMENT (hereinafter the “**Agreement**”) is entered into as of this 7th day of June, 2021, by and between ALL-IN, LLC, a North Carolina limited liability company (hereinafter the “**Borrower**”) and the COUNTY OF BRUNSWICK, NORTH CAROLINA (hereinafter the “**County**”).

RECITALS

- A. The Borrower is developing a commercial campground development to be known as Sea Breeze RV Park upon certain real property located in the County of Brunswick, North Carolina (hereinafter the “**Development**”).
- B. The Borrower requested that the County defer certain fees (*i.e.*, utility, capital recovery, system development...) payable to County with respect to the Development in the amount of One Hundred Seventeen Thousand Five Hundred Ten and No Hundredths Dollars (\$117,510.00) (the “**Deferral**”).
- C. The Borrower presented County staff with a site plan in June of 2018 for 115 campsites and was informed by County staff that the utility fees at that time would be \$1430.55 per site. In July of 2018, the Board of Commissioners changed the fee schedule in accordance with statutory requirements for system development fees. The current fees are \$2,452.38 per site. Because of the timing and confusion of the rate change, the Board agreed in this limited circumstance to allow payment of the difference over time instead of up front as otherwise required. The deferred payment total of \$117,510 specifically applies to the 115 camp sites requested. Any additional camp sites, buildings, or facilities related to this project are subject to current fees without any deferral provision.
- D. The County’s Board of Commissioners approved the Deferral at its June 7, 2021 regular meeting.
- E. The Borrower and County desire to memorialize the specific terms of the Deferral in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the covenants contained herein, the sum of TEN DOLLARS (\$10.00) in hand paid to each of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the County agree as follows:

1. **Incorporation of Recitals and Exhibits.** The recitals set forth above and all exhibits attached hereto are hereby incorporated into the substantive body of this Agreement.

2. **Deferment of Fees.** The County agrees to the Deferral in accordance with the terms of this Agreement. Borrower agrees to repay the Deferral amount in accordance with the terms of this Agreement.
3. **Repayment Terms.** The Borrower shall repay the amount of the Deferral as follows:
 - a. **Payments.** Borrower shall monthly payments of \$2,448.00 until the total deferred amount is paid in full.
 - b. **Statements.** The County will bill the Borrower for the deferred monthly amount along with the Borrower's regular bill for metered services on or around the first of each month and payable within 20 days to avoid late payment penalties.
 - c.
 - d. **Maturity.** The balance of the Deferral amount together with any and all accrued and unpaid interest/penalties shall be due and payable in full four (4) years after the date of the first billing period (the "**Maturity Date**").
4. **No Prepayment Penalties.** Borrower may pre-pay the Deferral amount at any time without penalty, subject only to the amount of unpaid interest that has accrued to the date of such payment in full.
5. **Default and Remedies.** The Borrower's failure to make any payment required under this Agreement shall constitute an event of default. Prior to exercising any remedies, the County shall give Borrower and Guarantors (hereinafter defined) simultaneous written notice of any event of default. Borrower and Guarantors have the right to cure any event of default by thirty (30) days after receipt of written notice of default by Borrower and Guarantors prior to exercise of any remedies by the County. If such default remains uncured more than thirty (30) days after receipt of written notice of default by Borrower and Guarantors, the County may declare the unpaid balance immediately due and payable.
 - a. Any cure of any default or event of default made or tendered by any guarantor shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.
 - b. "**Guarantors**" shall mean Samuel N. and Lisa L. Varnam.
6. **Notices.** Any notice, demand, request or other communication which may or are required to be given hereunder shall be in writing and shall be sent by statutory overnight delivery return receipt requested or certified United States mail return receipt requested to the party at the following address or at such other address as the party may have furnished in writing:

To County:

County of Brunswick
P.O. Box 249
Bolivia, NC 28422
Attn: County Manager

To Borrower and to Guarantors:

All-In, LLC
Samuel and Lisa Varnam
1574 Monster Buck Estates
Supply, NC 28462

7. **Entire Agreement.** This Agreement incorporates the terms of all agreements between the County and the Borrower with regard to the subject matter of this Agreement.
8. **Successors.** The provisions of this Agreement bind and inure to the benefit of the undersigned parties and their successors and assigns. Neither the withdrawal, removal, replacement, and/or addition of a Managing Member or an Investor Member of the Company pursuant to the terms of the Borrower's Operating Agreement, shall constitute a default under this Agreement or the Note, and any such actions shall not accelerate the maturity of under this Agreement or the Note, nor require the consent or approval of the County.
9. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of **North Carolina**.
10. **Assignment.** The County shall not assign, pledge or otherwise encumber, for security or otherwise, the Deferral fee amount or this Agreement, or any portion(s) thereof or any right(s) of the County thereto, without the prior written consent of the Borrower.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, this Agreement has been entered into by the undersigned as of the date first above written.

BORROWER:

All-In, LLC

a North Carolina limited liability company.

By: _____

Name: Samuel Varnam

Title: Member-Manager

COUNTY:

County of Brunswick, North Carolina

By: _____

Name: Randell Woodruff

Title: County Manager

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, _____, a Notary Public in and for the state and county aforesaid, hereby certify that Samuel Varnam personally came before me this date and acknowledged that he/she is a member-manager of All-In, LLC and that by authority duly given and as an act of the company, the foregoing instrument was signed in its name.

Witness my hand and official stamp or seal this the ____ day of _____, 2021.

My commission expires:

_____(SEAL)
[Signature of Notary Public]

_____, Notary Public
[Printed Name of Notary Public]

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, _____, a Notary Public in and for the state and county aforesaid, hereby certify that Randell Woodruff personally came before me this date and acknowledged that he is the Manager of the County of Brunswick and that by authority duly given and as an act of the county, the foregoing instrument was signed in its name.

Witness my hand and official stamp or seal this the ____ day of _____, 2021.

My commission expires:

_____(SEAL)
[Signature of Notary Public]

_____, Notary Public
[Printed Name of Notary Public]

PROMISSORY NOTE

\$117,510.00

Executed: _____, 2021

FOR VALUE RECEIVED, the undersigned, ALL-IN, LLC, a North Carolina limited liability company ("**Maker**"), having an address of 1574 Monster Buck Estates, Supply, NC 28462 hereby promises to pay to the order of the COUNTY OF BRUNSWICK, NORTH CAROLINA ("**Holder**"), having an address of 30 Government Center Drive, Bolivia, NC 28422, the principal sum of One Hundred Seventeen Thousand Five Hundred Ten and No Hundredths Dollars (\$117,510.00), with interest and principal payable as hereinafter provided.

1. **Fee Deferral.** This Promissory Note ("**Note**") evidences the obligations of Maker under that certain Fee Deferral Agreement between Maker and Holder of even date herewith (the "**Agreement**"). This Note is subject to all terms and definitions of the Agreement.
2. **Maturity Date.** If not sooner paid, all outstanding principal of this Note together with accrued and unpaid interest thereon shall be paid to the Holder on June 2, 2025 (the "**Maturity Date**").
3. **Payments.** Commencing July 1, 2021 payment shall be remitted to the Holder on or before the 20th day of each calendar month to be applied against the outstanding balance of the Deferral amount.
4. "**Development**" shall mean Maker's planned commercial campground development to be known as Sea Breeze RV Park and located upon certain real property located in the County of Brunswick, North Carolina.
5. **Prepayment.** Maker may prepay any amount due under this Note. There shall be no prepayment fee or premium charged on the amount of any prepayment.
6. **Defaults.** Maker's failure to make any payment required under this Note shall constitute an event of default. Prior to exercising any remedies, Holder shall give Maker and Guarantors (as defined in the Agreement) simultaneous written notice of any event of default. If such default remains uncured more than thirty (30) days after receipt of written notice by Borrower and Guarantors, Holder may declare the unpaid balance immediately due and payable.
7. **Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall comply with the terms of the Agreement.
8. **Security.** This Note is unsecured.
9. **Recourse.** This Note is a full recourse obligation of Maker.
10. **Venue.** This Note, and the application and interpretation hereof, shall be governed by and construed in accordance with the law of the state of **North Carolina** applicable to contracts executed in and to be performed in the state of **North Carolina. Brunswick County,**

North Carolina, shall be the venue of any legal action concerning this Note and/or the transactions contemplated hereby.

IN WITNESS WHEREOF, this Note has been executed as of the date first hereinabove written.

MAKER:

All-In, LLC
a North Carolina limited liability company.

By: _____

Name: Samuel Varnam

Title: Member-Manager

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, _____, a Notary Public in and for the state and county aforesaid, hereby certify that Samuel Varnam personally came before me this date and acknowledged that he/she is a member-manager of All-In, LLC and that by authority duly given and as an act of the company, the foregoing instrument was signed in its name.

Witness my hand and official stamp or seal this the ____ day of _____, 2021.

My commission expires:

_____(SEAL)
[Signature of Notary Public]

_____, Notary Public
[Printed Name of Notary Public]

COUNTY OF BRUNSWICK/ALL-IN, LLC GUARANTY AGREEMENT

NOW, WHEREFORE, IT IS AGREED,

FIRST: Samuel Varnam and Lisa Lewis Varnam (“Guarantors”) guarantee the payment of the loan in the amount of \$117,510 in accordance with the terms of the Fee Deferral Agreement and Promissory Note signed by ALL-IN, LLC, a North Carolina limited liability company, (“Borrower”) with its registered business address at 1574 Monster Buck Estates, Supply, NC 28462 (the “Loan Agreement”).

SECOND: Guarantors shall take all reasonable measures to assure that Borrower repays the loan in accordance with the terms of the Loan Agreement and to cooperate with the County of Brunswick (“Lender”) in collecting past-due loan payments under the terms of the Loan Agreement.

THIRD: If Borrower defaults on the Loan Agreement with the Lender, Guarantors shall pay the County of Brunswick the outstanding balance of the aforesaid loan within thirty days of receiving written notice of Borrower's default.

FOURTH: Notwithstanding the modification of the Loan Agreement so as to extend the repayment periods or so as to increase or decrease the amount of periodic payments, Guarantors shall remain bound by the obligations set out in this Guarantors’ Agreement.

FIFTH: If Borrower defaults on the loan payments, and if Guarantors fail to pay the outstanding balance of the aforesaid loan as required under Article THIRD above, Guarantors shall submit to the jurisdiction of the state courts in Brunswick County, North Carolina, and Guarantors hereby waive all challenges to the jurisdiction of those courts and pertinent authorities in relation to all legal process and other legal action that may be deemed necessary by Lender for the collection of monies owed on account of the breach of this Guarantors’ Agreement. Guarantors also agree to pay Lender reasonable legal fees, expenses, and court costs for collection of amounts owed under this Guarantors’ Agreement.

[Signatures Appear on Following Page]

Name: Samuel N. Varnam

Date: _____

STATE OF NORTH CAROLINA
BRUNSWICK COUNTY

On this _____ day of _____, 2021, Samuel N. Varnam personally appeared before me and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal below.

Notary Public, State of North Carolina

Name: Lisa L. Varnam

Date: _____

STATE OF NORTH CAROLINA
BRUNSWICK COUNTY

On this _____ day of _____, 2021, Lisa L. Varnam personally appeared before me and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal below.

Notary Public, State of North Carolina



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

From:
Randell Woodruff, County Manager

Action Item # V. - 5.

Brunswick BID - Building Reuse Grant - Contract Amendment -
Pacon Manufacturing

Issue/Action Requested:

Request that the Board of Commissioners approve an amendment to the NC Department of Commerce Rural Development Building Reuse Grant Agreement (Grant #2019-121-3201-2587) associated with Pacon Manufacturing Corporation.

Background/Purpose of Request:

The County entered into a NC Department of Commerce Rural Development Building Reuse Grant Agreement (Grant #2019-121-3201-2587) on July 6, 2020 for State assistance in offsetting the costs of facility improvements required to utilize an existing building located in Navassa for the Pacon Manufacturing Corporation project.

The proposed amendment will extend the term of the agreement from April 18, 2021 to April 18, 2022. All other terms and conditions of the Agreement will remain unaltered and in full force and effect.

Fiscal Impact:

Reviewed By Director of Fiscal Operations

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners approve an amendment to the NC Department of Commerce Rural Development Building Reuse Grant Agreement (Grant #2019-121-3201-2587) associated with Pacon Manufacturing Corporation.

ATTACHMENTS:

Description

- ☐ NC Department of Commerce Contract Amendment

AMENDMENT

North Carolina Department of Commerce
Rural Economic Development Division
Rural Grant/Programs

Contract #: 2019-121-3201-2587
Date: May 21, 2021

1

Number

GRANTEE:

Brunswick County
PO Box 249
Bolivia, NC 28422

Contact: Mr. Randy Thompson

Project Title: Pacon Manufacturing/Project Pavement

THE DEPARTMENT:

North Carolina Department of Commerce
Rural Economic Development Division
301 North Wilmington Street
4346 Mail Service Center
Raleigh, NC 27699-4346
Grant Manager: Nichole M. Gross

This Contract Amendment is hereby entered into by and between the North Carolina Department of Commerce (the "Department") and Brunswick County (the "Grantee") (referred to collectively as the "Parties"). By this Contract Amendment, the Parties amend their Grant #2019-121-3201-2587, respectively (the "Agreement"), as outlined below.

Except as set forth in this Contract Amendment, all other terms and conditions of the Agreement shall remain unaltered and in full force and effect. Should there arise any conflict, discrepancy or ambiguity between the terms and conditions contained in the Agreement and the terms and conditions of this Contract Amendment, the terms and conditions contained in this Contract Amendment shall govern and prevail.

☒ Paragraph 3 (Term of Agreement)

DELETE: "terminate on 4/18/2021 ." "
ADD: "terminate on 4/18/2022 ." "

Progress reports are due on January 15th and July 15th for each year that the grant remains open. The final report and job verification documentation are due at the time of project completion or no later than 30 days after the grant end-date, whichever is sooner. The reporting schedule remains in effect for the duration of the grant including time extensions.

Authorized Signature Warranty: The undersigned represent and warrant that they are authorized to bind their principles to the terms of this Contract Amendment.

In Witness Whereof, the Grantee and the Department have executed this Contract Amendment in duplicate originals, with one original being retained by each party.

GRANTEE:

THE DEPARTMENT:



Signature

Signature

Printed Name

Date

Kenny Flowers

5/21/2021

Printed Name

Date

Title

Assistant Secretary for Rural Economic Development
Title

If you agree with the amendment as proposed, please sign. **Retain one a copy for your files and return a copy to the attention of Nichole M. Gross at the NC Department of Commerce at rgpreports@nccommerce.com .**



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # V. - 6.

Clerk to the Board - Meeting Minutes

From:

Andrea White

Issue/Action Requested:

Request that the Board of Commissioners approve the draft minutes from the May 17, 2021 Regular Meeting.

Background/Purpose of Request:

Fiscal Impact:

Reviewed By Director of Fiscal Operations

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners approve the draft minutes from the May 17, 2021 Regular Meeting.

ATTACHMENTS:

Description

- ▣ Draft Minutes - 2021-05-17 Regular Meeting

**BRUNSWICK COUNTY BOARD OF COMMISSIONERS
OFFICIAL MINUTES
REGULAR MEETING
MAY 17, 2021
6:00 P.M.**

The Brunswick County Board of Commissioners met in Regular Session on the above date at 6:00 p.m., Commissioners' Chambers, David R. Sandifer Administration Building, County Government Center, Bolivia, North Carolina.

PRESENT: Commissioner Randy Thompson, Chairman
Commissioner Mike Forte, Vice-Chairman
Commissioner J. Martin Cooke
Commissioner Pat Sykes
Commissioner Frank Williams

STAFF: Steve Stone, Deputy County Manager
David Stanley, Deputy County Manager
Bob Shaver, County Attorney
Julie Miller, Finance Director
Andrea White, Clerk to the Board
Jared Galloway, Deputy Clerk to the Board
Meagan Kascsak, Communications Director
Jesse Heim, IT
Lt. Jeff Beck, Sheriff's Office
Maj. Brian Chism, Sheriff's Office

Board Action, containing all items in this set of minutes, is filed within the Clerk to the Board's office.

I. CALL TO ORDER

Chairman Thompson called the meeting to order at 6:00 p.m.

II. INVOCATION/PLEDGE OF ALLEGIANCE

Chairman Thompson gave the Invocation and led the Pledge of Allegiance.

III. ADJUSTMENTS/APPROVAL OF AGENDA

Chairman Thompson asked for adjustments to the agenda and requested that item *V-12. Emergency Services - Ambulance Remount Purchase* be moved from the Consent Agenda to Administrative Report and combined with item *VIII-3. Emergency Services - Ambulance Purchase (Ed Conrow, Emergency Services Director)* to facilitate discussion on these items.

Commissioner Williams moved to approve the agenda as amended. The motion was seconded by Commissioner Forte and passed unanimously (5 to 0).

IV. PUBLIC COMMENTS

Chairman Thompson briefly reviewed the Public Comments Policy and called those who had signed up to speak. The following individuals addressed the Board:

1. Dan Parent, resident of Oak Island and Board member of Oak Island Involved Citizens, spoke regarding beach renourishment and thanked the County officials who recently met with the Town officials to discuss possible funding sources. Mr. Parent also requested a meeting with Commissioner Sykes and encouraged the County to work with other eastern North Carolina county officials to lobby the State government for funds for beach renourishment.
2. Dr. Mark Blevins, resident of Southport and the Statewide Agriculture and Natural Resource Program Leader for Cooperative Extension and NC A&T State University, thanked the Board for supporting him during his time in Brunswick County. Dr. Blevins commented on the dedicated professionals that staff Brunswick County Cooperative Extension, and their use of technology and different communication styles to improve upon the community outreach and to provide agricultural, horticultural, family consumer sciences, master food volunteers (first in the state to have this program), and 4-H programs. Dr. Blevins asked that the Board continue to support Cooperative Extension's staff, programs, the upcoming budget, and personnel needed to reach the rapidly growing population.

V. APPROVAL OF CONSENT AGENDA

Commissioner Cooke moved to approve the Consent Agenda (*note: Item V-12 was moved to Administrative Report item VIII-3 during Adjustments/Approval of Agenda and was therefore not considered during the Approval of Consent Agenda*). The motion was seconded by Commissioner Sykes and passed unanimously (5 to 0). The following items were approved:

1. **Administration - Engagement Letter with Ward and Smith, P.A.**
Engaged Ward and Smith, P.A. and The Ferguson Group to represent Brunswick County with regard to its government relations work and associated issues. The monthly retainer for these services will vary from \$9,387.50 per month to \$12,475.00 per month, with a total retainer for the length of the contract being \$250,000.00.
2. **Administration - Organizational Chart Revision**
Approved the following revisions to the organizational chart for Brunswick County:
 - Removed “General Services” and “Public Services” from Deputy County Manager titles
 - Moved Engineering and Code Administration to Deputy County Manager (Haynes Brigman)
 - Moved Emergency Services, Cooperative Extension, and Soil & Water to Deputy County Manager (Steve Stone)
 - Changed Management Information Services (MIS) to Information Technology (IT)
3. **Administration - Surplus Property Offers for Upset Bid Process**
Accepted, subject to the upset bid process, the following offers that were submitted for surplus parcels that met the value parameters previously established by the Board:

Parcel	Location	Size	Tax Value	Acquired	Cost	Bid
142CE010	E. Boiling Spring Rd, BSL	.30 acre	\$9,000.00	4-25-2016	\$3,921.47	\$3,921.47
142HA018	Beech Rd, BSL	.36 acres	\$4,400.00	10-30-2015	\$1,993.94	\$2,000.00
4. **Board of Education - Request to Delay Budget Submittal**
Approved the Brunswick County Schools’ request to submit budget after Statutory Date due to the current funding agreement.
5. **Clerk to the Board - Meeting Minutes**
Approved the draft minutes from the May 3, 2021 Goals and Budget Workshop and the May 3, 2021 Regular Meeting.
6. **Cooperative Extension - Brunswick Wellness MOU**
Approved a Memorandum of Understanding (MOU) between Brunswick County and Brunswick Wellness Coalition by and through its fiscal agent, Doshier Memorial Hospital to allow Brunswick County to accept grant funds administered by Doshier Memorial Hospital as fiscal agent for the Brunswick Wellness Coalition “BWC” Healthy People Healthy Carolinas “HPHC” in order to fund 50% of an additional Family and Consumer Sciences Agent position in the Brunswick County Cooperative Extension “BCCE” Office.
7. **County Attorney - Hawthorne at Waterside Deed of Dedication**
Accepted the Deed of Dedication for water infrastructure in Hawthorne at Waterside.
8. **County Attorney - Resolution Supporting Legislative Action Against Forced Annexation**
Adopted a Resolution in Support of Legislative Action Prohibiting the Extension of Water and Sewer Services Conditioned on Annexation.

**RESOLUTION IN SUPPORT OF LEGISLATIVE ACTION
PROHIBITING THE EXTENSION OF WATER AND SEWER SERVICES CONDITIONED
ON ANNEXATION**

WHEREAS, a decade ago the General Assembly made changes to the involuntary annexation statutes that protected citizens in unincorporated areas and made it more difficult for municipalities to annex against a property owner’s wishes; and

WHEREAS, with involuntary annexation options limited, municipalities have increasingly relied on a practice of conditioning the provision of water and sewer services outside their corporate limits with a requirement that the property owner “voluntarily” petition to be annexed; and

WHEREAS, this practice is not addressed by any specific statute and has resulted in what amounts to circumvention of the prohibitions against involuntary annexation; and

WHEREAS, some municipalities have entered agreements with sanitary districts or other public water and sewer systems whereby the municipality abdicates all responsibility for operating its own utility system and purports to convey to the other system the municipality's assumed authority to condition the provision of service on voluntary annexation into the municipality; and

WHEREAS, legislation is needed to prohibit agreements or undertakings that condition the provision or extension of water and/or sewer services upon the voluntary annexation of the area to be served by a public water or sewer service district into city limits.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF BRUNSWICK, NORTH CAROLINA:

1. Brunswick County urges the General Assembly to implement legislation that would prohibit the extension of water and sewer services conditioned on annexation and expresses its support for such legislation.
2. This Resolution shall take effect immediately on its adoption and is directed to be transmitted to all members of the County's state legislative delegation.

Adopted this, the 17th day of May 2021.

Randell Thompson, Chairman
Brunswick County Board of Commissioners

ATTEST:
Andrea White, NCCCC
Clerk to the Board

9. **County Attorney - Sunset Ridge Duplexes North, Parcel, Lots 1-18**
Accepted the Deed of Dedication for water and sewer infrastructure for Sunset Ridge Duplexes North Parcel, Lots 1-18.
10. **Emergency Services - Ambulance Franchise for Atlantic Coast Medical Transport**
Approved the annual ambulance franchise for Atlantic Coast Medical Transport.
11. **Emergency Services - Ambulance Franchise for Med1 NC**
Approved the annual ambulance franchise agreement for Med1NC.
12. **Emergency Services - Ambulance Remount Purchase *(During Adjustments/Approval of Agenda, item was moved and combined with Administrative item VIII-3 Emergency Services – Ambulance Purchase)***
13. **Emergency Services - Bald Head Island Ambulance Franchise Agreement**
Approved the annual franchise agreement for Bald Head Island Fire and EMS.
14. **Emergency Services - Brunswick Search and Rescue Contract**
Approved the Brunswick Search and Rescue Contract for FY20/21.
15. **Emergency Services - Oak Island Water Rescue Contract**
Approved the Oak Island Water Rescue contract.
16. **Finance - Fiscal Items**
Approved the following Budget Amendments, Capital Project Ordinances and Fiscal Items of a routine nature:
 - **One-Time LIEAP Supplement Budget Amendment**
Appropriated \$91,617 of additional Federal (LIEAP) Low Income Energy Assistance Program funding as allocated by the Department of Health and Human service to Brunswick County for use in the LIEAP program for a one-time LIEAP supplement.
 - **Central Communications Insurance Proceeds Budget Amendment**
Appropriated \$18,311 of insurance proceeds for repair of the Southport tower damaged in a lightning strike.
 - **Wastewater Tap on Supplies Budget Amendment**
Appropriated \$300,000 of taps and connections revenue for capital outlay tap on supplies for additional sewer grinder tank packages.
 - **Financial Statements April 2021 (unaudited)**

Included Summary Information for General and Enterprise Funds, key indicators of Revenues and Expenditures and Cash and Investments. All reports are provided at <http://brunswickcountync.gov/finance/reports>.

17. **Governing Body - Resolution Opposing Divisive Theories**

Adopted a Resolution opposing divisive theories, such as “Critical Race Theory”, “Action Civics” and “The 1619 Project”.

RESOLUTION OPPOSING DIVISIVE THEORIES, SUCH AS “CRITICAL RACE THEORY”, “ACTION CIVICS” AND “THE 1619 PROJECT”

WHEREAS, it is apparent that divisive changes in curricula are being introduced in many North Carolina schools; and

WHEREAS, many of these changes ignore the magnificent history of the United States of America in becoming the beacon of freedom for the entire world; and

WHEREAS, the 45th President of the United States’ *1776 Commission* stated that there is “an incompatibility of identity politics with American principles”, and that “Rather than cast aside the serious study of America’s founding principles, or breed contempt for American history, our educational system should aim to teach students about the true principles and history of the entire country—a history that is accurate, unifying, inspiring and enabling”; and

WHEREAS, the replacement of our history with divisive theories such as “Critical Race Theory”, “Action Civics”, and “The 1619 Project” have been or are being considered for adoption as part of the curriculum in many public schools and counties throughout North Carolina and the United States; and

WHEREAS, “Critical Race Theory” is designed to indoctrinate our children by programming them to be ashamed of and divided by race and or ethnicity, and is the opposite of the individual freedoms endowed in each of us by our Creator to live a full and prosperous life; and

WHEREAS, depriving persons of any race, color, creed, religion, gender, or national origin of their God-given Constitutional rights is antithetical to the core beliefs of this Republic and our representative democracy.

WHEREAS, Dr. Martin Luther King Jr.’s speech stated, “I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character”; and

WHEREAS, many businesses throughout North Carolina and the nation are struggling to find qualified workers; and

WHEREAS, according to an article published by the Society for Human Resource Management (SHRM), 46 percent of new employees fail within 18 months and of these, 89 percent fail because of a lack of soft skills, such as professionalism or the ability to get along with others; and

WHEREAS, divisive theories such as “Critical Race Theory” are being incorporated into training programs at some corporations and government organizations; and

WHEREAS, Brunswick County recently installed the “Charters of Freedom” at our county complex to support and promote the timeless principles outlined in America’s God-inspired founding documents; and

WHEREAS, Brunswick County promotes individual freedom, opportunity for all, and the timeless principles outlined in our Charters of Freedom.

NOW, THEREFORE, BE IT RESOLVED, that the Brunswick County Board of Commissioners believes the inclusion of such theories in the classroom is an intentional effort to indoctrinate children with a specific political ideology, and that such efforts undercut parents’ ability to mentor their children; and

FURTHER BE IT RESOLVED, that the Brunswick County Board of Commissioners believes our educational system at all levels should focus on equipping every student, regardless of race, creed or socio-economic status, with the knowledge, technical skills, and soft skills needed to achieve the American Dream by maximizing their God-given talents; and

FURTHER BE IT RESOLVED, that the Brunswick County Board of Commissioners uniformly believes that divisive theories, such as “Critical Race Theory”, “Action Civics”, and “The 1619 Project” have no place in Brunswick County; and

FURTHER BE IT RESOLVED, that the Brunswick County Board of Commissioners does hereby direct Brunswick County staff to develop a policy ensuring that Critical Race Theory and other such divisive theories will not be utilized by any branch of Brunswick County Government.

Adopted this, the 17th day of May 2021.

Randy Thompson, Chairman
Brunswick County Board of Commissioners

ATTEST:
Andrea White, NCCCC

Clerk to the Board

18. **Sheriff’s Office - Sole Source Resolution of Parts for Helicopter**
Approved a sole source resolution authorizing the purchase of parts for the Sheriff’s Office helicopter.

**RESOLUTION AUTHORIZING PURCHASE OF
PARTS FOR BELL OH58 HELICOPTER
UNDER SOLE SOURCE EXCEPTION TO FORMAL BIDDING REQUIREMENTS**

WHEREAS, N.C.G.S 143-129(e)(6), Procedure for Letting of Public Contracts, allows for the waiver of formal bidding requirements for purchases of apparatus, supplies, materials, or equipment when performance or price competition for a product are not available, or a needed product is available from only one source of supply, or standardization or compatibility is the overriding consideration; and

WHEREAS, the military surplus Bell OH58 Helicopter used by the Brunswick County Sheriff’s Office is in need of parts and service; and

WHEREAS, the military surplus Bell OH58 Helicopter is a legacy helicopter that is no longer in production and, therefore, availability of parts directly from the manufacturer is limited; and

WHEREAS, Thoroughbred Aviation Maintenance, Inc. specializes in sourcing difficult to find, new surplus parts from wholesale vendors and ensuring all parts supplied are compatible and have an FAA approved conformity statement; and

WHEREAS, the governing board must approve the purchase under this bidding exemption prior to awarding the contract.

NOW, THEREFORE BE IT RESOLVED, that the Brunswick County Board of Commissioners approves the purchases described herein utilizing the exception to formal bidding requirements contained in N.C.G.S. 143-129(e)(6) and finds that the conditions described in that statute have been met.

Adopted this the 17th day of May, 2021.

Randy Thompson, Chairman
Brunswick County Board of Commissioners

ATTEST:
Andrea White, NCCCC
Clerk to the Board

19. **Sheriff’s Office - Vehicle Donation Resolution**
Approved a resolution to donate a vehicle currently assigned to the Sheriff’s Office to the Countywide CDC in Navassa.

**RESOLUTION AUTHORIZING THE BRUNSWICK COUNTY SHERIFF TO TRANSFER
OWNERSHIP OF A BRUNSWICK COUNTY LAW ENFORCEMENT VEHICLE
NO LONGER NECESSARY OR USEFUL FOR LAW ENFORCEMENT PURPOSES**

WHEREAS, the Brunswick County Board of Commissioners, on behalf of the citizens of Brunswick County, wish to support non-profit organizations in Brunswick County seeking to make the County a better place for its residents; and

WHEREAS, pursuant to N.C.G.S. § 160A-280, personal property that the Board of Commissioners deems to be surplus, obsolete, or unused may be donated to another governmental unit within the United States, a sister county, or a non-profit organization incorporated by the United States, one of the United States, or the District of Columbia; and

WHEREAS, the Countywide Community Development Corporation, aka “Countywide CDC” is a non-profit corporation organized and existing under the laws of the State of North Carolina and situated in Brunswick County, whose stated mission is “to equip individuals, organizations, neighborhoods, communities, [and] small townships to obtain, improve, retain, the knowledge and resources needed to adapt and thrive in a fast-changing social and economic environment;” and

WHEREAS, the Brunswick County Sheriff has a 2010 DODGE CHARGER vehicle, VIN# 2B3AA4CT0AH120622, that is a fixed asset of Brunswick County, and that is no longer suitable or useful for law enforcement or other County purposes; and

WHEREAS, the Brunswick County Sheriff requests that he be allowed to transfer ownership and possession of the above-described vehicle to Countywide CDC for its use in furtherance of its mission.

NOW, THEREFORE, BE IT RESOLVED BY THE BRUNSWICK COUNTY BOARD OF COMMISSIONERS:

1. That the Sheriff, or his designee, is hereby authorized to transfer ownership and possession of the 2010 DODGE CHARGER vehicle, VIN# 2B3AA4CT0AH120622, that is no longer

useful or necessary for law enforcement or other County purposes from Brunswick County to Countywide Community Development Corporation.

2. That the transfer of the above-described vehicle is “AS IS, WHERE IS” and without any warranties, express or implied.

3. That this resolution shall be effective upon adoption.

Adopted this the 17th day of May, 2021.

Randy Thompson, Chairman
Brunswick County Board of Commissioners

ATTEST:
Andrea White, NCCCC
Clerk to the Board

20. **Tax Administration - May 2021 Releases**
Approved the May 2021 releases.

VI. PRESENTATION

1. **Presentation - Cape Fear Public Transportation Authority - Wave Transit (Marie Parker, Executive Director - Wave Transit, and Yvonne Hatcher, Executive Director - BTS)**
Request the Board of Commissioner receive information on the Wilmington Regional Microtransit Project from Cape Fear Public Transportation Authority - Wave Transit and Brunswick Transit System (BTS).

Commissioner Williams provided a brief explanation of the Wave Transit Microtransit program based upon a meeting he and Vice-Chairman Forte recently attended. The program is a an on-demand version of the northern Brunswick County transit system.

Ms. Marie Parker, Executive Director of Wave Transit, explained that the proposed project is a one-year project to reestablish transportation connectivity between New Hanover and Brunswick counties. The project will utilize microtransit, which is similar to a ride-sharing service, and accessed using a mobile application or calling a dispatch center. The vehicle will resemble a transit vehicle with the ability to board multiple customers, and will be ADA compliant. The project will use Consolidation and Coordination of Public Transportation Systems (ConCPT) funding through the North Carolina Department of Transportation and will fund the project at 100% with no local match. The two participating agencies for the first year will be funded at a maximum of \$400,000 (\$200,000 each) with potential funding for future years through an annual application process. It is anticipated that transit agencies will contract for service from a third-party vendor (Transportation as a Service or TAS). The vendor will provide drivers and vehicles, and utilize their software to book trips, however, the operations will be determined by the transit agencies through planning and development. The go-live date is anticipated to be October 1, 2021. The coverage areas and zones will be determined during the planning process.

Ms. Yvonne Hatcher, Executive Director of BTS, explained that BTS is a rural transit system, and as such, does not have access to urban funds. This project will allow participation using the described funds for both counties. This will allow coordination of service in the urban area of Leland, as well as determine the demand required for other areas of the county.

No action was taken.

VII. PUBLIC HEARING

1. **Planning - UDO Refinements 2021 (Kirstie Dixon, Planning Director)**
Request that, after the Public Hearing, the Board of Commissioners consider amending the Brunswick County Unified Development Ordinance to be in compliance with NCGS 160D, provide clarification, and enhance existing regulations (UDO Refinements 2021 / UDO-21-01).

Chairman Thompson recognized Mr. Justin Brantley, Project Planner, to present in Ms. Dixon’s absence. Mr. Brantley presented the proposed mandated text amendments to the Unified Development Ordinance to be in compliance with NCGS 160D. The purpose of the text amendments is to modernize, consolidate, and organize city- and county-enabling statutes related to development regulations that are currently within Chapters 153A & 160A, into one unified chapter. Chapter 160D is effective now, but local governments have until August 1, 2021, to comply with the new law including implementing changes to development processes and adoption of ordinance changes. Mr. Brantley also presented text amendments

proposed by the Planning staff to provide clarification and enhance the existing UDO regulations. These amendments are considered housekeeping changes.

Following discussion on the text amendments proposed by the Planning staff, the Board requested that Planning staff provide additional information for review to include the definition and page number within the UDO for the bulleted list, as well as provide a detailed explanation of any item that further restricts the property owner’s use of the property.

CALL TO ORDER

Chairman Thompson called the Public Hearing to order at 6:55 p.m.

PUBLIC COMMENTS

Chairman Thompson asked if anyone wished to comment on the proposed text amendments.

There were no comments.

ADJOURN

Chairman Thompson closed the Public Hearing at 6:55 p.m.

Following discussion on the text amendments, it was the consensus of the Board to only consider the text amendments mandated by Chapter 160D at this time.

**CONSISTENCY STATEMENT
(per N.C.G.S. 153A-341)
Description: N.C.G.S. Chapter 160D**

The Board of Commissioners finds that the proposed Unified Development Ordinance Text Amendments are approved consistent with the CAMA Land Use Plan (Comprehensive Plan) for the following reasons: The proposed text amendments are consistent with the Comprehensive Plan (CAMA Land Use Plan), as they will not affect the Plan, and the proposed updates are mandatory requirements per the North Carolina General Statutes.

Therefore, on the basis of all the information provided, including the foregoing, Commissioner Williams moved to order approval of the text amendments to the Brunswick County Unified Development Ordinance as mandated by NCGS 160D. The motion was seconded by Vice-Chairman Forte and passed unanimously (5 to 0).

Commissioner Williams moved to postpone the remaining amendments as proposed by Planning staff until the July 5, 2021 meeting at 3:00 p.m. The motion was seconded by Commissioner Sykes and passed unanimously (5 to 0). *(Motion to correct the date to July 6, 2021 was made during the Administrative Report).*

ORDINANCE NUMBER UDO-21-01
AN ORDINANCE AMENDING THE BRUNSWICK COUNTY
UNIFIED DEVELOPMENT ORDINANCE

The Brunswick County Board of Commissioners in regular session duly assembled does hereby ordain:

The Brunswick County Unified Development Ordinance is hereby amended as follows:

- 1). Amend Article 1, General Provisions, Section 1.2, Authority, as follows:

These regulations are adopted pursuant to the authority granted to Brunswick County by ~~Ordinance 153A, Article 18,~~ **Chapter 160D** of the General Statutes of North Carolina.
- 2). Amend Article 1, General Provisions, Section 1.11.2., Approvals Granted Before Effective Date, as follows:

1.11.2. Approvals Granted Before Effective Date

Building permits, variances, special ~~exception~~ **use** permits, subdivision plans, site plan approvals, and other similar development approvals that are valid on April 30, 2007 will remain valid until their expiration date...
- 3). Amend Article 1, General Provisions, Section 1.11.3., Applications in Progress before Effective Date, as follows:

1.11.3. Applications in Progress before Effective Date

Applications for building permits, variances, special ~~exception~~ **use** permits and other similar development approvals that were submitted in complete form and are pending approval on April 30, 2007 must be reviewed wholly under the terms of the ordinance in effect on April 30, 2007. Any reapplication for an expired approval must meet the standards of this Ordinance in effect at the time of re-application.

- 4). Amend Article 2, Decision-Making and Administrative Bodies, Section 2.3.1., Establishment, Membership and Procedure, as follows:

2.3.1. Establishment, Membership and Procedure

The Planning Board is established by Article II, Code of Ordinances, Brunswick County, N.C. As stated in that Article and hereby reaffirmed, the Planning Board is that planning agency designated by N.C.G.S. ~~153A-344~~ **160D-604**. In addition to the duties and responsibilities assigned by Article II, Code of Ordinances, Brunswick County, N.C. and by N.C.G.S. ~~153A-322~~ **160D-103, -301, -502**, the Planning Board shall have the specific powers and duties provided within this Ordinance.

- 5). Amend Article 2, Decision-Making and Administrative Bodies, Section 2.4.1.C.(2, 5, and 8, Rules of Procedure, as follows:

2.4.1.C.2. Rules of Procedure

2. A quorum is not obtained unless four voting members are present. In the event there is abstention for reason declared into the record by a voting member, then a particular matter cannot proceed unless and until four other voting members are present and vote. As required by N.C.G.S. ~~153A-345.1~~ **160D-406**, a four-fifths vote is required to grant a variance, but only a simple majority is required for special ~~exception~~ **use** permits and ordinance interpretations.
5. All decisions of the Board of Adjustment run with the land, never the person or corporation. Special ~~Exceptions~~ **use** permits may have time limits imposed on their validity.
8. The Board of Adjustment shall have the authority to subpoena witnesses and compel the production of evidence as specified in N.C.G.S. ~~153A-345.1~~ **160D-406**.

- 6). Amend Article 3, Common Review and Approval Procedures, Section 3.4.1.H.5., Activities Eligible for Waiver, as follows:

5. Failure of any person to comply with the provisions of Paragraph H.3 above shall be in violation of this Ordinance, and all of the remedies available in ~~G.S. 153A-331~~ **N.C.G.S. 160D-804** shall apply.

- 7). Amend Article 3, Common Review and Approval Procedures, Section 3.4.1.I.3, Activities Eligible for Waiver, as follows:

3. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes as specified in ~~G.S. 153A-335~~ **N.C.G.S. 160D-802**.

- 8). Amend Article 3, Common Review and Approval Procedures, Section 3.4.2., No Subdivision without Plat Approval, as follows:

3.4.2. No Subdivision without Plat Approval

Pursuant to ~~G.S. 153A-330~~ **N.C.G.S. 160D-801**, a final plat shall be prepared, approved, and recorded pursuant to the provisions of this Ordinance whenever any subdivision of land takes place in Brunswick County.

- 9). Amend Article 3, Common Review and Approval Procedures, Section 3.4.3., Unlawful to Record Plat without Plat Approval, as follows:

3.4.3. Unlawful to Record Plat without Plat Approval

Pursuant to ~~G.S. 153A-331~~ **N.C.G.S. 160D-803**, no final plat of a subdivision within the jurisdiction of Brunswick County shall be recorded by the Register of Deeds of Brunswick County until it has been approved by the Planning Director or designee or by the County Planning Board pursuant to the procedures established in this Section.

- 10). Amend Article 3, Common Review and Approval Procedures, Section 3.4.4., Subdivision Required, as follows:

3.4.4. Subdivision Required

As of March, 2015, any person who, being the owner or agent of the owner of land located within the territorial jurisdiction of this Ordinance, thereafter subdivides his land in violation of this Ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this Ordinance shall be guilty of a misdemeanor. The description of metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The County, through its attorney or other official designated by the Board of Commissioners, may enjoin illegal subdivision, transfer, or sale of land by action

for injunction. Further, the violation of any provision of this Ordinance shall subject the offender to the penalties prescribed by ~~G.S. 153A-334~~ **N.C.G.S. 160D-807**.

