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CUMBERLAND
★ COUNTY ★
NORTH CAROLINA

BOARD OF COMMISSIONERS

CANDICE WHITE
Clerk to the Board

KELLIE BEAM
Deputy Clerk

MEMORANDUM

TO: Facilities Committee Members (Commissioners Adams, Keefe and Lancaster)

FROM: Kellie Beam, Deputy Clerk to the Board

DATE: July 31, 2015

SUBJECT: Facilities Committee Meeting – August 6, 2015

There will be a regular meeting of the Facilities Committee on Thursday, August 6, 2015 at 8:30 AM in Room 564 of the Cumberland County Courthouse.

AGENDA

1. Approval of Minutes – June 4, 2015 Regular Meeting (**Pg. 2**)
2. Update on the PWC Interbasin Appeal by Mick Noland, PWC Chief Operations Officer (**Pg. 12**)
3. Consideration of Approval of the Radio Tower Agreement with NC Division of Forest Resources (**Pg. 27**)
4. Deli Franchise Agreement Update (**Pg. 33**)
5. Other Items of Business (**No Materials**)

cc: Board of Commissioners
County Administration
County Legal
County Department Head(s)
Sunshine List

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ITEM NO. 1.

CUMBERLAND COUNTY FACILITIES COMMITTEE
COURTHOUSE, 117 DICK STREET, 5TH FLOOR, ROOM 564
JUNE 4, 2015 - 8:30 A.M.
MINUTES

MEMBERS PRESENT: Commissioner Glenn Adams
Commissioner Jimmy Keefe (arrived at 8:37 a.m.)
Commissioner Larry Lancaster

COMMISSIONERS PRESENT:
Commissioner Kenneth Edge
Commissioner Jeannette Council

OTHERS PRESENT: Amy Cannon, County Manager
James Lawson, Deputy County Manager
Tracy Jackson, Assistant County Manager
Melissa Cardinali, Assistant County Manager for Finance /
Administrative Services
Sally Shutt, Governmental Affairs and Public Information
Officer
Rick Moorefield, County Attorney
Jeffery Brown, Engineering and Infrastructure Director
Vicki Evans, Finance Accounting Manager
Amy Hall, Administrative Program Officer
Doug Noble, Lamar Advertising
Mark Stocks, Lamar Advertising
Amanda Hurlburt, Easter Seals/UCP
Mark Germann, Easter Seals/UCP
Candice White, Clerk to the Board
Kellie Beam, Deputy Clerk to the Board
Press

Commissioner Glenn Adams called the meeting to order.

1. APPROVAL OF MINUTES – MAY 7, 2015 REGULAR MEETING

MOTION: Commissioner Lancaster moved to approve the minutes.
SECOND: Commissioner Adams
VOTE: UNANIMOUS (2-0)

2. CONSIDERATION OF LEASE TERMS FOR DOROTHY SPAINHOUR
FACILITY

BACKGROUND:

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During the March 5, 2015, Special Meeting of the Board of Commissioners, an update was provided regarding the Dorothy Spainhour facility located at 223 Hull Road. Easter Seals United Cerebral Palsy (UCP) is a nonprofit agency currently housed in the 12,310 square foot building. They provide children's educational and therapeutic day services in a developmentally appropriate environment for infants, toddlers and preschoolers requiring specialized care, including autistic clients. These services are unique and unavailable elsewhere in the region.

These services are similar to those provided by the former Cumberland County Mental Health Local Management Entity (LME) until 2004 when the LME divested of this service. At that time, the LME established an agreement with Easter Seals UCP to utilize the Spainhour facility for the specific and sole purpose of continuing developmental day services for children, with the understanding that Easter Seals UCP would pay utility costs and provide ongoing maintenance for the building. Under this arrangement, they have been able to sustain this critical service within a limited budget.

Easter Seals UCP continues to be the only certified developmental day center in our region. The Spainhour Center is also the largest Easter Seals Center in North Carolina, with a staff of 30 serving up to 92 enrollees, including approximately 30 referrals from the Cumberland County School System. They are also the only agency providing year-round, full-day child care, before and after school, including the summer. They fill a gap in our community by supplementing childcare needs for the Partnership for Children, and clients who are no longer eligible for DSS childcare subsidies.