- 11). Amend Article 3, Common Review and Approval Procedures, Section 3.4.13., Development Agreements, as follows:

3.4.13. Development Agreements

Development Agreements may be considered as specified in N.C.G.S. ~~153A-376~~ **160D-1001** in accordance with the following minimum criteria:

- A. The property must have at least 25 developable acres (excluding wetlands, unbuildable slopes, etc.)
- B. The Development Agreements shall be limited to a term not exceeding 20 years.
- C. Development Agreements are subject to public hearing procedures set forth in N.C.G.S. ~~153A-323~~ **160D-601** and must be adopted by the Brunswick County Board of Commissioners.

- 12). Amend Article 3, Common Review and Approval Procedures, Section 3.5, Special Use Permit, as follows:

3.5 Special Use Permit

As specified in N.C.G.S. ~~153A-345 + 160D-705~~, the Zoning Board of Adjustment may grant permits for special ~~use permits~~ **exceptions** for uses indicated as permissible with approval of a Special Use Permit.

- 13). Amend Article 3, Common Review and Approval Procedures, Section 3.5.9.B.12, Impacts on Military Installations, as follows:

3.5.9.B.12.

12. Impacts on Military Installations

In cases of a Special Use permit that would change or affect the list of permitted uses within five miles of a military base, comments and analysis of the base commander shall be included in the consideration before making a final determination (~~NCCS 160A-323~~) (**N.C.G.S. 160D-601**).

- 14). Amend Article 3, Common Review and Approval Procedures, Section 3.5.12., Coordination with Rezoning Applications, as follows:

3.5.12. Coordination with Rezoning Applications

An application for a special ~~exception~~ **use** permit may be reviewed concurrently with a Rezoning application.

- 15). Amend Article 3, Common Review and Approval Procedures, Section 3.5.14., Amendments, as follows:

3.5.14. Amendments

Alterations or revisions to approved special ~~exception~~ **use permits** may be approved by the Zoning Administrator if the Special Use still meets the intent of the standards established with the original approval. Significant modifications to approved special uses, as determined by the Zoning Administrator, shall require submittal of a new application.

- 16). Amend Article 3, Common Review and Approval Procedures, Section 3.5.15., Expiration, as follows:

3.5.15. Expiration

A special ~~exception~~ **use** permit shall become null and void in any of the following cases:

- A. If a final site plan is not approved within 24 months of the date of permit approval.
- B. If an approved final site plan expires.
- C. If a substantial violation of the conditions of the permit, as determined by the Zoning Administrator occurs. The addition of language to the special ~~Exception~~ **use** permit regarding such voiding shall not be required.

- 17). Amend Article 3, Common Review and Approval Procedures, Section 3.7.5.C., Approval Criteria, as follows:

3.7.5.C. Approval Criteria

C. In cases of a text amendment that would change or affect the list of permitted uses within five miles of a military base, comments and analysis of the base commander shall be included in the consideration before making a final determination (~~NCCS 160A-323~~) (**N.C.G.S. 160D-601**).

- 18). Amend Article 4, Zoning Districts, Section 4.7.2.C.1., Notified Required, as follows:

C. Development Coordination Required/Encouraged

1. Notification Required

Notification Required

When an ordinance amendment or modification would result in a rezoning or change or affect the list of permitted uses within five miles of a military base, comments and analysis of the base commander shall be included in the consideration before making a final determination (~~NCGS 160A-323~~) (~~N.C.G.S. 160D-601~~). Mailed notification shall be provided prior to any such action as specified in Section 9.1.B.3.iv.

- 19). Amend Article 4, Zoning Districts, Section 4.8.6.C.1., Permitted Uses, as follows:
- C. Permitted Uses
1. Any use permitted by right, subject to limitations, or through special ~~exception use~~ permit in the underlying base districts shall be allowed in the overlay.

- 20). Amend Article 4, Zoning Districts, Section 4.9.1., Authority, as follows:
- 4.9.1. Authority**
- The standards and provisions of this Voluntary Agricultural District Program are established pursuant to the authority conferred by N.C.G.S. 106-735 through 106-743 and Chapter ~~453A~~ **160D**.

- 21). Amend Article 4, Zoning Districts, Section 4.13.2.C.3.ii.c., Flags and Flagpoles Requirements, as follows:
- ii. Requirements**
- (c) In residential districts, flagpoles shall not exceed 25 feet in height unless a special ~~exception use~~ permit (see Section 3.5) is granted by the Board of Adjustment. A fee shall not be charged for a use permit request for a flag in a residential district.

- 22). Amend Article 4, Zoning Districts, Section 4.13.2.C.3.ii.f., Flags and Flagpoles Requirements, as follows:
- 4.13.2.C.3.ii.f. Flags and Flagpoles Requirements**
- (f) Each property shall be allowed a maximum of three flagpoles unless a special ~~exception use~~ permit (see Section 3.5) is granted by the Board of Adjustment.

- 23). Amend Article 5, Permitted Uses, Section 5.2.1., Uses not Specifically Listed, as follows:
- 5.2.1. Uses Not Specifically Listed**
- A. Any use not specifically listed in this chapter is expressly prohibited, unless the Planning Director determines in accordance with Section 9.7, Written Interpretation, that the use is similar to a permitted individual use or permitted group of uses as listed in this Article. Where such similar permitted individual use or permitted group of uses is subject to a limited use standard contained in this Article or special ~~exception use permit~~ review, the proposed use shall also be subject to such standard or approval. The Planning Director shall not amend this chapter by adding to or eliminating any use standard for the proposed use.

- 24). Amend Article 5, Permitted Uses, Section 5.2.2., Developments with Multiple Principal Uses, as follows:
- 5.2.2. Developments with Multiple Principal Uses**
- Commentary:** If a proposed development includes a gas station, library and a restaurant, including outparcels, and one of those uses is only permitted as ~~with~~ a special ~~exception use~~ permit in the district, then the entire development requires special ~~exception use~~ permit review.

D. Where a use requiring approval as a limited use or a special ~~exception use~~ lies on a separate legal parcel, only the building containing the use and its separate parcel shall be subject to review, not the entire project. However, where the separate legal parcel is an outparcel, the application shall describe the relationship of the outparcel to the remaining site.

Commentary: For example, where a vehicle repair shop in a C-LD District (subject to special ~~exception use~~ review) is an outparcel within a larger retail development, the special ~~exception use~~ shall review the outparcel only – not the entire development. However, where a special ~~exception use~~ is proposed in a building that contains a variety of other uses, the entire building and its associated parcel(s) of land shall require special ~~exception use~~ review.

- 25). Amend Article 5, Permitted Uses, Section 5.3.2.B.4., Agricultural Tourism, as follows:
- B. Agricultural Tourism**

- 4. Property that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect may receive up to twenty-five percent (25%) of its gross sales from the sale of non-farm products and still qualify as a bona fide farm that is exempt from zoning regulations under ~~G.S. 153A-340(b)~~ **N.C.G.S. 160D-903**. The Planning Director or his/her designee may periodically request documentation to establish that property's sale of non-farm products does not exceed twenty-five percent (25%) of its gross sale.

26). Amend Article 5, Permitted Uses, Section 5.3.4.C.2.iii., Additional Standards for Adult Facilities, as follows:

2. Additional Standards for Adult Facilities

- iii. Programs meeting any of the following criteria shall be exempted from these requirements and may be permitted in accordance with the use tables in Section 5.1 without the issuance of a ~~Special Exception Permit~~ **special use permit**.

27). Amend Article 5, Permitted Uses, Section 5.3.4.O.3.iii.a., Wireless Telecommunication Facility (WTF) Standards, Dimensions, as follows:

iii. Dimensions

- (3) Freestanding WTF in Residential Districts: In the RR District, the maximum height shall be 250 feet. In the R-7500, R-6000, and SBR-6000 Districts, the maximum height shall be 200 feet. However, increases in height of up to 20% may be allowed by Board of Adjustment as part of the special ~~exception~~ **use permit** approval with a certification by a registered engineer that the setbacks provide adequate fall area in case of a tower collapse.
- (4) Freestanding WTF in Nonresidential Districts: In the N-C District, the C-I and C-LD, and all other nonresidential districts the maximum height shall be 300 feet. However, increases in height of up to 20% may be allowed by Board of Adjustment as part of the ~~Special Exception Permit~~ **special use permit** approval with a certification by a registered engineer that the setbacks provide adequate fall area in case of a tower collapse.

28). Amend Article 5, Permitted Uses, Section 5.3.4.O.3.iii.b.3, Setbacks, as follows:

5.3.4.O.3.iii.b.3

- (3) Freestanding Nonconcealed WTF: Setbacks for WTFs shall be determined according to the underlying zoning district, plus an additional six inches of setback (on each side) for every one-foot of tower height. The Board of Adjustment may approve reductions to this setback requirement as a part of the special ~~exception~~ **use permit** approval with a certification by a registered engineer that the resulting setbacks provide adequate fall area in case of a tower collapse.

29). Amend Article 5, Permitted Uses, Section 5.3.5.A.1., Adult & Sexually Oriented Businesses Authority, as follows:

A. Adult & Sexually Oriented Businesses Authority

1. Authority

The provisions of these regulations are adopted by the Brunswick County Board of Commissioners under authority granted by the General Assembly of the State of North Carolina, in ~~Ordinance 153A, Article 18 of the General Statutes~~ **N.C.G.S. 160D-902**. From and after the effective date and hereof, these regulations shall apply to every building, lot, tract, or parcel of land within Brunswick County.

30). Amend Article 5, Permitted Uses, Section 5.3.8.C.11.i.(a. & c.), RV Resort Operations, as follows:

11. RV Resort Operations

- (a) The entity to which a ~~Special Exception~~ **special use permit** is issued for an Outdoor RV Resort shall operate the Outdoor RV Resort in compliance with this Ordinance and shall provide adequate supervision to maintain the Outdoor RV Resort, its facilities and equipment in good repair and in a clean and sanitary condition.
- (c) The Outdoor RV Resort Owner(s) shall be responsible for refuse collection. Storage, collection, and disposal of refuse shall be so managed as not to create health hazards, rodent harborage, insect-breeding areas, accident, fire hazards, or air pollution. The method of garbage disposal shall be noted on the plan and approved as part of the ~~Special Exception~~ **special use permit**.

31). Amend Article 6, Design and Performance Standards, Section 6.1.4.D.2., Clear-Cutting, as follows:

D. Clear-Cutting

2. Prior to Development

Properties shall not be clear-cut prior to undertaking development activities. Along public rights-of-way, a buffer consisting of all existing vegetation located in a required street yard shall be maintained, exclusive of areas required for access to the site. Applications proposing development of properties that failed to maintain such a buffer prior to development may be denied for a period of up to five years from the date of clearing in conformance with N.C.G.S. Section ~~453A-452(e)~~ **160D-921(c)**.

- 32). Amend Article 6, Design and Performance Standards, Section 6.22.1.B., Applicability, as follows:

6.22.1. Applicability

- B. The requirements of this Section do not supersede or replace any previously issued special ~~exception~~ **use permit** for outdoor display or storage.

- 33). Amend Article 7, Flood Damage Prevention, Section 7.1.1., Statutory Authorization, as follows:

7.1.1. Statutory Authorization

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; ~~Parts 3 and 4 of Article 18 of Chapter 153A; and Part 121, Article 6 of Chapter 153A of the North Carolina General Statutes and Article 7 of Chapter 160D~~, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

- 34). Amend Article 7, Flood Damage Prevention, Section 7.1.3.B., Basis for Establishing the Special Flood Hazard Areas, as follows:

7.1.3.B. Basis for Establishing the Special Flood Hazard Areas

~~The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated December 6, 2019 for Brunswick County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of the Flood Damage Prevention Ordinance, and all revisions thereto after January 1, 2021. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of Brunswick County are also adopted by reference and declared a part of the Flood Damage Prevention Ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.~~

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated December 6, 2019 for Brunswick County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto.

- 35). Amend Article 7, Flood Damage Prevention, Section 7.1.3.H., Penalties for Violation, as follows:

7.1.3.H. General Provisions Penalties for Violation

Violation of the provisions of the Flood Damage Prevention Ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special ~~exceptions~~ **use permits**, shall constitute a Class 1 misdemeanor pursuant to N.C.G.S. §143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$200.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Brunswick County from taking such other lawful action as is necessary to prevent or remedy any violation.

- 36). Amend Article 9, Administration and Enforcement, Section 9.1.B.3.iv., Mailed Notice, as follows:

3. Mailed Notice

- iv. If the action would result in changes to the zoning map, text amendment, or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, written notice of the proposed changes shall be provided to the commander of the military base by certified mail, return receipt requested. Notice shall be provided at least 10 days, but not more than 25 days prior to the date of the public hearing (~~NCGS 160A-323~~) **(N.C.G.S. 160D-601(b))**.

- 37). Amend Article 9, Administration and Enforcement, Section 9.5.1.A.2., With Site Specific Development Plan, as follows:

A. With Site Specific Development Plan (See Vested Rights Amendment)

2. Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: “Approval of this plan

established a zoning vested right under N.C.G.S. ~~Section 153A-344.1~~ **160D-108**. Unless terminated at an earlier date, the zoning vested right shall be valid until (date).”

38). Amend Article 9, Administration and Enforcement, Section 9.5.1.B., With Special Use Permit, as follows:

B. With Special Use Permit (See Vested Rights Amendment)

1. Pursuant to N.C.G.S. ~~Section 153A-344.1~~ **160D-108**, Vesting Rights, as of May 1, 2007, a vested right to undertake and complete the development and use of property under the terms and conditions as approved pursuant to this Ordinance shall be established with respect to any property upon the approval of a ~~Special Exception Permit~~ **special use permit** for a site specific development plan or a phased development plan.
2. The approved plans and conditions for a ~~Special Exception Permit~~ **special use permit** constitute, for purposes of N.C.G.S. ~~Section 153A-344.1~~ **160D-108**, site specific development plans.

39). Amend Article 9, Administration and Enforcement, Section 9.5.3.B., Application Requirements, as follows:

9.5.3. Application Requirements (See Vested Rights Amendment)

B. Landowners seeking zoning vested rights on plats, special ~~exception~~ **use** permit applications, or other plans that would not normally receive site plan approval, may apply for vested rights protection through submittal of an application which contains the identical information, fee, and plans required for a complete site plan application and an additional fee for a vested rights public hearing.

40). Amend Article 9, Administration and Enforcement, Section 9.5.5.B., Action by the Zoning Administrator, as follows:

9.5.5. Action by the Approving Authority (See Vested Rights Amendment)

B. Approval by the approving authority shall confer upon the owner of the property a zoning "vested right" as defined in ~~NCGS §153A-344.1~~ **N.C.G.S. 160D-108**, effective on the date of approval. The approving authority may condition the approval upon terms and conditions reasonably necessary to protect the public health, safety, and welfare.

41). Amend Article 9, Administration and Enforcement, Section 9.5.7.C., Effect of Zoning Vested Rights, as follows:

9.5.7. Effect of Zoning Vested Rights (See Vested Rights Amendment)

C. The establishment of a zoning vested right shall not preclude the application of new laws or regulations as is allowed under ~~NCGS §160A-385.1~~ **N.C.G.S. 160D-108**. In addition, it shall not preclude overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this section.

42). Amend Article 9, Administration and Enforcement, Section 9.8.1., Applicability, as follows:

9.8.1. Applicability

As specified in N.C.G.S. ~~153A-345.1~~ **160D-405**, an appeal by any person aggrieved by a final order, interpretation or decision of the Zoning Administrator, Planning Director or other administrator in regard to the provisions of this Ordinance may be taken to the Board of Adjustment.

43). Amend Article 9, Administration and Enforcement, Section 9.11.9.A., Permit Revocation, as follows:

A. Permit Revocation

In accordance with the provisions of Section 9.10.2 of this Ordinance and the provisions of N.C.G.S. ~~153A-362~~ **160D-403(f)** and **160D-1115**, the Zoning Administrator or Building Inspector may revoke any permit or other authorization granted under this Ordinance for failure to comply with the provisions of this Ordinance or the terms and conditions of a permit or authorization granted under this Ordinance.

44). Amend Article 10, Nonconformities, Section 10.3.3.B., Change of Use, as follows:

10.3.3. Change of Use

B. The Board of Adjustment is authorized to approve a ~~Special Exception Permit~~ **special use permit** to allow a change from one nonconforming use to another nonconforming use that is in the same use category (see Section 5.1, Use

Interpretation) or to another functionally similar use, provided that the Board of Adjustment determines that the proposed use will have no greater adverse impacts on the surrounding area. To make a determination, the Board of Adjustment shall consider all of the following:

45). Amend Article 2, Decision-Making and Administrative Bodies, Section 2.1.2., Temporary Disqualification, as follows:

2.1.2. Temporary Disqualification

~~A board, commission, or committee member may not participate in any vote on a matter that would violate an applicant’s right to an impartial decision maker. Common conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member’s participation and that member does not recuse himself or herself, the remaining members of the board, commission, or committee shall by majority vote rule on the objection.~~

2.1.2. Conflicts of Interest

A. Governing Board

A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to Chapter 160D-109 where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

B. Appointed Boards

Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to Chapter 160D-109 where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

C. Administrative Staff

No staff member shall make a final decision on an administrative decision required by Chapter 160D-109 if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under Chapter 160D-109 unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the County to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the County, as determined by the County.

D. Quasi-judicial decisions

A member of any board exercising quasi-judicial functions pursuant to Chapter 160D-109 shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons’ constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

E. Resolution of Objection

If an objection is raised to a board member’s participation at or prior to the hearing or vote on that matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

F. Familial Relationship

For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

- 46). Amend Article 2, Decision-Making and Administrative Bodies, add the following:

2.1.3. Oath of Office for Elected and Appointed Boards

Every member of an Elected or Appointed Board shall before taking office or entering upon the execution of the office, take and subscribe to the following oath:

"I, _____, do solemnly and sincerely swear that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God."

- 47). Amend the Definitions Section as follows:

~~Building: A temporary or permanent structure having a roof supported by columns or walls and which can be used for the shelter, housing, or enclosure of person, animals, or goods. Mobile homes and modular homes are buildings.~~

Building: Any structure used or intended for supporting or sheltering any use or occupancy.

Dwelling: A building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

~~Dwelling Unit: Rooms used for human habitation containing independent cooking, sleeping, and toilet facilities; excluded are boarding houses, hotels, and dormitories.~~

Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Sleeping Unit: A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

- 48). Amend Article 9, Administration and Enforcement, Section 9.11.2., Initial Notice of Violation, as follows:

9.11.2. Initial Notice of Violation

- A. On determining that a violation exists, the Zoning Administrator shall ~~give the responsible person(s)~~ issue a written notice of the violation in conformance with statutory procedures to both the violator and landowner if different by personal delivery, email, or by certified or registered mail, return receipt requested. The notice shall describe the nature of the violation, state the actions necessary to correct the violation, and invite the alleged violator to meet with the Zoning Administrator within ten (10) days to discuss the violation and how it may be corrected. The Zoning Administrator must certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. The Zoning Administrator may provide the alleged violator additional written notices of violation.
- B. If reasonable attempts have been made to effect service of the written notice upon the responsible person(s) by personal delivery, email, or by certified or registered mail have been unsuccessful, then notice may be provided by posting the written notice upon the property in a conspicuous place for a period of not less than ten (10) days.
- ~~C. Before revoking a permit or other authorization, the Zoning Administrator shall give the holder of the permit or authorization ten days notice of intent to revoke the permit or authorization. The notice shall state the reasons for the intended revocation and state that the holder may have an informal hearing on the intended revocation before the Zoning Administrator. On revoking a permit or authorization, the Zoning Administrator shall give the holder of the permit or authorization a written notice of the revocation and the reasons for it.~~

- 49). Amend Article 9, Administration and Enforcement, Section 9.11.9.A., Permit Revocation, as follows:

A. Permit Revocation

In accordance with the provisions of Section 9.10.2 of this Ordinance and the provisions of N.C.G.S. 153A-362 160D-403(f), the Zoning Administrator or Building Inspector may revoke any permit or other authorization granted under this Ordinance for failure to comply with the provisions of this Ordinance or the terms and conditions of a permit or authorization granted under this Ordinance development approvals may be revoked. The Zoning Administrator may revoke any permit by the County by notifying the permit holder in writing stating the reason for revocation. The County shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review

and approval of any revocation of that approval. The revocation of an administrative development approval may be appealed pursuant to G.S. 160D-4-5.

Before revoking a permit or other authorization, the Zoning Administrator shall give the holder of the permit or authorization ten days notice of intent to revoke the permit or authorization. The notice shall state the reasons for the intended revocation and state that the holder may have an informal hearing on the intended revocation before the Zoning Administrator. On revoking a permit or authorization, the Zoning Administrator shall give the holder of the permit or authorization a written notice of the revocation and the reasons for it.

50). Amend Article 3, Common Review and Approval Procedures, Section 3.5.8., Approval of a Special Use Permit, as follows:

3.5.8. Approval of a Special Use Permit

C. The ~~approving authority~~ Board of Adjustment may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the Special Use permit approval. Verbal consent to the conditions associated with the Special Use Permit must be agreed to by the applicant at the meeting once the Board discusses and decides on the case. Written consent is required from the applicant following the meeting as part of the draft Special Use Permit that is sent to the applicant once the Special Use Permit is approved. Written consent to conditions related to a Special Use Permit must be obtained to ensure enforceability. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

51). Amend Article 9, Administration and Enforcement, Section 9.1.B.3.i., Mailed Notice, as follows:

9.1.B.3. Mailed Notice

i. Where ~~any~~ mailed notice is required, the County shall notify by both first class mail all property owners on the subject property and adjoining properties. Adjoining properties shall include properties separated from the subject parcel(s) by street, railroad or other transportation corridor. In rezoning cases where properties have been added to a rezoning application by the County (in addition to properties in the original application), owners of the added properties must be notified by both certified mail and first class mail.

52). Amend Article 3, Common Review and Approval Procedures, Section 3.1.1., Development Permit Required, as follows:

3.1.1. Development Permit Required

No land shall be used or occupied and no building hereafter constructed, structurally altered, erected, or moved shall be used or its use changed until a Development Permit is issued by the Planning Director. The purpose of the Development Permit is to guide the applicant in carrying out their improvement plans and avoid potential pitfalls by ensuring that the appropriate approvals are obtained in the most efficient and effective manner possible. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. Development permits shall be provided in writing in by the County in print or electronic form. Additional administrative provisions pertaining to Development Permits are outlined in Section 9.3 of Article 9, Administration and Enforcement, of this ordinance.

53). Amend Article 9, Administration and Enforcement, Section 9.3., Development Permit Requirements, as follows:

A. Applicability

1. No excavation shall be commenced, no wall, structure, premises, or land used, building or part thereof shall be built, constructed or altered, nor shall any building be moved, nor shall any sign be erected or structurally altered (unless exempted), until application has been made and the property permit has been obtained. When the Zoning Administrator, with the technical assistance of other County departments or upon direction by the Brunswick County Planning Board or Board of Adjustment, has determined that the proposed land use may be permitted under the provisions of this Code, a permit for the proposed use shall be issued in print or electronic form.

54). Amend Article 3, Common Review and Approval Procedures, add the following:

Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to Chapter 160D attach to and run with the land. This article outlines the most common types of review and approval of development activity. Less frequently used approvals, such as temporary use permits, vested rights, etc., are outlined in ~~8-3~~ Article 9, Administration and Enforcement.

55). Amend Article 3, Common Review and Approval Procedures, Section 3.2.10., Duration of Validity, as follows:

3.2.10. Duration of Validity

An approved site plan shall remain valid for a period of three years from the date of approval and shall run with the land. After the initial three-year period, construction or development activity must be actively pursued to maintain validity. If construction or development activity is discontinued for a period of greater than 180 calendar days, the site plan shall expire and a new application must be submitted. Consistent with Chapter 160, Section 108.D.3., Brunswick County may provide that rights regarding a site-specific vesting plan shall be vested for a period exceeding three years, but not exceeding five years, where if warranted by the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations.

56). Amend Article 9, Administration and Enforcement, Section 9.5.1.A., Establishment, as follows:

9.5.1. Establishment

A. With Site-Specific Development Vesting Plan

1. ~~In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application, on a form to be provided by the County, that a zoning vested right is being sought.~~ Upon approval by the appropriate approval authority, site plans constituting a Site-Specific Vesting Plan shall be automatically vested for a period of three years unless a greater period is requested.
2. Each map, plat, site plan or other document evidencing a site-specific development vesting plan shall contain the following notation: "Approval of this plan established a zoning vested right under N.C.G.S. ~~Section 153A-344.1~~ 160D-108. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

B. With Special Use Permit

1. Pursuant to N.C.G.S. ~~Section 153A-344.1~~ 160D-108, Vesting Rights and ~~Permit Choice~~, as of May 1, 2007, a vested right to undertake and complete the development and use of property under the terms and conditions as approved pursuant to this Ordinance shall be established with respect to any property upon the approval of a Special ~~Exception~~ Use Permit for a site specific development vesting plan or a phased development plan.
2. The approved plans and conditions for a Special ~~Exception~~ Use Permit constitute, for purposes of N.C.G.S. ~~Section 153A-344.1~~ 160D-108, site-specific development vesting plans.

C. Multiphase Development

1. A multiphase development shall be vested for the entire development with the zoning regulations, subdivision regulations, and unified development ordinances in place at the time a site plan approval is granted for the initial phase of the multiphase development. This right shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multiphase development. For purposes of this section, "multiphase development" means a development containing 25 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

D. All Other Development Approvals

Consistent with the issuance of a development permit, all other development approvals shall be automatically vested for a period of 1 year.

57). Amend Article 9, Administration and Enforcement, Section 9.5.2, Approving Authority, as follows:

9.5.2. Approving Authority

~~Commentary: In order to determine the approving authority, refer to the table of permitted uses in Section 5.2.~~

Commentary: In order to determine the approving authority, refer to the Summary of Review Authority in Section 2.14.

58). Amend Article 9, Administration and Enforcement, Section 9.5.3.A., Application Requirements, as follows:

9.5.3. Application Requirements

- A. An application for vested rights determination in excess of three years shall be submitted in accordance with Section 3-1.7-J 3.1.8, Application Requirements. Applications shall include, at a minimum, the following information in addition to the standard information required:
 - 1. Information on the proposed uses of the property that the applicant wishes to vest;
 - 2. The length of time for which vesting is requested;
 - 3. A listing of those provisions of this Ordinance from which vesting is requested;
 - 4. Identification of the portions of the development plan for which vesting is requested;
 - 5. Indication of the impact on the ability of the project to proceed as originally approved if vesting is not granted; and,
 - 6. The proposed timetable for the construction of the phases of the project for which vesting is requested.
 - 7. If the owner considers prior expenditures and economic impact to be relevant to the governing body's determination, then any economic information regarding expenditures shall be accompanied by information regarding benefits or profits realized resulting from phases of the development previously built.
- ~~B. Landowners seeking zoning vested rights on plats, special exception permit applications, or other plans that would not normally receive site plan approval, may apply for vested rights protection through submittal of an application which contains the identical information, fee, and plans required for a complete site plan application and an additional fee for a vested rights public hearing.~~
- B. Pursuant to G.S. 160D-403(c), unless otherwise specified in this section, all other local development approvals expire one year after issuance unless work has substantially commenced.
- C. An extension of vested rights not to exceed five years may be sought. The applicant must submit an application which contains the identical information, fee, and plans required for a complete site plan application and any required fee for a vested rights evidentiary hearing.

59). Amend Article 9, Administration and Enforcement, Section 9.5.5., Action by the Approving Authority, as follows:

9.5.5. Action by the Approving Authority

Commentary: In order to determine the approving authority, refer to the table of permitted uses in Section 5.2.

- A. Upon receipt of a complete application the Zoning Administrator shall schedule an evidentiary hearing before the appropriate body, give public notice as set forth in Section 9.1, and forward a copy of the application with all related materials to the approving authority.
- ~~BA.~~ The approving authority may shall hold the vested rights public hearing at the same time that the site plan is considered for approval.
- ~~CB.~~ Approval by the approving authority shall confer upon the owner of the property a zoning "vested right" as defined in N.C.G.S. 160D-108 NCGS §153A-344.1, effective on the date of approval. The approving authority may condition the approval upon terms and conditions reasonably necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by its terms and conditions will result in a forfeiture of vested rights.

60). Amend Article 9, Administration and Enforcement, Section 9.5.6., Duration as follows:

9.5.6. Duration

- A. A right which has been vested as provided for in this section shall remain vested for a period of three years, unless a longer period, not to exceed five years, is granted by the approval authority. Modifications or amendments to an approved plan do not extend the period of vesting unless specifically so provided by the Board of Adjustment or the Planning Board upon approval of the modification and or amendment.
- B. The Board of Adjustment or the Planning Board may approve an extension of a zoning vested right for a period of two years resulting in a total vesting period of five years if warranted by the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions, or other considerations. Applications to extend a vesting period shall

be considered by the same authority that approved the original vested right determination.

- C. A multiphase development shall be vested for the entire development at the time a site plan approval is granted for the initial phase of the multiphase development. This right shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multiphase development. For purposes of this section, "multiphase development" means a development containing 100 acres or more that is submitted for site plan approval for construction to occur in more than one phase and is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

61). Amend Article 9, Administration and Enforcement, Section 9.5.7.(A, C and D), Effect of Zoning Vested Rights, as follows:

9.5.7. Effect of Zoning Vested Rights

- A. Following approval or approval of a site-specific development vesting plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
- C. The establishment of a zoning vested right shall not preclude the application of new laws or regulations as is allowed under NCGS §160A-385.1 N.C.G.S. 160D-108. In addition, it shall not preclude overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site-specific development vesting plan upon the expiration or termination of the vested right in accordance with this section.
- D. A vested right obtained under this section is not a personal right, but shall attach to and run with the subject property. After approval of a site-specific development vesting plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

62). Amend Article 9, Administration and Enforcement, Section 9.5.8.(C, D, E, and F), Termination, as follows:

9.5.8. Termination

- C. Upon findings by the Board of Adjustment or the Planning Board by ordinance and after notice and public an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific development vesting plan;
- D. Upon payment of compensation to the affected owner for all costs, expenses, and other losses incurred by the landowner together with interest; The extent to which the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consulting fees incurred after approval by the local government, together with interest as is provided in N.C.G.S. 160D-106. Compensation shall not include any diminution in the value of the property that is caused by such action;
- E. Upon findings by the Board of Adjustment or the Planning Board by ordinance and after notice and public an evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approving authority of the site-specific development vesting plan; or
- F. Upon the enactment of a State or Federal law or regulation or local ordinances enacted in compliance with such laws or regulations that preclude development as contemplated in the site specific development plan. Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the approved vested right, in which case the Board of Adjustment or the Planning Board may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, after notice and an evidentiary hearing.

63). Amend the Definitions Section as follows:

~~Site Specific Development Plan: A plan of land development submitted to the appropriate approval authority for the purpose of obtaining one of the following approvals/permissions pursuant to N.C.G.S. 153A334.1:~~

~~(a) A major site plan prepared for a Special Exception to this Ordinance based upon such required and official site plan;~~

~~(b) A Planned Unit Development Plan jointly receiving permissions/authority under the terms of this Ordinance and the Subdivision Ordinance, thus a combined Zoning Special Exception and preliminary plat.~~

~~(c) Or such other combination of approvals and permissions under both this Ordinance and the Subdivision Ordinance as from time to time may be developed in accordance with the intent of this General Statute.~~

Site-Specific Vesting Plan: A plan which has been submitted to the County by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals:

- (a) A planned unit development plan,
- (b) A subdivision plat,
- (c) Minor and major site plans,
- (d) A special use permit,
- (e) A conditional zoning and an associated site plan,
- (f) Or any other land-use approval designation as may be utilized by the County.

64. Amend Article 3, Common Review and Approval Procedures, Section 3.2.2.B., Actions by the Planning Board, as follows:

- A. For applications which the Planning Board serves as the approving authority, the Planning Board may approve or disapprove the application, approve the application with conditions, or send the application back to the Planning Director for additional consideration. Approval by the Planning Board shall be in the form of the conceptual plan for the project including street layout, lot/building layout, development type (commercial, residential, multifamily), number of dwelling units, floor area of buildings, building form and size (stories, etc.), open space areas, setbacks, buffers, etc. The detailed site plan shall be approved by the Planning Director, the components of which shall be in general conformance with the components of the conceptual plan as approved by the Planning Board. For Conditional Zoning site plans, the Planning Board shall ~~make recommendations on the conceptual plan to the Board of Commissioners for final action~~ **take final action**.

65). Amend Article 3, Common Review and Approval Procedures, Section 3.2.4.A., Action by the Board of Commissioners, as follows:

- A. The Board of Commissioners shall be responsible for hearing appeals of decisions by the Planning Board for Conditional Rezoning requests with site plans and shall hear the case de novo.
- ~~A. Before taking action on a site plan in conjunction with a Conditional Rezoning request, the Board of Commissioners shall consider the recommendations of the Planning Director and the Planning Board.~~

66). Amend Article 3, Common Review and Approval Procedures, Section 3.2.12.B., C., and D., Appeal, as follows:

- B. Final Action on a site plan in conjunction with a Conditional Rezoning request may be appealed to the Board of Commissioners.
- ~~B~~C. Final action on a major site plan that does not involve a Special Use may be appealed to the Board of County Commissioners.
- ~~C~~D. Final action on a major site plan that involves a Special Use may be appealed by filing a petition for certiorari with the Brunswick County Superior Court.

67). Amend Article 3, Common Review and Approval Procedures, Section 3.7.3.C. and D., Action by the Planning Board, as follows:

- C. The Planning Board shall make a recommendation **following the required public hearing** based on the approval criteria in Section 3.7.5., as appropriate.
- D. When conducting a review of proposed zoning text amendment, the Planning Board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.
- ~~D. The Planning Board shall make its recommendation following the initial public hearing.~~

68). Amend Article 3, Common Review and Approval Procedures, Section 3.7.4, Action by the Board of Commissioners, add the following:

- F. When adopting or rejecting any zoning text amendment, the Board of Commissioners shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the meeting that at the time of action on the amendment the Board of Commissioners was aware of and considered the Planning Board's recommendations and any relevant portions of an adopted comprehensive plan.

69). Amend Article 3, Common Review and Approval Procedures, Section 3.8.1., Applicability, add the following:

3.8.1. Purpose & Applicability

A. Purpose

1. Conventional Rezoning

A conventional rezoning or zoning map amendment is a legislative zoning map amendment to change the zoning district of a specified property or properties. Refer to Article 4, Zoning Districts, for a list of zoning districts. The permitted uses associated with these districts are found in Article 5, Permitted Uses.

2. Conditional Rezoning

A conditional rezoning is a legislative zoning map amendment that incorporates site-specific conditions designed to mitigate impacts on adjacent properties and offers flexibility to meet project needs that are not accommodated by conventional zoning districts. Elements of conventional zoning classifications may be incorporated into the conditional rezoning.

B. Applicability

- 1A. Amendments to the Zoning Map shall be made, including by Conventional Rezoning and Conditional Zoning. ~~(see Section 3.1.7. for additional information)~~, The two types of rezoning follow the same legislative process in accordance with the provisions of this section.
- 2B. The Planning Board and if appealed, the Board of County Commissioners, shall consider amendments to the Zoning Map of Brunswick County, as may be required from time to time.
- 3C. Rezoning should correspond with the boundary lines of existing platted lots or tracts. Where the boundaries of a rezoning request stop short of an exterior property line, it must be possible to subdivide and develop that portion of the property outside the proposed rezoning boundary in accordance with the existing zoning, required conditions, and other requirements of this Ordinance.
- 4D. All zoning requirements shall be met within the boundaries of the area being rezoned. If all of the requirements cannot be met on the site being rezoned, the rezoning shall be expanded to include all property necessary to meet zoning requirements.
- 5. Any land use may be approved, subject to agreed-upon conditions in a Conditional Rezoning. Uses allowed as a Special Use Permit included with the Conditional Rezoning shall not require separate approval.
- 6. For conditional rezoning, a site plan, a list of proposed uses, and a list of conditions shall be included with the approval.
- 7. The conditions shall relate to the list of uses, development standards, site features, improvements, etc. and be agreed upon in writing by the current property owner to ensure enforceability.

70). Amend Article 3, Common Review and Approval Procedures, Section 3.8.2., Initiation of Amendment, as follows:

3.8.2. Initiation of Amendment

- A. A request for a conventional rezoning may be initiated by the Board of County Commissioners, the Board of Adjustment, the Planning Board, the Zoning Administrator, or the property owner or their agent or any other party. A request for a conditional rezoning may be initiated by the property owner or their agent. However, the property owner must agree to the conditions in writing to ensure enforceability.
- B. Amendments to zoning regulations or the zoning map that down-zone property shall not be initiated or enforced without the written consent of all property owners unless initiated by the County. For purposes of this section, “down-

zoning” means a zoning change that affects a parcel or area of land in one of the following ways:

1. By decreasing density to allow less development than previously allowed.
2. By reducing permitted uses that are specified within this ordinance to less than were allowed previously.

71). Amend Article 3, Common Review and Approval Procedures, Section 3.8.3., Project Planning Session, as follows:

3.8.3. Project Planning Session

All applicants petitioning for a rezoning shall schedule a project planning session with the ~~Zoning Administrator~~ Planning Director or designee in accordance with Section 3.1.7.

72). Amend Article 3, Common Review and Approval Procedures, Section 3.8.4., Neighborhood Meeting, as follows:

3.8.4. Neighborhood Meeting

All applicants petitioning for a **Conventional** Rezoning are encouraged to hold a neighborhood meeting in accordance with Section 9.2. A neighborhood meeting is required for Conditional Zoning requests.

73). Amend Article 3, Common Review and Approval Procedures, Section 3.8.7., Action by Zoning Administrator, as follows:

3.8.7. Action by ~~Zoning Administrator~~ Planning Director

- A. The ~~Zoning Administrator~~ Planning Director or designee shall prepare a staff report that reviews the rezoning request in light of any applicable plans and the general requirements of this Ordinance. ~~The staff report shall consider the entire range of permitted uses in the requested classification regardless of any representations made that the use will be limited, unless a development plan is submitted that restricts the permitted range of uses to specific uses. For conventional rezonings, the staff report shall consider the entire range of permitted uses allowed within the requested zoning district regardless of a proposed site plan or representations made that a specific use will be limited. For conditional rezonings, the staff report shall consider proposed uses, site plan, and conditions.~~
- B. Following completion of technical review by staff, the ~~Zoning Administrator~~ Planning Director or designee shall forward the completed request, staff recommendation report, and any related materials to the Planning Board for a hearing and decision.

74). Amend Article 3, Common Review and Approval Procedures, Section 3.8.8.A., D., and E. and renumber items as follows:

3.8.8. Action by Planning Board

- A. Before making any decision on a rezoning request, the Planning Board shall consider any recommendations from the ~~Zoning Administrator~~ Planning Director or designee and shall conduct a public hearing where interested parties may be heard.
- B. Notice and public hearing requirements shall be in accordance with Section 9.1.
- C. The Planning Board shall make a decision based on the approval criteria in Section 3.8.10, as appropriate.
- D. When adopting or rejecting any zoning amendment, the Planning Board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. If a zoning amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required.
- E. When adopting or rejecting any petition for a zoning amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Planning Board. This statement of reasonableness may consider factors including but not limited to the following:
 1. The size, physical conditions, and other attributes of the area proposed to be rezoned,
 2. The benefits and detriments to the landowners, the neighbors, and the surrounding community,
 3. The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment,

4. Why the action taken is in the public interest, and

5. Any changed conditions warranting the amendment.

~~F~~ D. Following Planning Board decision, the Planning Board Chair or Zoning Administrator shall announce that any person with standing may appeal the decision of the Planning Board by providing written notice to the County Manager within 15 days of the decision.

~~G~~ E. If notice of the appeal is not provided in writing within 15 days, then the decision of the Planning Board shall be final.

75). Amend Article 3, Common Review and Approval Procedures, Section 3.8.9.C. and D., Action by Board of County Commissioners, as follows:

3.8.9. Action by Board of County Commissioners

C. The Board of County Commissioners shall take action on ~~a rezoning request~~ the ~~appeal of a rezoning decision~~ based on the approval criteria in Section 3.8.10., as appropriate.

D. The Board of County Commissioners may approve the rezoning, ~~deny the rezoning, or send the rezoning back to the Zoning Administrator~~ ~~Planning Director or designee~~ for additional consideration.

76). Amend Article 3, Common Review and Approval Procedures, Section 3.8.12.A., Resubmission of Application, as follows:

3.8.12. Resubmission of Application

Upon final action to deny or approve an application for the rezoning of a piece of property, the Planning Board shall not review any applications for changes affecting the same property or any portion thereof until the expiration of one year from the date of such previous action except as provided as follows:

A. The ~~Zoning Administrator~~ ~~Planning Director~~ may allow re-submission of such petition within one year period if it is determined that, since the date of action on the prior petition:

77). Amend Article 4, Zoning Districts, Section 4.8.2., CZ: Conditional Zoning, as follows:

4.8.2. CZ: Conditional Zoning

~~A. Purpose~~

~~The Conditional Zoing Overlay is established to offer flexibility to meet project needs that are not accommodated by conventional zoning districts. These overlay districts are approved with individualized development standards adopted as part of the rezoning. Property is rezoned to these districts in response to and consistent with a petition filed by the property's owner. The petition includes a site plan, a specification of the actual use planned, and any rules, regulations, or conditions that would govern development of the site. The petitioner must conduct at least one community meeting on the proposal prior to the official hearing on the rezoning. These districts are potentially available in conjunction with any of the conventional zoning classifications.~~

~~B. Designation of Conditional Zoning Overlay~~

~~1. A Conditional Zoning Overlay may only be established as a zoning map change in accordance with the requirements of Section 3.8, Rezoning.~~

~~2. A Conditional Zoning Overlay may be established in conjunction with any conventional zoning base district.~~

~~C. Permitted Uses and Development Standards~~

~~1. Any use permitted by right, subject to limitations, or through special use permit in the underlying base districts may be approved in the overlay. Uses allowed as a special use permit included with the Conditional Zoning Overlay shall not require separate approval.~~

~~2. Conditions pertaining to the uses, development standards, site features, improvements, etc. may be included with the approval; provided however, the petitioner must be agreeable to such conditions.~~

VIII. ADMINISTRATIVE REPORT

1. Administration - Recommended Budget Ordinance, Capital Improvement Plan, Schedule of Fees for FY 2022 (Randell Woodruff, County Manager)

Request that the Board of Commissioners receive the Recommended Budget Ordinance, Capital Improvement Plan, Schedule of Fees for FY 2022, and schedule a public hearing on the matters for June 7, 2021 at 3:00 p.m.

Chairman Thompson recognized Deputy County Manager Steve Stone to present the recommended budget ordinance in Mr. Woodruff's absence. Mr. Stone presented the FY 2021-2022 recommend budget totaling \$291.5 million for all funds, with no change in the property tax rate of 48.50 cents.

Following the presentation, Commissioner Williams moved to set the Public Hearing to receive comments on the proposed budget for 3:00 p.m. on June 7, 2021. The motion was seconded by Commissioner Sykes and passed unanimously (5 to 0).

It was the consensus of the Board to cancel the June 7, 2021 study session previously scheduled for 1:00 p.m.

2. **Engineering - Courthouse Addition & Renovation Project - Architect Additional Services (Wm. L. Pinnix, P.E.)**

Request that the Board of Commissioners receive an update from the architect on courthouse furniture and using the Big Sky Interior Design firm for consultative services as a subconsultant to the architect for courthouse furniture design, specification, cost opinion, and bid package preparation.

Mr. Pinnix gave a brief update on the project. The courthouse addition and renovation project began on April 1, 2020 and Phase I was completed on April 9, 2021. Phase 2 and 3 renovation of the remainder of the original building began on April 26, 2021 and is scheduled to be completed April 2022. Mr. Pinnix explained that furniture, fixtures and equipment are not generally included in the General Contractor's contract, however, the Contractor did provide seating in the new jury assembly room and the pew-style seating in the courtrooms. The Clerk of Court has requested furniture for other areas of the building.

Following a brief discussion regarding the security gate for the secure parking lot, Mr. Pinnix introduced Mr. John Sawyer, Sawyer Sherwood & Associate Architects, to provide an update on both the gate and the courthouse furniture needs.

Mr. Sawyer provided information on the operation and design of the security gate to address the security concerns. Following discussion, Mr. Sawyer indicated that a second gate could be installed.

Mr. Sawyer presented a request for a subconsultant to assist with furnishing the 115,000 sq. ft. courthouse and reviewed the process for bidding the project.

Following discussion, Vice-Chairman Forte moved to approve the consultant, subject to final review by the County Attorney. The motion was seconded by Commissioner Cooke and passed 4 to 1 (Ayes - Thompson, Cooke, Forte Williams; No – Sykes).

Chairman Thompson noted that a correction needed to be made to the date for consideration of the amendments proposed by the Planning staff.

Commissioner Williams moved to correct the previous motion to postpone the remaining amendments as proposed by Planning staff until the July 6, 2021 meeting at 3:00 p.m. The motion was seconded by Commissioner Cooke and passed unanimously (5 to 0).

3. **Emergency Services - Ambulance Purchase (Ed Conrow, Emergency Services Director)**
(This item was amended during Adjustments/Approval of Agenda to include item V-12 Emergency Services – Ambulance Remount Purchase)

Request that the Board of Commissioners approve the purchase of two new ambulances and to proceed with the budgeted purchase of a remounted ambulance

Mr. Conrow presented information on both the new and remounted ambulance needs and specifications. Both the remount and the purchase will be facilitated by Northwestern Emergency Vehicles and will consist of two new Chevrolet C-5500 ambulances and one Chevrolet G-4500 remount.

Commissioner Cooke stepped out of the meeting at 8:18 p.m. and returned at 8:20 p.m.

Following a brief discussion on the item, Commissioner Williams moved to approve the purchase of the remount and two new ambulances. The motion was seconded by Vice-Chairman Forte and passed unanimously (5 to 0).

IX. Board Appointments

- 1. **Governing Body - Annual Board Appointments**
Request that the Board of Commissioners approve the annual board appointments as presented.

Following discussion, Commissioner Williams moved to approve the board appointments as presented. The motion was seconded by Commissioner Sykes and passed unanimously (5 to 0).

X. OTHER BUSINESS/INFORMAL DISCUSSION

No items were brought forth.

XI. CLOSED SESSION

- 1. **Closed Session**
Request the Board of Commissioners enter into Closed Session pursuant to N.C.G.S. 143-318.11(a)(1) to approve closed session minutes, 143-318.11(a)(3) to consult with its attorney, and 143-318.11(a)(4) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.

Mr. Shaver noted that the statutory requirements were included in the agenda with the purpose to approve closed session minutes, consult with the attorney, and discuss matters relating to the location or expansion of industries.

Commissioner Cooke moved to enter Closed Session as stated at 8:27 p.m. The motion was seconded by Vice-Chairman Forte and passed unanimously (5 to 0).

Chairman Thompson called the Regular Session to order at 8:48 p.m. There were no items to report from Closed Session.

XII. ADJOURNMENT

Commissioner Williams moved to adjourn the meeting at 8:48 p.m. The motion was seconded by Commissioner Cooke and passed unanimously (5 to 0).

Randy Thompson, Chairman
Brunswick County Board of Commissioners

Attest:

Andrea White, NCCCC
Clerk to the Board



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # V. - 7.

From: Code Administration - Hazard Mitigation Grant Program
Michael Slate-Director Code Administration 4393DR-State Centric Opt In

Issue/Action Requested:

Request the Board of Commissioners approve County participation in the Hazard Mitigation Grant Program 4393DR-State Centric Opt In Option for management of the Hazard Mitigation Grant for Hurricane Florence.

Background/Purpose of Request:

Brunswick County was awarded disaster assistance for the impacts of Hurricane Florence. The first part of the award was managed and initially funded by Brunswick County. The North Carolina State Centric program allows the County to turn over the work associated with the Hazard Mitigation Grant Program 4393 DR for Hurricane Florence. The State would handle all funding, organization and implementation of the HMGP4393DR program for Brunswick County.

Fiscal Impact:

Reviewed By Director of Fiscal Operations

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners approve County participation in the Hazard Mitigation Grant Program 4393DR-State Centric Opt In Option for management of the Hazard Mitigation Grant for Hurricane Florence.

ATTACHMENTS:

Description

- ☐ HMGP 4393DR - State Centric Opt-In
- ☐ North Carolina State Centric Implementation Plan



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

OFFICE LOCATION:
200 Park Officers Dr
Durham NC 27713

Telephone: (919) 873-5847



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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?

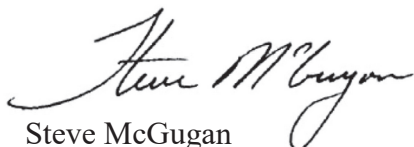
All that is required of the sub-applicant is to request/agree to the State's program. You take advantage of the program immediately by selecting and signing the OPT IN section of the attached form.

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.

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: Brunswick County, North Carolina
(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

X 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: John Shirk, CFM, CZO, Brunswick County Floodplain Administrator,
(910)253-2046, email: john.shirk@brunswickcountync.gov

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: Randy Thompson, Chairman Board of Commissioners (Printed Name)

Sub-Applicant Designated Agent Signature: _____



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

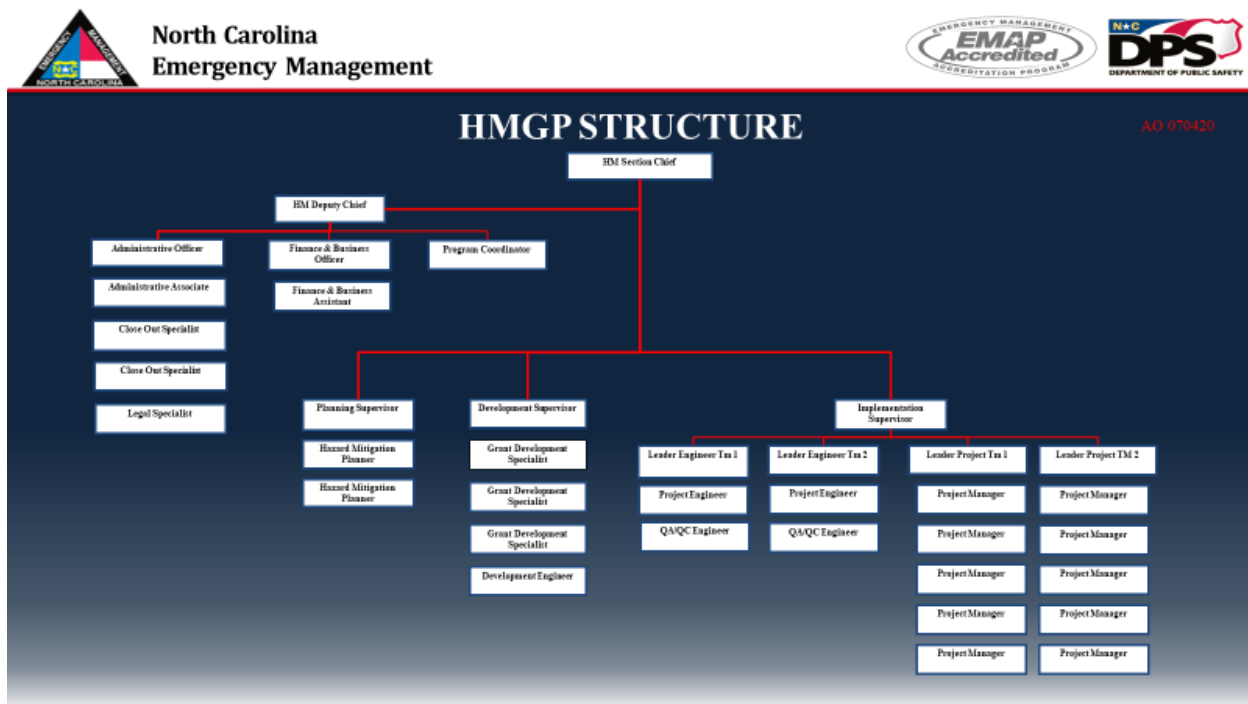
The Hazard Mitigation Section's workload includes the administration of all FEMA disaster mitigation and Non-disaster mitigation grants programs. Additionally, the hazard mitigation section's staff is engaged in work associated with maintaining and updating the State of North Carolina's Hazard Mitigation 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:

LOCATION		
Priority	Category	Scoring
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
RESIDENTIAL MITIGATION		
Priority	Category	Scoring
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
COMMERCIAL MITIGATION		
Priority	Category	Scoring
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
INFRASTRUCTURE MITIGATION		
Priority	Category	Scoring
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 likelihood 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*.”¹ 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

¹ 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.

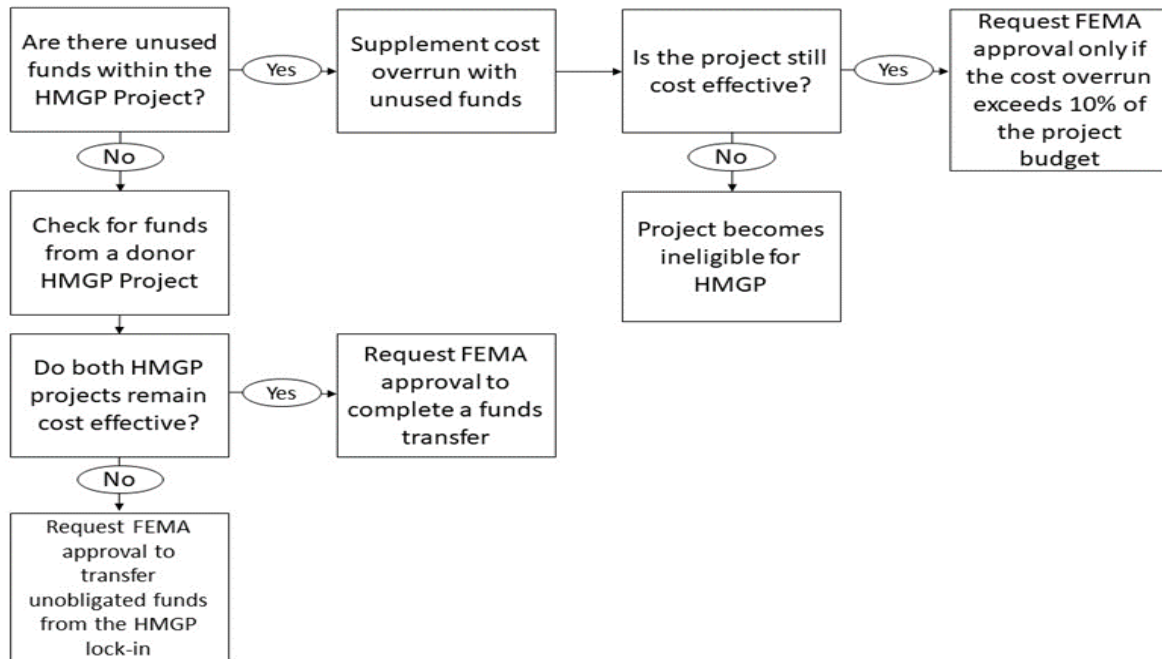
All cost reports from a contractor or sub-recipient, will be entered into EMGrants. PMs will review all costs within EMGrants and if allowable, forwards the approved reimbursement request to the Senior Project manager for review. Once the Senior PM completes the reimbursement review, those costs will 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.

30. 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.



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # V. - 8.

From: County Attorney - Amend Contract and Purchasing Policy
Bryan W. Batton, Asst. County Attorney

Issue/Action Requested:

Request that the Board of Commissioners approve amendments to the Brunswick County Contract and Purchasing Policy.

Background/Purpose of Request:

The recommended amendments are recommended as follows:

1. Delegation of approval authority to County Manager for certain change orders and contract amendments. (Page 14)
2. Allow for the donation of surplus property to non-profits consistent with state law. (Page 29)
3. Amend sole source language to clarify that it does not apply to services. (Pages 12 and 26)

All changes are reflected in the attached red-lined version of the attached policy.

Fiscal Impact:

Reviewed By Director of Fiscal Operations

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners approve amendments to the Brunswick County Contract and Purchasing Policy.

ATTACHMENTS:

Description

- ▣ Proposed Amendments to Contract and Purchasing Policy



BRUNSWICK COUNTY

CONTRACT AND PURCHASING POLICY

Adopted by the Board of Commissioners: May 6, 2019

As amended and adopted: ~~December 16, 2019~~ June 21, 2021

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1. PREAMBLE

This Contract and Purchasing Policy is intended for use as a guide to Brunswick County's contracting and procurement methods and practices. The goal of this policy is to standardize Brunswick County's contracting and procurement methods and to establish and implement a system of internal controls that provide reasonable assurance that the County is in compliance with N.C.G.S. Chapter 143, Article 8: Public Contracts and the Uniform Guidance for Federal Awards, 2 C.F.R. Part 200. While this policy does not answer all procurement related questions, it provides a foundation for County procurement methods.

The goals of Brunswick County's purchasing program are as follows:

1. To comply with legal and ethical requirements for public purchasing and procurement.
2. To assure vendors that impartial and equal treatment is afforded to all who conduct business with the County.
3. To receive maximum value for money spent by awarding purchase orders to the lowest responsive, responsible bidder, taking into consideration quality, performance, support, delivery schedule, previous performance, business location, and other relevant factors.
4. To provide County departments the required goods and services in a timely manner in the proper quantity and quality while providing necessary information to the County Finance Department.
5. To professionally administer the search for sources of supplies, the development of new sources, and the selection of suppliers.
6. To promote healthy business relationships through informed and fair purchasing practices and maintenance of ethical standards.

This policy supersedes all prior or contemporaneous policies and resolutions related to contracting and procurement methods and practices by Brunswick County, including, without limitation, the Resolution for Approval of Construction Contract Modifications and Change Orders dated March 17, 2008, and the Resolution for Approval of Professional and Service Contracts dated July 1, 2013.

Any questions or concerns about this policy or the established procedures should be directed to the Purchasing Agent.

2. GENERAL GUIDELINES

2.1 Planning

It is imperative that all County departments take time to properly plan purchases. Purchasing plans should be made for goods and services to be purchased in both the near and distant future; thereby minimizing small orders and last-minute purchases. Planning is of highest importance to the County because proper planning reduces unnecessary clerical and supervisory time and costs associated with the procurement process.

2.2 Incurring Obligations

No obligation may be incurred in a program, function, or activity accounted for in a fund unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains. No obligation may be incurred for a capital project or a grant project authorized by a project ordinance unless that project ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction as required by N.C.G.S. § 159-28 (a).

2.3 Local Buying

It is the desire of Brunswick County to contract with vendors within Brunswick County provided that such vendors provide the County with the lowest price on equivalent goods or services meeting the County's needs. The County has a responsibility to its citizens and local businesses which is bilateral; both to spend locally when possible, but always to ensure that whenever taxpayer money is spent, it is spent with prudence. Because state statute uses an award standard of the lowest responsible, responsive bidder, the County prohibits the use of geographical preference in the selection of a vendor in competitively bid contracts. However, every effort will be made to encourage qualified local vendors and suppliers to compete for County business.

2.4 Buying Proper Quality

Quality and service are as important as price when considering goods for purchase. It is the duty of the requesting department to secure the most cost-effective goods or services that will meet the requirements for which the goods or services are intended. In some instances, the lowest price does not necessarily mean the lowest cost. A higher price, higher quality product may save the County from excess expenses in the future. The requesting department should take this into consideration when making a purchase. However, when making a purchase of other than the lowest cost goods or services, the requesting department should be prepared to justify such a purchase to County Administration based on standards directly related to the quality of the goods or services to be obtained, or the terms on which such goods or services are to be provided.

2.5 Standard of Award

Vendors will be selected on a competitive basis, unless exceptions apply. Bid awards, purchase orders and/or contracts will be issued to the lowest responsive, responsible bidder, unless otherwise noted herein.

2.6 Purchase Procedures

2.6.1 Purchase Orders

All obligations of the County of \$5,000 or more and all recurring/blanket obligations must be supported by an official purchase order (PO). The dollar amount of any single item under a blanket purchase order shall not exceed \$5,000.

The following exceptions apply:

1. Salaries and wages
2. Fringe benefits
3. Travel and registration expenditures
4. Fuel
5. Telephone and utilities
6. Routine maintenance agreements
7. Legal services
8. Medical services
9. Postage
10. Payments for appropriations to non-profit entities, public schools, and community colleges
11. Debt service payments
12. Advertisements in local newspapers
13. Beneficiary payments to social services recipients
14. Social services payments to medical transportation providers
15. Animal services payments for veterinary service providers
16. Payments made to or on behalf of beneficiaries of the Public Housing Section 8 program
17. County credit card purchases
18. Others as periodically determined by the Finance Officer or other designated purchasing official (hereinafter the "Purchasing Agent")
19. Small obligations of less than \$5,000 under the following conditions:
 - a. Non-reoccurring expenditures (i.e. certain dues, subscriptions, or services)
 - b. An unencumbered balance is available for obligation
 - c. Shall be supported with a properly executed original invoice
 - d. Any abuse/misuse as determined by the Finance Officer or Purchasing Agent of the small obligation procedure shall cause it to be discontinued for that respective department.

2.6.2 Emergency Purchases Orders

Emergency purchase orders may be issued on a case-by-case basis in accordance with all sections of this policy. If it is anticipated that a purchase will be submitted for FEMA reimbursement, the purchase order must include certain clauses required by FEMA, which may be obtained from Finance or the County Attorney's office.

2.7 Limitations of Procurement

2.7.1 Debarment

Brunswick County is prohibited from and will not use vendors who have been debarred by federal, state, or local governments. Vendor verification can be made through the federal System for Award Management (SAM) website and the NC Debarred Vendor List, and any County list maintained by the Finance Department and published on the County's intranet site.

2.7.2 E-Verification Requirement

No contract can be entered unless the contractor agrees to comply with NC E-Verify hiring requirements pursuant to N.C.G.S. § 143-133.3. Under the law the entity must possess twenty-five (25) or more employees for E-Verify to be applicable.

The following exceptions apply:

1. Expenses related to travel, including transportation and lodging, for employees, officers, agents, elected officials, or members of state or local boards, commissions, committees, or councils.
2. Contracts solely for the purchase of goods, apparatus, supplies, materials, or equipment (contracts that involve a combination of purchase and construction or purchase and service would not be exempt).
3. Contracts let under N.C.G.S. § 143-129(e)(1), (9) or (9a) (the exceptions to competitive bidding requirements for purchases made directly from another unit of government or from a vendor under contract with the State of North Carolina or a federal agency).
4. Contracts let under N.C.G.S. § 143-129(g) (the piggyback exception to competitive bidding requirements).

2.7.3 Divestment from Companies that Boycott Israel

N.C.G.S. Chapter 147, Article 6G prohibits the investment of state funds in, or governmental contracting with, any company that boycotts or is involved in a

boycott of the State of Israel. To verify companies please visit the NC Treasurers website at www.nctreasurer.com.

2.7.4 Non-appropriation of Funds Clause for Contracts Spanning More Than One County Fiscal Year

In any contract or other agreement in which the other party's performance occurs in more than one County fiscal year, the following language shall be included in the contract:

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Provider of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

2.7.5 Contract Renewals

Automatic renewals and options to renew must be included in calculating the contract amount for purposes of the approval thresholds in this policy.

2.7.6 Maximum Length of Contract

The maximum length of any contract, including automatic renewals and options to renew, shall not exceed three (3) years without the approval of the signatory authority based on a determination that the longer period is in the best interests of the County.

2.8 Contract Approval Process / Review by County Attorney

2.8.1 Contracts and Documents Subject to Review

The following types of contracts, contract amendments, and documents must go through the contract approval process:

1. Service contracts \$10,000 or more, except those for services that fall under the Mini-Brooks Act (Architectural, Engineering and/or Surveying) for which a qualification-based selection applies
2. Service contracts for services that fall under the Mini-Brooks Act (Architectural, Engineering and/or Surveying) for which a qualification-based selection applies, regardless of the amount

3. Contracts for the purchase or lease of goods (apparatus, supplies, materials, and/or equipment) \$30,000 or more
4. Construction or repair contracts \$30,000 or more
5. Any contract for which Board of Commissioners approval or signature of the Chairman of the Board is sought or required
6. Any contract \$10,000 or more for which FEMA reimbursement will be sought
7. Any contract \$10,000 or more with federal source of funds
8. Any contract involving a grant
9. Franchise agreements
10. Leases, licenses or other agreements for the use of County property
11. Funded Agency
12. Interlocal
13. Sole source (all documentation)
14. All Requests for Proposals, Requests for Qualifications, and Invitations to Bid

Please refer to Appendix B for additional information regarding contract approval requirements.

Contracts requiring approval must be submitted for County Attorney review through the iContracts portal. This process serves as a tool to ensure the correct execution of contracts and to provide instruction and information necessary to assist in the process. A department should not permit a contractor to start work, and create an obligation on the part of the County, until the contract has been fully executed and copies are in the possession of the department, the County, and the contractor.

2.8.2 Use of Document Templates

Departments should utilize standard County contract and document templates available through the iContracts portal if possible. The County Attorney's office has created a library of standard templates that are tailored for use for many specific types of contracts and circumstances. Non-standard (vendor-generated) contracts should be limited, but may be necessary in some circumstances. Contact the County Attorney's office for guidance on use of the appropriate form of contract.

3. PREAUDIT CERTIFICATION

Except as otherwise provided by law, no obligation may be incurred by the County unless the budget resolution includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year.

If an obligation is reduced to a written contract or written agreement requiring the payment of money or is evidenced by a written purchase order for supplies and materials, the written contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited and shall be signed by the Finance Director to assure compliance with N.C.G.S §159-28 (a1). The certificate will take substantially the following form:

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

(Date)

(Signature of Finance Officer)

No preaudit certification is required for: (1) an obligation, or a document related to the obligation, that has been approved by the Local Government Commission; (2) payroll expenditures, including employee benefits; or (3) electronic payments, as specified in the rules adopted by the Local Government Commission.

An obligation incurred in violation of the requirements of state law as specified in this policy is invalid and may not be enforced. The Finance Officer shall establish procedures in accordance with any rules adopted by the Local Government Commission to ensure compliance with statutory requirements and this policy.

4. ELECTRONIC PAYMENTS

In order for electronic transactions to qualify for an exemption from the preaudit requirements in N.C.G.S. § 159-28(d1), the disbursement must be in compliance with the rules adopted by the Local Government Commission as detailed below:

1. The amount claimed is payable.
2. There is a budget, project, or grant ordinance appropriation authorizing the expenditure.
3. The monies remain within the appropriation to cover the amount that is due.

5. CONFLICTS OF INTEREST; GIFTS AND FAVORS

Employees and officers shall not, pursuant to their public authority, make or administer any contracts for their own direct financial benefit. Employees and officers who derive a direct benefit, but are not involved in making or administering the contract, are further prohibited from influencing or attempting to influence the award of contracts, or from soliciting or receiving gifts or rewards for recommending, and influencing or attempting to influence contract awards. These matters are generally governed by N.C.G.S. § 14-234.

Pursuant to N.C.G.S. § 133-32, no employee or officer of Brunswick County who is charged with the duty of: (1) preparing plans, specifications, or estimates for public contracts; (2) awarding or administering public contracts; or (3) inspecting or supervising construction, shall accept any gifts or favors from any vendor or service provider who has a contract with a governmental agency, or has performed under such a contract within the past year, or anticipates bidding on such a contract in the future.

This Section is not intended to prevent a gift a public servant would be permitted to accept under N.C.G.S. § 163A-212, or the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This Section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees and officers who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting.

This Section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship, rather than the business of the individual concerned, which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the recipient to their Department Head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift.

6. GENERAL PROCUREMENT STANDARDS AND PROCEDURES – LOCAL AND STATE FUNDING

6.1 Application

This Section applies to all local and state funded procurement. Such procurement must be in compliance with local, state and federal rules and regulations, including, without limitation, N.C.G.S. Chapter 143, Article 8: Public Contracts, and the Uniform Guidance for Federal Awards, 2 C.F.R. Part 200.

6.2 Minority and Women-Owned Business Enterprises

For building construction and repair projects in excess of \$30,000, the County must make a good faith effort to provide minority and women-owned businesses, as defined in N.C.G.S. § 143-128.2(g), with equal access and opportunity to participate in the County's business opportunities. To that end, at a minimum, contractor bid opportunities must be timely posted to the North Carolina Department of Administration, Office for Historically Underutilized Businesses Bid Posting Website located at: <https://ncadmin.nc.gov/businesses/historically-underutilized-businesses-hub/submit-contractor-bid-opportunity-hub>.

7. SPECIFIC PROCUREMENT STANDARDS AND PROCEDURES – LOCAL AND STATE FUNDING

7.1 Purchases or Leases for Apparatus, Supplies, Materials and/or Equipment

7.1.1 Purchases or Leases up to \$30,000

Purchases or leases in this price range shall be procured through an informal price comparison process. A minimum of three (3) price comparisons is required. All documentation related to price comparisons must be maintained within the requesting department's records, and such records are subject to audit. Non-responsive submissions do not qualify. If three (3) price comparisons cannot be obtained, a detailed explanation must be submitted to the Purchasing Agent.

7.1.2 Purchases or Leases between \$30,000 and \$90,000

Purchases or leases in this price range shall be procured through an informal bid process pursuant to N.C.G.S. § 143-131. The requesting department is required to secure a minimum of three (3) informal bids. Informal bids may be received via telephone, facsimile or email, and they must be documented on the electronic requisition with a copy provided to the Finance Department. The Finance Department or Purchasing Agent may request additional bids if deemed necessary during review of the purchase requisitions. If three (3) informal bids cannot be obtained, a detailed explanation must be submitted to the Purchasing Agent. *Please refer to Section 7.3 for proper procedures related to Construction and Non-Emergency Repair in this price range.*

7.1.3 Delegation of Approval Authority to County Manager (up to \$90,000)

The Board of Commissioners delegates approval authority to the County Manager for the purchase of goods or services in an amount up to \$90,000 *provided that* there is a budget appropriation available and the item(s) were included in the annual budget presentation that supports the budget ordinance.

7.1.4 Purchases or Leases \$90,000 or more

Purchases or leases in this price range shall be procured through a formal bid process pursuant to N.C.G.S. § 143-129. All formal bids shall be procured through the Purchasing Agent and must be approved by the Board of Commissioners. In order to prepare the formal bid package for dissemination, a written request and detailed supporting information must be submitted to the Purchasing Agent at least thirty (30) days prior to the advertisement for bids. *Please refer to Section 7.3 for proper procedures related to Construction and Non-Emergency Repair in this price range.*

7.2 Special Considerations for Construction or Repair

No contract may be divided for the purpose of avoiding bidding or notice requirements pursuant to N.C.G.S. § 143-133.

7.3 Construction and Non-Emergency Repair Procedures

7.3.1 Construction and Repair up to \$30,000

Construction and repair contracts in this price range shall be procured through an informal price comparison process. A minimum of three (3) price comparisons is required. All documentation related to price comparisons must be maintained within the requesting department's records, and such records are subject to audit. Non-responsive submissions do not qualify. If three (3) price comparisons cannot be obtained, a detailed explanation must be submitted to the Purchasing Agent.

7.3.2 Construction and Repair between \$30,000 and \$500,000

Construction and repair contracts in this price range shall be procured through an informal bid process pursuant to N.C.G.S. § 143-131. The requesting department is required to secure a minimum of three (3) informal bids. Informal bids may be received via telephone, facsimile or email, and they must be documented on the electronic requisition with a copy provided to the Finance Department. The Finance Department or Purchasing Agent may request additional bids if deemed necessary during review of the purchase requisitions. If three (3) informal bids cannot be obtained, a detailed explanation must be submitted to the Purchasing Agent. Informal bids in this price range must be approved by the Board of Commissioners. *If the contract involves construction or repair of a building \$300,000 or more, please refer to 7.3.4.*

7.3.3 Construction and Repair \$500,000 or more

Construction and repair contracts in this price range shall be procured through a formal bid process pursuant to N.C.G.S. § 143-129. Three (3) competitive bids are required for construction and/or repairs. All formal bids shall be procured through the Purchasing Agent. In order to prepare the formal bid package for dissemination, a written request and detailed supporting information must be submitted to the Purchasing Agent at least thirty (30) days prior to the advertisement for bids. If three (3) bids are not received, the County will re-advertise, and the contract may be awarded with only one bid. Formal bids in this price range must be approved by the Board of Commissioners. *If the contract involves construction or repair of a building \$300,000 or more, please refer to 7.3.4.*

7.3.4 Construction and Repair involving a building \$300,000 or more

All construction and repair contracts involving a building \$300,000 or more must also comply with the following additional requirements:

1. Formal Historically Underutilized Business (“HUB”) participation required under N.C.G.S. § 143-128.2, including local government outreach efforts and bidder good faith efforts, shall apply.
2. Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under N.C.G.S. § 143-128(a).
3. The project shall be bid using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under N.C.G.S. § 143-129(a1).

7.3.5 Delegation of Approval Authority to County Manager for Certain Construction or Repair Contracts

The Board of Commissioners delegates approval authority to the County Manager for construction or repair projects in an amount up to \$500,000 *provided that* there is a budget appropriation available and the project(s) were included in the annual budget presentation that supports the budget ordinance.

7.4 Architectural, Engineering or Surveying Contracts

Procurement of all architectural, engineering or surveying services shall be in accordance state Mini-Brooks Act/Qualification Based Selection requirements pursuant to N.C.G.S. § 143-64.31. All such services shall be procured through the Purchasing Agent and must be approved by the Board of Commissioners in accordance with the terms of this policy and applicable general statutes. Initial selection is based on qualifications rather than price. The Board of Commissioners may exempt a contract of this type estimated to cost less than \$50,000 from these requirements.

7.5 Non-Emergency Services

All non-emergency service contracts, for which the contractor will perform work while on County property, must be accompanied by a written contract. All contracts must be delivered to the County Manager, Finance Officer and County Attorney for review prior to execution. The contract must follow all signature procedures and contain all necessary insurance and payment options and be compliant with the Local Government Budget and Fiscal Control Act. The completed and signed contract must be reviewed as to form by the County Attorney, signed by the County Manager and/or Board of Commissioners, as appropriate, pre-audited by the Finance Director, and be filed in the respective department. If a contract requires action by the Board of Commissioners, the Chairman of the Board’s signature may be required. The executed

contract should be scanned and attached to the department requisition that is forwarded to the Finance Department. The County will attempt to structure contracts to coincide with the fiscal year unless another arrangement is in the best interest of the County.

Contracts directly authorized by the Board of Commissioners through direct award or budget authorization may be executed by the County Manager. Subsequent orders changing the original contract, which do not exceed the approved cost of the contract, will be executed by the County Manager.

7.6 Special Procurement Procedures for Technology Goods and Services

All technology purchases require the approval of the Management Information Services (“MIS”) Director. This includes, but is not limited to, hardware, software, licensing, maintenance, and all technology-related service contracts.

7.7 Exceptions to Competitive Bidding Requirements

North Carolina General Statutes provide Exceptions to State Competitive Bidding Requirements for NC Local Governments. Brunswick County departments are encouraged to utilize these alternative procurement methods when the appropriate exception allows the County to procure the goods or services desired more conveniently and efficiently than normal competitive bidding procedures. The intent to use an exception should be submitted to the Finance Officer and County Attorney for review prior to submitting a purchase requisition as some of the exceptions may require approval by the Board of Commissioners. Exceptions are detailed in N.C.G.S. § 143-129, but the most commonly utilized exceptions are described below.

7.7.1 Sole Source

A sole source exception may apply to certain purchases that fall within the competitive bidding ranges (informal or formal) set forth herein. Pursuant to N.C.G.S. § 143-129(e)(6), a sole source exception may apply to purchases made with local or state funding when: (1) performance or price competition for a product are not available; (2) a needed product is available from only one source of supply; or (3) standardization or compatibility is the overriding consideration. Departments that seek to procure goods ~~and/or services~~ from a sole source must: (1) ensure the correct application of the sole source exception; (2) complete a Sole Source Justification Form; (3) complete a resolution for approval by the Board of Commissioners authorizing the purchase under the applicable sole source exception (a template form is available in the iContracts library); and (4) maintain all required documentation, including without limitation, the justification for and lack of available competition for the item. The required documentation must be attached to the Sole Source Justification Form, and the documentation must be reviewed and approved by the Purchasing Agent and the County Attorney. By statute, sole source purchases require approval by the Board of Commissioners prior to the award of the contract. Any sole source purchase approval intended

to apply to reoccurring purchases must be reviewed and approved by the Board of Commissioners at least every three (3) years to ensure that a sole source exception still applies. *Please refer to Section 9.4.1 for specific information related to sole source purchases made, in whole or in part, with the use of federal funds, as federal exceptions to competitive bidding are more restrictive.*

7.7.2 Purchasing on “State Contract” N.C.G.S. § 143-129(e)(9)

An exception applies for purchases from contracts established by the State or any agency of the State, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the State contract.

7.7.3 “Piggybacking” on Other Government Agency Purchases N.C.G.S. § 143-129(g)

Although commonly called “piggybacking,” this exception is actually a waiver for previously bid contracts. It applies to the purchase of apparatus, supplies, materials or equipment (excludes services) when a department seeks to purchase goods from a person or entity that has, through a competitive bidding process within the past twelve (12) months, contracted to furnish an item to: (1) the federal government or any federal agency; (2) the State of North Carolina or any agency or political subdivision of the state; or (3) any other state or agency or political subdivision of that state. The price and terms must be as good as or better than those that could be obtained through a formal bidding process, and the item specifications must be the same.

7.7.4 Group Purchasing Program Exception N.C.G.S. § 143-129(e)(3)

This exception applies to purchases made through a competitive bidding group purchasing program, which is a formally organized program that offers competitively obtained purchasing services at discount prices to two (2) or more public agencies. Some of the most common group purchasing programs include, without limitation, the NC Sheriff’s Association Vehicle Procurement Program, Sourcewell (formerly NJPA), U.S. Communities, and The Cooperative Purchasing Network.

7.7.5 Special Emergencies

The County Manager may exempt the procurement of any goods or services from the requirements of this policy in cases of special emergency involving the health and safety of the people or their property pursuant to N.C.G.S. § 143-129(e)(2). In order to exercise this emergency exemption, the emergency must be present, immediate, and existing. It cannot be a condition that is merely anticipated and may never actually occur. If the condition can be foreseen in time to take action to prevent harm to the public (or if the required

procurement method can be completed before any harm would occur), the emergency exception cannot be invoked. Further, if harm to the public can be averted through temporary measures while the proper procurement method is being conducted, the emergency exception cannot be used. The failure to take proper precautions to prevent the need for an emergency procurement will not be accepted as a justification for exemption from the requirements of this policy.

7.8 Delegation of Approval Authority to County Manager for Certain Change Orders and Contract Modifications or Amendments

The Board of Commissioners delegates approval authority to the County Manager for change orders and contract modifications for previously approved contracts in an amount up to \$30,000 provided that there is a current budget appropriation available.

8. GENERAL PROCUREMENT STANDARDS AND PROCEDURES – FEDERAL FUNDING

8.1 Application

This Section applies to contracts for purchases, services, and construction or repair work funded with federal financial assistance (direct or reimbursed). All federally funded projects, loans, grants, and sub-grants, whether funded in whole or in part, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards (Uniform Guidance) codified at 2 C.F.R. Part 200. These requirements also apply to any subrecipient of federal funds.

8.2 Compliance with Federal Law

All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200.326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. The County will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the County have more stringent requirements, the most restrictive requirement shall apply as long as it is consistent with state and federal law.

8.3 Minority and Women-Owned Business Enterprise (“M/WBE”) Solicitation

For all federally-funded contracts, subcontracts and procurements for services (including engineering and legal), supplies, equipment, and construction or repair, the County must make minority businesses aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. Pursuant to 2 C.F.R. § 200.321, the County must take affirmative steps, otherwise known as “six good faith efforts,” to ensure that minority firms, women’s business enterprises and labor surplus area firms are afforded equal contracting opportunities. The affirmative steps include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Ensuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources of products or services to be bid;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises (i.e. provide alternate bidding scenarios);
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises (i.e. timing and flexibility);
5. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the United States Department of Commerce; and
6. Requiring any prime contractor to take the affirmative steps listed above, if they will be awarding subcontracts.

The County and any prime contractor must maintain documentation evidencing compliance with these "six good faith efforts."

If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. However, as noted below, the procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this policy.

8.4 No Evasion

No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this policy or state and federal law.

8.5 Contract Requirements

All contracts, except those that fall at or below the "micro-purchase" threshold as set forth in 2 C.F.R. § 200.67, that are paid for, in whole or in part, with federal funds shall be in writing and must be reviewed by the County Attorney's office. *Please note that the "micro-purchase" threshold is periodically adjusted for inflation. As of the date of adoption of this policy, the threshold is \$10,000.* The written contract must include or incorporate by reference the provisions required under 2 C.F.R § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.

8.6 Necessity

Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. The Department Head or Purchasing Agent should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.

8.7 Clear Specifications

All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.

8.8 Notice of Federal Funding

All bid solicitations must acknowledge the use of federal funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.

8.9 Compliance by Contractors

All solicitations shall inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.

8.10 Fixed Price

Solicitations must state that bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this policy. Cost plus percentage of cost contracts are prohibited. Time and materials contracts are prohibited in most circumstances. Time and materials contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A time and materials contract shall not be awarded without the express written permission of the federal agency or state pass-through agency that awarded the funds. If a time and materials federal contract is awarded, the requesting department must exercise a high degree of oversight to be reasonably assured that the contractor is using efficient methods and effective cost controls.

8.11 Use of Brand Names

When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how to achieve the required result to the contractor. Brand names may be used only when it is impractical or uneconomical

to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and “or equal” must be included in the description.

8.12 Lease versus Purchase

Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach.

8.13 Documentation

Documentation must be maintained by the Purchasing Agent and/or the requesting department detailing the history of all procurements. The documentation should include the procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor’s responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request.

8.14 Cost Estimate

For all procurements costing \$250,000 or more, the Purchasing Agent and/or requesting department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.

8.15 Contractor Oversight

The County department receiving the federal funding must maintain oversight of the contract to ensure that the contractor is performing in accordance with the contract terms, conditions, and specifications.

8.16 Open Competition

Solicitations shall be prepared in a way to be fair and provide open competition. The procurement process shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to, unnecessary supplier experience, excessive or unnecessary bonding, specifying a brand name without allowing for “or equal” products, or other unnecessary requirements that have the effect of restricting competition.

8.17 Geographic Preference

No contract shall be awarded on the basis of a geographic preference.

8.18 Settlement of Issues

The County, *not* the federal government, shall be solely responsible for settling all contract disputes and claims. The federal government will not be a party to or defend contract claims for any reason.