Tracy Jackson, Assistant County Manager, and James Lawson, Deputy County Manager, have been in discussions with Mr. Mark Germann, Community Director for Easter Seals/UCP, and Amanda Hurlburt, Spainhour Site Manager regarding their operations, financial condition and terms for a lease agreement. Mr. Germann has indicated that due to their budgetary constraints, additional costs incurred by Easter Seals/UCP would probably create financial difficulties, and likely result in a reduction of services in our community. A review of their financial data reflects an uncertain trend from year-to-year that widely varies from end-of-year shortfalls to break-even to surplus. Mr. Germann indicates that Easter Seals UCP North Carolina & Virginia, Inc. and Affiliate have had to take on some debt in order to help sustain their operations.

CONSIDERATIONS:

In considering reasonable lease terms for the Easter Seals UCP to continue operations in the Spainhour facility, the following should be taken into account:

- Community impact; critical nature and lack of alternative resources for this specialized service.
- Services were previously under the umbrella of Cumberland County.
- Spainhour facility has been generally maintained in a structurally sound condition.

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- Over the past 5 years, Easter Seals UCP has spent an average of over \$37,000 annually for utilities and maintenance; recently covered \$13,000 cost of replacing an aging HVAC unit.
- Easter Seals UCP's financial condition.

RECOMMENDATION

Consider whether to extend a 3-year agreement with the Easter Seals UCP to remain in the Dorothy Spainhour Center located at 223 Hull Road with the following requirements:

- Continue the same developmental day programs and services currently provided; Cumberland County must receive 30 days advance notice of changes in services.
- Maintain responsibility for utility costs and ongoing maintenance of the facility to the County's standard; this includes building and grounds; HVAC, plumbing, electrical and telephone systems; parking area, playground and fencing. Any replacement of mechanical equipment or proposed renovation must be coordinated through the County for approval.
- Provide annual financial statements.
- Be subject to periodic facility inspections conducted by the County; and correct any noted deficiencies within a reasonable timeframe.
- Payment of an annual \$1 lease rate.

James Lawson, Deputy County Manager, reviewed the background information and recommendation as recorded above. Mr. Lawson introduced Mr. Mark Germann and Amanda Hurlburt from Easter Seals UCP. Mr. Lawson stated he feels Easter Seals provides a substantial public benefit to this community.

MOTION: Commissioner Lancaster moved to recommend to the full board approval to extend a 3-year agreement with Easter Seals UCP to remain in the Dorothy Spainhour Center located at 223 Hull Road along with the requirements listed in the recommendation above.

SECOND: Commissioner Adams

DISCUSSION:

Commissioner Adams stated he would like the public to know the value of this lease because this is a benefit to this community.

VOTE: UNANIMOUS (3-0)

3. CONSIDERATION OF PROFESSIONAL SERVICES AGREEMENT WITH MCGILL ASSOCIATES FOR BRAGG ESTATES SEWER PROJECT

BACKGROUND:

The Bragg Estates Water and Sewer (BEWS) District has received notification from the USDA Rural Development of their intent to fund the installation of sewer within the District. The application may be completed on the basis of a Rural Utilities Service

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(RUS) loan not to exceed \$497,000, a RUS grant not to exceed \$1,453,000 and a contribution from Cumberland County of \$50,000 for a total project cost of \$2,000,000. The next step in moving forward with the application is to hire an engineer for the design, bidding and construction oversight of the wastewater collection system. A Request for Qualifications (RFQ) for Engineering Services for the Bragg Estates Sewer Project was sent out to engineering firms in December 2014, with responses received on January 9, 2015. A selection committee was formed and tasked with evaluating the Qualification Statements submitted by the engineering firms responding to the RFQ. An evaluation matrix was used to evaluate the written qualification statements and a numerical score was assigned to each engineering firm. McGill Associates was selected by the committee to complete the design, bidding and construction oversight for the BEWS District.

RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director and County Management recommend that the Facilities Committee approve the Professional Services Agreement with McGill Associates and place it on the agendas of the June 15, 2015 Board of Commissioners and Bragg Estates Water and Sewer District meetings for approval.

Jeffery Brown, Engineering and Infrastructure Director, reviewed the background information and recommendation as recorded above.