9. SPECIFIC PROCUREMENT STANDARDS AND PROCEDURES – FEDERAL FUNDING

The County shall solicit bids in accordance with the requirements under this Section of the policy based on the type and cost of the contract.

9.1 Purchase or Service Contracts

Except for Architectural, Engineering or Surveying services which are covered in the Mini-Brooks Act and for which a qualification-based selection process is required:

9.1.1 Purchases of Goods and/or Services up to \$10,000

Goods and/or services in this price range shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:

1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered fair and reasonable. Reasonableness may be determined by comparing the price to past purchases or other published prices and/or requesting prices from more than one vendor.
2. To the extent practicable, purchases must be distributed among qualified suppliers.

9.1.2 Purchases of Goods Only between \$10,000 and \$90,000

This process only applies to the procurement of goods, not services, in this price range. Goods in this price range shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. 200.320(b)) as follows:

1. Obtain price or rate quotes from an “adequate number” of qualified sources. A federal grantor agency may issue guidance interpreting “adequate number,” so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Cost or price analysis is not required prior to soliciting bids.

4. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis.

9.1.3 Purchases of Goods Only \$90,000 or more

This process only applies to the procurement of goods, not services, in this price range. Goods in this price range shall be procured using a combination of the most restrictive requirements of the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (N.C.G.S. § 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids.
2. Complete specifications or purchase description must be made available to all bidders.
3. The bid must be formally advertised in a newspaper of general circulation for at least seven (7) full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the Board of Commissioners. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the Board of Commissioners the right to reject any or all bids only for “sound documented reasons.”
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
5. Bids must be open at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of two (2) bids must be received in order to open all bids.
6. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis. Board of Commissioners approval is required unless the Board has delegated award authority to an individual official or employee. Any and all bids may be rejected only for “sound documented reasons.”

9.1.4 Purchases of Services Only between \$10,000 and \$250,000

This process only applies to the procurement of services, not goods, in this price range. Services in this price range shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. 200.320(b)) as follows:

1. Obtain price or rate quotes from an “adequate number” of qualified sources. A federal grantor agency may issue guidance interpreting “adequate number,” so the requesting department should review the terms

and conditions of the grant award documents to confirm whether specific guidance has been issued.

2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Cost or price analysis is not required prior to soliciting bids.
4. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).

9.1.5 Purchases of Services Only \$250,000 or more

This process only applies to the procurement of services, not goods, in this price range. Services in this price range shall be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(d)) when the “sealed bid” procedure is not appropriate for the particular type of service being sought. The procedures are as follows:

1. A Request for Proposal (“RFP”) must be publicly advertised. Formal advertisement in a newspaper is not required as long as the method of advertisement will solicit proposals from an “adequate number” of qualified firms. A federal grantor agency may issue guidance interpreting “adequate number,” so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
4. Consider all responses to the publicized RFP to the maximum extent practical.
5. There must be a written method for conducting technical evaluations of proposals and selecting the winning firm.
6. Award the contract to the responsible firm with the most advantageous proposal taking into consideration price and other factors identified in the RFP.
7. Award the contract on a fixed-price or cost-reimbursement basis.

9.1.6 Delegation of Approval Authority to County Manager (up to \$90,000)

The Board of Commissioners delegates approval authority to the County Manager for the purchase of goods or services in an amount up to \$90,000 *provided that* there is a budget appropriation available and the item(s) were included in the annual budget presentation that supports the budget ordinance.

9.2 Architectural, Engineering or Surveying Contracts

Procurement of all architectural, engineering or surveying services shall be in accordance state Mini-Brooks Act/Qualification Based Selection requirements pursuant to N.C.G.S. § 143-64.31. All such services shall be procured through the Purchasing Agent and must be approved by the Board of Commissioners in accordance with the terms of this policy and applicable general statutes. Initial selection is based on qualifications rather than price. The Board of Commissioners may exempt a contract of this type estimated to cost less than \$50,000 from these requirements.

9.2.1 Architectural, Engineering or Surveying Services up to \$250,000

All architectural, engineering or surveying services in this price range shall be procured using the state “Mini-Brooks Act” requirements as follows:

1. A Request for Qualifications (“RFQ”) must be issued to solicit qualifications from qualified firms. A formal advertisement in a newspaper is not required. The price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Respondent qualifications should be evaluated based on the evaluation criteria developed by the requesting department or Purchasing Agent.
4. Respondents should be ranked based solely on qualifications, not price. Preference may be given to in-state, but not local, firms.
5. Fair and reasonable compensation will be negotiated with the best qualified firm. If negotiations are not successful, the County will commence negotiations with the second-best qualified firm.
6. The contract should be awarded to the best qualified firm with whom fair and reasonable compensation has been successfully negotiated.

9.2.2 Architectural, Engineering or Surveying Services \$250,000 or more

All architectural, engineering or surveying services in this price range shall be procured using the Uniform Guidance “competitive proposal” procedure(2 C.F.R. § 200.320(d)(5)) as follows:

1. An RFQ must be publicly advertised to solicit qualifications from an “adequate number of qualified sources.” A federal grantor agency may issue guidance interpreting “adequate number,” so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued. A formal advertisement in a newspaper is not required. The price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. The RFQ should identify the evaluation criteria and relative importance of each criteria (the criteria weight).
4. The County must consider all responses to the publicized RFQ to the maximum extent practical.
5. There must be a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
6. Respondent qualifications should be evaluated to rank respondents and for selection of the most qualified firm. Preference may be given to in-state, but not local, firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
7. Price cannot be a factor in the initial selection of the most qualified firm.
8. Once the most qualified firm is selected, fair and reasonable compensation will be negotiated. If negotiations are not successful, the County will commence negotiations with the second-best qualified firm.
9. The contract should be awarded to the best qualified firm with whom fair and reasonable compensation has been successfully negotiated.

9.3 Construction and Repair Contracts

9.3.1 Construction and Repair up to \$10,000

Construction and repair contracts in this price range shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:

1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered fair and reasonable. Reasonableness may be determined by comparing the price to past purchases or other published prices and/or requesting prices from more than one vendor.
2. To the extent practicable, purchases must be distributed among qualified suppliers.

9.3.2 Construction and Repair between \$10,000 and \$250,000

Construction and repair contracts in this price range shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. 200.320(b)) as follows:

1. Obtain price or rate quotes from an “adequate number” of qualified sources. A federal grantor agency may issue guidance interpreting “adequate number,” so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
4. Award the contract to the lowest responsive, responsible bidder on a fixed-price or not-to-exceed basis.

9.3.3 Construction and Repair between \$250,000 and \$500,000

Construction and repair contracts in this price range shall be procured using the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) as follows:

1. Cost or price analysis is required prior to soliciting bids (the cost estimate may be provided by the project designer).
2. Complete specifications must be made available to all bidders.

3. The bid solicitation must be publicly advertised for a period of time sufficient to give bidders notice of opportunity to submit bids. A formal advertisement in a newspaper is not required as long as other means of advertising will provide sufficient notice of the opportunity to bid. The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
5. Bids must be open at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of two (2) bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders. The winning bidder must also provide performance and payment bonds of 100% of the contract price.
7. The contract may only be awarded to the lowest responsive, responsible bidder on a firm fixed-price basis. Any and all bids may be rejected only for “sound documented reasons.” *If the contract involves construction or repair of a building \$300,000 or more, please refer to 9.3.5.*

9.3.4 Construction and Repair \$500,000 or more

Construction and repair contracts in this price range shall be procured using a combination of the most restrictive requirements of the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (N.C.G.S. § 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids (the cost estimate should be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. The bid must be formally advertised in a newspaper of general circulation for at least seven (7) full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the Board of Commissioners. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the Board of Commissioners the right to reject any or all bids only for “sound documented reasons.”
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.

5. Bids must be open at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of three (3) bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders (a bid that does not include a bid bond cannot be counted toward the three-bid minimum requirement). The winning bidder must also provide performance and payment bonds of 100% of the contract price.
7. The contract may only be awarded to the lowest responsive, responsible bidder on a firm fixed-price basis. Board of Commissioners approval is required and cannot be delegated. The Board of Commissioners may reject and all bids only for “sound documented reasons.” *If the contract involves construction or repair of a building \$300,000 or more, please refer to 9.3.5.*

9.3.5 Construction and Repair involving a building \$300,000 or more

Construction and repair involving a building \$300,000 or more must also comply with the following additional requirements under state law:

1. Formal Historically Underutilized Business (“HUB”) participation required under N.C.G.S. § 143-128.2, including local government outreach efforts and bidder good faith efforts, shall apply.
2. Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under N.C.G.S. § 143-128(a).
3. The project shall be bid using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under N.C.G.S. § 143-129(a1).

9.3.6 Delegation of Approval Authority to County Manager for Certain Construction or Repair Contracts

The Board of Commissioners delegates approval authority to the County Manager for construction or repair projects in an amount up to \$500,000 *provided that* there is a budget appropriation available and the project(s) were included in the annual budget presentation that supports the budget ordinance.

9.4 Exceptions

Non-competitive contracts are allowed *only* under the following conditions and with the written approval of the federal agency or state pass-through agency that awarded the federal funds:

9.4.1 Sole Source

A contract may be awarded without competitive bidding when the item is available from only one source. The requesting department and/or Purchasing Agent shall document the justification for and lack of available competition for the item. Departments that seek to procure goods ~~and/or services~~ from a sole source using federal funds must: (1) ensure the correct application of the sole source exception pursuant to 2 C.F.R. § 200.320(f); (2) complete a Sole Source Justification Form; (3) complete a resolution for approval by the Board of Commissioners authorizing the purchase under the applicable sole source exception (a template form is available in the iContracts library); and (4) maintain all required documentation, including without limitation, the justification for and lack of available competition for the item. The required documentation must be attached to the Sole Source Justification Form, and the documentation must be reviewed and approved by the Purchasing Agent and the County Attorney. By statute, sole source purchases require approval by the Board of Commissioners prior to the award of the contract. Any sole source purchase approval intended to apply to reoccurring purchases must be reviewed and approved by the Board of Commissioners at least every three (3) years to ensure that a sole source exception still applies.

9.4.2 Public Exigency

A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding.

9.4.3 Inadequate Competition

A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this policy does not result in a qualified winning bidder.

9.4.4 Federal Contract

A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.

9.4.5 Awarding Agency Approval

A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law.

9.4.6 Piggybacking

The piggybacking exception that may apply to local and state funded contracts is not permitted for federally-funded contracts.

10. DISPOSITION OF SURPLUS PROPERTY

When apparatus, supplies, materials, and/or equipment purchased for use by a County department are no longer suitable for use by that department, but may be useful to another department, the Department Head shall apprise all County departments of such property in order to maximize its benefit to the County. If, after a reasonable period of time, the Department Head determines that such property is not suitable for use by another County department, the Purchasing Agent may dispose of such surplus property as outlined below. All disposition methods set forth below, as well as any disposition of property for circumstances not specifically described below, shall be governed by the procedures set forth in Article 12 of Section 160A of the North Carolina General Statutes (160A-265 through 160A-280). (Although these statutes reference cities, note that all of these procedures are made applicable to counties by 153A-176).

10.1 Real or Personal Property Valued Greater Than or Equal To \$30,000

Upon authorization by the Board of Commissioners, such property may be disposed of by public auction, sealed bid, negotiated offer and upset bid, or exchange.

10.2 Real or Personal Property Valued Greater Than or Equal To \$5,000 but Less Than \$30,000

Upon authorization by the Board of Commissioners, such property may be disposed of by any of the methods described in Section 10.1 or by private negotiation.

10.3 Personal Property Valued at Less Than \$5,000

Without authorization by the Board of Commissioners, such property may be disposed of by any of the methods described in Section 10.2 or as set out below. Such property may be declared surplus and disposed of by the Purchasing Agent for fair market value at public or private sale. The Purchasing Agent shall have authority to convey title to any property disposed of pursuant to this Section. The Purchasing Agent's estimate of value for any one item or group of items disposed of pursuant to this Section shall be verified by the Finance Officer, or his/her designee, prior to sale.

The Purchasing Agent shall keep a record of all property sold under this Section, and the record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.

Regarding the disposition of personal property, the Purchasing Agent is authorized to use existing private or public electronic auction services and to publish notice of all auctions solely by electronic means. The Purchasing Agent is authorized to

discard any personal property that: (1) is determined to have no value; (2) remains unsold or unclaimed after the County has exhausted efforts to sell the property using any applicable procedure under this policy; or (3) poses a potential threat to public health or safety.

10.4 Special Consideration for Real Property Surplus; Minimum Terms

Notwithstanding the foregoing, any bids received for real property (of any value) which do not meet the criteria set forth below will be refused and will not be forwarded to the Board of Commissioners for consideration.

1. For properties that have been held by the County for a period of ten (10) years or longer, bids that meet or exceed the lesser of \$750 or 25% of current tax value.
2. For properties that have been held by the County for a period of less than ten (10) years, bids that meet or exceed the lesser of the County's basis in the property or 50% of current tax value.

10.5 Purchase of Surplus Property by Employees

County officials, employees and their immediate family shall be permitted to purchase County surplus property provided that no conflict of interest exists and provided further that the surplus item is otherwise available to the public, and the County employee does not gain a financial benefit based on non-public information the employee possesses because of his or her job.

10.6 Donations of Personal Property to Other Governmental Units

Pursuant to N.C.G.S. § 160A-280, personal property that the Board of Commissioners deems to be surplus, obsolete, or unused, including supplies, materials, and equipment, may be donated to another governmental unit within the United States, a sister county, or a nonprofit organization incorporated by the United States, one of the United States or the District of Columbia. For purposes of this section, a "sister county" is defined as one in a nation other than the United States that has entered into a formal, written agreement or memorandum of understanding with the County for the purposes of establishing a long-term relationship to promote communication, understanding, and goodwill and to develop mutually beneficial activities, programs, and ideas. Any agreement or memorandum of understanding must be signed by the Chairman of the Board of Commissioners for both the donor and recipient. Additionally, the Board of Commissioners must adopt a resolution approving the donation, and the resolution must be posted publicly at least five (5) days prior to its adoption. No donation of any surplus, obsolete, or unused personal property may occur prior to the adoption of such resolution.

Notwithstanding the foregoing, federal guidelines for the disposition of surplus property acquired, in whole or in part, with federal grant funds may differ from County procedure. To ensure compliance with federal guidelines, refer to the federal award document for guidance.

10.7 Sale or Donations of Property to Entities Carrying Out a Public Purpose

Pursuant to N.C.G.S. § 160A-279, property that the Board of Commissioners deems to be surplus, obsolete, or unused, including supplies, materials, and equipment, may be donated to any public or non-profit private entity which carries out a public purpose provided that said property was not acquired by condemnation. The Board of Commissioners must adopt a resolution identifying the property and authorizing the action. With the exception of automobiles, the Board shall attach to any conveyance the conditions which assure the property will be put to a public use. A notice summarizing the resolution shall be published once after its adoption, and action cannot take place until ten (10) days after the publication.

11. VIOLATION OF POLICY

Any employee who knowingly violates the provisions of this policy shall be subject to disciplinary action in accordance with the Brunswick County Personnel Policy and may be held personally responsible for obligations incurred as set forth in N.C.G.S. § 159-28.

Adopted, as amended, this ~~16th~~21st day of ~~December~~June, ~~2019~~2021.

BRUNSWICK COUNTY BOARD OF COMMISSIONERS

**APPENDIX A
COMPETITIVE BIDDING REFERENCE CHART**

	Budgetary Appropriation Required	Competition Approval Level	Type of Competition	Finance Officer Pre-Audit	Purchasing Agent Approval of Bid Process	County Issued PO \$5,000 or Greater	Documentation of Bids or Informal Quotes
Purchases or lease of apparatus, supplies, materials or equipment Up to \$10,000 – Federal ("Micro-Purchase" Procedure)	Yes	None	None	At Payment	No	Yes	None
Purchases or lease of apparatus, supplies, materials or equipment Up to \$30,000 – Non Federal	Yes	Department Head/ Purchasing Agent	3 Price Comparisons	At Payment	No	Yes	Finance/ Department >\$5,000
Purchases or lease of apparatus, supplies, materials or equipment \$30,000 to \$90,000 – Non-Federal \$10,000 to \$90,000 – Federal ("Small Purchase" Procedure)	Yes	Purchasing Agent	3 Informal Quotes/Bids <u>or</u> an "adequate number" as may be determined by the federal grantor agency	Yes	Yes	Yes	Finance
Purchases or lease of apparatus, supplies, materials or equipment \$90,000 or more – All	Yes	County Commissioners	Formal Bids	Yes	Yes	Yes	Finance
Professional Service Contracts Up to \$10,000 – Federal ("Micro-Purchase" Procedure)	Yes	None	None	At Payment	No	Yes	None
Professional Service Contracts \$10,000 to \$250,000 – Federal ("Small Purchase" Procedure)	Yes	Purchasing Agent	3 Informal Quotes/Bids <u>or</u> an "adequate number" as may be determined by the federal grantor agency	Yes	Yes	Yes	Finance
Professional Service Contracts \$250,000 or more – Federal	Yes	County Commissioners	Formal Bids	Yes	Yes	Yes	Finance

**APPENDIX A
COMPETITIVE BIDDING REFERENCE CHART**

	Budgetary Appropriation Required	Competition Approval Level	Type of Competition	Finance Officer Pre-Audit	Purchasing Agent Approval of Bid Process	County Issued PO \$5,000 or Greater	Documentation of Bids or Informal Quotes
Construction or Repair Up to \$10,000 – Federal ("Micro-Purchase" Procedure)	Yes	None	None	At Payment	No	Yes	None
Construction or Repair Up to \$30,000 – Non-Federal	Yes	Department Head/ Purchasing Agent	3 Price Comparisons	At Payment	No	Yes	Finance/ Department <\$5,000
Construction or Repair \$30,000 to \$500,000 – Non-Federal \$10,000 to \$250,000 – Federal ("Small Purchase" Procedure)	Yes	County Commissioners ¹	3 Informal Quotes/Bids	Yes	Yes	Yes	Finance
Construction or Repair \$500,000 or more – Non-Federal \$250,000 or more – Federal	Yes	County Commissioners ¹	Formal Bids	Yes	Yes	Yes	Finance
Architectural/Engineering/Survey Services (Mini-Brooks Act/Qualification Based Selection) \$50,000 or more	Yes	County Commissioners	Qualification Based Selection	Yes	Yes	Yes	Finance
Architectural/Engineering/Survey Services (Mini-Brooks Act/Qualification Based Selection) < \$50,000 (exemption may be requested)	Yes	County Commissioners	Qualification Based Selection	Yes	Yes	Yes	Finance

¹The Board of Commissioners delegates approval authority to the County Manager for construction or repair projects in an amount up to \$500,000 *provided that* there is a budget appropriation available and the project(s) were included in the annual budget presentation that supports the budget ordinance.

APPENDIX B
CONTRACT APPROVAL REQUIREMENTS

Contract Type	Contract Amount	Approval Required	Signature Required¹
<i>Board of Commissioners Approval</i>			
Purchase or lease of goods, apparatus, supplies, materials and/or equipment <i>not</i> requiring formal bids by law	\$30,000 up to \$90,000	County Attorney County Manager Board of Commissioners ²	Board of Commissioners ²
Purchase or lease of goods, apparatus, supplies, materials and/or equipment requiring formal bids by law	\$90,000 or more	County Attorney County Manager Board of Commissioners	Board of Commissioners
Non-Federally funded professional services	\$30,000 up to \$50,000 ³	County Attorney County Manager Board of Commissioners	Board of Commissioners ²
Non-Federally funded professional services	\$50,000 or more ⁴	County Attorney County Manager Board of Commissioners	Board of Commissioners ²
Federally funded professional services <i>not</i> requiring formal bids by law	\$30,000 up to \$250,000	County Attorney County Manager Board of Commissioners	Board of Commissioners ²
Federally funded professional services requiring formal bids by law	\$250,000 or more	County Attorney County Manager Board of Commissioners	Board of Commissioners
Architectural/Engineering/Surveying services (Mini-Brooks Act/Qualification-Based Selection)	All	County Attorney County Manager Board of Commissioners	Board of Commissioners
Non-Federally funded construction, renovation or repair work <i>not</i> requiring formal bids by law	\$30,000 up to \$500,000	County Attorney County Manager Board of Commissioners ²	Board of Commissioners ²
Non-Federally funded construction, renovation or repair work requiring formal bids by law	\$500,000 or more	County Attorney County Manager Board of Commissioners	Board of Commissioners
Federally funded construction, renovation or repair work <i>not</i> requiring formal bids by law	\$30,000 up to \$250,000	County Attorney County Manager Board of Commissioners ²	Board of Commissioners ²
Federally funded construction, renovation or repair work requiring formal bids by law	\$250,000 or more	County Attorney County Manager Board of Commissioners ²	Board of Commissioners ²
Real property leases	All	County Attorney County Manager Board of Commissioners	Board of Commissioners
Real estate transactions involving the purchase or sale of real property	All	County Attorney County Manager Board of Commissioners	Board of Commissioners
Easements or other limited property rights	\$30,000 or more	County Attorney County Manager Board of Commissioners	Board of Commissioners
Grants	All	County Attorney County Manager Board of Commissioners	Board of Commissioners
Interlocal	All	County Attorney County Manager Board of Commissioners	Board of Commissioners
Sole Source	Any amount subject to competitive bidding	County Attorney County Manager Board of Commissioners	Board of Commissioners

¹The County Manager may periodically delegate his/her signing authority.

²The Board of Commissioners delegates approval and signing authority to the County Manager for the purchase or lease of goods, apparatus, supplies, materials and/or equipment or services in an amount up to \$90,000 and/or for construction or repair projects in an amount up to \$500,000 *provided that* there is a budget appropriation available and the item(s) and/or project(s) were included in the annual budget presentation that supports the budget ordinance.

³Service contracts for amounts that are within the available budget appropriation and capital project ordinance for an amount between \$30,000 and \$50,000 may be placed on the consent agenda of a regularly scheduled Board of Commissioners meeting.

⁴Service contracts for amounts greater than \$50,000 shall be placed on an agenda for consideration of the Board of Commissioners.

APPENDIX B CONTRACT APPROVAL REQUIREMENTS			
Contract Type	Contract Amount	Approval Required	Signature Required¹
<i>County Manager Approval</i>			
Purchase or lease of goods, apparatus, supplies, materials and/or equipment <i>not</i> requiring formal bids by law	Up to \$30,000	County Manager	County Manager
Non-Federally funded professional services	Up to \$30,000	County Attorney (>\$10,000) County Manager	County Manager
Federally funded professional services <i>not</i> requiring formal bids by law	Up to \$30,000	County Attorney (>\$10,000) County Manager	County Manager
Non-Federally funded construction, renovation or repair work <i>not</i> requiring formal bids by law	Up to \$30,000	County Attorney (>\$10,000) County Manager	County Manager
Federally funded construction, renovation or repair work <i>not</i> requiring formal bids by law	Up to \$30,000	County Attorney (>\$10,000) County Manager	County Manager
Easements or other limited property rights	Up to \$30,000	County Attorney County Manager	County Manager
Roadway Encroachment Agreements	All	County Attorney County Manager	County Manager

APPENDIX C RESOURCES

- North Carolina General Statutes governing Public Contracts can be found here:
https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_143/Article_8.html
- Code of Federal Regulations (CFR) can be found here:
<https://www.ecfr.gov/cgi-bin/ECFR?page=browse>
- Uniform Guidance can be found here:
<https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=468eb6b7cfa5f58ae694694ec6ab1098&mc=true&n=pt2.1.200&r=PART&ty=HTML>
- Uniform Guidance for Administrative Requirements can be found here:
Pre-award: <https://www.ecfr.gov/cgi-bin/text-idx?SID=4b780e94e8d664276dd8303a8c4672b6&mc=true&node=sp2.1.200.c&rgn=div6>
Post-award: <https://www.ecfr.gov/cgi-bin/text-idx?SID=4b780e94e8d664276dd8303a8c4672b6&mc=true&node=sp2.1.200.d&rgn=div6>
- Uniform Guidance for Contract Provisions for Contracts Under Federal Awards can be found here:
<https://www.ecfr.gov/cgi-bin/text-idx?SID=e445ffeda20922c2617965197de87ba5&node=2:1.1.2.2.1.6.51.23.6&rgn=div9>
- A comparison chart of federal and state procurement requirements can be found here:
<https://www.nctreasurer.com/slg/Single%20Audit%20Documents/FederalandStateProcurementComparisonChart.pdf>
- Further information on dollar thresholds can be found here:
<https://www.sog.unc.edu/sites/www.sog.unc.edu/files/Dollar%20Thresholds%20Chart%202013.pdf>
- The State of North Carolina Interactive Purchasing System can be found here:
<https://www.ips.state.nc.us/ips/Default.aspx>
- The North Carolina E-Procurement System can be found here:
<http://eprocurement.nc.gov/>
- The North Carolina Department of Administration, Office of Historically Underutilized Businesses Bid Posting Website can be found here:
<https://ncadmin.nc.gov/businesses/historically-underutilized-businesses-hub/submit-contractor-bid-opportunity-hub>
- Exceptions to State Competitive Bidding Requirements can be found here:
<https://www.sog.unc.edu/resources/legal-summaries/exceptions-state-competitive-bidding-requirements-table>
- The Federal System for Award Management (SAM) can be found here:
<https://www.sam.gov/SAM/>
- The NC Debarred Vendor List can be found here:
<https://ncadmin.nc.gov/government-agencies/procurement/contracts/debarred-vendors>



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # V. - 9.

From:
Emergency Services - Lyle Johnston

Emergency Services - RACE-CARS Clinical Research Sub-award

Issue/Action Requested:

Request that the Board of Commissioners approve Brunswick County EMS' participation in an "out of hospital cardiac arrest cases" study with Duke University.

Background/Purpose of Request:

If approved, Brunswick County EMS will become part of a study with Duke University related to out of hospital cardiac arrest.

Brunswick County will be a control county, meaning normal operations will not change due to the study. The study will look at patient outcomes based on the current standard guidelines, versus some changes that other agencies will be making in their care of cardiac arrest. This study will be based on the information BCEMS enters in the CARES Registry, which is done on a normal basis. There will be no new cost associated with this study. The County will be eligible for up to \$250.00 per quarter year for data submissions, as well as, up to \$75.00 per subject for any BCEMS patients who qualify for the follow study in the program.

Fiscal Impact:

Reviewed By Director of Fiscal Operations

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners approve Brunswick County EMS' participation in an "out of hospital cardiac arrest cases" study with Duke University.

ATTACHMENTS:

Description

▣ RACECARS Clinical Contract

FDP Fixed Rate Clinical Research Subaward

Federal Awarding Agency:

Pass-Through Entity (PTE):

Subrecipient:

PTE PI:

Sub PI:

PTE Federal Award No:

Subaward No:

Project/
Study Title:

Subaward Budget Period:

Start:

End:

Estimated Period of Performance:

Start:

End:

Terms and Conditions

1. PTE hereby awards a fixed rate Subaward, (as determined by 2 CFR 200.331 and Chapter 8 – Administrative Requirements 8.1.2.11), to Subrecipient. The Statement of Work/protocol and budget for this Subaward are as shown in Attachment 5. In its performance of Subaward work, Subrecipient shall be an independent entity and not an employee or agent of PTE.
2. PTE shall provide funding in accordance with the Payment Schedule shown in Attachment 5. All invoices shall be submitted using Subrecipient's standard invoice, but at a minimum shall include the deliverable completed and milestone payment amount, Subaward number, and certification, as required in 2 CFR 200.415 (a). Invoices that do not reference PTE Subaward number shall be returned to Subrecipient. Invoices and questions concerning invoice receipt or payments shall be directed to the appropriate party's Contact, shown in Attachment 3A.
- 3.
4. Upon the receipt of proper invoices, the PTE agrees to process payments in accordance with this Subaward and 2 CFR 200.305. PTE reserves the right to reject an invoice.
5. Matters concerning the technical performance of this Subaward shall be directed to the appropriate party's Principal Investigator as shown in Attachments 3A and 3B. Technical reports are required as shown in Attachment 4.
6. Matters concerning the request or negotiation of any changes in the terms, conditions, or amounts cited in this Subaward, and any changes requiring prior approval, shall be directed to the PTE' Contact and the Subrecipient's
Contact, as shown in Attachments 3A and 3B. Any such change made to this Subaward requires the
written approval of each party's Authorized Official, as shown in Attachments 3A and 3B.
7. The PTE may issue non-substantive changes to the Budget Period(s) and Budget . Unilateral modification
shall be considered valid 14 days after receipt unless otherwise indicated by Subrecipient when sent to Subrecipient's
Contact, as shown in Attachment 3B.
8. Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by law.
9. Either party may terminate this Subaward with 30 days written notice. Notwithstanding, if the Awarding Agency terminates the Federal Award, PTE will terminate in accordance with the Awarding Agency requirements. PTE notice shall be directed to the PTE's Contact and the Subrecipient's notice directed to the
Contact, as
shown in Attachments 3A and 3B. PTE shall pay Subrecipient for termination costs as allowable under Uniform Guidance, 2 CFR 200, or 45 CFR Part 75 Appendix IX, as applicable.
10. By signing this Subaward including Attachments hereto which are hereby incorporated by reference, Subrecipient certifies that it will perform the Statement of Work in accordance with the terms and conditions of this Subaward and the applicable terms of the Federal Award, including the appropriate Research Terms and Conditions ("RTCs") of the Federal Awarding Agency, as referenced in Attachment 2. The parties further agree that they intend this Subaward to comply with all applicable laws, regulations and requirements.

By an Authorized Official of Pass-through Entity:

By an Authorized Official of Subrecipient:

Name:

Date

Title:

Name:

Date

Title:

Attachment 1

Certifications and Assurances

Subaward Number:

Certification Regarding Lobbying (2 CFR 200.450)

By signing this Subaward, the Subrecipient Authorized Official certifies, to the best of his/her knowledge and belief, that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement in accordance with 2 CFR 200.450.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or intending 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 Subrecipient shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," to the PTE.

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 31 U.S.C. 1352. 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.

Debarment, Suspension, and Other Responsibility Matters (2 CFR 200.214 and 2 CFR 180)

By signing this Subaward, the Subrecipient Authorized Official certifies, to the best of his/her knowledge and belief that neither the Subrecipient nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, in accordance with 2 CFR 200.213 and 2 CFR 180.

Audit and Access to Records

Subrecipient certifies that it will provide PTE with notice of any adverse findings which impact this Subaward. Subrecipient certifies compliance with applicable provisions of 2 CFR 200.501-200.521. If Subrecipient is not required to have a Single Audit as defined by 200.501, Awarding Agency requirements, or the Single Audit Act, then Subrecipient will provide notice of the completion of any required audits and will provide access to such audits upon request. Subrecipient will provide access to records as required by parts 2 CFR 200.337 and 200.338 as applicable.

Program for Enhancement of Contractor Employee Protections (41 U.S.C 4712)

Subrecipient is hereby notified that they are required to: inform their employees working on any federal award that they are subject to the whistleblower rights and remedies of the program; inform their employees in writing of employee whistleblower protections under 41 U.S.C §4712 in the predominant native language of the workforce; and include such requirements in any agreement made with a subcontractor or subgrantee.

The Subrecipient shall require that the language of the certifications above in this Attachment 1 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.

Use of Name

Neither party shall use the other party's name, trademarks, or other logos in any publicity, advertising, or news release without the prior written approval of an authorized representative of that party. The parties agree that each party may use factual information regarding the existence and purpose of the relationship that is the subject of this Subaward for legitimate business purposes, to satisfy any reporting and funding obligations, or as required by applicable law or regulation without written permission from the other party. In any such statement, the relationship of the parties shall be accurately and appropriately described.

Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment

Pursuant to 2 CFR 200.216, Subrecipient will not obligate or expend funds received under this Subaward to: (1) procure or obtain; (2) extend or renew a contract to procure or obtain; or (3) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services (as described in Public Law 115-232, section 889) as a substantial or essential component of any system, or as a critical technology as part of any system.

Attachment 2A

Federal Award Terms and Conditions

Subaward Number

Required Data Elements

The data elements required by Uniform Guidance are incorporated

Awarding Agency Institute (If Applicable)

Federal Award Issue Date

FAIN

Assistance Listing No.

This Subaward Is:

Assistance Listing Program Title (ALPT)

Research & Development

Subject to FFATA

Key Personnel Per NOA

General Terms and Conditions

By signing this Subaward, Subrecipient agrees to the following:

1. To abide by the conditions on activities and restrictions on expenditure of federal funds in appropriations acts that are applicable to this Subaward to the extent those restrictions are pertinent. This includes any recent legislation noted on the Federal Awarding Agency's website:
2. 2 CFR 200 and 45 CFR Part 75.
3. The Federal Awarding Agency's grants policy guidance, including addenda in effect as of the beginning date of the period of performance or as amended found at:
4. Research Terms and Conditions, including any Federal Awarding Agency's Specific Requirements found at:
except for the following :
 - a. No-cost extensions require the written approval of the PTE. Any requests for a no-cost extension shall be directed to the Contact shown in Attachment 3A, not less than 30 days prior to the desired effective date of the requested change.
 - b. Any payment mechanisms and financial reporting requirements described in the applicable Federal Awarding Agency Terms and Conditions and Agency-Specific Requirements are replaced with Terms and Conditions (1) through (4) of this Subaward; and
 - c. Any prior approvals are to be sought from the PTE and not the Federal Awarding Agency.
 - d. Title to equipment as defined in 2 CFR 200.1 that is purchased or fabricated with research funds or Subrecipient cost sharing funds, as direct costs of the project or program, shall vest in the Subrecipient subject to the conditions specified in 2 CFR 200.313.
 - e. Prior approval must be sought for a change in Subrecipient PI or change in Key Personnel (defined as listed on the NOA).
5. Treatment of program income:

Special Terms and Conditions:

Data Sharing and Access:

Subrecipient agrees to comply with the Federal Awarding Agency's data sharing and/or access requirements as reflected in the NOA or the Federal Awarding Agency's standard terms and conditions as referenced in General Terms and Conditions 1-4 above.

Data Rights:

Subrecipient grants to PTE the right to use data created in the performance of this Subaward solely for the purpose of and only to the extent required to meet PTE's obligations to the Federal Government under its PTE Federal Award.

Copyrights:

to PTE an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, and perform publicly any copyrights or copyrighted material (including any computer software and its documentation and/or databases) first developed and delivered under this Subaward solely for the purpose of and only to the extent required to meet PTE's obligations to the Federal Government under its PTE Federal Award.

Subrecipient grants to PTE the right to use any written progress reports and deliverables created under this Subaward solely for the purpose of and only to the extent required to meet PTE's obligations to the Federal Government under its Federal Award.

Promoting Objectivity in Research (COI):

Subrecipient must designate herein which entity's Financial Conflicts of Interest policy (COI) will apply:

If applying its own COI policy, by execution of this Subaward, Subrecipient certifies that its policy complies with the requirements of the relevant Federal Awarding Agency as identified herein:

Subrecipient shall report any financial conflict of interest to PTE's Administrative Representative or COI contact, as designated on Attachment 3A. Any financial conflicts of interest identified shall, when applicable, subsequently be reported to Federal Awarding Agency. Such report shall be made before expenditure of funds authorized in this Subaward and within 45 days of any subsequently identified COI.

Certificate of Confidentiality:

The Parties agree that this research funded in whole or in part by the National Institutes of Health ("NIH"), is subject to NIH Policy NOT-OD-17-109 (the "Policy") and therefore is deemed under the Policy to be issued a Certificate of Confidentiality ("Certificate") should the conditions outlined within the Policy apply. Accordingly, the subrecipients who collect or receive identifiable, sensitive information are is required to adhere to the Policy and protect the privacy of individuals who are subjects of such research in accordance with the Policy and subsection 301(d) of the Public Health Service Act (the "PHS Act").

Additional Terms

Attachment 3A
Pass-Through Entity (PTE) Contacts

Subaward Number:

PTE Information

Entity Name:

Legal Address:

Website:

PTE Contacts

Central Email:

Principal Investigator Name:

Email:

Telephone Number:

Administrative Contact Name:

Email:

Telephone Number:

COI Contact email (if different to above):

Financial Contact Name:

Email:

Telephone Number:

Email invoices? Yes No Invoice email (if different):

Authorized Official Name:

Email:

Telephone Number:

PI Address:

Administrative Address:

Invoice Address:

Attachment 3B

Subrecipient Contacts

Subaward Number:

Subrecipient Information for [FFATA](#) reporting

Entity's DUNS Name:

EIN No.:

Institution Type:

DUNS:

Currently registered in SAM.gov: Yes No

Exempt from reporting executive compensation: Yes No *(if no, complete 3Bpg2)*

Parent DUNS:

This section for U.S. Entities: Zip Code [Look-up](#)

Place of Performance Address

Congressional District: Zip Code+4:

Subrecipient Contacts

Central Email:

Website:

Principal Investigator Name:

Email:

Telephone Number:

Administrative Contact Name:

Email:

Telephone Number:

Financial Contact Name:

Email:

Telephone Number:

Invoice/Payment Email:

Authorized Official Name:

Email:

Telephone Number:

Legal Address:

Administrative Address:

Payment Address:

Attachment 3B-2
Highest Compensated Officers

Subaward Number:

Subrecipient:

Institution Name:

PI Name:

Highest Compensated Officers

The names and total compensation of the five most highly compensated officers of the entity(ies) must be listed if the entity in the preceding fiscal year received 80 percent or more of its annual gross revenues in Federal awards; and \$25,000,000 or more in annual gross revenues from Federal awards; and the public does not have access to this information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. See FFATA § 2(b)(1) Internal Revenue Code of 1986.

Officer 1 Name:

Officer 1 Compensation:

Officer 2 Name:

Officer 2 Compensation:

Officer 3 Name:

Officer 3 Compensation:

Officer 4 Name:

Officer 4 Compensation:

Officer 5 Name:

Officer 5 Compensation:

Attachment 4
Reporting and Prior Approval Terms

Subaward Number:

Subrecipient agrees to submit the following reports (PTE contacts are identified in Attachment 3A):

Technical Reports:

Monthly technical/progress reports will be submitted to the PTE's _____ within _____ days of the end of the month.

Quarterly technical/progress reports will be submitted within 30 days after the end of each project quarter to the PTE's _____.

Annual technical / progress reports will be submitted within _____ days prior to the end of each budget period to the PTE's _____. Such report shall also include a detailed budget for the next Budget Period, updated other support for key personnel, certification of appropriate education in the conduct of human subject research of any new key personnel, and annual IRB or IACUC approval, if applicable.

A Final technical/progress report will be submitted to the PTE's _____ within _____ days of the end of the Project Period or after termination of this award, whichever comes first.

Technical/progress reports on the project as may be required by PTE's _____ in order for the PTE to satisfy its reporting obligations to the Federal Awarding Agency.

Prior Approvals:

Carryover is not applicable for fixed rate Subawards

Other Reports:

In accordance with 37 CFR 401.14, Subrecipient agrees to notify both the Federal Awarding Agency via iEdison and PTE's _____ within 60 days after Subrecipient's inventor discloses invention(s) in writing to Subrecipient's personnel responsible for patent matters. The Subrecipient will submit a final invention report using Federal Awarding Agency specific forms to the PTE's _____ within 60 days of the end of the Project Period to be included as part of the PTE's final invention report to the Federal Awarding Agency.

A negative report is required:

Property Inventory Report (only when required by Federal Awarding Agency), specific requirements below.

Other Special Reporting Requirements:

Subaward Number:

Attachment 5
Statement of Work & Payment Schedule

Statement of Work/Protocol

Under separate cover Below Attached, pages

If award is FFATA eligible and SOW exceeds 4000 characters, include a *Subrecipient Federal Award Project Description*

Payment Schedule Information

Below Attached, pages

Budget and Payment Schedule

Control County

As payment in full for performance of the RACE-CARS Study, PTE will pay yearly fees as set forth in Tables B1 and B2. Yearly data entry fees for each eligible Study County-Site that completes the milestone payment schedule are listed in Table B1. All fees to Study County-Site include all overhead costs. Yearly long-term follow-up fees for each eligible Study County-Site for qualified, evaluable, eligible patients shown in Table B2.

*For purposes of the below budget exhibit, all references to “County-Site” or “EMS” shall mean the named Subrecipient of this Subaward.

Payments made according to the schedule below:

TABLE B1–Study Payment Schedule			
Payment	Description	Payment After	Amount
Timely Entry of CARES Data	Data entry within 30 days of the cardiac arrest	Data entry within 30 days of the cardiac arrest	\$250 per quarter/\$1000 per year
RACE-CARS Review of 10% of 911 Dispatch Data	RACE-CARS will review 10% of records per quarter for trial purposes	Upon RACE-CARS review; and receipt of participant file	\$10 per participant file per quarter

TABLE B2 – Per Subject Payment Schedule			
Milestone	Activity	Payment After	Amount
Yearly	Yearly Long-Term Follow-up	EMS obtains contact information for each survivor; mails letter to participant, enter accurate data in format and location required; resolve any discrepancies preventing call center contact	\$75 per participant after successful PTE call center contact

All milestones are inclusive of overhead costs

Study Payments Terms:

1. Qualified Study Subject - Payment shall only be made for milestones completed in connection with subjects that meet the enrollment criteria set forth in the Protocol.
2. Premature Termination of Subject - In the event Subrecipient terminates or is terminated early from the Study, Subrecipient will be paid for milestones completed in accordance with the milestone payment schedule set forth in this Attachment 5.

3. Premature Termination of Study- Subrecipient is paid for milestones completed in accordance with the milestone payment schedule set forth in this Attachment 5.
4. Protocol Deviation - If the Study is terminated at Subrecipient because of deviation from the Protocol, payment will only be made for activities completed in accordance with the Protocol prior to the date of such deviation.
5. Payment Schedule - PTE shall make payments to the Subrecipient in accordance with the milestone payment schedule set forth above by the 30th day of each calendar month, or upon receipt of funds from Federal Awarding, at PTE's discretion.
6. All payments shall be made to Subrecipient in US dollars.

PAYEE INFORMATION

Payee Name – Entity to whom payment will be made:
(maximum 35 characters - one line)

Attention – Person or Department to whom payments will be mailed:
(maximum 35 characters – one line)

Address (maximum 35 characters – one line):

Federal Tax ID#:

Request for Taxpayer Identification Number and Certification

Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type.
See Specific Instructions on page 3.

1	Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
2	Business name/disregarded entity name, if different from above
3	Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor or single-member LLC ☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ ☐ Other (see instructions) ▶ ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. (Applies to accounts maintained outside the U.S.)
4	Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)
5	Address (number, street, and apt. or suite no.) See instructions.
6	City, state, and ZIP code
7	List account number(s) here (optional)
Requester's name and address (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number	
OR	
Employer identification number	

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ▶

Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

Attachment 6

Notice of Award (NOA) and any additional documents

The following pages include the NOA and if applicable any additional documentation referenced throughout this Subaward.

Not incorporating the NOA or any additional documentation to this Subaward.



NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

Grant Number: 1UG3HL146935-01A1
FAIN: UG3HL146935

Principal Investigator(s):
CHRISTOPHER B. GRANGER, MD

Project Title: RACE-CARS CCC 1/2

Dickman, Michael
Assoc Dir, Research Administra
2200 West Main St.
Suite 820 Erwin Square Plaza
Durham, NC 277050000

Award e-mailed to: gmail@mc.duke.edu

Period Of Performance:

Budget Period: 05/01/2020 – 04/30/2021

Project Period: 05/01/2020 – 04/30/2027

Dear Business Official:

The National Institutes of Health hereby awards a grant in the amount of \$1,184,044 (see "Award Calculation" in Section I and "Terms and Conditions" in Section III) to DUKE UNIVERSITY in support of the above referenced project. This award is pursuant to the authority of 42 USC 241 42 CFR PART 52 and is subject to the requirements of this statute and regulation and of other referenced, incorporated or attached terms and conditions.

Acceptance of this award including the "Terms and Conditions" is acknowledged by the grantee when funds are drawn down or otherwise obtained from the grant payment system.

Each publication, press release, or other document about research supported by an NIH award must include an acknowledgment of NIH award support and a disclaimer such as "Research reported in this publication was supported by the National Heart, Lung, And Blood Institute of the National Institutes of Health under Award Number UG3HL146935. The content is solely the responsibility of the authors and does not necessarily represent the official views of the National Institutes of Health." Prior to issuing a press release concerning the outcome of this research, please notify the NIH awarding IC in advance to allow for coordination.

Award recipients must promote objectivity in research by establishing standards that provide a reasonable expectation that the design, conduct and reporting of research funded under NIH awards will be free from bias resulting from an Investigator's Financial Conflict of Interest (FCOI), in accordance with the 2011 revised regulation at 42 CFR Part 50 Subpart F. The Institution shall submit all FCOI reports to the NIH through the eRA Commons FCOI Module. The regulation does not apply to Phase I Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) awards. Consult the NIH website <http://grants.nih.gov/grants/policy/coi/> for a link to the regulation and additional important information.

If you have any questions about this award, please contact the individual(s) referenced in Section IV.

Sincerely yours,

Gayle Jones
Grants Management Officer
NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

Additional information follows

SECTION I – AWARD DATA – 1UG3HL146935-01A1**Award Calculation (U.S. Dollars)**

Salaries and Wages	\$304,423
Fringe Benefits	\$72,266
Personnel Costs (Subtotal)	\$376,689
Consultant Services	\$12,000
Travel	\$32,094
Other	\$314,648

Federal Direct Costs	\$735,431
Federal F&A Costs	\$448,613
Approved Budget	\$1,184,044
Total Amount of Federal Funds Obligated (Federal Share)	\$1,184,044
TOTAL FEDERAL AWARD AMOUNT	\$1,184,044

AMOUNT OF THIS ACTION (FEDERAL SHARE) **\$1,184,044**

SUMMARY TOTALS FOR ALL YEARS		
YR	THIS AWARD	CUMULATIVE TOTALS
1	\$1,184,044	\$1,184,044
2	\$1,720,506	\$1,720,506
3	\$1,688,573	\$1,688,573
4	\$1,688,573	\$1,688,573
5	\$1,672,264	\$1,672,264
6	\$1,185,789	\$1,185,789
7	\$487,614	\$487,614

Recommended future year total cost support, subject to the availability of funds and satisfactory progress of the project

Fiscal Information:

CFDA Name: Cardiovascular Diseases Research
CFDA Number: 93.837
EIN: 1560532129A1
Document Number: UHL146935A
PMS Account Type: P (Subaccount)
Fiscal Year: 2020

IC	CAN	2020	2021	2022	2023	2024	2025	2026
H	847514	\$1,184,0	\$1,720,5	\$1,688,5	\$1,688,5	\$1,672,2	\$1,185,7	\$487,61
L	6	44	06	73	73	64	89	4

Recommended future year total cost support, subject to the availability of funds and satisfactory progress of the project

NIH Administrative Data:

PCC: HHHSN / **OC:** 41026 / **Released:** JONESG 06/19/2020
Award Processed: 06/29/2020 12:08:30 AM

SECTION II – PAYMENT/HOTLINE INFORMATION – 1UG3HL146935-01A1

For payment and HHS Office of Inspector General Hotline information, see the NIH Home Page at <http://grants.nih.gov/grants/policy/awardconditions.htm>

SECTION III – TERMS AND CONDITIONS – 1UG3HL146935-01A1

This award is based on the application submitted to, and as approved by, NIH on the above-titled project and is subject to the terms and conditions incorporated either directly or by reference in the following:

- a. The grant program legislation and program regulation cited in this Notice of Award.

- b. Conditions on activities and expenditure of funds in other statutory requirements, such as those included in appropriations acts.
- c. 45 CFR Part 75.
- d. National Policy Requirements and all other requirements described in the NIH Grants Policy Statement, including addenda in effect as of the beginning date of the budget period.
- e. Federal Award Performance Goals: As required by the periodic report in the RPPR or in the final progress report when applicable.
- f. This award notice, INCLUDING THE TERMS AND CONDITIONS CITED BELOW.

(See NIH Home Page at <http://grants.nih.gov/grants/policy/awardconditions.htm> for certain references cited above.)

Research and Development (R&D): All awards issued by the National Institutes of Health (NIH) meet the definition of “Research and Development” at 45 CFR Part§ 75.2. As such, auditees should identify NIH awards as part of the R&D cluster on the Schedule of Expenditures of Federal Awards (SEFA). The auditor should test NIH awards for compliance as instructed in Part V, Clusters of Programs. NIH recognizes that some awards may have another classification for purposes of indirect costs. The auditor is not required to report the disconnect (i.e., the award is classified as R&D for Federal Audit Requirement purposes but non-research for indirect cost rate purposes), unless the auditee is charging indirect costs at a rate other than the rate(s) specified in the award document(s).

This institution is a signatory to the Federal Demonstration Partnership (FDP) Phase VI Agreement which requires active institutional participation in new or ongoing FDP demonstrations and pilots.

Carry over of an unobligated balance into the next budget period requires Grants Management Officer prior approval.

This award is subject to the requirements of 2 CFR Part 25 for institutions to receive a Dun & Bradstreet Universal Numbering System (DUNS) number and maintain an active registration in the System for Award Management (SAM). Should a consortium/subaward be issued under this award, a DUNS requirement must be included. See <http://grants.nih.gov/grants/policy/awardconditions.htm> for the full NIH award term implementing this requirement and other additional information.

This award has been assigned the Federal Award Identification Number (FAIN) UG3HL146935. Recipients must document the assigned FAIN on each consortium/subaward issued under this award.

Based on the project period start date of this project, this award is likely subject to the Transparency Act subaward and executive compensation reporting requirement of 2 CFR Part 170. There are conditions that may exclude this award; see <http://grants.nih.gov/grants/policy/awardconditions.htm> for additional award applicability information.

In accordance with P.L. 110-161, compliance with the NIH Public Access Policy is now mandatory. For more information, see NOT-OD-08-033 and the Public Access website: <http://publicaccess.nih.gov/>.

This award provides support for one or more clinical trials. By law (Title VIII, Section 801 of [Public Law 110-85](#)), the “responsible party” must register “applicable clinical trials” on the [ClinicalTrials.gov Protocol Registration System Information Website](#). NIH encourages registration of all trials whether required under the law or not. For more information, see http://grants.nih.gov/ClinicalTrials_fdaaa/

In accordance with the regulatory requirements provided at 45 CFR 75.113 and Appendix XII to 45 CFR Part 75, recipients that have currently active Federal grants, cooperative agreements, and procurement contracts with cumulative total value greater than \$10,000,000 must report and

maintain information in the System for Award Management (SAM) about civil, criminal, and administrative proceedings in connection with the award or performance of a Federal award that reached final disposition within the most recent five-year period. The recipient must also make semiannual disclosures regarding such proceedings. Proceedings information will be made publicly available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). Full reporting requirements and procedures are found in Appendix XII to 45 CFR Part 75. This term does not apply to NIH fellowships.

Treatment of Program Income:

Additional Costs

SECTION IV – HL Special Terms and Conditions – 1UG3HL146935-01A1

Clinical Trial Indicator: Yes

This award supports one or more NIH-defined Clinical Trials. See the NIH Grants Policy Statement Section 1.2 for NIH definition of Clinical Trial.

NHLBI FUNDING GUIDELINES

This award is being issued in accordance with the NHLBI FY 2020 Operating Guidelines which can be found at: <https://www.nhlbi.nih.gov/current-operating-guidelines>

RFA NOTICE

The Terms and Conditions of this award incorporate the operating guidelines in the PAR 18-410 (Data Coordinating Center for Multi-Site Investigator-Initiated Clinical Trials (Collaborative U24 Clinical Trial Required)), which can be found at:

<https://grants.nih.gov/grants/guide/pa-files/PAR-18-410.html>

Terms and Conditions :

Milestones : The awardee is expected to adhere to these mutually agreed upon milestones; subsequent funding will be contingent on meeting these milestones and achieving satisfactory progress. Failure to adhere to these Milestones may result in enforcement actions as described by the NIH GPS, including requiring the submission of a close-out plan for early phase-out of the award if adequate progress is not achieved.

- ***Complete finalized clinical protocol and informed consent.: 1) Submission of protocol to protocol review committee/DSMB for review 2) IRB submission of documents needed for approval of DCC and CCC activities 3) Finalize informed consent process for late health status/quality of life follow up***
- ***Complete initial registration on ClinicalTrials.gov per NIH policy: Complete initial required listing of ClinicalTrials.gov, as per NIH policy***
- ***Enrollment of the first participant during the UG3 phase: For year 01, at least 25% of counties, the units of randomization, will be enrolled. The first patient participant will be enrolled 18 months after trial funding initiation.***
- ***Identification of initial 50 counties and 25% of participating counties activated: 25% of counties will be enrolled and randomized during the UG3 period***
- ***IRB approval of final protocol and consent and/or assent.: Completion of regulatory approvals (IRB and DSMB review) in conjunction with the DCC***

RESTRICTION: This award is issued with the knowledge that subjects may be involved within the period of support, but definite plans were not set forth in the application as per 45 CFR 46.118. No human subjects may be involved in any project supported by this award until all requirements for Human Subjects research as identified in the SF424 Instructions have been provided to and approved by NIH.

RESTRICTION: The present award is being made without a currently valid certification of IRB approval for this project with the following restriction: Only activities that are clearly severable and independent from activities that involve human subjects) may be conducted pending the NHLBI's acceptance of the certification of IRB approval.

No funds may be drawn down from the payment system and no obligations may be made against Federal funds for any research involving human subjects prior to the NHLBI's notification to the recipient that the identified issues have been resolved and this restriction removed.

STAFF CONTACTS

The Grants Management Specialist is responsible for the negotiation, award and administration of this project and for interpretation of Grants Administration policies and provisions. The Program Official is responsible for the scientific, programmatic and technical aspects of this project. These individuals work together in overall project administration. Prior approval requests (signed by an Authorized Organizational Representative) should be submitted in writing to the Grants Management Specialist. Requests may be made via e-mail.

Grants Management Specialist: John Diggs

Email: diggsj@nhlbi.nih.gov **Phone:** (301) 827-8028 **Fax:** (301) 451-5462

Program Official: George Sopko

Email: sopkog@nhlbi.nih.gov **Phone:** 301- 435-0504 **Fax:** 301- 480-1336

SPREADSHEET SUMMARY

GRANT NUMBER: 1UG3HL146935-01A1

INSTITUTION: DUKE UNIVERSITY

Budget	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Salaries and Wages	\$304,423	\$364,544	\$358,927	\$358,927	\$358,927	\$347,693	\$228,669
Fringe Benefits	\$72,266	\$86,575	\$85,238	\$85,238	\$85,238	\$82,564	\$54,330
Personnel Costs (Subtotal)	\$376,689	\$451,119	\$444,165	\$444,165	\$444,165	\$430,257	\$282,999
Consultant Services	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000
Travel	\$32,094	\$29,483	\$26,603	\$26,603	\$26,603	\$16,603	\$7,344
Other	\$314,648	\$576,035	\$566,035	\$566,035	\$555,905	\$277,655	\$523
TOTAL FEDERAL DC	\$735,431	\$1,068,637	\$1,048,803	\$1,048,803	\$1,038,673	\$736,515	\$302,866
TOTAL FEDERAL F&A	\$448,613	\$651,869	\$639,770	\$639,770	\$633,591	\$449,274	\$184,748
TOTAL COST	\$1,184,044	\$1,720,506	\$1,688,573	\$1,688,573	\$1,672,264	\$1,185,789	\$487,614

Facilities and Administrative Costs	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
F&A Cost Rate 1	61%	61%	61%	61%	61%	61%	61%
F&A Cost Base 1	\$735,431	\$1,068,637	\$1,048,803	\$1,048,803	\$1,038,673	\$736,515	\$302,866
F&A Costs 1	\$448,613	\$651,869	\$639,770	\$639,770	\$633,591	\$449,274	\$184,748

Attachment 7 Fixed-Rate Clinical Trial Subaward Agreement Prime Award Form of Transfer Record

This Record is to document shipment of Subject Material from Subrecipient to PTE, under the terms of a Fixed-Rate Clinical Trials Subaward Agreement entered by and between the parties effective . The Subject Material is provided as part of the Study defined in that Subaward Agreement, and all use of these Subject Material shall be subject to the provisions of that Subaward Agreement.

List and Description of Subject Material included in this shipment:

Human-derived materials, such as this Subject Material, may pose known, or unknown, health or safety risks and must be handled accordingly, and in compliance with all applicable laws and regulations, including, but not limited to current EPA, FDA, USDA and NIH guidelines.

Date Shipped:		
Shipping Authorization		
(to be completed at time of shipment)	Signature	Printed Name

Date Received:		
Receipt Acknowledgement		
(to be completed upon receipt)	Signature	Printed Name



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # V. - 10.
Finance - Fiscal Items

From:
Julie A. Miller

Issue/Action Requested:

Request that the Board of Commissioners approve Budget Amendments, Capital Project Ordinances and Fiscal Items of a routine nature on the consent agenda.

-Environmental Health Budget Amendment

Appropriate \$104,600 of local fee revenues for Environmental Health projection of actual salary and fringe needs through year end.

-Airport Grant 36244.58.12.2 Budget Amendment and CPO

Appropriate \$150,000 of additional state funding awarded from North Carolina Department of Transportation for use in airport grant 36244.58.12.2.

-FY21 JCPC Funding Plan Amendment

Request the Board of Commissioners to approve updated FY21 JCPC Funding Plan for Brunswick County. Appropriate an additional \$29,560 for Teen Court/Communities In Schools to support training for the entire CIS team across the state. Funds will also benefit Brunswick County CIS/Teen Court. Brunswick County JCPC approved discretionary funding at May 20, 2021 meeting. The Funding Plan also increases Brunswick County's cash match for the Restitution Program for replacement of hoop house heaters. Total amount is \$3,588 for capital outlay which includes a required 20% cash match. Match of \$717 will be covered by Cooperative Extension's approved FY21 budget.

-Airport Grant 36244.58.13.1 Budget Amendment and CPO

Appropriate \$3,254,231 of state grant funds from the NC Department of Transportation Division of Aviation for the award of grant funding for the West Apron Expansion Phase II project and transfer of local match of \$361,582 to the project.

-DSS Revenues GASB 84 Budget Amendment

Appropriate \$175,000 of DSS Representative Payee Revenue to corresponding expenditure line for the implementation of GASB 84 for the required elimination of agency funds for fiduciary activities.

-Sheriff's Office GASB 84 Budget Amendment

Appropriate \$275,000 of Sheriff Trust revenue and \$105,000 Sheriff Seizure restricted revenues to be used in corresponding expenditure lines for the implementation of GASB 84 for the required elimination of agency funds for fiduciary activities.

-Brunswick County Schools GASB 84 Budget Amendment

Appropriate \$250,000 of miscellaneous revenues and \$50,000 of NSF Check Penalties revenue for Brunswick County Schools expenditures for the implementation of GASB 84 for the required elimination of agency funds

for fiduciary activities.

-Family Health Personnel Salary Budget Amendment

Appropriate \$50,000 of clinic fees and \$40,000 of Medicare revenues associated with administrative fees for vaccines to salary in Family Health Personnel.

Background/Purpose of Request:

Fiscal Impact:

Budget Amendment Required, Capital Project/Grant Ordinance Required, Reviewed By Director of Fiscal Operations

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners approve Budget Amendments, Capital Project Ordinances and Fiscal Items of a routine nature on the consent agenda.

ATTACHMENTS:

Description

- ❑ 20210607 Budget Amendment Environmental Health Funding.pdf
- ❑ 20210607 Budget Amendment 36244.58.12.2 Additional Funds.pdf
- ❑ 20210607 Attach FY20-21 - Brunswick County Funding Plan w- discretionary funds UPDATED 05252021
- ❑ 20210607 - Attach 20-21 Discretionary Approved Fund Award Letter - Brunswick - CIS
- ❑ 20210607 - Budget Amendment FY21 JCPC Discretionary Funds - CIS
- ❑ 20210607 Budget Amendment 36244.58.13.1.pdf
- ❑ 20210607 CPO Airport Grants.pdf
- ❑ 20210607 Budget Amendment DSS Revenue.pdf
- ❑ 20210607 Budget Amendment Sheriff's Office Revenues.pdf
- ❑ 20210607 Budget Amendment Brunswick County Schools Revenue.pdf
- ❑ 20210607 Budget Amendment Family Health Personnel Salary.pdf

Request Info	
Type	Budget Amendment
Description	Environmental Health Funding
Justification	Board Meeting 06/07/2021-Appropriate \$104,600 of local fee revenues for Environmental Health projection of actual salary and fringe needs through year end.
Originator	Tiffany Rogers

Items						
Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
135181	335005	Environmental Health	Local Fees	104600	Increase	Credit
135181	412100	Environmental Health	Salary and Wages-Regular	84000	Increase	Debit
135181	418100	Environmental Health	FICA	3500	Increase	Debit
135181	418300	Environmental Health	Health Insurance	7000	Increase	Debit
135181	418200	Environmental Health	Retirement	10000	Increase	Debit
135181	418400	Environmental Health	Disability and Long-Term Ins	100	Increase	Debit

Total	
Grand Total:	209200

Request Info	
Type	Budget Amendment
Description	36244.58.12.2 Additional Funds
Justification	Board Meeting 06/07/2021-Appropriate \$150,000 of additional state funding awarded from North Carolina Department of Transportation for use in airport grant 36244.58.12.2
Originator	Tiffany Rogers

Items						
Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
438157	332122	Airport Grants	State Rev?36244.58.12.2	150000	Increase	Credit
438157	449844	Airport Grants	36244.58.12.2 Corporate Hanger	150000	Increase	Debit

Total	
Grand Total:	300000

Brunswick County

NC DPS - Community Programs - County Funding Plan

Available Funds: \$ \$242,486 Local Match: \$ \$144,902 Rate: 20%

DPS JCPC funds must be committed with a Program Agreement submitted in NC Allies and electronically signed by authorized officials.

#	Program Provider	DPS-JCPC Funding	LOCAL FUNDING			OTHER State/ Federal	OTHER Funds	Total	% Non DPS-JCPC Program Revenues
			County Cash Match	Local Cash Match	Local In- Kind				
1	JCPC Administration	\$7,500						\$7,500	
2	Coastal A.R.T.	\$44,990			\$8,999			\$53,989	17%
3	Brunswick Restitution	\$63,125	\$717		\$22,691			\$86,533	27%
4	Guiding Good Choices/Systematic Training Toward Effective Parenting	\$47,289			\$9,509			\$56,798	17%
5	Providence Home	\$20,441	\$35,000	\$17,616	\$10,185			\$83,242	75%
6	Brunswick Teen Court	\$88,701		\$30,000	\$10,185			\$128,886	31%
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
TOTALS:		\$272,046	\$35,717	\$47,616	\$61,569			\$416,948	35%

The above plan was derived through a planning process by the Brunswick County
Juvenile Crime Prevention Council and represents the County's Plan for use of these funds in FY 2020-2021

Amount of Unallocated Funds _____

Amount of funds reverted back to DPS _____

Discretionary Funds added \$29,560

check type ☐ initial plan ☒ update ☐ final

-----DPS Use Only-----

Reviewed by _____	Area Consultant	Date _____
Reviewed by _____	Program Assistant	Date _____
Verified by _____	Designated State Office Staff	Date _____

Napine J. Elliott 5/25/2021
 Chairperson, Juvenile Crime Prevention Council (Date)

 Chairperson, Board of County Commissioners (Date)
 or County Finance Officer



North Carolina Department of Public Safety

Adult Correction and Juvenile Justice-Juvenile Community Programs

Roy Cooper, Governor
Erik A. Hooks, Secretary

Timothy D. Moose, Chief Deputy Secretary
William L. Lassiter, Deputy Secretary
Cindy Porterfield, Director

May 13, 2021

Dear Bonnie Jordan, Program Manager:

Congratulations! The Juvenile Community Programs Section is pleased to announce that Communities In Schools of Brunswick County has been awarded discretionary funding in the amount of \$29,560 for FY 2020-2021! This award is to fund (or partially fund) the following:

Agency Request(s)	Awarded Discretionary Funds
Training for the entire CIS team across the state	\$29,560

As a reminder, discretionary awards for the 2020-2021 are treated as additional JCPC dollars and equipment or capital outlay, valued at \$500 or more with a useful life in excess of one year, must have a cash match. In order to complete the award process, please access NCALLIES, complete a Program Agreement Revision, and prompt your Area Consultant via email once the revision is completed. If you have any questions or need technical assistance to complete the revision process, please contact your consultant.

We are providing this notification of discretionary fund award to your agency to ensure that all local approvals by the JCPC and local county commission boards may be accomplished. However, there may be some modifications to this process locally, given the effects of COVID-19 and direct impacts on public meetings. Please check with your local county government officials to ensure that all local actions taken to complete this process are in accordance with locally approved/adjusted protocols.

Please note the following timeline to ensure timely disbursement of discretionary fund awards:

- **May 7, 2021-** Programs/JCPCs awarded discretionary funds **must submit a Program Agreement Revisions in NCALLIES** for Consultant review.
- **May 28, 2021** – All JCPC approval actions must be finalized. *County approval is required before the expenditure of discretionary funds. Consult with your county officials about any variations in the approval practice due to the coronavirus pandemic. Note: Administrative Code 14B NCAC 11B.0106 states that prior county approval is required for discretionary funds. It does not indicate the specific protocols of the approval. Our DPS policy sets forth local JCPC approval processes. However, the Department is allowing local discretion as to how counties approve requests. We will accept county approvals as the county determines appropriate at this time.*

MAILING ADDRESS:
4212 Mail Service Center
Raleigh, NC 27699-4212
www.ncdps.gov



An Equal Opportunity Employer

OFFICE LOCATION:
3010 Hammond Business Place
Raleigh, NC 27603
Telephone: (919) 733-3388

- **June 4, 2021- All** Program Agreement Revisions must be locally approved and **signed (not just submitted in NCALLIES)** via DocuSign.

Note: Failure to meet the June 4th signature deadline may result in termination of the award of discretionary funds.

Thank you for your continued investment in the youth and families of North Carolina through the valuable services that you offer, particularly during this time of significant challenges for our state and for the youth and families that we serve. It is our hope that this discretionary fund award will further enhance and offer the needed support for your agency to provide continuity of services for our juveniles and their families.

Kind regards,

A handwritten signature in cursive script, reading "Cindy Porterfield".

Cindy Porterfield, Director
Juvenile Community Programs

Cc: JCPC Chairperson
County Finance Officer

Request Info	
Type	Budget Amendment
Description	FY21 JCPC Discretionary Funds
Justification	Board Meeting 6/7/20210 - Request the Board of Commissioners to approve updated FY21 JCPC Funding Plan for Brunswick County. Appropriate an additional \$29,560 for Teen Court/Communities In Schools to support training for the entire CIS team across the state. Funds will also benefit Brunswick County CIS/Teen Court. Brunswick County JCPC approved discretionary funding at May 20, 2021 meeting.
Originator	CHRISTINA KENNEDY

Items						
Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
105846	332000	Teen Court - JCPC	State Revenues - Restricted	29560	Increase	Credit
105846	465500	Teen Court - JCPC	Grant Subsidy	29560	Increase	Debit

Total	
Grand Total:	59120

Request Info	
Type	Budget Amendment
Description	Airport Grant 36244.58.13.1
Justification	Board Meeting 06/07/2021-Appropriate \$3,254,231 of state grant funds from the NC Department of Transportation Division of Aviation for the award of grant funding for the West Apron Expansion Phase II project and transfer of local match of \$361,582 to the project.
Originator	Tiffany Rogers

Items						
Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
438157	332123	Airport Grants	State Rev?36244.58.13.1	3254231	Increase	Credit
438157	398110	Airport Grants	Trans Frm General Fund	361582	Increase	Credit
438157	449846	Airport Grants	36244.58.13.1 West Apron Expan	3615813	Increase	Debit
439801	398110	Interfund Trans Co Cap Reserve	Trans Frm General Fund	-361582	Decrease	Debit
439801	464299	Interfund Trans Co Cap Reserve	Undesignated Funds	-361582	Decrease	Credit

Total	
Grand Total:	6508462

COUNTY OF BRUNSWICK, NORTH CAROLINA
CAPITAL PROJECT ORDINANCE
Airport Grants Program
Amended (438157)

Be it ordained by the Board of County Commissioners of Brunswick County that pursuant to Section 13.2 of the General Statutes of North Carolina, the following ordinance is hereby adopted:

Section 1. The following amounts are hereby appropriated in the Brunswick County Airport Grants Capital Projects Fund:

Airport Grant Project Fund:

Revenues:

36237.45.13.2	3,031,885
36237.45.14.1	449,252
36237.45.15.2	899,841
36237.45.16.1	21,508
36244.58.4.1	62,000
36237.45.10.2	513,265
36237.45.10.3	409,235
36237.45.10.1	150,000
36244.58.5.1	2,853,811
36237.45.11.1	288,401
36244.58.6.1	2,814,516
36237.45.10.4	172,359
36237.45.13.1	229,592
36244.58.7.1	85,000
36237.45.15.1	201,656
46333.1.1	111,000
46333.2.1	251,281
36244.58.8.3	448,107
36244.58.10.1	1,276,182
36244.58.10.2	2,000,000
36244.58.10.3	1,168,447
36244.58.10.4	277,446
36244.58.9.1	1,105,950
36244.58.11.1	309,454
36244.58.11.2	1,492,037
36244.58.8.2	225,000
36244.58.12.1	297,810
36237.45.17.1	127,892
36237.45.18.1	390,244
36237.45.18.3	69,000
46333.3.1	192,646
36244.58.12.2	500,000
36244.58.13.1	3,254,231
Transfer from General Fund	1,139,107
Total Airport Grant Capital Project Fund Revenues	\$ 26,818,155

Expenditures:

36237.45.13.2	3,031,885
36237.45.14.1	449,252
36237.45.15.2	899,911
36237.45.16.1	21,508
36244.58.4.1	62,000
36237.45.10.2	528,873
36237.45.10.3	409,235
36237.45.10.1	150,000
36244.58.5.1	2,853,811
36237.45.11.1	288,401
36244.58.6.1	2,814,516
36237.45.10.4	172,359
36237.45.13.1	229,592
36244.58.7.1	85,000

36237.45.15.1	209,467
46333.1.1	111,000
46333.2.1	251,281
36244.58.8.3	459,932
36244.58.10.1	1,345,248
36244.58.10.2	2,000,000
36244.58.9.1	1,326,412
36244.58.10.3	1,298,277
36244.58.10.4	308,273
36244.58.11.1	309,455
36244.58.8.2	250,000
36244.58.11.2	1,657,818
36244.58.12.1	330,901
36237.45.17.1	142,103
36237.45.18.1	433,603
36237.45.18.3	69,000
46333.3.1	192,646
36244.58.12.2	500,000
36244.58.13.1	3,615,813
Miscellaneous Expense	10,583
Land	-
Total Airport Grant Capital Project Fund Expenditures	26,818,155

Section 2. It is estimated that the following revenues will be available in the Brunswick County General Fund:

Current Funds Appropriated	\$	1,139,107

Section 3. The following amounts are hereby appropriated in the Brunswick County General Fund:

Contribution to Capital Project Fund	\$	1,139,107

Section 4. This Capital Project Ordinance shall be entered into the minutes of the June 7, 2021 meeting of the Brunswick County Board of Commissioners.

Request Info	
Type	Budget Amendment
Description	DSS Revenues
Justification	Board Meeting 06/07/2021-Appropriate \$175,000 of DSS Representative Payee Revenue to corresponding expenditure line.
Originator	Tiffany Rogers

Items						
Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
145310	384003	DSS-Administration	Representative Payee Funds	175000	Increase	Credit
145310	439809	DSS-Administration	Representative Payee Funds	175000	Increase	Debit

Total	
Grand Total:	350000

Request Info	
Type	Budget Amendment
Description	Sheriff's Office Revenues
Justification	Board Meeting 06/07/2021-Appropriate \$275,000 of Sheriff Trust revenue and \$105,000 Sheriff Seizure restricted revenues to be used in corresponding expenditure lines.
Originator	Tiffany Rogers

Items						
Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
104310	384001	Sheriff's Office	Sheriff Trust	275000	Increase	Credit
104310	384002	Sheriff's Office	Sheriff Seizure - Restricted	105000	Increase	Credit
104310	439807	Sheriff's Office	Sheriff Trust	275000	Increase	Debit
104310	439808	Sheriff's Office	Sheriff Seizure - Restricted	105000	Increase	Debit

Total	
Grand Total:	760000

Request Info	
Type	Budget Amendment
Description	Brunswick County Schools Revenues
Justification	Board Meeting 06/07/2021-Appropriate \$250,000 of miscellaneous revenues and \$50,000 of NSF Check Penalties revenue for Brunswick County Schools expenditures.
Originator	Tiffany Rogers

Items						
Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
105911	383900	Brunswick County Schools	Miscellaneous Revenues	250000	Increase	Credit
105911	383948	Brunswick County Schools	NSF Check Penalties	50000	Increase	Credit
105911	449900	Brunswick County Schools	Miscellaneous Expense	300000	Increase	Debit

Total	
Grand Total:	600000

Request Info	
Type	Budget Amendment
Description	Family Health Personnel Salary
Justification	Board Meeting 06/07/2021-Appropriate \$50,000 of clinic fees and \$40,000 of medicare revenues associated with administrative fees for vaccines to salary in Family Health Personnel.
Originator	Tiffany Rogers

Items						
Department	Object	Dept Desc	Object Desc	Amount	Incr/Decr	Dr/Cr
135126	335006	Immunization	Clinic Fees	50000	Increase	Credit
135126	332070	Immunization	Medicare Revenues	40000	Increase	Credit
135100	412100	Family Health Personnel	Salary and Wages-Regular	50000	Increase	Debit
135100	412200	Family Health Personnel	Salary and Wages-Overtime	40000	Increase	Debit

Total	
Grand Total:	180000



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # V. - 11.

From:
Jan Clemmons

GIS - First Reading and Schedule Public Hearing on June 21, 2021 For Street Name Adoptions

Issue/Action Requested:

Request that the Board of Commissioners approve the first reading of the street names and set the date of the Public Hearing for June 21, 2021.

Background/Purpose of Request:

The attached street names were named by the property owners, the GIS Department, or by recorded survey.

TO	FROM	TOWNSHIP
BOURNE DR SW	NONE	SHALLOTTE
BRUNSWICK BEACHES DR SW	KOA DR SW	SHALLOTTE
BUTTONWILLOW CT SW	NONE	SHALLOTTE
CAMPANELLA CT SW	NONE	SHALLOTTE
CAYA LUNA COVE SE	NONE	LOCKWOOD FOLLY
COLBERT PLACE DR NE	NONE	TOWN CREEK
DABNEY PARK DR NE	NONE	TOWN CREEK
EDUCATION LN SE	NONE	LOCKWOOD FOLLY
FINLEY FARMS CT	NONE	TOWN CREEK
FOREST GLEN DR NE	NONE	NORTHWEST
HOFFMAN CORNERS RD NE	NONE	TOWN CREEK
KINSLEY CT NE	NONE	TOWN CREEK
OAK GROVE CT NE	NONE	NORTHWEST
PRATT CT NE	NONE	TOWN CREEK
PUTNAM DR NE	NONE	TOWN CREEK
RIGBY CT NE	NONE	TOWN CREEK
SELBY CT NE	NONE	TOWN CREEK
TABOR WAY NE	NONE	TOWN CREEK
WINDING OAKS CT NE	NONE	NORTHWEST
WINDY PINES FARM LN NW	NONE	WACCAMAW

Fiscal Impact:

Not Applicable

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners approve the first reading of the street names and set the date of the Public Hearing for June 21, 2021.

ATTACHMENTS:

Description

☐ List of streets to be adopted

TO	FROM	TOWNSHIP
BOURNE DR SW	NONE	SHALLOTTE
BRUNSWICK BEACHES DR SW	KOA DR SW	SHALLOTTE
BUTTONWILLOW CT SW	NONE	SHALLOTTE
CAMPANELLA CT SW	NONE	SHALLOTTE
CAYA LUNA COVE SE	NONE	LOCKWOOD FOLLY
COLBERT PLACE DR NE	NONE	TOWN CREEK
DABNEY PARK DR NE	NONE	TOWN CREEK
EDUCATION LN SE	NONE	LOCKWOOD FOLLY
FINLEY FARMS CT	NONE	TOWN CREEK
FOREST GLEN DR NE	NONE	NORTHWEST
HOFFMAN CORNERS RD NE	NONE	TOWN CREEK
KINSLEY CT NE	NONE	TOWN CREEK
OAK GROVE CT NE	NONE	NORTHWEST
PRATT CT NE	NONE	TOWN CREEK
PUTNAM DR NE	NONE	TOWN CREEK
RIGBY CT NE	NONE	TOWN CREEK
SELBY CT NE	NONE	TOWN CREEK
TABOR WAY NE	NONE	TOWN CREEK
WINDING OAKS CT NE	NONE	NORTHWEST
WINDY PINES FARM LN NW	NONE	WACCAMAW



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # V. - 12.

IT - Courthouse Data & AV Changes

From:

Steve Randone

Issue/Action Requested:

Request that the Board of Commissioners approve the submitted changes and associated cost for additional data drops and Courtroom audio/visual and authorize County Manager to execute contract amendment upon approval of County Attorney.

Background/Purpose of Request:

Per request from the Courthouse Stakeholder Committee and the architect, additional data cabling and outlets need to be installed in various office locations at the cost of \$5,853.97 (see attached NC Sound Proposal - RFP 27 R1 Data Adds.pdf) and audio/visual changes made in Courtrooms 3, 4, and 7 at the cost of \$11,863.54 and \$3,727.97 (see attached NC Sound Proposals - Courtroom 3 4 7 Additional Audio Outputs Per AOC.pdf and Courtroom 7 Jury Display.pdf respectively).

Fiscal Impact:

Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations
Funds available in the current project

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners approve the submitted changes and associated cost for additional data drops and Courtroom audio/visual and authorize County Manager to execute contract amendment upon approval of County Attorney.

ATTACHMENTS:

Description

- ☐ Courthouse Data Proposal
- ☐ Courtroom 3, 4, 7 Audio Output Proposal
- ☐ Courtroom 7 Jury Display Proposal



North Carolina Sound
5413 US Hwy 117N
Pikeville, NC 27863
Phone: 919-709-4040
Fax: 919-709-4044

Prepared especially for
Brunswick County Government Complex

On Friday, May 7, 2021
Prepared by Chris Jordan
cjordan@ncsound.org

Proposal: 19327
Created: 5/7/2021
Printed: 5/7/2021

Quantity	Description

Pathways

- 50 J Hook 3/4" Beam Fasteners Flange 1/8" to 1/4"
- 3 Smooth Firestop Sleeve, Penetrator 1"
- 1 Electrical Tape, .75" x 66' Roll, 7.0 mil Thick, PVC, 10 Rolls, White

Patch Panels

- 1 2RU 48-Port Flat 110-Style Patch Panel, Cat6
- 1 1RU 24-Port Flat 110-Style Panel, Cat 6

Patch Cords

- 15 Cat6 Slimline Patch Cable, Grey, 5'
- 15 Cat6 Slimline Patch Cable, Grey, 7'

Wall plate and Jacks

- 15 Quickport Single-Gang 2-Port Wallplate w/ ID Window, White
- 30 Extreme Cat 6 UTP Channel-Rated Quickport Connector, 1Pk, Blue

Cable

- 6,000 LANmark-6 Cat6 Plenum 4-Pair UTP, 1000', Blue

Labor

- 40.00 EST Labor
- 10.00 Technician Labor

Your Price:	<u>\$5,853.97</u>
Total:	<u><u>\$5,853.97</u></u>

Prices are firm until 7/6/2021 Terms: Net 30

Quoted by: Chris Jordan, cjordan@ncsound.org

Date: 5/7/2021

Furnish labor and material to add 15 dual data outlets as define in RFP 27 R1. This work will be completed after normal business hours, the owner will provide free and ready access.

Accepted by: _____

Date: _____

General Information

General installation hours for NCS are 7:00am-5:30pm Monday- Friday. We will schedule all work through the owner's designated contact. NCS Employees will maintain a clean work site at all times. NCS Employees will notify your staff upon arrival and departure. Complete system training will be provided to your staff with any necessary documentation. Free Phone support provided on specific system issues that allow simple troubleshooting and help desk type resolutions.

Warranty Information

NCS installations have a 1 Year Parts and Labor Warranty. This warranty covers the installed system against defects in material and workmanship for a period of 1 year from the date of acceptance from the owner. This warranty does not include damage related to fire, flood/water damage, lightning damage, power surges, or other acts of nature. Also not covered is deliberate or accidental physical abuse of the equipment. NCS offers various annual maintenance agreements on select systems. Inquire at sales@ncsound.org or visit us at www.ncsound.org

Service Information

NCS provides full service on all of the systems we install as well as equipment provided and installed by others. Normal service times are 7:00am-5:30pm Monday - Friday. Standard service rates will apply, including one way travel to your facility. Request for service can be made by submitting a form on our website www.ncsound.org, sending an email to service@ncsound.org, or calling our office at 919-709-4040. In an emergency please contact 919-222-5373.

Approved Proposals

Approved Proposals may be emailed to sales@ncsound.org or faxed to 919-709-4044.

Proprietary Information/Non Disclosure

This proposal, and any proposed designs, plans and specifications which have been or may have been provided by NCS that are related to the project related to this quotation (a) are proprietary to NCS, (b) may not be used or copied for any purpose than your evaluation of this quotation and any work performed by NCS following your acceptance of this quotation.