Mr. Brown stated last year the County was awarded a significant grant in addition to a loan amount to fund the installation of a sewer project in an area just north of Spring Lake that has failing septic systems. Mr. Brown stated a part of this process is to acquire the services of an engineer to design and administer construction for the project. Mr. Brown stated the County issued a Request for Qualifications for Engineering Services and received proposals back from several firms. Mr. Brown further stated the County has compiled a team that evaluated the responses that were received and a firm has been selected. Mr. Brown stated the next step in the process is to move forward with a contract with the most qualified firm.

Mr. Brown stated the recommendation to the Facilities Committee is to approve a professional service agreement with McGill Associates and place on the June 15, 2015 Board of Commissioners agenda and the Bragg Estates Water and Sewer District agenda for approval.

MOTION: Commissioner Keefe moved to recommend to the full board approval of the Professional Services Agreement with McGill Associates and place it on the agendas of the June 15, 2015, Board of Commissioners and Bragg Estates Water and Sewer District meetings.

SECOND: Commissioner Lancaster

VOTE: UNANIMOUS (3-0)

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4. CONSIDERATION OF PUBLIC UTILITIES POLICY REGARDING DELINQUENT ACCOUNT COLLECTIONS

BACKGROUND:

The purpose of the Delinquent Account Policy is to set forth uniform collection actions for all of the Cumberland County Water and Sewer Districts. The policy establishes the steps that will be taken should an account become delinquent. The policy will be for all existing and future Water and Sewer Districts created by Cumberland County Board of Commissioners.

RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director and County Management recommend that the Facilities Committee approve the Delinquent Account Policy and place it on the agenda of the June 15, 2015 Board of Commissioners meeting for approval.

Cumberland County Public Utilities Division Delinquent Account Policy

The Public Utilities Division will take the following steps to collect past due payments from the customers:

Water Customers and Sewer Customers with Elder Valves

1. Send a cutoff notice (certified and regular mail) informing the customer that payment needs to be paid by 5:00 PM the day prior to the cutoff date stated on the notice. In addition, the customer will receive a door hanger at the service address on the day prior to the cutoff date stated on the notice.
2. If no payment is made, the customer will then be disconnected from the service. Service will not be restored until all outstanding bills and charges are paid, and all service or reconnection charges are paid in accordance with the rate currently in effect and approved by the Board of Commissioners of Cumberland County.
3. For sewer customers, the Environmental Health Division of the Cumberland County Health Department will be notified that sewer service has been disconnected which in turn may render the residence uninhabitable.
4. Accounts delinquent over 90 days and in excess of \$50.00 will be submitted to the NC Debt Set-Off program, which will allow the County to retrieve monies owed through income tax returns and lottery winnings.
5. Accounts delinquent in excess of \$200 will then be sent to Small Claims Court to seek judgment against the customer.
6. Any returning customer with a previous debt and who is legally responsible shall be required to pay the debt before being allowed to sign up for a new service.

Sewer Customers without Elder Valves

1. Send a cutoff notice (certified and regular mail) informing the customer that payment needs to be paid by 5:00 p.m. the day prior to the cutoff date stated on

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- the notice. In addition, the customer will receive a door hanger at the service address on the day prior to the cutoff date stated on the notice.
2. If no payment is made, Public Utilities staff will then place a work order to have an elder valve installed to disconnect the service. Service will not be restored until all outstanding bills and charges are paid, and all service or reconnection charges are paid in accordance with the rate currently in effect and approved by the Board of Commissioners of Cumberland County.
 3. The Environmental Health Division of the Cumberland County Health Department will be notified that sewer service has been disconnected which in turn may render the residence uninhabitable.
 4. Accounts delinquent over 90 days and in excess of \$50.00 will be submitted to the NC Debt Set-Off program, which will allow the County to retrieve monies owed through income tax returns and lottery winnings.
 5. Accounts delinquent in excess of \$200 will then be sent to Small Claims Court to seek judgment against the customer.
 6. Any returning customer with a previous debt and who is legally responsible shall be required to pay the debt before being allowed to sign up for a new service.

Customers Not Connected and Only Paying Availability Fee

1. Accounts delinquent over 90 days and in excess of \$50.00 will be submitted to the NC Debt Set-Off program, which will allow the County to retrieve monies owed through income tax returns and lottery winnings.
2. Accounts delinquent in excess of \$200 will then be sent to Small Claims Court to seek judgment against the customer.
3. Any returning customer with a previous debt and who is legally responsible shall be required to pay the debt before being allowed to sign up for a new service.