North Carolina Sound
5413 US Hwy 117N
Pikeville, NC 27863
Phone: 919-709-4040
Fax: 919-709-4044

Prepared especially for
Brunswick County Government Complex

On Tuesday, May 18, 2021
Prepared by Chris Stephenson
cstephenson@ncsound.org
(919) 709-4040 x 118

Proposal: 19359
Created: 5/12/2021
Printed: 5/18/2021

Quantity Description

Courtroom 3, 4 & 7 Additional Audio Plates

6 Lockable Security Enclosure

21 Line-Level Distribution Amplifier - 1x3

21 24V Switching Power Supply, 500 mA

6 Enclosure Power Strip

8,000 22/2 Shielded CMP Plenum PVC, 1000', Black

12 Decora Insert w/ 2 XLR F Wired 6" Pigtail

3 Quickport Decora Multimedia 2-Port Insert, Ivory

3 Rapco-Decora Plate with (6) 3.5 inputs

3 Leviton 84423-40 5gang stainless steel decora plate

3 V5748-5 5 gang wiremold box

2.00 Small consumables

1 Shipping/Freight

*****LABOR*****

40.00 EST Labor

30.00 Technician Labor

Courtroom 3, 4 & 7 Additional Audio Plates

\$11,372.31

Item Total:	\$11,172.31
Your Price:	\$11,372.31
Sales Tax	\$491.23
SubTotal:	\$11,863.54

Courtroom 3, 4 & 7 Additional Audio Plates

Total:	\$11,863.54
You saved:	(\$200.00)
For a savings of	-1.79%

Prices are firm until 7/11/2021 Terms: Net 30

Quoted by: Chris Stephenson, cstephenson@ncsound.org

Date: 5/12/2021

Courtroom 3, 4 & 7 Additional Audio Plates

This quote is for the installation of additional audio output plates in court rooms 3,4 and 7. These outputs will be an extension of the audio outputs located in the floor boxes near the clerk. A 5 gang wiremold box will be installed over the existing data outlet underneath the clerk's desk. The wiremold box will contain (8) xlr connectors for the AOC mic outputs and (2) data outlets to replace the ones being covered by the new wiremold box. (2) new plates containing (7) 3.5 mm output jacks will be installed in the face of the furniture underneath the front of the witness stand. An enclosure containing 7 line level distribution amplifiers with 3 outputs each will be mounted underneath the clerk area. The mic wires that are currently installed in the clerk floor box will be pulled out and pulled down into the new enclosure. The existing cables will be connected to the inputs on the distribution amplifiers and outputs from the amplifiers will go back to the clerk floor box, to the new audio output plate by the witness stand and to the xlr connector plates for the AOC. Testing and training will be provided once the new audio output plates are installed.

Notes:

-The 2-gang box and raceway for the witness audio output plate is not included in this proposal.

Accepted by: _____

Date: _____

General Information

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Warranty Information

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Approved Proposals

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Proprietary Information/Non Disclosure

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North Carolina Sound
5413 US Hwy 117N
Pikeville, NC 27863
Phone: 919-709-4040
Fax: 919-709-4044

Prepared especially for
Brunswick County Government Complex

On Tuesday, May 18, 2021
Prepared by Chris Stephenson
cstephenson@ncsound.org
(919) 709-4040 x 118

Proposal: 19358
Created: 5/12/2021
Printed: 5/18/2021

Quantity	Description

Courtroom 7 Jury Display

1 49" 3840 x 2160 UHD Commercial Lite LED backlit LCD TV - Black

1 Small THINSTALL™ Dual Swing Arm Wall Display Mount - 18" Extension

2 6' ULTRA FLEXIBLE HIGH SPEED HDMI CABLE

1 DTP Receiver for HDMI (230')

300 LANmark-10G FTP Cat 6A Plenum 4-Pair, F/UTP, 1000', Blue

300 LANmark-6 Cat6 Riser 4-Pair UTP, 1000', Blue

1 Quickport Single-Gang 2-Port Wallplate w/ ID Window, Ivory

1 Extreme Cat 6 UTP Channel-Rated Quickport Connector, 1Pk, Ivory

1 RJ45 Cat6a 10Gig Shielded Connector w/ Liner, Solid

2 RJ45 Boots

10 J Hook 3/4" Beam Fasteners Flange 1/8" to 1/4"

1.00 Small consumables

1 Shipping/Freight

*****LABOR*****

10.00 EST Labor

10.00 Technician Labor

2.00 Programming Labor

Courtroom 7 Jury Display

\$3,592.27

Your Price:	\$3,592.27
Sales Tax	\$135.70
SubTotal:	\$3,727.97

Courtroom 7 Jury Display

Total: \$3,727.97

Prices are firm until 7/11/2021 Terms: Net 30

Quoted by: Chris Stephenson, cstephenson@ncsound.org

Date: 5/12/2021

Courtroom 7 Jury Display

This quote is for the installation of a 49" display in courtroom 7. The display will be installed on the wall to the left of the jury in the corner above the door. A single gang plate containing a DTP jack and an AV network jack will be installed in the wall behind the display. Cat 6A F/UTP will be pulled from the new display location to the IDF rack located in IDF room 2014. The cables from the new display will be connected to the existing video matrix and AV network switch located in the AV rack. The same video that is routed to the existing courtroom displays will be routed to the new display. Control of the new display will be performed by the touch panel located on the Judge's bench.

Accepted by: _____

Date: _____

General Information

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Approved Proposals

Approved Proposals may be emailed to sales@ncsound.org or faxed to 919-709-4044.

Proprietary Information/Non Disclosure

This proposal, and any proposed designs, plans and specifications which have been or may have been provided by NCS that are related to the project related to this quotation (a) are proprietary to NCS, (b) may not be used or copied for any purpose than your evaluation of this quotation and any work performed by NCS following your acceptance of this quotation.



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

From:
Stephanie Lewis, Operation Services
Director

Action Item # V. - 13.

Operation Service - Solid Waste & Recycling - NC CWRAR
Grant Agreement

Issue/Action Requested:

Request that the Board of Commissioner approve the NC Community Waste Reduction and Recycling Grant Agreement.

Background/Purpose of Request:

The NC DEQ Community Waste Reduction and Recycling Grant is a recurring annual grant program that provides funding to public recycling programs for projects that help communities build lasting capacity to divert materials from the waste stream and/or increase public awareness of recycling.

The Brunswick County Solid Waste Department is requesting the Board's approval to accept a grant to increase its education and outreach programs. The grant does require the county to provide a cash match of 20% of grant funds. The total grant is \$24,000, \$20,000 paid by NC DEQ and \$4,000 paid by the county. The grant period is from July 1, 2021 through June 30, 2022.

Fiscal Impact:

Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations
Grant match available upon the FY 22 budget approval

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioner approve the NC Community Waste Reduction and Recycling Grant Agreement.

ATTACHMENTS:

Description

- ▣ NC CWRAR Grant Agreement

STATE OF NORTH CAROLINA
COUNTY OF WAKE

GRANTEE'S FEDERAL
IDENTIFICATION
NUMBER: **_***0278

North Carolina Department of Environmental Quality Financial Assistance Agreement

This financial assistance agreement is hereby made and entered into this **1st day of July 2021**, by and between the **NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY** (the "Department") and **BRUNSWICK COUNTY** (the "Grantee"¹).

1. **Audit and Other Reporting Requirements of the Local Government Commission.** If subject to the audit and other reporting requirements of the Local Government Commission pursuant to Article 3 of Chapter 159 of the North Carolina General Statutes (Local Government Budget and Fiscal Control Act), the Grantee understands and agrees that the terms, conditions, restrictions and requirements hereinafter set forth shall only apply to the extent not inconsistent with, or superseded by, the audit and other reporting requirements of the Local Government Commission.
 2. **Contract Documents.** The agreement between the parties consists of this document (the "Contract Cover") and its attachments, which are identified by name as follows:
 - a. State's General Terms and Conditions (Attachment A)
 - b. Department's Request for Proposal ("RFP") (Attachment B)
 - c. Grantee's Response to RFP, including scope of work, line item budget, budget narrative and, *if applicable*, indirect cost documentation (hereinafter referred to generally as the "Award Proposal") (Attachment C)
 - d. Notice of Certain Reporting and Audit Requirements (Attachment D)
 - e. Conflict of Interest Policy (Attachment E)
- Together, these documents (the "Contract Documents") constitute the entire agreement between the parties (the "Agreement"), superseding all prior oral or written statements or agreements. Modifications to this Contract Cover or to any other Contract Document may only be made through written amendments processed by the Department's Financial Services Division. Any such written amendment must be duly executed by an authorized representative of each party.
3. **Precedence Among Contract Documents.** In the event of a conflict or inconsistency between or among the Contract Documents, the document with the highest relative precedence shall prevail. This Contract Cover shall have the highest precedence. The order of precedence thereafter shall be determined by the order of documents listed in § 2 above, with the first-listed document having the second-highest precedence and the last-listed document having the lowest precedence. If there are multiple contract amendments, the most recent amendment has the highest precedence and the oldest amendment has the lowest precedence.
 4. **Contract Period.** This Agreement shall be effective from **07/01/2021** to **06/30/2022**, inclusive of those dates.
 5. **Grantee's Duties.** As a condition of the grant award, the Grantee agrees to:
 - a. Undertake and deliver the grant award project, plan or services as described in the Award Proposal (Attachment C), adhering to all budgetary provisions set out therein throughout the course of performance.
 - b. Ensure that all award funds are expended in a manner consistent with the purposes for which they were awarded, as described more fully in the attached Contract Documents.

¹ The contract documents attached hereto may at times use alternative terms to describe the Grantee. Such terms might include, but are not necessarily limited to, the following (in common or proper form): "recipient," "applicant," or "participant."

- c. Comply with the requirements of 09 NCAC 03M .0101, *et seq.* (Uniform Administration of State Awards of Financial Assistance), including, but not limited to, those provisions relating to audit oversight, access to records, and availability of audit work papers in the possession of any auditor of any recipient of State funding.
- d. Comply with the applicable provisions of Attachment D, Notice of Certain Reporting and Audit Requirements.
- e. Maintain all records related to this Agreement (i) for a period of six (6) years following the date on which this Agreement expires or terminates, or (ii) until all audit exceptions have been resolved, whichever is longer.
- f. Comply with all laws, ordinances, codes, rules, regulations, and licensing requirements applicable to its performance hereunder and/or the conduct of its business generally, including those of Federal, State, and local agencies having jurisdiction and/or authority.
- g. Obtain written approval from the Department's Contract Administrator (see § 14 below) prior to making any subaward or subgrant not already described in the Award Proposal.
- h. Ensure that the terms, conditions, restrictions and requirements of this Contract Cover, including those incorporated by reference to other Contract Documents and/or applicable law, are made applicable to, and binding upon, any subgrantee who receives as a subaward or subgrant any portion of the award funds made available to the Grantee hereunder.
- i. Take reasonable measures to ensure that any subgrantee (i) complies with the terms, conditions, restrictions and requirements set forth in this Contract Cover, including those incorporated by reference to other Contract Documents and/or applicable law, and (ii) provides such information in its possession as may be necessary for the Grantee to comply with such terms, conditions, restrictions and requirements.

- 6. Historically Underutilized Businesses.** Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.

Pursuant to G.S. 143B-1361(a), 143-48 and 143-128.4, the Department invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this contract. Any questions concerning NC HUB certification, contact the [North Carolina Office of Historically Underutilized Businesses](#) at (919) 807-2330.

- 7. Department's Duties.** The Department shall pay the Grantee in the manner and amounts specified below and in accordance with the approved budget set forth in the Award Proposal.
- 8. Total Award Amount.** The total amount of award funds paid by the Department to the Grantee under this Agreement shall not exceed **TWENTY THOUSAND DOLLARS (\$20,000.00)** (the "Total Award Amount"). This amount consists of:

Funding:

Type of Funds	Funding Source	CFDA No.
Appropriations	State	NA

Account Coding Information:

Dollars	GL Company	GL Account	GL Center
\$20,000.00	1602	536961	6760

Grantee Matching Information:

- ☐ a. There are no matching requirements from the Grantee.
- ☐ b. There are no matching requirements from the Grantee; however, the Grantee has committed the following match to this project:

	In-Kind	\$
	Cash	\$
	Cash and In-Kind	\$
	Other / Specify:	\$

- ☒ c. The Grantee's matching requirement is **\$4,000.00**, which shall consist of:

	In-Kind	\$
X	Cash	\$4,000.00
	Cash and In-Kind	\$
	Other / Specify:	\$

- ☐ d. The Grantee is committing to an additional \$ to complete the project or services described in the Award Proposal.

Based on the figures above, the total contract amount is **\$24,000.00**.

- 9. Invoice and Payment.** The award funds shall be disbursed to the Grantee in accordance with the following provisions:
- The Grantee shall submit invoices to the Department's Contract Administrator at least quarterly. The final invoice must be received by the Department within forty-five (45) days following the date on which termination or expiration of this Agreement becomes effective. Amended or corrected invoices must be received by the Department's Financial Services Division within six (6) months of such date. Any invoice received thereafter shall be returned without action.
 - The Department shall reimburse the Grantee for actual allowable expenditures, with the Department retaining a minimum of ten percent (10%) of the Total Award Amount until all grant-related activities are completed and all reports/deliverables are received and accepted by the Department. As used herein, "allowable expenditures" are expenditures associated with work conducted to meet performance obligations under this Agreement, provided such work is carried out in a manner consistent with the Award Proposal. The Department may withhold payment on invoices when performance goals and expectations have not been met or when the manner of performance is inconsistent with Attachment C.
- 10. Grantee's Fiscal Year.** The Grantee represents that its fiscal year is from July 1 to June 30.
- 11. Availability of Funds.** The Grantee understands and agrees that payment of the sums specified herein shall be subject to, and contingent upon, the allocation and appropriation of funds to the Department for the purposes described in this Agreement.
- 12. Reversion of Unexpended Funds.** The Grantee understands and agrees that any unexpended grant funds shall revert to the Department upon termination of this Agreement.
- 13. Supplantation of Expenditure of Public Funds.** The Grantee understands and agrees that funds received pursuant to this Agreement shall be used only to supplement, not to supplant, the total amount of Federal, State and local public funding that the Grantee would otherwise expend to carry out the project or services described in the Award Proposal.

- 14. Contract Administrators.** Each party shall submit notices, questions and correspondence related to this Agreement to the other party's Contract Administrator. The contact information for each party's Contract Administrator is set out below. Either party may change its Contract Administrator and/or the associated contact information by giving timely written notice to the other party.

Grantee Contract Administrator	Department's Contract Administrator
Micki Bozeman, Solid Waste & recycling Coordinator Brunswick County PO Box 249 Bolivia, NC 28422 Telephone: 910-253-2524 Email: Micki.bozeman@brunswickcountync.gov	Mel Giles NC DEQ DEACS 1639 Mail Service Center Raleigh, NC 27699-1639 Telephone: 919-707-8127 Email: mel.giles@ncdenr.gov

- 15. Assignment.** The Grantee may not assign its obligations or its rights to receive payment hereunder.
- 16. Procurement.** The Grantee understands and agrees that all procurement activities undertaken in connection with this Agreement shall be subject to the following provisions:
- None of the work or services to be performed under this Agreement involving the specialized skill or expertise of the Grantee shall be contracted without prior written approval from the Department.
 - In the event the Grantee or any subrecipient of the Grantee contracts for any of the work to be performed hereunder, the Grantee shall not be relieved of any duties or responsibilities herein set forth.
 - The Grantee shall not contract with any vendor who is restricted from contracting with the State of North Carolina pursuant to N.C.G.S. §§ 143-133.3, 143-59.1, 143-59.2 or 147.86.60.
- 17. Subawards.** The Grantee understands and agrees that any subaward or subgrant of any portion of the financial assistance provided hereunder shall not relieve the Grantee of any duties or responsibilities herein set forth.
- 18. Title VI and Other Nondiscrimination Requirements.** Throughout the course of its performance hereunder, the Grantee shall comply with all applicable State and Federal laws, regulations, executive orders and policies relating to nondiscrimination, including, but not limited to:

Title VI of the Civil Rights Act of 1964, as amended;

Civil Rights Restoration Act of 1987, as amended;

Section 504 of the Rehabilitation Act of 1973, as amended;

Age Discrimination Act of 1975, as amended;

Titles II and III of the Americans with Disabilities Act of 1990, as amended;

Title IX of the Education Amendments of 1972, as amended;

Part III of Executive Order No. 11246 (September 24, 1965), as amended; and

Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

In accordance with the above laws and their implementing regulations, the Grantee agrees to ensure that no person in the United States is, on the basis of race, color, national origin, sex, age or disability, excluded from participation in, denied

the benefits of, or subjected to discrimination under any program or activity for which the Grantee receives Federal assistance. For purposes of this provision, "program or activity" shall have the meaning ascribed to that term under Federal law (see 42 U.S.C.S. § 2000d-4a).

The Grantee understands and acknowledges that, in addition to itself, any lower-tier recipient of the financial assistance provided hereunder must also comply with the requirements of this section. Accordingly, the Grantee agrees to include a similar provision in any financial assistance agreement made with any lower-tier recipient of such assistance.

- 19. E-Verify.** To the extent applicable, the Grantee represents that it and each of its subgrantees, contractors and/or subcontractors performing work pursuant to, or in association with, this Agreement are in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes, including, in particular, the requirement that certain employers verify the work authorization of newly hired employees using the Federal E-Verify system.
- 20. Termination by Mutual Consent.** This Agreement may be terminated by mutual consent of the parties, provided the consent is documented in writing and duly executed by an authorized representative of each party.
- 21. Survival.** Any provision contained in this or any other Contract Document that contemplates performance or observance subsequent to the termination or expiration of this Agreement shall survive the termination or expiration hereof and continue in full force and effect.
- 22. Signature Warranty.** The undersigned represent and warrant that they are authorized to bind their principals to the terms and conditions of this Contract Cover and the Agreement generally, including those incorporated by reference to applicable law.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by the duly authorized representative in duplicate originals, one of which is retained by each of the Parties.

BRUNSWICK COUNTY

**NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

By _____
Grantee's Signature

By _____
Signature of Department Head or Authorized Agent

Printed Name and Title

Tommy Kirby, Purchasing Director
Printed Name and Title

Organization

Financial Services Division, Purchasing and Contracts Section
Division/Section

ORIGINAL

General Terms and Conditions Governmental Entities

DEFINITIONS

Unless indicated otherwise from the context, the following terms shall have the following meanings in this Contract. All definitions are from 9 NCAC 3M.0102 unless otherwise noted. If the rule or statute that is the source of the definition is changed by the adopting authority, the change shall be incorporated herein.

- (1) "Agency" (as used in the context of the definitions below) means and includes every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political sub-agency of government. For other purposes in this Contract, "Agency" means the entity identified as one of the parties hereto.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.
- (3) "Certification of Compliance" means a report provided by the Agency to the Office of the State Auditor that states that the Grantee has met the reporting requirements established by this Subchapter and included a statement of certification by the Agency and copies of the submitted grantee reporting package.
- (4) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Agency within the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.
- (5) "Contract" means a legal instrument that is used to reflect a relationship between the agency, grantee, and sub-grantee.
- (6) "Fiscal Year" means the annual operating year of the non-State entity.
- (7) "Financial Assistance" means assistance that non-State entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.
- (8) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
- (9) "Grant" means financial assistance provided by an agency, grantee, or sub-grantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or sub-grantee during the performance of the grant.
- (10) "Grantee" has the meaning in G.S. 143C-6-23(a)(2): a non-State entity that receives a grant of State funds from a State agency, department, or institution but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For other purposes in this Contract, "Grantee" shall mean the entity identified as one of the parties hereto. For purposes of this contract, Grantee also includes other State agencies such as universities.
- (11) "Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.
- (12) "Non-State Entity" has the meaning in N.C.G.S. 143C-1-1(d)(18): A firm, corporation, partnership, association, county, unit of local government, public authority, or any other person, organization, group, or governmental entity that is not a State agency, department, or institution.
- (13) "Public Authority" has the meaning in N.C.G.S. 159-7(10): A municipal corporation that is not a unit of local government or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation, (ii) is not subject of the State Budget Act, and (iii) operates on an area, regional, or multiunit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.
- (14) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
- (15) "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.
- (16) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are sub-granted to other organizations. Pursuant to N.C.G.S. 143C-6-23(a)(1), the terms "State grant funds" and "State grants" do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.
- (17) "Sub-grantee" has the meaning in G.S. 143C-6-23(a)(4): a non-State entity that receives a grant of State funds from a grantee or from another sub-grantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(18) "Unit of Local Government has the meaning in G.S. 159-7(b)(15): A municipal corporation that has the power to levy taxes, including a consolidated city-county as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

Relationships of the Parties

Independent Contractor: The Grantee is and shall be deemed to be an independent contractor in the performance of this Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Agency.

Subcontracting: To subcontract work to be performed under this contract which involves the specialized skill or expertise of the Grantee or his employees, the Grantee first obtains prior approval of the Agency Contract Administrator. In the event the Grantee subcontracts for any or all of the services or activities covered by this contract: (a) the Grantee is not relieved of any of the duties and responsibilities provided in this contract; (b) the subcontractor agrees to abide by the standards contained herein or to provide such information as to allow the Grantee to comply with these standards, and; (c) the subcontractor agrees to allow state and federal authorized representatives access to any records pertinent to its role as a subcontractor.

Sub-grantees: The Grantee has the responsibility to ensure that all sub-grantees, if any, provide all information necessary to permit the Grantee to comply with the standards set forth in this Contract.

Assignment: The Grantee may not assign the Grantee's obligations or the Grantee's right to receive payment hereunder. However, upon Grantee's written request approved by the issuing purchasing authority, the Agency may:

- (a) Forward the Grantee's payment check(s) directly to any person or entity designated by the Grantee, or
- (b) Include any person or entity designated by Grantee as a joint payee on the Grantee's payment check(s).

Such approval and action does not obligate the State to anyone other than the Grantee and the Grantee remains responsible for fulfillment of all contract obligations.

Beneficiaries: Except as herein specifically provided otherwise, this Contract inures to the benefit of and is binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, are strictly reserved to the Agency and the named Grantee. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Agency and Grantee that any

third person receiving services or benefits under this Contract is an incidental beneficiary only.

Indemnity

Indemnification: In the event of a claim against either party by a third party arising out of this contract, the party whose actions gave rise to the claim is responsible for the defense of the claim and any resulting liability, provided that a party may not waive the other party's sovereign immunity or similar defenses. The parties agree to consult with each other over the appropriate handling of a claim and, in the event they cannot agree, to consult with the Office of the Attorney General.

Insurance: During the term of the contract, the Grantee at its sole cost and expense provides commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Grantee provides and maintains the following coverage and limits:

- (a) **Worker's Compensation:** The Grantee provides and maintains Worker's Compensation insurance as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Grantee's employees who are engaged in any work under this contract. If any work is sublet, the Grantee requires the subgrantee to provide the same coverage for any of his employees engaged in any work under this contract.
- (b) **Commercial General Liability:** General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
- (c) **Automobile:** Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles used in performance of the contract. The minimum combined single limit is \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$25,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the Grantee and is of the essence of this contract. The Grantee may meet its requirements of maintaining specified coverage and limits by demonstrating to the Agency that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the Agency. Grantee obtains insurance that meets all laws of the State of North Carolina. Grantee obtains coverage from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Grantee complies at

all times with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Grantee do not limit the Grantee's liability and obligations under the contract.

Default and Termination

Termination by Mutual Consent: Either party may terminate this agreement upon sixty (60) days notice in writing from the other party. In that event, all finished or unfinished documents and other materials, at the option of the Agency, be submitted to the Agency. If the contract is terminated as provided herein, the Grantee is paid in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this agreement; for costs of work performed by subcontractors for the Grantee provided that such subcontracts have been approved as provided herein; or for each full day of services performed where compensation is based on each full day of services performed, less payment of compensation previously made. The Grantee repays to the Agency any compensation the Grantee has received which is in excess of the payment to which he is entitled herein.

Termination for Cause: If, through any cause, the Grantee fails to fulfill in timely and proper manner the obligations under this agreement, the Agency thereupon has the right to terminate this contract by giving written notice to the Grantee of such termination and specifying the reason thereof and the effective date thereof. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Grantee, at the option of the Agency, be submitted to the Agency, and the Grantee is entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials. The Grantee is not relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this agreement, and the Agency may withhold payment to the Grantee for the purpose of set off until such time as the exact amount of damages due the Agency from such breach can be determined.

Waiver of Default: Waiver by the Agency of any default or breach in compliance with the terms of this Contract by the Grantee is not a waiver of any subsequent default or breach and is not a modification of the terms of this Contract unless stated to be such in writing, signed by an authorized representative of the Agency and the Grantee and attached to the contract.

Availability of Funds: The parties to this Contract agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Agency.

Force Majeure: Neither party is in default of its obligations hereunder if it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Survival of Promises: All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

Intellectual Property Rights

Copyrights and Ownership of Deliverables: Any and all copyrights resulting from work under this agreement shall belong to the Grantee. The Grantee hereby grants to the North Carolina Department of Environmental Quality a royalty-free, non-exclusive, paid-up license to use, publish and distribute results of work under this agreement for North Carolina State Government purposes only.

Compliance with Applicable Laws

Compliance with Laws: The Grantee understands and agrees that it is subject to compliance with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

Equal Employment Opportunity: The Grantee understands and agrees that it is subject to compliance with all Federal and State laws relating to equal employment opportunity.

Confidentiality

Confidentiality: As authorized by law, the Grantee keeps confidential any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Grantee under this agreement and does not divulge or make them available to any individual or organization without the prior written approval of the Agency. The Grantee acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this Contract or without the prior written approval of the Agency.

Oversight

Access to Persons and Records: The State Auditor and the using agency's internal auditors shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7 and Session Law 2010-194, Section 21 (i.e., the State Auditors and internal auditors may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees or performance). The Contractor shall retain all records for a period of six (6) years

following completion of the contract or until any audits begun during this period are completed and findings resolved, whichever is later.

Record Retention: The Grantee may not destroy, purge or dispose of records without the express written consent of the Agency. State basic records retention policy requires all grant records to be retained for a minimum of six (6) years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to Federal policy and regulations, record retention may be longer than six (6) years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has started before expiration of the six (6) year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular six (6) year period described above, whichever is later.

Time Records: The GRANTEE will maintain records of the time and effort of each employee receiving compensation from this contract, in accordance with the appropriate OMB circular.

Miscellaneous

Choice of Law: The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, are governed by the laws of North Carolina. The Grantee, by signing this Contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this Contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

Amendment: This Contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Agency and the Grantee.

Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect.

Headings: The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

Time of the Essence: Time is of the essence in the performance of this Contract.

Care of Property: The Grantee agrees that it is responsible for the proper custody and care of any State owned property furnished him for use in connection with the performance of his contract and will reimburse the State for its loss or damage.

Ownership of equipment purchased under this contract rests with the Grantee. Upon approval of the Agency Contract Administrator, such equipment may be retained by the Grantee for the time the Grantee continues to provide services begun under this contract.

Travel Expenses: All travel, lodging, and subsistence costs are included in the contract total and no additional payments will be made in excess of the contract amount indicated in above. Contractor must adhere to the travel, lodging and subsistence rates established in the Budget Manual for the State of North Carolina.

Sales/Use Tax Refunds: If eligible, the Grantee and all sub-grantees shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

Advertising: The Grantee may not use the award of this Contract as a part of any news release or commercial advertising.

Recycled Paper: The Grantee ensures that all publications produced as a result of this contract are printed double-sided on recycled paper.

Sovereign Immunity: The Agency does not waive its sovereign immunity by entering into this contract and fully retains all immunities and defenses provided by law with respect to any action based on this contract.

Gratuities, Kickbacks or Contingency Fee(s): The parties certify and warrant that no gratuities, kickbacks or contingency fee(s) are paid in connection with this contract, nor are any fees, commissions, gifts or other considerations made contingent upon the award of this contract.

Lobbying: The Grantee certifies that it (a) has neither used nor will use any appropriated funds for payments to lobbyist; (b) will disclose the name, address, payment details, and purpose of any agreement with lobbyists whom the Grantee or its sub-tier contractor(s) or sub-grantee(s) will pay with profits or non-appropriated funds on or after December 22, 1989; and (c) will file quarterly updates about the use of lobbyists if material changes occur in their use.

By Executive Order 24, issued by Governor Perdue, and N.C.

G.S. § 133-32: It is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Natural and Cultural Resources, Environmental Quality, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24."

2021 Community Waste Reduction and Recycling Grant Program

REQUEST FOR PROPOSALS

N.C. Department of Environmental Quality
Division of Environmental Assistance and Customer Service

The purpose of this grant program is to assist local governments with the implementation, expansion, and improvement of waste reduction and recycling programs in North Carolina. The Division of Environmental Assistance and Customer Service (DEACS) administers the Community Waste Reduction and Recycling Grant program through the Solid Waste Management Outreach Program.

With the release of this Request for Proposals (RFP), DEACS is seeking proposals that request grant funding to help initiate or expand public waste reduction programs within the state. **Applicants should carefully read this entire RFP prior to submitting a proposal. Proposals must be received by DEACS by 5:00 p.m. on Thursday, February 18, 2021.** Please address any questions about this grant program to Sandy Skolochenko at (919) 707-8147, sandy.skolochenko@ncdenr.gov.

Community Waste Reduction and Recycling Grant Program Parameters:

The 2021 Community Waste Reduction and Recycling (CWRAR) Grant Program seeks to fund projects that help communities build lasting capacity to divert materials from the waste stream and / or that increase public awareness of waste reduction and recycling. There are two categories of CWRAR Grants for 2021: Priority Project Grants and Standard Project Grants. Different levels of grant funding are available for each project category.

Available Funding:

- Priority Project: Applicants are eligible for a Priority Project grant award of up to **\$40,000**.
- Standard Project: Applicants are eligible for a Standard Project grant award of up to **\$30,000**.

Priority Project Grants:

Priority Project Grants support investments in public recycling program areas that have been determined by the state recycling program to be of particular importance to growing and expanding efficient and effective waste reduction and recycling services throughout North Carolina.

2021 CWRAR priorities include:

- Projects that fund outreach enforcement efforts (e.g., tagging program) to reduce contamination in the recycling stream and improve material quality. If seeking funding for educational enforcement efforts, please see additional provisions in the Special Requirements section.
- Projects that divert food waste from landfill disposal through backyard composting programs or by implementing or expanding collection, management, and recycling of food waste from residential or commercial sources.
- Projects that implement or expand Construction and Demolition recycling efforts to divert materials such as concrete, unpainted/untreated wood, asphalt (from roads and shingles), gypsum, metals, brick, glass, plastics, carpet, or salvaged building materials from landfill disposal.
- Projects that implement new permanent Household Hazardous Waste (HHW) programs or that expand existing permanent HHW programs. To qualify as a Priority Project, a newly established permanent HHW program must be open to collect HHW from the public at least four (4) separate days during any given fiscal year and an existing HHW program must significantly increase the number of days or hours of operation so that citizens have improved access to HHW services.

Standard Project Grants:

Standard Project Grants include any projects that increase and / or enhance public waste reduction and recycling but fall outside of the 2021 priorities. Standard Projects may include but are not limited to:

- Projects that significantly increase a community's overall diversion of materials from the solid waste stream.
- Projects that improve recycling program efficiency and/or cost effectiveness.
- Projects that implement new or expand existing curbside recycling programs or that help transition a curbside recycling program from collection using bins or blue-bags to a cart-based collection system.
- Projects that increase the diversion of materials that are banned from disposal in North Carolina.
- Projects that implement recycling programs for special wastes such as fluorescent bulbs, used motor oil or filters, used cooking oil, antifreeze, pesticide containers, batteries or latex paint.
- Projects that implement education and outreach to reduce contamination in the recycling stream and improve material quality. If seeking funding for recycling education, please see additional provisions in the Special Requirements section.
- Projects that implement or expand public school recycling programs. If seeking funding for public school recycling, please see additional provisions in the Special Requirements section.
- Projects that increase the efficiency or effectiveness of public electronics recycling programs. If seeking funding for electronics recycling, please see additional provisions in the Special Requirements section.
- Projects that create or expand away-from-home recycling opportunities such as recycling infrastructure for parks, sports fields, streetscape / pedestrian recycling, and / or recycling at public venues. If seeking funding for away-from-home recycling, please see additional provisions in the Special Requirements section.

Communities preparing proposals for a 2021 CWRAR Grant are strongly encouraged to contact Sandy Skolochenko at (919) 707-8147, sandy.skolochenko@ncdenr.gov or Mel Gilles (for education and outreach projects) at (919) 707-8127, mel.gilles@ncdenr.gov. These staff are available to discuss potential grant projects and provide technical assistance and advice prior to submitting a grant proposal.

Cash Match Requirement:

Required Cash Match: CWRAR grant winners must provide a cash match equal to or exceeding 20 percent of the requested grant funding. For example, a grantee requesting a \$20,000 grant must match at least \$4,000 with local funds for a total project cost of \$24,000.

Calculating Cash Match: To determine the necessary cash match for any grant project, first determine the total budget associated with the project and then use the following equation: $\text{total project budget} \div 6 = \text{required cash match}$.

Distributions from the \$2 per ton Solid Waste Disposal Tax may be used to cover cash match requirements. In-kind contributions will not be accepted in lieu of cash match.

Grant Project Planning:

Available funding is limited, and it is anticipated that the 2021 CWRAR Grant Round will be highly competitive. For this reason, it is important that projects seeking grant funding be well thought out and well planned, and that applicants follow the instructions in this RFP when preparing proposals by providing all information as outlined in the Required Proposal Format section. Proposals that seek grant funds for the replacement of existing equipment will be scored substantially lower than projects that implement new recycling services or projects that expand existing recycling services.

Use of Grant Funds:

Examples of **approved uses** of CWRAR Grant funds include site development costs, construction of facilities to handle recyclable materials, equipment purchases, equipment installation costs, key recycling program components, public awareness programs and materials that support public education such as signs or brochures.

Grant funds **MAY NOT** be used for employee salaries, land acquisition costs, administrative expenses such as overhead, utility costs, studies or work performed by consultants, contracted collection costs, and / or payment for other contracted recycling services such as payment to a vendor for operating a household hazardous waste collection event.

If you have questions about eligible uses of grant funds, please contact Sandy Skolochenko at (919)-707-8147 or sandy.skolochenko@ncdenr.gov for more information.

Eligible Entities:

- Local governments, defined as counties, municipalities, councils of governments and solid waste authorities in North Carolina, are eligible to apply for funding from the CWRAR Grant Program.
- Former CWRAR grantees are eligible to apply. Applicants with an **open 2020 CWRAR Grant contract** must have invoiced for 90% of eligible grant funds by the proposal due date (February 18, 2021). Proposals **will not** be accepted from applicants with an open CWRAR Grant from cycles prior to 2020. Applicants with open grants from other programs (Abandoned Manufactured Home Grants, Regional Recycling Infrastructure Grants, COVID-19 Recycling Relief Grants, Backyard Compost Grants) are eligible to apply.
- Federal and state agencies **are not eligible** for funding through this grant program.
- Public universities, community colleges and private colleges and universities **are not eligible** for funding through this grant program.
- Not-for-profit entities **are not eligible** for funding through this grant program; however, these entities are eligible for funding through the Recycling Business Development Grant Round. Contact Sandy Skolochenko at (919) 707-8147 or sandy.skolochenko@ncdenr.gov for more information.
- Public school systems and individual public schools **are not eligible** to apply directly for funding through this grant program. **However**, local governments (counties or municipalities) may apply for funding to support public school recycling projects - see Special Requirements section below.

Conditions on Submittals:

- **ONLY ONE PROPOSAL PER ELIGIBLE ENTITY WILL BE ACCEPTED.** Grant proposals may combine funding requests for multiple types of projects into one proposal. The available funding limits still apply, and total request may not exceed the grant award amounts noted in the Available Funding section.
- Multi-party initiatives such as joint projects involving two or more local governments where each local government contributes towards project funding are strongly encouraged. Any group participating in a regional or multi-party project proposal may not submit additional proposals.
- Applications will not be accepted from local governments that have not submitted the required Solid Waste and Materials Management Annual Report for the most recent fiscal year.

General Requirements:

General requirements for **all applicants**:

- Usage of N.C. Solid Waste Disposal Tax proceeds: Solid Waste Disposal Tax proceeds are distributed to eligible local governments on a quarterly basis by the Department of Revenue. According to G.S. § 105-187.63, these funds must be used by a city or county solely for solid waste management programs and services. CWRAR Grant applicants must certify in writing that all disposal tax proceeds are used only for the purpose of providing solid waste and recycling services.

In addition to this written certification, applicants should describe how disposal tax funds are utilized and whether proceeds will be used to supply matching funds.

- **Public Building Recycling Services:** CWRAR Grants will not be awarded to applicants that do not have recycling services for cans, bottles and paper available at their government buildings. As part of the grant proposal, all applicants must indicate that employees in the key government buildings operated by the applicant have reasonable access to recycling services and are able and encouraged to recycle materials generated in the course of government business. Please include a list of the materials collected for recycling at these facilities.
- **Mercury Product Recycling:** G.S. § 130A-310.60 requires that any public agency using state funds for the construction or operation of public buildings shall establish a program for the collection and recycling of all spent fluorescent lights and thermostats that contain mercury generated in public buildings. As part of the grant proposal, all applicants must indicate that they have a program in place for the collection of fluorescent lights and mercury thermostats from their public buildings. If the applicant does not have a program in place for the collection of these materials, then as a precondition of any grant award the applicant must initiate such services. For more information about these requirements and / or for assistance implementing a mercury products recycling program please contact Sandy Skolochenko at 919-707-8147, sandy.skolochenko@ncdenr.gov

Special Requirements:

Applicants seeking funding for recycling education, public school recycling, away-from-home recycling and/or electronics recycling **MUST** address the following Special Requirement(s) in their submitted proposal.

- **Special Requirements for Recycling Education/Enforcement Projects:** Applicants should contact DEACS Recycling Outreach Specialist, Mel Gilles at (919) 707-8127, mel.gilles@ncdenr.gov, to discuss a project before applying.
 1. Provide a list of the recyclable materials accepted by the program and indicate how the materials are to be collected (single stream, dual stream, source separated). If the grant application is for regional outreach materials, all local governments or entities participating must agree on a common list of materials for recycling and provide that common accepted list with the grant application.
 2. If the grant application is for regional outreach materials, a letter of agreement and support must be provided by each local government or entity participating in the proposed grant project. Each participating entity should establish and provide a designated recycling contact for project coordination.
 3. Identify the primary message of the outreach effort.
 4. Indicate whether you will be using your own design or if you will be using DEACS customizable design services. <https://deq.nc.gov/conservation/recycling/general-recycling-information/customized-outreach-materials>
 5. Supply mock-ups or example graphics for the outreach materials, enforcement tags, or ads. Are your materials dependent on words or images?
 6. If the grant is awarded:
 - Discuss the material design with your assigned DEACS grant manager as soon as possible to ensure clear communication about the project content and timing.
 - Documents must be submitted for review prior to printing or execution. Reviews may take up to two weeks, so plan accordingly and submit well in advance of printing (not days before going to print). It is often helpful to submit an initial draft for early feedback.
 - Post your community's accepted recyclables list online.
 - Program changes can affect the grant and messaging. Inform DEACS immediately if program changes occur to determine if a contract amendment is needed.

- **Special Requirements for Public School Recycling Projects:** Local governments may apply for funding to support public school recycling projects, but **must** provide the supplemental information outlined below to ensure that all necessary school recycling program elements are addressed and to help demonstrate project planning. This is a competitive grant program and projects that institute or expand a system-wide school recycling program will compete better than projects that only serve an individual school. Eligible grant projects may seek funding for equipment (such as bins and roll carts) and/or education materials. As with other CWRAR projects, administrative expenses, staff salaries and contract collection costs are not eligible for grant funding nor can they be used as matching funds. If a public school system will be contributing funds towards the implementation of a recycling grant project, these funds should be paid to the state grantee in order to ensure that the state grantee makes the purchases associated with the grant project. All purchases associated with a grant project must be made by the grantee. Purchases made directly by a public school system shall not be eligible for reimbursement. Please contact Mel Gilles at 919-707-8127, mel.gilles@ncdenr.gov for information or assistance with public school recycling projects.

School Recycling Supplemental Requirements:

1. Describe the existing school recycling program (if any) that is available in the school system associated with the grant project. The description should include the following items:
 - Indicate whether recycling service is available to *all* schools within the district or only to certain schools within the district.
 - If recycling collection presently exists or if this project implements a new school recycling service, then please indicate the recycling service provider (e.g. indicate whether the collection of recyclables is provided by public school system employees, by a specific local government, or through a contracted or third-party service provider).
 - Provide a list of the recyclable materials accepted by the program and indicate how the materials are to be collected (single stream, dual stream, source separated).
 - Indicate where the recyclables are going after they are collected (provide the name of the materials processor).
2. List all of the public agencies and/or departments that collaborate to assist with or operate the school recycling program and list the role of each entity. Examples could include the local educational authority (school district), municipal and/or county solid waste management departments. Ideally, a holistic school system recycling program should include cooperation between the community's public recycling program and the public school system.
3. If a system-wide school recycling program is in place, explain if and how this grant will expand recycling throughout the school system and note whether this grant project is part of a phased plan.
4. A designated recycling contact should be established for each school facility participating in the recycling program. Examples of designated contacts might include school facility manager, head custodian, the faculty coordinator or leader of a group or club, the principal, or school administrator. Please provide a list of schools to be served by this project and the designated recycling contact for each school including the name and title of the designated contact.
5. Indicate the locations where recycling containers are or will be placed at the school facilities (e.g. classrooms, cafeterias, hallways, athletic fields, administrative offices, library, copy rooms, etc.).
6. Indicate who will be responsible for emptying the recycling containers (e.g. custodian / cleaning staff, teachers, students, student groups, etc.).
7. Provide a plan for promoting recycling within the schools impacted by the grant project as well as a plan for educating staff and students about the program.

- **Electronics Recycling Projects:** Any community seeking grant funds related to an electronics recycling related project must indicate in their proposal whether the local government has ever received funds distributed from the State's Electronics Management Program. For more information on eligibility for Electronics Management Program Funds see this web site: <http://deq.nc.gov/about/divisions/waste-management/solid-waste-section/electronics-management/nc-local-governments-info-page>. If the local government has received Electronics Management Fund distributions in the past, then the applicant must include information in its proposal about how those funds have been used and how the community intends to use the funds that will be distributed in February 2021 and February 2022.

Successful **county** applicants seeking grant funds to support an electronics recycling related project that **have not** previously been eligible for distributions from the State's Electronics Management Program will be required to become eligible for Electronics Management Funds on or before December 31, 2021 as a precondition of receipt of CWRAR Grant funds.