Mr. Brown reviewed the background information and recommendation as recorded above. Mr. Brown stated during the May Facilities Committee meeting Kelly Hills rate structure item discussion there was a suggestion for a written internal policy on how to deal with delinquent accounts. Mr. Brown stated Amy Hall developed a Public Utilities Division Delinquent Account Policy that will allow the County to specify which path the County can take to collect on accounts if customers are not paying their bills.

Commissioner Adams stated he feels sending certified mail, regular mail and putting a door hanger on the customers door will be too much work for the small staff in the Public Utilities Department. Mr. Brown stated he feels it would give customers one last opportunity to become current on their bill and he does not anticipate a large number of customers becoming delinquent. Commissioner Keefe stated he does not feel the letter needs to be sent by certified mail.

MOTION: Commissioner Keefe moved to recommend to the full board approval of the Delinquent Account Policy and removing the need for certified mail to delinquent customers.

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SECOND: Commissioner Lancaster
VOTE: UNANIMOUS (3-0)

5. DISCUSSION OF CIP ITEMS ASSOCIATED WITH CROWN COLISEUM COMPLEX

BACKGROUND:

In consultation with Heery International, PC, staff has recently identified a number of basic maintenance and repair items associated with the Crown Coliseum Complex that should be included in the Capital Improvement Projects Plan. Addressing these items in a timely manner is viewed as taking a proactive step towards handling various compliance issues which have been recently identified. Many of these items can be addressed utilizing in-house labor while some items may have to be contracted. County staff will be utilized where possible to complete the work that needs to be done. In all, the total cost of completing the repair items is not expected to exceed \$74,500.

Along these lines, staff wishes to make the Facilities Committee aware of two individuals employed by the County that have responsibility for ADA-related concerns. John Holmes with the Human Resources Department handles the processing of ADA-related grievances involving Cumberland County while Jeffrey Brown, Engineering and Infrastructure Director, is charged with reviewing any ADA issues involving County facilities.

RECOMMENDATION/PROPOSED ACTION:

Staff recommends including the repair items and associated costs as part of the Capital Improvement Projects Plan so that work can begin without delay.

Tracy Jackson, Assistant County Manager, reviewed the background information and recommendation as recorded above.

Ms. Cannon stated the repair items will be included in the FY 2016 budget for the Crown Coliseum. Ms. Cannon stated the County will do as much as possible in-house.

MOTION: Commissioner Lancaster moved to recommend to the full board approval of the recommended repairs and associated costs as part of the Capital Improvement Projects Plan so that work can begin without delay.

SECOND: Commissioner Keefe

VOTE: UNANIMOUS (3-0)

6. REVIEW OF COURTHOUSE SPACE UTILIZATION LAYOUT

BACKGROUND:

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At the conclusion of the Facilities Committee in May, Chairman Adams asked if the County had an existing layout of the Courthouse indicating how the space was being utilized on each floor. It was communicated that the County had space allocation layouts on some of the floors but that they needed to be updated and that it would take some time to compile the information for the floors that were missing. This space utilization layout of each floor will be completed early next week in time to be presented during the Facilities Committee meeting scheduled for June 4, 2015.

RECOMMENDATION:

The Facilities Committee is not being asked to take action. The purpose of this item was to inform the Facilities Committee as to how space within the Courthouse is currently being utilized.

Mr. Brown reviewed the background information and recommendation as recorded above. Commissioner Adams stated between all the different agencies that are housed in the courthouse he felt it was important to have a current layout to see what space is being occupied and if any space is available at this time.

Commissioner Edge asked if the Law Library on the 3rd floor is used and still needed. Mr. Brown stated the Law Library was recently made smaller when the waiting room for SafeLink was created and he does feel it is still being used and needed. Commissioner Adams stated he feels it is an asset to have in the Courthouse. Commissioner Keefe stated he feels most of the books in the Law Library need to be updated. Commissioner Keefe asked Mr. Brown to track the number of people using the Law Library. Mr. Moorefield stated the Law Library is actually designated by the legislature as the Cumberland County Courthouse Library with a funding mechanism associated with it so if the commissioners want to do something different it would need to be done in conjunction with the statute. Mr. Brown stated when the renovations were made to the Law Library he worked with library staff and the Cumberland County Lawyers Association to identify which books were not utilized and current and they were disposed properly.