Successful **municipal** applicants seeking grant funds to support an electronics recycling related project that **have not** previously been eligible for distributions from the State's Electronics Management Program must decide whether or not to make themselves eligible for Electronics Management Funds prior to the December 31, 2021 eligibility deadline. This decision should be made in consultation with the county where the municipality is located and should be based on how the distribution of funds can best serve the advancement of electronics recycling within the community. If it is determined that the municipality should seek Electronics Management Funds, the municipality should take action to become eligible for funds on or before December 31, 2021.

- **Away-From-Home Recycling Projects:** Grant funds for away-from-home recycling projects can only be used for recycling related purchases and cannot be used to pay for the purchase of away-from-home receptacles for the collection of waste (garbage). If a proposal includes the purchase of away-from-home receptacles that collect BOTH waste and recyclables, then the standard cash matching fund requirement will be adjusted so that the applicant (grantee) covers the full cost of the waste portion of the container with their matching funds. For example, if a community seeks to purchase a combo waste / recycling station that has one slot for garbage and one for recyclables and the receptacle costs \$1,000 then the applicant will be expected to provide a cash match equal to one half of the purchase price, or \$500. If seeking funding for an away-from-home recycling project, please indicate in the Special Requirements section of the proposal whether any of the equipment to be purchased will be used to collect waste materials that are intended to be disposed of in a landfill.

In addition, applicants for away-from-home related grant projects are strongly encouraged to specify which particular recycling receptacles are being considered for purchase as a part of their proposal. For assistance with and guidance on the selection of recycling receptacles, please contact Mel Gilles at 919-707-8127 or mel.gilles@ncdenr.gov.

Grant Project Period / Funding Period:

Successful grant applicants will be required to enter into a grant contract with the N.C. Department of Environmental Quality (DEQ). The resultant grant contract period is intended to align with the local government fiscal year and will generally have a one (1) year contract long term. Grantees must expend funds within the year-long contract period unless the grant contract end date is extended by written agreement between the applicant and the DEQ. Extensions are possible but not guaranteed. It is anticipated that grant contracts resulting from this grant cycle will begin on July 1, 2021 and end on June 30, 2022. **All purchases associated with grant funds must be made within the grant contract period. Any purchases**

made prior to the start of the grant contract or after the end date of the grant contract will not be eligible for reimbursement.

Proposal Due Date:

Proposals **MUST** be received by DEACS by **5:00 p.m. on Thursday, February 18, 2021**. Any proposals received after the deadline will not be considered. Local governments requiring board approval to apply for grant funds should plan to procure that approval before the submittal deadline. **Late proposals will not be accepted.**

How to Submit Proposals:

One electronic copy of the proposal must be submitted by email to sandy.skolochenko@ncdenr.gov. Receipt of all acceptable proposals will be acknowledged by e-mail. ***If you do not receive a confirmation, contact Sandy Skolochenko at sandy.skolochenko@ncdenr.gov or 919-707-8147 as soon as possible.*** It is the responsibility of anyone submitting a proposal to contact DEACS if they do not receive a confirmation. No arrangements will be made for lost applications after the due date. Please submit electronic versions of proposals as Microsoft Word (preferred) or Adobe (PDF) files. If submittal of an electronic version of a grant proposal presents a hardship, please contact Sandy Skolochenko to discuss submittal options.

Required Proposal Format:

The following outline indicates what applicants **must** include in their proposal for their application to be considered complete. Proposals that fail to provide all of the required information or that fail to follow the following format may not compete well and may not be considered for funding.

- Project Title
- Applicant Contact Information: to include the following:
 - ✓ Name and title of main contact
 - ✓ Organization
 - ✓ Address
 - ✓ Phone number
 - ✓ Fax number
 - ✓ E-mail address
- Date of Proposal Submittal: this should be the date the proposal is submitted to DEACS
- General Requirements: (see General Requirements section for more information)
 - ✓ Written statement certifying that Solid Waste Disposal Tax Proceeds are used only for solid waste management purposes and a description of how proceeds are used.
 - ✓ Written statement indicating that the applicant has recycling services for cans, bottles and paper available at the key government buildings and a list of the materials collected.
 - ✓ Written statement indicating that the applicant has established a program for the collection and recycling of fluorescent lights and mercury containing thermostats from public buildings owned by the applicant.
- Project Description: Provide responses to each of the following prompts below. Applicants are encouraged to provide a clear project description and consider the Award Criteria as they describe the project elements.
 1. Describe the proposed project and identify specifically what items (and how many) you intend to purchase with grant funds.
(Planning: 0-20 points; Priority Project: 0-10 points)
 2. What is the anticipated service life for the items or materials to be purchased with grant funds? Estimate how long the project will continue to serve the community and how you will sustain the project after the grant ends.
(Planning: 0-20 points; Efficiency/Cost Effectiveness: 0-20 points)

3. How does the proposed project address a specific recycling need for the community? Will the grant project create a new service, enhance or expand an existing service, or support an existing recycling service without expanding that service?
(Demonstration of Need: 0-20 points)
 4. How many households or businesses will be impacted by or have access to the recycling services associated with the proposed project?
(Demonstration of Need: 0-20 points; Efficiency/Cost Effectiveness: 0-20 points)
 5. Estimate the number of tons of waste expected to be reduced annually as a result of the proposed project. Please explain how you came up with the estimate.
(Waste Reduction Impact: 0-25 points)
 6. Describe any partnerships associated with the proposed project. Please include documentation of support from any partner entities.
(Joint Effort: 0-5 points)
- Special Requirements: Proposals for recycling education, school recycling, electronics recycling or away-from-home recycling must include additional information as stipulated in the Special Requirements section.
 - Project Timeline: Bulleted list showing project milestones and general implementation dates. Timeline must begin on or after July 1, 2021 and project must be complete by June 30, 2022.
 - Project Budget: to include the following:
 - ✓ Itemized list of intended expenditures and estimated costs;
 - ✓ Total project cost with breakdown of funding requested from the state and amount of matching funds to be provided by the applicant (see Cash Match Requirements);
 - ✓ Please submit the Project Budget in a table following the example shown below:

Project Elements	Estimated Cost		
Recycling Carts for Commercial Recycling Program	\$ 10,500		
Labels for Carts and Signs for Recycling Sites	\$ 900		
Program Brochures (Printing)	\$ 600		
Project Budget	Total Project Cost	State Grant Award	Applicant Cash Match
Total	\$ 12,000	\$ 10,000	\$ 2,000

* Note about Project Budgets: state and local sales taxes **are not** reimbursable expenditures and should not be included as part of grant budgets.

Grant Selection Process:

A selection committee will use the pre-established Award Criteria identified below to rank proposals and make award decisions. The review process is expected to be completed and preliminary award announcements should be made by April 2021.

Award Criteria:

Applicants are encouraged to consider the following Award Criteria as they develop their grant proposals. A total of 100 points is available.

1. **Demonstration of Need (0-20 points)**: Does the proposed project address a specific equipment, educational, or infrastructure need for the community?

2. **Planning (0-20 points):** Did the Project Description include all necessary elements as outlined in the Required Proposal Format? Is the proposal well thought out, well researched and backed by valid facts and assumptions? Is the project consistent with recycling industry Best Management Practices?
3. **Waste Reduction Impact (0-25 points):** Will the project contribute substantially toward reduction of the local waste stream or will it substantially increase tonnage recovered through recycling services? Will the project improve the material quality in the recycling stream by reducing contaminants?
4. **Efficiency / Cost-effectiveness (0-20 points):** Will the project improve the efficiency or cost-effectiveness of the local waste reduction program? Does the project increase the efficiency or effectiveness of an existing recycling service? Does the project reduce the operating cost of a current recycling service or does it adopt practices proven to be cost effective in other communities? Does the project make investments that will continue to serve the community for years to come?
5. **Joint Effort (0 or 5 points):** One-party proposals will receive zero (0) points; multi-party proposals (involving cash match from all participants) will receive five (5) points.
6. **Priority Project★ (0-10 points):** Is the project seeking funding for a Priority Project Grant? To what extent does the project support investments in one of the Priority Project Grant categories?

If a Proposal is Selected for Funding:

DEACS anticipates that applicants selected to receive grant funding will be notified by the end of April 2021. DEACS will notify the applicant with a formal offer by e-mail. The applicant must accept or decline the offer. The following will occur once the offer of grant funding is accepted:

- DEACS may work with applicants to revise initially submitted proposals before entering into a grant contract. Any changes to initial proposals must be approved by DEACS and the applicant and the resultant Final CWRAR Proposal will become an attachment to the grant contract.
- The annual CWRAR Grant cycle typically receives funding requests that exceed available funds. However, it is a priority for DEACS to support as many qualifying projects as possible. After close examination of funding requests and subject to agreement with the applicant, DEACS may award grant amounts lower than the original request.
- Successful applicants will be required to:
 - Provide their federal tax ID number.
 - Register with the state's e-procurement system using the same address provided in the applicant's proposal. To register in the state's e-procurement system or confirm/update your existing registration, please visit the following link: <http://eprocurement.nc.gov/>.
 - Submit a Conflict of Interest Policy using the following template or submitting a copy of your organization's existing policy: <https://deq.nc.gov/conservation/recycling/programs-offered/grants-local-governments#Forms>
- All applicants selected for funding will undergo a compliance review to ensure that they do not have an outstanding Notice of Violation (NOV) related to North Carolina solid waste statutes and rules. Any outstanding NOVs must be corrected to the satisfaction of the N.C. Division of Waste Management (DWM) prior to any grant being awarded. Applicants with outstanding NOVs are responsible for providing DEACS with information from DWM indicating that the community is in compliance and that the NOVs have been corrected before a grant contract can be initiated.
- DEACS will submit a request through the DEQ contract processing system for a grant contract. Grantees must act to execute the resultant grant contract without excessive delay.

NOTE: Successful applicants that make purchases before a grant contract is signed by both DEQ and the grant recipient will not be reimbursed.

Other General Terms and Conditions:

All grantees are subject to the following terms and conditions. Most of these terms and conditions will be outlined in the grant contract.

- **Publications:** all documents and publications associated with a grant contract should be printed on recycled paper containing at least 30 percent post-consumer content.
- **Final reports:** a draft final report is required to be submitted to DEACS at least 30 days prior to the contract end date and a final report is required to be submitted by the contract end date. Final reports and drafts should be submitted electronically. All applicants are strongly encouraged to visit the following web site to review the final reporting format and guidelines:
<https://deq.nc.gov/conservation/recycling/programs-offered/grants-local-governments>.
- **Extensions / Amendments:** no-cost time extensions are possible but not guaranteed for grant contracts. Grantees seeking no-cost time extensions should submit a request for a time extension at least sixty (60) days prior to the contract end date.
- **Reimbursement:** distribution of DEACS grant funds is on a reimbursement basis. Requests for reimbursement can only be made after the grantee has completed purchases associated with the grant project. Reimbursement requests must be submitted on letterhead, must include copies of invoices, and must include proof that the grantee has made payment. Proof of payment may include copies of canceled checks or other financial reports showing that funds were spent. **State and local sales taxes are not reimbursable, may not be counted towards expenditure requirements, and should be excluded from reimbursement requests.** The amount of actual grant payments may be prorated for projects and / or project elements that come in under budget.
- **Final 10 Percent of Funds:** DEACS will continue to reimburse grantees until 90 percent of the grant award amount has been expended. The final 10 percent of grant funds will be held until an acceptable final report has been received by DEACS. The final report must be received and approved prior to the end date of the contract.

A Final Word on Grant Writing:

Proposals may receive low scores or even be rejected because applicants fail to follow the instructions outlined in this document. Applicants stand a better chance of success if they include all of the required components of a proposal and if they follow the Required Proposal Format. Project Descriptions should be clear, concise, and should demonstrate thoughtful planning. Poorly prepared proposals create uncertainty about the project goals and intended results. Clear details will provide grant proposal reviewers confidence about the viability and feasibility of a proposal. Applicants with questions are encouraged to contact DEACS for more information.

2021 Community Waste Reduction and Recycling Grant February 18, 2021

Contact Information:

Micki Bozeman, Solid Waste & Recycling Coordinator
P.O. Box 249
179 March 9th, 1764 Drive
Bolivia, N.C. 28422
(910) 253-2524 phone
(910) 253-2539 fax

Certification on Usage of NC Solid Waste Disposal Tax

This is to certify that Brunswick County Government receives solid waste disposal tax distribution funds quarterly. The funds are solely used for solid waste and recycling operations, including the collection and hauling cost of commingled recycling collected at all Brunswick County schools.

Public Building Recycling Services

The Brunswick County Government Center and all other county sites have commingled recycling services available to all employees and visitors. This service includes weekly pick-ups as well as on-site commingled recycling dumpsters at all facilities. The county also provides scheduled pick-ups upon request for any special projects that may produce large quantities of recyclables. Materials collected in the recycling service are plastic bottles, containers and jugs, aluminum and steel cans, newspapers, mixed paper, paperboard, magazines, junk mail, phone books, and glass jars and bottles.

In addition to the commingled recycling collection, fluorescent bulbs and thermostats are also collected from all government buildings and convenient sites. The mercury containing products are stored at the Brunswick County Landfill until they are collected by Southeast Recycling Technologies, Inc. for recycling.

Project Description:

Brunswick County is one of the fastest growing counties in North Carolina. The population has grown to over 140,000 with a 27% growth rate between 2010-2018. With this number of residents, education and outreach can be difficult. The use of social media has helped in the past but there is still more that needs to be done.

The project would include outreach materials such as tax bill inserts, stickers and Oops tags. These would be distributed to all Brunswick County households including municipalities. Brunswick County is partnering with the County's waste hauler to replace the old stickers with the new ones. The number of inserts and stickers needed are around 155,000. The remaining funds would be used to purchase enforcement tags that the waste haulers can use when they notice contaminants in the bins such as plastic bags.

With the mass distribution, the life of the service could be 15 to 20 years considering the life of the recycling bins. If this project proves to be successful, there may be opportunities in the future to request annual tax bill inserts in the solid waste budget. The County's hauler has also agreed to provide and place updated stickers on all new recycling bins issued at their cost.

Special Requirements:

All of Brunswick County's commingled recycling is hauled to Sonoco Recycling in New Hanover County so everyone has the same accepted items list. These items include bottles, tubs, jugs and jars, metal cans, glass bottles and jars, and paper, cartons and cardboard. The attached flyer was designed by the DEACS and is the format of the stickers we plan to purchase. The County does plan to work with DEACS again in designing the enforcement tags. The attached brochure, designed by DEACS, will serve as the tax bill inserts.

Project Timeline:

July 2021 – Distribute tax bill inserts and order stickers.

August 2021 – Begin distribution of stickers.

May 31, 2022- Submit final report draft.

June 30, 2022 – Final report submitted and reimbursements approved.

Project Budget:

Project Elements	Estimated Cost		
Tax Bill Inserts	\$10,000.00		
Recycling Cart Stickers	\$10,000.00		
Recycling Cart Tags	\$4,000.00		
Project Budget	Total Project Cost	State Grant Award	Applicant Cash Match
Total	\$24,000.00	\$20,000.00	\$4,000.00

DON'T TANGLE OR CONTAMINATE RECYCLE MORE FOR A GREENER STATE



PLASTIC

Bottles, tubs, jugs and jars



No pumps

Empty and rinse

METAL

All cans



Empty and rinse

GLASS

Bottles and jars



Empty and rinse

PAPER

Paper, cartons and cardboard



Flatten cardboard

KEEP THESE OUT OF THE RECYCLING BIN!



- ❌ Aerosol cans
- ❌ All batteries (car, lithium, etc.)
- ❌ Aluminum foil
- ❌ Ceramic items
- ❌ Clothing or textiles
- ❌ Diapers
- ❌ Disposable cups (plastic and coffee)
- ❌ Electronics
- ❌ Food-tainted items
- ❌ Hazardous waste
- ❌ Household glass
- ❌ Medical waste
- ❌ Plastic bags/wrap*
- ❌ Scrap metal/wood
- ❌ Shredded paper
- ❌ Styrofoam/peanuts
- ❌ Tanglers (cords, hoses, wires, etc.)
- ❌ Tires
- ❌ Toys



* Take clean and dry plastic bags and wrap back to the grocery store.



Brunswick County's Solid Waste and Recycling
910-253-2520
www.brunswickcountync.gov

SONOCO
RECYCLING

USING YOUR COUNTY'S CONVENIENCE DROP-OFF SITES

Designed for residents of Brunswick County, this easy reference guide on the county's waste and recycling services tells how to properly prepare your recyclables and dispose of other special wastes. Brunswick County operates and maintains staffed convenience drop-off sites listed on the back of this brochure. These convenience drop-off sites are for residential waste and recycling only. Curbside services for both trash and recycling are available to all Brunswick County residents as well. You will receive a blue 96 gallon roll out cart and your commingled recycling will be picked up every other week on your regularly scheduled garbage day. For more information, rates, and to sign up please contact:
Waste Industries at 910-253-4177.

Use this map of Brunswick County to find the nearest drop-off site listed on the back of this brochure.



CONVENIENCE DROP-OFF SITES

The county provides dumpsters at the following sites for all county residents to drop off their commingled recyclables.

- ★ **Brunswick County Landfill**
172 Landfill Rd. NE Bolivia, NC 28422
- 2 **Sunset Beach Convenient Site**
736 Seaside Rd. SW, Sunset Beach, NC 28468
- 3 **Supply Convenient Site**
1709 Oxpen Rd. SW, Supply, NC 28462
- 4 **Southport Convenient Site**
8392 River Rd. SE, Southport, NC 28461
- 5 **Leland Convenient Site**
9921 Chappell Loop Rd. SE, Leland, NC 28451
- 6 **Leland Community Park**
1490 Village Rd. NE, Leland, NC 28451
- 7 **Lockwood Folly District Park**
430 Green Swamp Rd. Supply, NC 28462
- 8 **Shallotte District Park**
5550 Main Street, Shallotte, NC 28459
- 9 **Town Creek District Park**
6420 Ocean Hwy E, Winnabow, NC 28479
- 10 **Waccamaw District Park**
5855 Waccamaw School Rd NW, Ash, NC 28420
- 11 **Northwest Park**
1937 Andrew Jackson Hwy. Leland, NC 28451
- 12 **Ocean Isle Beach Park**
6483 Old Georgetown Rd. SW Ocean Isle Beach, NC 28469
- 13 **Government Complex Center**
179 March 9, 1764 Dr NE, Bolivia, NC 28422



DON'T TANGLE OR CONTAMINATE!
RECYCLE MORE
FOR A GREENER STATE



**A GUIDE FOR USING
BRUNSWICK COUNTY'S
SOLID WASTE AND RECYCLING SERVICES**
P.O. Box 249
Bolivia, N.C. 28422
Phone: 910-253-2520 Fax: 910-253-2539
brunswickcountync.gov

RECYCLE ALL TOGETHER

PLASTIC

Bottles, tubs, jugs and jars



No pumps

Empty and rinse

METAL

All cans



Empty and rinse

GLASS

Bottles and jars



Empty and rinse

PAPER

Paper, cartons and cardboard



Flatten cardboard

KEEP THESE OUT OF THE RECYCLING BIN!



*** Take clean and dry
plastic bags and wrap
back to the grocery store.**

ALSO ACCEPTED

The following materials are also accepted for recycling and proper disposal at the county convenience drop-off sites 1 through 5 **unless indicated otherwise**. For additional restrictions, see the site attendant.



Used cooking oil



Used motor oil, filters, anti-freeze/coolant, car batteries (site 1 only)



Oyster shells (sites 1 only)



Fluorescent and CFL bulbs (site 1 & sites 2-5 only accepts 4 ft. & under)



Scrap metal and large appliances



Electronics and computer equipment



Latex paint and cans (site 1 only)



Tires (sites 1, 4 and 5)



Household batteries and cell phones



Smoke detectors



Textiles and shoes (all sites)



Thermostats and empty propane tanks (site 1 only)

Notice of Certain Reporting and Audit Requirements

A recipient or subrecipient shall comply with the all rules and reporting requirements established by statute or administrative rules found in 09 NCAC Subchapter 3M. For convenience, the requirements of 09 NCAC Subchapter 3M.0205 are set forth in this Attachment.

Reporting Thresholds.

There are three reporting thresholds established for recipients and subrecipients receiving State awards of financial assistance. The reporting thresholds are:

- (1) Less than \$25,000 – A recipient or subrecipient that receives, hold, uses, or expends State financial assistance in an amount less than twenty-five thousand dollars (\$25,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:
 - (A) A certification that State financial assistance received or held was used for the purposes for which it was awarded; and
 - (B) An accounting of all State financial assistance received, held, used, or expended.
- (2) \$25,000 up to \$500,000 -A recipient or subrecipient that receives, holds uses, or expends State financial assistance in an amount of at least twenty-five thousand (\$25,000) but less than five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:
 - (A) A certification that State financial assistance received or held was used for the purposes for which it was awarded; and
 - (B) An accounting of all State financial assistance received, held, used, or expended.
 - (C) A description of activities and accomplishments undertaken by the recipient, including reporting on any performance measures established in the contract.
- (3) Greater than \$500,000 – A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in the amount equal to or greater than five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:
 - (A) A certification that State financial assistance received or held was used for the purposes for which it was awarded; and
 - (B) An accounting of all State financial assistance received, held, used, or expended.
 - (C) A description of activities and accomplishments undertaken by the recipient, including reporting on any performance measures established in the contract.
 - (D) A single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow Book.

Other Provisions:

1. All reports shall be filed with the disbursing agency in the format and method specified by the agency no later than three (3) months after the end of the recipient's fiscal year, unless the same information is already required through more frequent reporting. Audits must be provided to the funding agency no later than nine (9) months after the end of the recipient's fiscal year.
2. Unless prohibited by law, the costs of audits made in accordance with the provisions of 09 NCAC 03M .0205 shall be allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in the Code of Federal Regulations, 2CFR Part 200. The cost of any audit not conducted in accordance with this Subchapter shall not be charged to State awards.
3. Notwithstanding the provisions of 09 NCAC 03M .0205, a recipient may satisfy the reporting requirements of Part (3)(D) of this Rule by submitting a copy of the report required under the federal law with respect to the same funds.
4. Agency-established reporting requirements to meet the standards set forth in this Subchapter shall be specified in each recipient's contract.

County of Brunswick
Office of the County Commissioners



CODE OF CONDUCT

Declaration of policy.

- (a) The proper operation of democratic government requires that:
- (1) Public officials, employees and agents to be independent, impartial and responsible to the people;
 - (2) Governmental decisions and policy be made in proper channels of the governmental structure;
 - (3) Public office is not to be used for personal gain; and
 - (4) The public have confidence in the integrity of its government.
- (b) In recognition of these goals, this Code of Conduct is hereby adopted. The purpose is to establish guidelines for ethical standards of conduct for all such public officials, employees and agents by setting forth those acts or actions that are incompatible with the best interests of the county.

Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agent means all persons who are not county officials or employees that are authorized by the county to act for or in place of the county in the conduct, management or administration of a particular project, contract(s) or endeavor.

Business entity means any business, proprietorship, firm, partnership, person in a representative or fiduciary capacity, association, venture, trust or corporation which is organized for financial gain or for profit.

County official means the County Commissioners, the County Manager, the Clerk to the Board of County Commissioners and the County Attorney.

Employee means all persons employed by the county, except county officials.

Immediate family means the spouse and all children of the county official, employee or agent.

Interest means direct or indirect pecuniary or material benefit accruing to a county official, employee or agent as a result of a contract or transaction which is or may be the subject of an official act or action by or with the county. For the purpose of this article, a county official, employee or agent shall be deemed to have an interest in the affairs of:

- (1) Any person in his/her immediate family, as such term is defined in this section;
- (2) Any business entity in which he/she is an officer or director;
- (3) Any business entity in which in excess of five percent of the stock of, or legal or beneficial ownership of, is controlled or owned directly or indirectly by them; or
- (4) Any nonprofit organization on which they currently serve as an officer, director, or board member.

Official act or action means any legislative, administrative, appointive or discretionary act of any county official.

Standards of conduct.

(a) *Scope.* All county officials, employees and agents shall be subject to and shall abide by the code of conduct.

(b) *Interest in contract or agreement.* No county official, employee or agent shall have or thereafter acquire an interest in any contract or agreement with the county.

(c) *Use of official position.* No county official, employee or agent shall use his/her official position or the county's facilities for his/her private gain, nor shall he/she appear before or represent any private person, group or interest before any department, agency, commission or board of the county except in matters of purely civic or public concern. This subsection is not intended to prohibit speaking before neighborhood groups and other nonprofit organizations. No county official, employee or agent shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the county official, employee or agent, a member of his/her immediate family, his/her partner, or an organization which employs, or is about to employ, any of the above individuals, has a financial or other interest in the firm selected for award.

(d) *Disclosure of information.* No county official, employee or agent shall use or disclose confidential information gained in the course of or by reason of his/her official position for purposes of advancing:

- (1) His/her financial or personal interest;
- (2) A business entity of which he/she is an owner in part or in whole, an officer or a director; or
- (3) The financial or personal interest of a member of his/her immediate family or that of any other person.

(e) *Incompatible service.* No county official, employee or agent shall engage in or accept private employment or render service for private interest, when such employment or service is incompatible with the proper discharge of his/her official duties or would tend to impair his/her

independence of judgment or action in the performance of his/her official duties, nor shall any county official, employee or agent serve on any county board except where expressly required by statute and provided disclosure is made as provided in this article.

(f) *Gifts.* No county official, agent or employee shall directly or indirectly solicit any gift or accept or receive any gift, whether in the form of money, cash equivalents (instruments readily convertible into cash such as money orders and checks), gift cards, gift certificates, pre-paid credit cards, services, loans, travel, entertainment, hospitality, or things or promises under circumstances in which it could reasonably be inferred that the gift was intended to influence him/her, or could reasonably be expected to influence him/her, in the performance of his/her official duties, or was intended as a reward for any official action on his/her part. Legitimate political contributions shall not be considered as gifts under this.

(g) *Special treatment.* No county official, agent or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

Disclosure of interest in legislative action.

Any member of the County Commissioners who has an interest in any official act or action before the commissioners shall publicly disclose on the record of the commissioners the nature and extent of such interest and shall withdraw from any consideration of the matter if excused by the commissioners.

Investigations; filing of complaints.

(a) The County Commissioners may direct the County Attorney to investigate any apparent violation of this article, as it applies to any member of the Board of County Commissioners, the County Manager or the Clerk to the Board of County Commissioners and to report the findings of his/her investigation to the County Commissioners.

(b) The County Manager may direct the County Attorney to investigate any apparent violation of this article as it applies to any other employee or agent and to report the findings of his/her investigation to the County Manager.

(c) The County Commissioners may direct the County Manager to investigate any apparent violation of this article by the County Attorney and to report the findings of his/her investigation to the County Commissioners.

(d) Any person who believes that a violation of this article has occurred may file a complaint in writing with the County Commissioners when a member of the County Commissioners, the County Manager, the Clerk to the County Commissioners or the County Attorney is the subject of the complaint, or with the County Manager when an employee or agent is the subject of the complaint, who may thereafter proceed as provided in subsections (a) through (c) of this section.

Hearings on violations; sanctions; rights of accused at hearings.

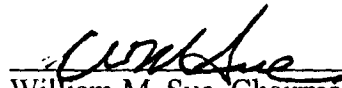
(a) If the County Manager, after the receipt of an investigation by the County Attorney, has cause to believe a violation of this article has occurred, he/she shall schedule a hearing on the matter. The person charged with the violation shall have the right to present evidence, cross examine witnesses, including the complainant, and be represented by counsel at the hearing. If, after such hearing and a review of all the evidence, the County Manager finds that a violation of this article has occurred, he/she shall take whatever lawful disciplinary action he/she deems appropriate, including but not limited to reprimand, suspension, demotion or termination of service.

(b) If the County Commissioners, after receipt of an investigation by the County Attorney, has cause to believe a violation has occurred, the County Commissioners shall schedule a hearing on the matter. The person charged with the violation shall have the right to present evidence, cross examine witnesses, including the complainant, and be represented by counsel at the hearing. If, upon the conclusion of the hearing, a majority of the members of the commissioners vote to find a violation has occurred, the commissioners may adopt a resolution of censure which shall be placed as a matter of record in the minutes of an official commissioners meeting.

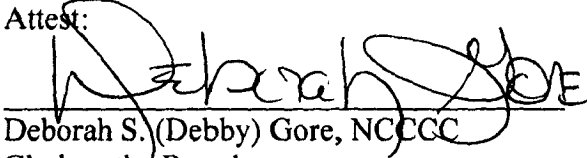
Advisory opinions.

When any county official or employee has a doubt as to the applicability of any section of this article to a particular situation, or as to the definition of terms used in this article, he/she may apply to the County Attorney for an advisory opinion. The county official or employee shall have the opportunity to present his/her interpretation of the facts at issue and of the applicability of sections of this article before such advisory opinion is made.

Adopted this 6th day of December 2010.


William M. Sue, Chairman
Brunswick County Commissioners

Attest:


Deborah S. (Debby) Gore, NCCCC
Clerk to the Board





Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

From:
Donald Dixon

Action Item # V. - 14.

Utilities - McKim & Creed West Brunswick Regional Water
Reclamation Facility Capacity Study

Issue/Action Requested:

Request that the Board of Commissioners approve the contract amendment with McKim & Creed to extend the term of the contract for engineering services associated with the Capacity Study of the West Brunswick Regional Wastewater System Water Reclamation Facility (WBR-WRF).

Background/Purpose of Request:

In February 2021, the Board of Commissioners approved an agreement with McKim & Creed for services associated with a capacity study of the WBR-WRF. To perform the model McKim & Creed requested the County obtain and analyze certain influent wastewater samples that required additional time not anticipated in the original project schedule. Staff recommends an amendment with McKim & Creed to extend the existing contract by 6 months.

Fiscal Impact:

Reviewed By Director of Fiscal Operations

Approved By County Attorney:

Yes

County Attorney's Recommendation:

approved

Advisory Board Recommendation:

Not Applicable

County Manager's Recommendation:

Recommend the Board of Commissioners approve the contract amendment with McKim & Creed to extend the term of the contract for engineering services associated with the Capacity Study of the West Brunswick Regional Wastewater System Water Reclamation Facility (WBR-WRF).

ATTACHMENTS:

Description

- ☐ Utilities - 02/01/21 Approved Board Action - Attach 1
- ☐ Amendment

APPROVED



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
February 1, 2021

Action Item # V. - 13.

From:

Donald Dixon

Utilities - West Brunswick Regional WRF Capacity Study -
McKim & Creed

Issue/Action Requested:

Request that the Board of Commissioners approve and authorize the Chairman and Clerk to the Board to execute the contract with McKim & Creed in an amount of \$110,000 for engineering services associated with a capacity study of the West Brunswick Regional Wastewater System Water Reclamation Facility (WBR-WRF), subject to review and approval by the County Attorney.

Background/Purpose of Request:

McKim & Creed, the original engineers of the treatment plant, were chosen from the Request for Qualifications response to perform the study, as they are intimately familiar with the plant design, operation, and permitting. Requests for Qualifications were requested via county standard procedures and two (2) statement of qualifications were received from qualified firms. The selection committee selected McKim & Creed, based on qualifications and experience with similar projects as well as the association with the treatment plant design.

It is recommended that the Board approve the proposed contract with McKim & Creed Engineering in the amount of \$110,000.

Fiscal Impact:

Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations

Funds available in the current budget and does require utilizing \$30,000 of the budgeted capital and replacement funds.

Approved By County Attorney:

Yes

Advisory Board Recommendation:

Not Applicable

County Manager's Recommendation:

Recommend the Board of Commissioners approve and authorize the Chairman and Clerk to the Board to execute the contract with McKim & Creed in an amount of \$110,000 for engineering services associated with a capacity study of the West Brunswick Regional Wastewater System Water Reclamation Facility (WBR-WRF), subject to review and approval by the County Attorney.

ATTACHMENTS:

Description

- ☐ Professional Services Agreement

**NORTH CAROLINA
BRUNSWICK COUNTY**

**PROFESSIONAL SERVICES AGREEMENT
FOR ENGINEERING SERVICES
(Mini-Brooks Act/Qualification Based Selection)**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as “County” or “Owner”), party of the first part and McKim & Creed, P.A., (hereinafter referred to as “Provider” or “Engineer”), party of the second part.

WITNESSETH:

1. SERVICES; FEES

Provider agrees to perform the services (hereinafter referred to as the “Services”) in connection with the project (hereinafter referred to as the “Project”) at the agreed upon fees, all as more fully set forth on Exhibit “A” attached hereto.

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

2. TERM OF AGREEMENT AND TERMINATION

The term of this Agreement begins one (1) business day after approval by the Brunswick County Board of Commissioners or execution of the Agreement by County, whichever is later (the “Effective Date”). Engineer shall complete the Services in accordance with the schedule set forth on Exhibit “A,” unless this Agreement is sooner terminated or amended as provided herein. The County may terminate this Agreement at any time without cause by giving written notice to Provider. The County may set the effective date of termination at a time up to thirty (30) days following notice to Engineer to allow Engineer ample time to complete tasks for which value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks and/or to assemble Project materials in orderly files. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to County showing in detail the work performed under this Agreement through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, County may terminate this Agreement immediately and without notice to Provider if Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property, or if Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

3. BRUNSWICK COUNTY GENERAL CONDITIONS OF THE CONTRACT

This Agreement, in addition to any construction documents prepared hereunder, shall be subject to the Brunswick County, North Carolina General Conditions of the Contract (for construction contracts), unless the County directs otherwise. In the event of a conflict between the General Conditions of the Contract and this Agreement, this Agreement shall prevail.

4. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Provider of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

5. COMPENSATION

The County agrees to pay fees as specified in Exhibit "A" or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise specified, Provider shall submit monthly invoices to County and include detail of all Services delivered or performed under the terms of this Agreement. County shall pay all undisputed and properly completed invoices within forty-five (45) days of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Provider, the County shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice County for the previously disputed charges, and, per any resolution between County and Provider, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

6. INDEPENDENT CONTRACTOR

Both County and Provider agree that Provider shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, Provider shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Provider shall not be entitled to participate in any plans, arrangements or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security

contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

7. OPINIONS OF COST

If applicable, Provider shall provide opinions of probable construction costs, including but not limited to, designer fees, costs of construction, costs of equipment, furnishings, signage, permit fees and appropriate contingencies, at Project intervals determined by County. Such opinions of costs shall be representative of Provider's best judgment as an experienced and qualified professional generally familiar with the construction industry. The parties acknowledge that actual bids, proposals and costs may vary from Provider's opinions of costs based on the cost of labor, materials, equipment or services furnished by others, differing methods for determining prices, competitive bidding or other market conditions. When requested by County, Provider shall participate in rebidding, renegotiation and design adjustments to the extent such are necessary to reduce Project costs. Such services shall be performed by Provider without additional compensation.

8. ACCOUNTING RECORDS

Provider shall maintain accounting records in accordance with generally accepted accounting practices and shall make such records available for inspection by County upon reasonable request and during normal business hours for a period of three (3) years following completion of the Services.

9. PERMITS AND APPROVALS

Provider shall provide County with a schedule of all required approvals and the dates by which application for such approvals must be made in order to avoid any risk of delay to the Project. Provider shall prepare the necessary application forms, present documents requiring approval by County and submit documents with County approval to appropriate federal, state and local government or other agencies in a timely manner. County shall be financially responsible for all necessary permits, licenses, approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

10. ENVIRONMENTAL CONDITIONS

County shall disclose to Provider the existence of all known and suspected hazardous substances, including, without limitation: asbestos; polychlorinated biphenyls (PCBs); petroleum; hazardous waste; or radioactive material located at or near the site where the Services are to be performed. If Provider discovers any undisclosed hazardous substances, or if investigative or remedial action or other professional services are necessary, Provider may, at its option and without liability for damages, suspend performance of the Services hereunder until County: (1) retains an appropriate specialist consultant or contractor to identify and, as appropriate, abate, remediate or remove the hazardous substances; and (2) warrants that the site where the Services are to be performed are in full compliance with applicable laws and regulations. Notwithstanding the foregoing, if the presence of any hazardous materials adversely affects the performance of

Provider's duties under this Agreement, then Provider shall have the option of: (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause upon thirty (30) days' written notice to County.

11. PROVIDER REPRESENTATIONS

- a. Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- b. Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- c. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;
- d. In connection with Provider's obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;
- e. Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- f. Provider has not engaged in corrupt, fraudulent or coercive practices in competing for or executing this Agreement;
- g. Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- h. The Services provided by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);
- i. Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;
- j. Provider shall be responsible for all errors, omissions or deficiencies in technical accuracy in any drawings, specifications or other documents prepared or services rendered by Provider, its subcontractors or consultants and shall correct, at no additional cost to County, any and all errors, omissions, discrepancies, ambiguities, mistakes, deficiencies or conflicts;
- k. Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and

1. Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

12. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

Provider shall be solely responsible for any damage to or loss of the County's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of Provider or its subcontractors or consultants. In the event that Provider causes damage to the County's equipment or facilities, Provider shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

13. NON-ENDORSEMENT AND PUBLICITY

County is not endorsing Provider or its Services, and Provider is not permitted to reference this Agreement or County in any manner without the prior written consent of County. Notwithstanding the foregoing, the parties agree that Provider may list the County as a reference in response to requests for proposals and may identify County as a customer in presentations to potential customers.

14. NON-EXCLUSIVITY

Provider acknowledges that County is not obligated to contract solely with Provider for the Services covered under this Agreement.

15. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

16. DEBARMENT

Provider hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. Provider must notify County within thirty (30) days if debarred by any governmental entity during this Agreement.

17. INDEMNIFICATION

Provider shall indemnify and hold harmless County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind (collectively, "Claims") which may be brought or made against County or which County must pay and incur arising out of this Agreement should fault or negligence on the part of the Provider

or its subcontractors or consultants be the proximate cause of such Claims. Provider shall be fully responsible to County for the acts and omissions of its subcontractors or consultants and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

18. INSURANCE

Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense, and shall ensure that any of its consultants maintains in full force and effect at all times and at its sole cost and expense, Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by County with limits acceptable to County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include County as an additional insured and as a certificate holder. Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

19. WORKERS' COMPENSATION

To the extent required by law, Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Provider's obligations under this Agreement.

Provider agrees to furnish County proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

20. REMEDIES

- a. **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of County, 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:
 - i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement; and

- ii. Deduct any and all expenses incurred by County in obtaining or performing the Services from any money then due or to become due Provider and, should the County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.
- b. **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.
- c. **SETOFF.** Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- d. **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- e. **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

21. TAXES

Provider shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Provider shall substantiate, on demand by the County, that all taxes and other charges are being properly paid.

22. HEALTH AND SAFETY

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees in connection with performing the Services and other persons who may be affected thereby.

23. NON-DISCRIMINATION IN EMPLOYMENT

Provider shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Provider shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Provider is determined by the

final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by County, and Provider may be declared ineligible for further County agreements.

24. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that Provider and its subcontractors or consultants must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Provider agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Provider shall require its subcontractors and consultants to do the same. Upon request, Provider agrees to provide County with an affidavit of compliance or exemption.

25. CONFIDENTIAL INFORMATION

For purposes of this Agreement, the party disclosing Confidential Information is the “Discloser,” and the party receiving Confidential Information is the “Recipient.” “Confidential Information” shall mean any nonpublic information concerning the parties’ respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as “Confidential.” Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- a. in the public domain through no fault of the Recipient;
- b. within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- c. lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- d. independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- e. disclosed with the prior written consent of the Discloser; or

- f. required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

26. OWNERSHIP OF WORK PRODUCT

- a. All work product created by Provider pursuant to this Agreement, including, without limitation, design drawings, construction documents, photographs and models and any derivative works and compilations, and whether or not such work product is considered a "work made for hire" or an employment to invent (hereinafter referred to collectively as "Work Product") shall be the exclusive property of County. County and Provider agree that such original works of authorship are "works made for hire" of which County is the author within the meaning of the United States Copyright Act. To the extent that County is not the owner of the intellectual property rights in and to such Work Product, Provider hereby irrevocably assigns to County any and all of its rights, title and interest in and to all original Work Product created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret or any other state or federal intellectual property law or doctrine. Upon County's request, Provider shall execute such further documents and instruments or obtain such documents from third parties, including consultants and subcontractors, if applicable, necessary to fully vest such rights in County. Provider forever waives any and all rights relating to original Work Product created pursuant to this Agreement, including without limitation, any and all rights arising under 17 U.S.C. § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- b. In the event the use of any of Provider's intellectual property, including any derivative work created with the use of third-party intellectual property, is necessary for the use of any Work Product, Provider hereby grants to County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the intellectual property for the purposes set forth in this Agreement and will ensure that any third-party grants the same.
- c. County may use Work Product for any other purpose and on any other project without additional compensation to Provider. Notwithstanding the foregoing, the use of Work Product by County for any purpose other than as set forth in this Agreement shall be at County's risk.

27. NO ASSIGNMENT WITHOUT CONSENT

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and County shall not recognize any assignment in violation of this provision.

28. GOVERNING LAW AND VENUE

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

29. DISPUTE RESOLUTION

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

30. GOVERNMENTAL IMMUNITY

County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

31. NON-WAIVER

Failure by County at any time to require the performance by Provider of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

32. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the foregoing, all documents included in the Request for Qualifications and the qualifications statement submitted by Provider, if applicable, including, but not necessarily limited to: General Conditions; Supplementary General Conditions; Scope of Work; Specifications; Addenda; Accepted Proposal; Notice to Proceed; Performance Bond; Payment Bond; MBE forms; Power of Attorney; Insurance Certificates; Approval by County Commissioners; Tax Statement and Certification; Notice of Substantial Completion; Notice of Final Completion and Acceptance; and Drawings are incorporated herein by reference and made an integral part of this Agreement. To the extent the terms of such documents conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

33. HEADINGS

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

34. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

35. AMENDMENTS

No amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall be valid unless in writing and signed by authorized agents of both Provider and County.

36. NOTICES

- a. **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- b. **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- c. **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

i. For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022

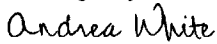
ii. For the Provider: McKim & Creed, P.A.
243 N. Front Street
Wilmington, NC 28401

37. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S. § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S. § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

BRUNSWICK COUNTY

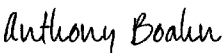
DocuSigned by:

 Clerk to the Board /
 Deputy Clerk to the Board

DocuSigned by:

 By: Chairman, Board of Commissioners

[SEAL]

MCKIM & CREED, P.A.

DocuSigned by:

 By: _____
 943885976A0D474...

Printed Name: Anthony Boahn

Title: Vice President

Date: 1/28/2021

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

DocuSigned by:

 Julie A. Miller, Director of Fiscal Operations
 Brunswick County, North Carolina

APPROVED AS TO FORM

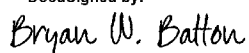
DocuSigned by:

 Robert V. Shaver, Jr., County Attorney /
 Bryan W. Batton, Assistant County Attorney

EXHIBIT “A”
SCOPE – SCHEDULE AND FEES
WEST BRUNSWICK REGIONAL WASTEWATER SYSTEM WATER
RECLAMATION FACILITY CAPACITY STUDY

Engineer shall provide services in accordance with the in accordance with the Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Phase I - WBRWRF Re-Rate Study and Report

A. Engineer shall:

1. Consult with Owner to define and clarify Owner’s requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services which are not part of Engineer’s Basic Services.
3. Identify and evaluate the following:
 - a. Re-rating of the West Brunswick WWTP with a goal to increase the maximum capacity to the greatest extent possible (inclusive of Biowin Modeling) and shall include the identification of the most cost-effective re-rate which does not require major modifications at the treatment facility and shall include the evaluation of but not limited to the following WWTP components:
 - 1) Influent Screens
 - 2) Grit Removal System
 - 3) Equalization Basin
 - 4) Oxidation Ditches (SRT & Aeration requirements)
 - 5) RAS Rate
 - 6) WAS Loading
 - 7) Clarification
 - 8) Filtration
 - 9) Chlorine Contact Tank
 - 10) Reclaimed Water PS and 5-day upset pond
 - 11) WAS storage
 - 12) Residuals Management System
 - b. Hydrogeologic evaluation that includes the re-rating of the HRIB at the IP Tract, re-rating of the HRIB at Mercer Mill Site, to maximize effluent disposal capacity. This shall include services to perform a review of historical NDMR data for each of the high rate infiltration basins for the IP Tract (9 basins) and Mercer Mill (2 basins). This data will be evaluated to determine if flow to each basin can be increased with modifications, including drain design alteration, additional berm height (including associated increase in loading rate [gpd/sq. ft.]), or perhaps the data reveals that no change is needed to adjust the permitted loading capacity. This will be quantified and evaluated by simulating flow. Modflow and MT3D simulations will be prepared based on an Autocad™ plan for the two sites. The models will analyze the NDMR results using the original calibration used for initial permitting **(no field work is proposed**

for this re-rating). Transient state alternatives will be simulated to determine the maximum potential for each basin with identified modifications.

- c. Hydraulic evaluation of the reclaim water major transmission system for conveyance of reclaim water to the disposal sites, this is NOT inclusive of actual spray/drip system hydraulic evaluation.
4. Prepare a report (the “Report”) which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.
5. Perform or provide the following additional Study and Report Phase tasks or deliverables: Shall be inclusive of up to two (2) meetings for project review and discussions with County representatives and staff and one (1) Board of Commissioners Meeting to discuss or present findings of report/evaluation.
6. Furnish two review copies of the Preliminary Report and any other deliverables to Owner and review it with Owner. Within fourteen calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.

Revise the Report and any other deliverables in response to Owner’s comments, as appropriate, and furnish up to seven (7) copies of the revised Report and any other deliverables to the Owner in accordance with the schedule outlined as follows:

Task	Duration
Notice to Proceed	1 Calendar Day
Draft Report	90 Calendar Days
Brunswick County Draft Report Review	14 Calendar Days
Final Report	30 Calendar Days
BOC Meeting	30 Calendar Days

- B. Engineer’s services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

- Hydrogeologic and Soil Investigation to determine the potential for conversion from Spray Irrigation to High Rate Infiltration at Mercer Mill and IP Tracts
- Hydraulic analysis of spray irrigation or drip irrigation facilities
- Soils evaluation for re-rating spray irrigation or drip irrigation facilities
- Design Phase Services
- Bid & Award Phase Services
- Construction Administration or Construction Observation services
- Permitting Services
- Geotechnical Services
- Flow monitoring, supply of meters, pressure gauges, or other flow measurement devices
- Bidder Pre-Qualification Services
- Court appearances for expert witness
- Off-site drainage improvements
- Condition Assessment of existing facilities, pump stations, manholes, force mains, etc.
- Design of demolition or abandonment of existing facilities
- CAMA or Wetlands Permitting
- Environmental Assessments, Environmental Impact Statements or biological surveys for endangered species
- Subsurface Utility Engineering
- Survey and mapping for the purposes of land acquisition
- Application fees for plan approval or construction permits
- Redesigns of facilities after approval of final plans (if design is included)
- Court appearances for litigation, or preparation for the same

Payments to Engineer for Services
Basic Services - Lump Sum

The Professional Services Agreement is supplemented to include the following agreement of the parties.

Compensation for Basic Services - Method of Payment

B. Owner shall pay Engineer for Basic Services as follows:

1. A Lump Sum amount based on the following estimated distribution of compensation:

	<u>Amount</u>	<u>Duration</u>
a. Study and Report Phase	\$ <u>110,000.00</u>	<u>165</u> days
 Basic Services Total	 \$ <u>110,000.00</u>	 <u>165</u> days

2. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and reimbursable expenses.
3. The portion of the Lump Sum billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period.
4. The date for project completion shall be determined by adding the above noted Total Duration, also known as the “Time for Completion” to the Effective Date of the Agreement.

End
Of
Original

**NORTH CAROLINA
BRUNSWICK COUNTY**

**PROFESSIONAL SERVICES AGREEMENT
FOR ENGINEERING SERVICES
(Mini-Brooks Act/Qualification Based Selection)**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as “County” or “Owner”), party of the first part and McKim & Creed, P.A., (hereinafter referred to as “Provider” or “Engineer”), party of the second part.

WITNESSETH:

1. SERVICES; FEES

Provider agrees to perform the services (hereinafter referred to as the “Services”) in connection with the project (hereinafter referred to as the “Project”) at the agreed upon fees, all as more fully set forth on Exhibit “A” attached hereto.

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

2. TERM OF AGREEMENT AND TERMINATION

The term of this Agreement begins one (1) business day after approval by the Brunswick County Board of Commissioners or execution of the Agreement by County, whichever is later (the “Effective Date”). Engineer shall complete the Services in accordance with the schedule set forth on Exhibit “A,” unless this Agreement is sooner terminated or amended as provided herein. The County may terminate this Agreement at any time without cause by giving written notice to Provider. The County may set the effective date of termination at a time up to thirty (30) days following notice to Engineer to allow Engineer ample time to complete tasks for which value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks and/or to assemble Project materials in orderly files. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to County showing in detail the work performed under this Agreement through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, County may terminate this Agreement immediately and without notice to Provider if Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property, or if Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

3. BRUNSWICK COUNTY GENERAL CONDITIONS OF THE CONTRACT

This Agreement, in addition to any construction documents prepared hereunder, shall be subject to the Brunswick County, North Carolina General Conditions of the Contract (for construction contracts), unless the County directs otherwise. In the event of a conflict between the General Conditions of the Contract and this Agreement, this Agreement shall prevail.

4. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Provider of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

5. COMPENSATION

The County agrees to pay fees as specified in Exhibit "A" or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise specified, Provider shall submit monthly invoices to County and include detail of all Services delivered or performed under the terms of this Agreement. County shall pay all undisputed and properly completed invoices within forty-five (45) days of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Provider, the County shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice County for the previously disputed charges, and, per any resolution between County and Provider, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

6. INDEPENDENT CONTRACTOR

Both County and Provider agree that Provider shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, Provider shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Provider shall not be entitled to participate in any plans, arrangements or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security

contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

7. OPINIONS OF COST

If applicable, Provider shall provide opinions of probable construction costs, including but not limited to, designer fees, costs of construction, costs of equipment, furnishings, signage, permit fees and appropriate contingencies, at Project intervals determined by County. Such opinions of costs shall be representative of Provider's best judgment as an experienced and qualified professional generally familiar with the construction industry. The parties acknowledge that actual bids, proposals and costs may vary from Provider's opinions of costs based on the cost of labor, materials, equipment or services furnished by others, differing methods for determining prices, competitive bidding or other market conditions. When requested by County, Provider shall participate in rebidding, renegotiation and design adjustments to the extent such are necessary to reduce Project costs. Such services shall be performed by Provider without additional compensation.

8. ACCOUNTING RECORDS

Provider shall maintain accounting records in accordance with generally accepted accounting practices and shall make such records available for inspection by County upon reasonable request and during normal business hours for a period of three (3) years following completion of the Services.

9. PERMITS AND APPROVALS

Provider shall provide County with a schedule of all required approvals and the dates by which application for such approvals must be made in order to avoid any risk of delay to the Project. Provider shall prepare the necessary application forms, present documents requiring approval by County and submit documents with County approval to appropriate federal, state and local government or other agencies in a timely manner. County shall be financially responsible for all necessary permits, licenses, approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

10. ENVIRONMENTAL CONDITIONS

County shall disclose to Provider the existence of all known and suspected hazardous substances, including, without limitation: asbestos; polychlorinated biphenyls (PCBs); petroleum; hazardous waste; or radioactive material located at or near the site where the Services are to be performed. If Provider discovers any undisclosed hazardous substances, or if investigative or remedial action or other professional services are necessary, Provider may, at its option and without liability for damages, suspend performance of the Services hereunder until County: (1) retains an appropriate specialist consultant or contractor to identify and, as appropriate, abate, remediate or remove the hazardous substances; and (2) warrants that the site where the Services are to be performed are in full compliance with applicable laws and regulations. Notwithstanding the foregoing, if the presence of any hazardous materials adversely affects the performance of

Provider's duties under this Agreement, then Provider shall have the option of: (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause upon thirty (30) days' written notice to County.

11. PROVIDER REPRESENTATIONS

- a. Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- b. Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- c. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;
- d. In connection with Provider's obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;
- e. Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- f. Provider has not engaged in corrupt, fraudulent or coercive practices in competing for or executing this Agreement;
- g. Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- h. The Services provided by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);
- i. Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;
- j. Provider shall be responsible for all errors, omissions or deficiencies in technical accuracy in any drawings, specifications or other documents prepared or services rendered by Provider, its subcontractors or consultants and shall correct, at no additional cost to County, any and all errors, omissions, discrepancies, ambiguities, mistakes, deficiencies or conflicts;
- k. Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and

1. Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

12. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

Provider shall be solely responsible for any damage to or loss of the County's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of Provider or its subcontractors or consultants. In the event that Provider causes damage to the County's equipment or facilities, Provider shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

13. NON-ENDORSEMENT AND PUBLICITY

County is not endorsing Provider or its Services, and Provider is not permitted to reference this Agreement or County in any manner without the prior written consent of County. Notwithstanding the foregoing, the parties agree that Provider may list the County as a reference in response to requests for proposals and may identify County as a customer in presentations to potential customers.

14. NON-EXCLUSIVITY

Provider acknowledges that County is not obligated to contract solely with Provider for the Services covered under this Agreement.

15. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

16. DEBARMENT

Provider hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. Provider must notify County within thirty (30) days if debarred by any governmental entity during this Agreement.

17. INDEMNIFICATION

Provider shall indemnify and hold harmless County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind (collectively, "Claims") which may be brought or made against County or which County must pay and incur arising out of this Agreement should fault or negligence on the part of the Provider

or its subcontractors or consultants be the proximate cause of such Claims. Provider shall be fully responsible to County for the acts and omissions of its subcontractors or consultants and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

18. INSURANCE

Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense, and shall ensure that any of its consultants maintains in full force and effect at all times and at its sole cost and expense, Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by County with limits acceptable to County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include County as an additional insured and as a certificate holder. Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

19. WORKERS' COMPENSATION

To the extent required by law, Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Provider's obligations under this Agreement.

Provider agrees to furnish County proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

20. REMEDIES

- a. **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of County, 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:
 - i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement; and

- ii. Deduct any and all expenses incurred by County in obtaining or performing the Services from any money then due or to become due Provider and, should the County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.
- b. **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.
- c. **SETOFF.** Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- d. **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- e. **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

21. TAXES

Provider shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Provider shall substantiate, on demand by the County, that all taxes and other charges are being properly paid.

22. HEALTH AND SAFETY

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees in connection with performing the Services and other persons who may be affected thereby.

23. NON-DISCRIMINATION IN EMPLOYMENT

Provider shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Provider shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Provider is determined by the

final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by County, and Provider may be declared ineligible for further County agreements.

24. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that Provider and its subcontractors or consultants must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Provider agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Provider shall require its subcontractors and consultants to do the same. Upon request, Provider agrees to provide County with an affidavit of compliance or exemption.

25. CONFIDENTIAL INFORMATION

For purposes of this Agreement, the party disclosing Confidential Information is the “Discloser,” and the party receiving Confidential Information is the “Recipient.” “Confidential Information” shall mean any nonpublic information concerning the parties’ respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as “Confidential.” Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- a. in the public domain through no fault of the Recipient;
- b. within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- c. lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- d. independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- e. disclosed with the prior written consent of the Discloser; or

- f. required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

26. OWNERSHIP OF WORK PRODUCT

- a. All work product created by Provider pursuant to this Agreement, including, without limitation, design drawings, construction documents, photographs and models and any derivative works and compilations, and whether or not such work product is considered a "work made for hire" or an employment to invent (hereinafter referred to collectively as "Work Product") shall be the exclusive property of County. County and Provider agree that such original works of authorship are "works made for hire" of which County is the author within the meaning of the United States Copyright Act. To the extent that County is not the owner of the intellectual property rights in and to such Work Product, Provider hereby irrevocably assigns to County any and all of its rights, title and interest in and to all original Work Product created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret or any other state or federal intellectual property law or doctrine. Upon County's request, Provider shall execute such further documents and instruments or obtain such documents from third parties, including consultants and subcontractors, if applicable, necessary to fully vest such rights in County. Provider forever waives any and all rights relating to original Work Product created pursuant to this Agreement, including without limitation, any and all rights arising under 17 U.S.C. § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- b. In the event the use of any of Provider's intellectual property, including any derivative work created with the use of third-party intellectual property, is necessary for the use of any Work Product, Provider hereby grants to County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the intellectual property for the purposes set forth in this Agreement and will ensure that any third-party grants the same.
- c. County may use Work Product for any other purpose and on any other project without additional compensation to Provider. Notwithstanding the foregoing, the use of Work Product by County for any purpose other than as set forth in this Agreement shall be at County's risk.

27. NO ASSIGNMENT WITHOUT CONSENT

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and County shall not recognize any assignment in violation of this provision.

28. GOVERNING LAW AND VENUE

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

29. DISPUTE RESOLUTION

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

30. GOVERNMENTAL IMMUNITY

County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

31. NON-WAIVER

Failure by County at any time to require the performance by Provider of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

32. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the foregoing, all documents included in the Request for Qualifications and the qualifications statement submitted by Provider, if applicable, including, but not necessarily limited to: General Conditions; Supplementary General Conditions; Scope of Work; Specifications; Addenda; Accepted Proposal; Notice to Proceed; Performance Bond; Payment Bond; MBE forms; Power of Attorney; Insurance Certificates; Approval by County Commissioners; Tax Statement and Certification; Notice of Substantial Completion; Notice of Final Completion and Acceptance; and Drawings are incorporated herein by reference and made an integral part of this Agreement. To the extent the terms of such documents conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

33. HEADINGS

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

34. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

35. AMENDMENTS

No amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall be valid unless in writing and signed by authorized agents of both Provider and County.

36. NOTICES

- a. **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- b. **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- c. **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

- i. For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022

- ii. For the Provider: McKim & Creed, P.A.
243 N. Front Street
Wilmington, NC 28401

37. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S. § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S. § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board /
Deputy Clerk to the Board

By: _____
Chairman, Board of Commissioners

[SEAL]

MCKIM & CREED, P.A.

DocuSigned by:
By: Anthony Boahn
943885976A0D474...

Printed Name: Anthony Boahn

Title: Vice President

Date: 1/28/2021

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

DocuSigned by:
Julie A. Miller
022997186D194B2
Julie A. Miller, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

DocuSigned by:
Bryan W. Batton
0195D1896EE7473
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

EXHIBIT “A”
SCOPE – SCHEDULE AND FEES
WEST BRUNSWICK REGIONAL WASTEWATER SYSTEM WATER
RECLAMATION FACILITY CAPACITY STUDY

Engineer shall provide services in accordance with the in accordance with the Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Phase I - WBRWRF Re-Rate Study and Report

A. Engineer shall:

1. Consult with Owner to define and clarify Owner’s requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services which are not part of Engineer’s Basic Services.
3. Identify and evaluate the following:
 - a. Re-rating of the West Brunswick WWTP with a goal to increase the maximum capacity to the greatest extent possible (inclusive of Biowin Modeling) and shall include the identification of the most cost-effective re-rate which does not require major modifications at the treatment facility and shall include the evaluation of but not limited to the following WWTP components:
 - 1) Influent Screens
 - 2) Grit Removal System
 - 3) Equalization Basin
 - 4) Oxidation Ditches (SRT & Aeration requirements)
 - 5) RAS Rate
 - 6) WAS Loading
 - 7) Clarification
 - 8) Filtration
 - 9) Chlorine Contact Tank
 - 10) Reclaimed Water PS and 5-day upset pond
 - 11) WAS storage
 - 12) Residuals Management System
 - b. Hydrogeologic evaluation that includes the re-rating of the HRIB at the IP Tract, re-rating of the HRIB at Mercer Mill Site, to maximize effluent disposal capacity. This shall include services to perform a review of historical NDMR data for each of the high rate infiltration basins for the IP Tract (9 basins) and Mercer Mill (2 basins). This data will be evaluated to determine if flow to each basin can be increased with modifications, including drain design alteration, additional berm height (including associated increase in loading rate [gpd/sq. ft.]), or perhaps the data reveals that no change is needed to adjust the permitted loading capacity. This will be quantified and evaluated by simulating flow. Modflow and MT3D simulations will be prepared based on an Autocad™ plan for the two sites. The models will analyze the NDMR results using the original calibration used for initial permitting **(no field work is proposed**

for this re-rating). Transient state alternatives will be simulated to determine the maximum potential for each basin with identified modifications.

- c. Hydraulic evaluation of the reclaim water major transmission system for conveyance of reclaim water to the disposal sites, this is NOT inclusive of actual spray/drip system hydraulic evaluation.
4. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.
5. Perform or provide the following additional Study and Report Phase tasks or deliverables: Shall be inclusive of up to two (2) meetings for project review and discussions with County representatives and staff and one (1) Board of Commissioners Meeting to discuss or present findings of report/evaluation.
6. Furnish two review copies of the Preliminary Report and any other deliverables to Owner and review it with Owner. Within fourteen calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.

Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish up to seven (7) copies of the revised Report and any other deliverables to the Owner in accordance with the schedule outlined as follows:

Task	Duration
Notice to Proceed	1 Calendar Day
Draft Report	90 Calendar Days
Brunswick County Draft Report Review	14 Calendar Days
Final Report	30 Calendar Days
BOC Meeting	30 Calendar Days

- B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

- Hydrogeologic and Soil Investigation to determine the potential for conversion from Spray Irrigation to High Rate Infiltration at Mercer Mill and IP Tracts
- Hydraulic analysis of spray irrigation or drip irrigation facilities
- Soils evaluation for re-rating spray irrigation or drip irrigation facilities
- Design Phase Services
- Bid & Award Phase Services
- Construction Administration or Construction Observation services
- Permitting Services
- Geotechnical Services
- Flow monitoring, supply of meters, pressure gauges, or other flow measurement devices
- Bidder Pre-Qualification Services
- Court appearances for expert witness
- Off-site drainage improvements
- Condition Assessment of existing facilities, pump stations, manholes, force mains, etc.
- Design of demolition or abandonment of existing facilities
- CAMA or Wetlands Permitting
- Environmental Assessments, Environmental Impact Statements or biological surveys for endangered species
- Subsurface Utility Engineering
- Survey and mapping for the purposes of land acquisition
- Application fees for plan approval or construction permits
- Redesigns of facilities after approval of final plans (if design is included)
- Court appearances for litigation, or preparation for the same

Payments to Engineer for Services
Basic Services - Lump Sum

The Professional Services Agreement is supplemented to include the following agreement of the parties.

Compensation for Basic Services - Method of Payment

B. Owner shall pay Engineer for Basic Services as follows:

1. A Lump Sum amount based on the following estimated distribution of compensation:

	<u>Amount</u>	<u>Duration</u>
a. Study and Report Phase	\$ <u>110,000.00</u>	<u>165</u> days
 Basic Services Total	 \$ <u>110,000.00</u>	 <u>165</u> days

2. The Lump Sum includes compensation for Engineer's services and services of Engineer's consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and reimbursable expenses.
3. The portion of the Lump Sum billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.
4. The date for project completion shall be determined by adding the above noted Total Duration, also known as the "Time for Completion" to the Effective Date of the Agreement.

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

This Amendment to Professional Services Agreement (the "Amendment") is made and entered into the 7th day of June, 2021, by and between Brunswick County (hereinafter referred to as "County" or "Owner") and McKim & Creed, P.A. (hereinafter referred to as "Engineer").

WITNESSETH:

WHEREAS, County and Engineer entered into a Professional Services Agreement (the "Agreement") effective February 2, 2021; and

WHEREAS, the estimated duration of the Project, as defined in the Agreement, was 165 days, inclusive of all phases; and

WHEREAS, the treatment process modeling required to determine the ultimate capacity of the facility is unable to be completed within the Agreement term due to delays in obtaining influent wastewater sampling results; and

WHEREAS, the parties mutually wish to extend the Project duration to allow time for completion.

NOW, THEREFORE, in consideration of the mutual covenants and agreements as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The estimated Project duration is hereby amended to extend an additional 180 days.
2. Except as otherwise amended herein, all other terms of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto execute this Amendment by their duly authorized representatives.

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board /
Asst. Clerk to the Board

By: _____
Randy Thompson
Chairman

[SEAL]

APPROVED AS TO FORM

MCKIM & CREED, P.A.

By: Anthony Boahn

Bryan W. Batton
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Asst. County Attorney
Brunswick County, NC

Printed Name: Anthony W. Boahn

Title: Vice President

Date: 5/28/2021



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # V. - 15.

Utilities - USGS Well Monitoring Program

From:

John Nichols, P.E.

Issue/Action Requested:

Request that the Board of Commissioners approve the Joint Funding Agreement with the U.S. Geological Survey for continued monitoring of groundwater levels in Brunswick County and authorize the Chairman to sign the agreement on behalf of the county.

Background/Purpose of Request:

For a number of years, Brunswick County has entered into a Joint Funding Agreement with the U.S. Geological Survey. Under the proposed Joint Funding Agreement, Brunswick County would agree to extend the monitoring program for a two-year period. Under the terms of the agreement, the county will pay \$22,210 and the U.S. Geological Survey will pay \$16,000 for the first year of the monitoring program and the county would pay \$23,270 for the second year of the program and the U.S. Geological Survey's share of the program would be \$16,000.

As the county operates a groundwater plant on NC 211 and may need additional groundwater resources in the future, developing long-term trends on groundwater levels is an important component of water resources planning. The U.S. Geological Survey publishes an annual report on groundwater levels in Brunswick County and maintains similar information on their webpage.

Staff recommends approval of the Joint Funding Agreement and that the Chairman be authorized to execute the agreement.

Fiscal Impact:

Pre-Audit Certification Required, Reviewed By Director of Fiscal Operations

Funds available in the current budget

Approved By County Attorney:

Yes

Advisory Board Recommendation:

Not Applicable

County Manager's Recommendation:

Recommend the Board of Commissioners approve the Joint Funding Agreement with the U.S. Geological Survey for continued monitoring of groundwater levels in Brunswick County and authorize the Chairman to sign the agreement on behalf of the county.

ATTACHMENTS:

Description

- ☐ Utilities - USGS Letter - Attach 1
- ☐ USGS Joint Funding Agreement



United States Department of the Interior

U.S. GEOLOGICAL SURVEY
South Atlantic Water Science Center
3916 Sunset Ridge Road
Raleigh, NC 27607
Phone: (919) 571-4000
Fax: (919) 571-4041

May 7, 2021

Mr. John Nichols
Director of Public Utilities
Brunswick County Government Center
Post Office Box 249
Bolivia, North Carolina 28422

Dear Mr. Nichols:

Thank you for your continuing support of the U.S. Geological Survey (USGS) programs, which we conduct across North Carolina in cooperation with more than 30 local, State, and Federal agencies. We also appreciate your long-standing commitment to the USGS-Brunswick County partnership in groundwater investigations. Below is a table listing costs for the operation and maintenance of the groundwater-level monitor network for the period July 1, 2021, through June 30, 2023. Program costs for each fiscal year will be partially matched in the amount of \$16,000 by the USGS, subject to availability of USGS Cooperative Water Program matching funds.

Fiscal Year	Funding		
	Brunswick Co.	USGS	Total
2022	\$22,210	\$16,000	\$38,210
2023	\$23,270	\$16,000	\$39,270
Total	\$45,480	\$32,000	\$77,480

Program costs cover routine data collection, servicing and maintaining the equipment and the instrumentation, and publication of the water-level record. The list of wells included for this program is enclosed. A water sample from each well will be collected once each year and analyzed for chloride concentration.

Enclosed is the Joint Funding Agreement (JFA). This agreement may be terminated by either party upon 60 days written notice to the other party. In the event of termination by either party, each party shall be responsible for its share of the costs incurred through the effective date of termination, as well as its share of costs incurred after the effective date of the termination which are related to the termination. Additionally, as noted in sections 2(d) and 2(e) of the enclosed agreement, each party may reduce the amounts or modify the performance period.

Please have the enclosed JFA signed and return one copy as soon as possible. Regulations state

that we cannot continue work or start new work until we receive the signed agreement. Work performed with funds from this agreement will be conducted on a fixed-price basis. The results of all work under this agreement will be available for publication by the U.S. Geological Survey.

We appreciate your partnership with the USGS and look forward to continuing work with you on this important program. If you have any questions regarding the agreement, please call Dominick Antolino at (919) 571-4094.

Sincerely,

Victor Engel, Director
USGS, South Atlantic Water Science Center

Enclosures

Copy to: Dominick Antolino, U.S. Geological Survey, Raleigh, North Carolina

Wells monitored in Brunswick County
July 1, 2021, to June 30, 2023

Location	Well	USGS Station number	Aquifer
Bolivia	BR-078	340416078084202	Peedee
Sunset Harbor	BR-079	335629078115406	Peedee
Sunset Harbor	BR-080	335629078115407	surficial
Southport	BR-081	335631078003604	Peedee
Southport	BR-082	335631078003605	Castle Hayne
Southport	BR-083	335631078003606	surficial
County Well Field	BR-100	335849078054301	Castle Hayne/Peedee
Calabash	BR-381	335334078352106	surficial

**U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations**

**Customer #: 6000000191
Agreement #: 21MPJFAN0000168
Project #: MP00GXH
TIN #: 56-6000278**

Fixed Cost Agreement YES[X] NO[]

THIS AGREEMENT is entered into as of the July 1, 2021, by the U.S. GEOLOGICAL SURVEY, South Atlantic Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the Brunswick County party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation Water Resource Investigations (per attachment), herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50, and 43 USC 50b.

2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) include In-Kind-Services in the amount of \$0.00

- (a) \$32,000 by the party of the first part during the period
July 1, 2021 to June 30, 2023
- (b) \$45,480 by the party of the second part during the period
July 1, 2021 to June 30, 2023
- (c) Contributions are provided by the party of the first part through other USGS regional or national programs, in the amount of: \$0

Description of the USGS regional/national program:

- (d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
- (e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.

6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program, and if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties. The Parties acknowledge that scientific information and data developed as a result of the Scope of Work (SOW) are subject to applicable USGS review, approval, and release requirements, which are available on the USGS Fundamental Science Practices website (<https://www.usgs.gov/about/organization/science-support/science-quality-and-integrity/fundamental-science-practices>).

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR

Customer #: 6000000191
Agreement #: 21MPJFAN0000168
Project #: MP00GXH
TIN #: 56-6000278

Water Resource Investigations

9. Billing for this agreement will be rendered quarterly. Invoices not paid within 60 days from the billing date will bear Interest, Penalties, and Administrative cost at the annual rate pursuant the Debt Collection Act of 1982, (codified at 31 U.S.C. § 3717) established by the U.S. Treasury.

USGS Technical Point of Contact

Name: Dominick Antolino
Hydrologist
Address: 3916 Sunset Ridge Road
Raleigh, NC 27607
Telephone: (919) 571-4094
Fax: (919) 571-4041
Email: dantolin@usgs.gov

Customer Technical Point of Contact

Name: John Nichols
Address: PO Box 249
Bolivia, NC 28422
Telephone: (910) 253-2653
Fax:
Email: john.nichols@brunswickcountync.gov

USGS Billing Point of Contact

Name: Crystal Stallworth
Budget Analyst
Address: 1770 Corporate Drive Suite 500
Norcross, GA 30093
Telephone: (678) 924-6691
Fax: (678) 924-6710
Email: castallw@usgs.gov

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U.S. Geological Survey
United States
Department of Interior

Brunswick County

Signature

By _____ Date: _____
Name: Victor Engel
Title: Director

Signatures

By _____ Date: _____
Name:
Title:

By _____ Date: _____
Name:
Title:

By _____ Date: _____
Name:
Title:

**U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations**

**Customer #: 6000000191
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U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR

Customer #: 6000000191
Agreement #: 21MPJFAN0000168
Project #: MP00GXH
TIN #: 56-6000278

Water Resource Investigations

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Fax:
Email: john.nichols@brunswickcountync.gov

U.S. Geological Survey
United States
Department of Interior

Brunswick County

Signature

By _____ Date: _____
Name: Victor Engel
Title: Director

Signatures

By _____ Date: _____
Name: Randy Thompson
Title: Chairman, Board of Commissioners
ATTEST:
By _____ Date: _____
Name: Andrea G. White
Title: Clerk to the Board

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

Julie A. Miller, Director of Fiscal Operations
Brunswick County, NC

APPROVED AS TO FORM

Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Asst. County Attorney
Brunswick County, NC



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

From:

Andrea White

Action Item # VI. - 1.

Administration - Public Hearing to Receive Comments on the FY 2021-2022 Brunswick County Budget, Fees, and Capital Improvement Plan (Randell Woodruff, County Manager)

Issue/Action Requested:

Request that the Board of Commissioners hold a public hearing on the Manager's FY 2021-2022 Recommended Budget, Proposed Fees and Five Year Capital Improvement Plan.

Background/Purpose of Request:

The Deputy County Manager, on behalf of the County Manager, presented the recommended budget, schedule of fees and five year capital improvement plan on May 17, 2021. The documents were posted online, and emailed to all department and agency stakeholders. The public hearing was advertised.

Fiscal Impact:

Reviewed By Director of Fiscal Operations

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners hold a public hearing on the Manager's FY 2021-2022 Recommended Budget, Proposed Fees and Five Year Capital Improvement Plan.

ATTACHMENTS:

Description

- ☐ Public Hearing Notice

NOTICE OF A PUBLIC HEARING

The Brunswick County Board of Commissioners will conduct a Public Hearing on Monday, June 7, 2021 at 3:00 p.m., or as soon thereafter as it may be reached, in the Commissioners Chambers located in the David R. Sandifer Building, 30 Government Center Drive, NE, Bolivia, NC. The Hearing will be held to receive public comment on the proposed Budget for Fiscal Year 2021-2022. A copy of the Proposed Budget Ordinance, proposed fee changes and Capital Improvement Plan are available in the Office of the Clerk to the Board of Commissioners of Brunswick County, Room 301, County Administration Building, or online at:

<http://www.brunswickcountync.gov/finance/budget/>

The schedule of proposed fees, which includes all proposed new fees or fee changes, fines and costs of whatever nature, shall also be the subject of this hearing and shall include the Smithville Township tax, the municipal collection fee, Health Department charges, utility fees, and any other charge or fee collected by Brunswick County.

The purpose of the Public Hearing is to receive comments from the citizenry of Brunswick County on the proposed budget, fees, and capital improvement plan. All citizens are encouraged to attend.

Andrea White
Clerk to the Brunswick County Board of Commissioners



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # VII. - 1.

From:

Andrea White

Board Appointment - Health & Human Services Advisory Board
- Nurse Position

Issue/Action Requested:

Request the Board of Commissioners consider appointing Cynthia Carver to the Health & Human Services Advisory Board - Nurse Position for a 3-year term beginning July 1, 2021 and expiring June 30, 2024.

Background/Purpose of Request:

Dr. Kathryn Lawler's term on the Health & Human Advisory Board expires June 30, 2021. Dr. Lawler has indicated that she will not seek reappointment at the end of her term.

Ms. Cynthia Carver, RN, has expressed interest in serving on the Health & Human Services Advisory Board in the Nurse Position which carries a 3-year term. If appointed, Ms. Carver's term will begin on July 1, 2021 and expire June 30, 2024.

Fiscal Impact:

Not Applicable

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners consider appointing Cynthia Carver to the Health & Human Services Advisory Board - Nurse Position for a 3-year term beginning July 1, 2021 and expiring June 30, 2024.

ATTACHMENTS:

Description

- Health & Human Services Advisory Board Roster

Health & Human Services Advisory

Name	Category	Appointment Date	Term	Expiration Date	Serving Since
Dr. Justin Asbury	Physician	6/1/2020	3	6/30/2023	2019
Dr. Flint King	Veterinarian	6/1/2020	3	6/30/2023	2007
Dr. Allen Williams	Dentist	6/1/2020	3	6/30/2023	2010
Vacant (unexp)	Optometrist	11/7/2016	3	6/30/2020	2004
Michael Norton	Engineer	5/17/2021	3	6/30/2024	2011
Dr. Kathryn Lawler	Nurse	6/18/2018	3	6/30/2021	2014
Gene Ward	Public	5/17/2021	3	6/30/2024	2011
Lisa Narron	Pharmacist	6/1/2020	3	6/30/2023	2016
Hubert Reaves	Public	6/17/2019	3	6/30/2022	2006
Dr. Jerry Smith	Public	6/17/2019	3	6/30/2022	2015
Pat Sykes (Ex-Officio)	Commissioner				

Mission

Serves as an advisory oversight board to the Health and Human Services departments of Brunswick County.

Membership

All members serve 3-year terms.

~ 10 members, appointed by the Board of Commissioners

~ One dentist, one engineer, one nurse, one optometrist, one pharmacist, one physician, one veterinarian, and three members of the public

~ One Commissioner serves as an ex-officio member

~ Members may not serve more than three (3) consecutive terms



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # VII. - 2.

From: Board Appointment - Zoning Board of Adjustments - District 4
Andrea White

Issue/Action Requested:

Request that the Board of Commissioners reappoint Mr. Clayton Rivenbark to the Zoning Board of Adjustments, representing District 4, for a 3-year term expiring June 30, 2024.

Background/Purpose of Request:

Mr. Rivenbark previously served in an Alternate seat that carried an expiration date of June 30, 2022. On September 21, 2020, the Board of Commissioners appointed Mr. Rivenbark to fill the unexpired vacancy in District 4 which carried an expiration date of June 30, 2021.

If reappointed to the District 4 seat, Mr. Rivenbark will serve a 3-year term expiring June 30, 2024.

Fiscal Impact:

Not Applicable

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners reappoint Mr. Clayton Rivenbark to the Zoning Board of Adjustments, representing District 4, for a 3-year term expiring June 30, 2024.

ATTACHMENTS:

Description

- Zoning Board of Adjustment Roster

Zoning Board of Adjustments

Name	District	Appointment Date	Term	Expiration Date	Serving Since
Robert Williamson	1	6/1/2020	3	6/30/2023	2001
Ron Medlin	2	6/15/2020	3	6/30/2023	2011
Mary Ann McCarthy	3	6/1/2020	3	6/30/2023	2013
Clayton Rivenbark (unexp)	4	9/21/2020	3	6/30/2021	2013
Marian Shiflet	5	5/17/2021	3	6/30/2024	2019
Virginia Ward	alternate	5/17/2021	3	6/30/2024	
James Goodman (unexp)	alternate	1/19/2021	3	6/30/2022	2021

Mission

The Zoning Board of Adjustments is a quasi-judicial body that hears and takes final action on variances, Special Exception Permits, zoning vested rights, approval of administrative decisions, approval of wireless telecommunication facilities, and interpretation of zoning boundary lines in concert with the Planning Director or Planning Director's designee.

Membership

All members serve 3-year terms

~ 1 member from each county district, appointed by the Board of Commissioners

~ 2 alternate members, called on to attend those meetings and hearings at which one or more regular members are absent or are unable to participate in hearing a case because of a financial or other interest.



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # VIII. - 1.

From:

Andrea White

Governing Body - NACo Voting Delegate

Issue/Action Requested:

Request that the Board of Commissioners appoint a voting delegate to represent Brunswick County at the 2021 NACo Annual Business Meeting on July 12, 2021.

Background/Purpose of Request:

The NACo Annual Business Meeting will be held virtually and in-person at the Gaylord National Resort & Convention Center in Prince George's County, Maryland, July 12 at 1:00 p.m. All designated voting delegates (in-person or virtual), will cast their votes using an online/mobile solution.

The deadline for designating the primary voting delegate is July 9, 2021. (Please note that there is not a form to complete. The selection of the primary voting delegate will be submitted online by staff.)

Fiscal Impact:

Not Applicable

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners appoint a voting delegate to represent Brunswick County at the 2021 NACo Annual Business Meeting on July 12, 2021.



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

Action Item # VIII. - 2.

From:

Andrea White

Governing Body - NCACC Voting Delegate

Issue/Action Requested:

Request that the Board of Commissioners designate a voting delegate and an alternate to represent Brunswick County at the NCACC Annual Conference for the General Business Session on August 14, 2021.

Background/Purpose of Request:

The NCACC 114th Annual Conference Business Session will be held in New Hanover County on Saturday, August 14, at 12:45 p.m. Each county will be entitled to one vote on items that come before the membership, including the election of the NCACC Second Vice President.

In order to facilitate the voting process, each county is asked to designate one voting delegate and one alternate voting delegate prior to Annual Conference.

The deadline for submitting a voting delegate August 9, 2021.

Fiscal Impact:

Not Applicable

Approved By County Attorney:

Yes

County Manager's Recommendation:

Recommend the Board of Commissioners designate a voting delegate and an alternate to represent Brunswick County at the NCACC Annual Conference for the General Business Session on August 14, 2021.

ATTACHMENTS:

Description

- ☐ NCACC Voting Delegate Form



Designation of Voting Delegate to NCACC Annual Conference

I, _____, hereby certify that I am the duly designated voting delegate for _____ County at the 114th Annual Conference of the North Carolina Association of County Commissioners to be held during the Annual Business Session on August 14, 2021, at 12:45 p.m. in New Hanover County.

Voting Delegate Name: _____

Title: _____

In the event the designated voting delegate is unable to attend, _____ has been selected as _____ County's alternate voting delegate.

Alternate Voting Delegate Name: _____

Title: _____

Article VI, Section 2 of our Constitution provides:

“On all questions, including the election of officers, each county represented shall be entitled to one vote, which shall be the majority expression of the delegates of that county. The vote of any county in good standing may be cast by any one of its county commissioners who is present at the time the vote is taken; provided, if no commissioner be present, such vote may be cast by another county official, elected or appointed, who holds elective office or an appointed position in the county whose vote is being cast and who is formally designated by the board of county commissioners. These provisions shall likewise govern district meetings of the Association. A county in good standing is defined as one which has paid the current year's dues.”

Please return this form to Alisa Cobb via email by **Monday, August 9, 2021** close of business:

Email: alisa.cobb@ncacc.org



Brunswick County Board of Commissioners
ACTION AGENDA ITEM
June 7, 2021

From:
Andrea White

Action Item # IX. - 1.
Closed Session - Approve Closed Session Minutes and Discuss
Personnel

Issue/Action Requested:

Request that the Board of Commissioners enter into Closed Session pursuant to N.C.G.S. 143-318.11(a)(1) to approve closed session minutes and 143-318.11(a)(6) to discuss personnel.

Background/Purpose of Request:

Fiscal Impact:

Approved By County Attorney:

County Manager's Recommendation:

Recommend that the Board of Commissioners enter into Closed Session pursuant to N.C.G.S. 143-318.11(a)(1) to approve closed session minutes and 143-318.11(a)(6) to discuss personnel.