Commissioner Adams stated he sees four spaces on the 3rd floor for Clerk's Office storage and there is one storage space on the 2nd floor. Commissioner Adams asked Mr. Brown to possibly talk to the Clerk about getting a bigger location and putting all of the small storage areas in one location.

No action taken.

7. CONSIDERATION OF DISPOSITION OF THE WELLS HOUSE

BACKGROUND:

During the March 5, 2015 Budget Work Session, it was recommended to the Board of Commissioners that the Wells House located at 111 Bradford Avenue be considered for

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demolition based on the facility's current condition and utilize the vacant space to expand the existing paved parking lot that serves 109 Bradford Avenue. Funding has been included in the FY 2016 budget for demolition. To demolish the structure the following steps along with the projected timeframes will have to be taken.

Complete Asbestos Survey on the Structure	30 days
Advertise and Award Demolition Project	45 days
Complete Demolition	30 days
Survey, Design, and Permit Parking Lot Area	60 days
Advertise and Award Construction Project	45 days
Complete Construction Project	45 days

If approved, the Engineering & Infrastructure Department would anticipate beginning this process in July 2015.

RECOMMENDATION:

The Engineering and Infrastructure Director and County Management recommend that the Facilities Committee approve the demolition of the Wells House based upon the above schedule, to utilize the vacant space for the expansion of the existing paved parking for 109 Bradford Avenue and place it on the agenda of the June 15, 2015 Board of Commissioners meeting for approval.

Mr. Brown reviewed the background information and recommendation as recorded above. Mr. Brown stated the parking at 109 Bradford Ave is currently very tight if the Facilities Committee moves forward with the demolition of the Wells House the vacant area will be utilized for an expanded parking lot.

Commissioner Keefe asked if there is any historical salvage to the Wells House. Mr. Brown stated he would look into any historical salvage before the demolition. Commissioner Council asked Mr. Brown to have Bobby Howard look through the Wells House for any salvage or value.

MOTION: Commissioner Lancaster moved to recommend to the full board approval of the demolition of the Wells House based upon the schedule recorded above, to utilize the vacant space for the expansion of the existing paved parking for 109 Bradford Avenue.

SECOND: Commissioner Keefe

VOTE: UNANIMOUS (3-0)

8. UPDATE ON OFFER OF LAMAR COMPANIES TO LEASE OR PURCHASE SITES OF EXISTING BILLBOARDS

BACKGROUND

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At its May meeting the Facilities Committee expressed interest in simply licensing both parcels on which the Lamar billboards are located instead of selling the triangular portion in the intersection of Ramsey Street and the MLK Expressway.

RECOMMENDATION/PROPOSED ACTION

The county attorney requests that the Facilities Committee consider whether a license agreement for the use of these parcels is its preference, as opposed to the option of selling subdividing and selling the parcel that is separated from the DSS campus by the railroad tracks.

Rick Moorefield, County Attorney, reviewed the background information and recommendation recorded above. Mr. Moorefield stated if the County is going to continue a non-sale situation with Lamar billboards it is Mr. Moorefield's preference to establish with a license agreement as opposed to a lease because it gives the County more flexibility.

MOTION: Commissioner Keefe moved to recommend to the full board approval of a license agreement for the use of both parcels on which the Lamar billboards are located on Ramsey Street and the MLK Expressway.
SECOND: Commissioner Lancaster
VOTE: UNANIMOUS (3-0)

9. OTHER ITEMS OF BUSINESS

Mr. Lawson stated Alliance Behavioral Healthcare has provided notice to vacate the Winding Creek facility. Mr. Lawson further stated the Alliance has asked the County to give them an extension on the current lease which expires at the end of June 2015. Mr. Lawson stated the Alliance projects they will be out of the Winding Creek facility by the first of January 2016. Mr. Moorefield suggested the amendment be extended to a month to month lease once the current lease expires in June 2015. Commissioner Edge stated once the Alliance Behavioral Healthcare vacates the Winding Creek facility it will give the County the opportunity to utilize the building for some other reason or sell it.

MOTION: Commissioner Lancaster moved to recommend to the full board approval of an amendment to the Alliance Behavioral Healthcare lease to convert to a month to month lease once the current lease expires in June 2015 with the same terms.
SECOND: Commissioner Keefe
VOTE: UNANIMOUS (3-0)

No other items of business.

MEETING ADJOURNED AT 9:31 AM.

AMY H. CANNON
County Manager

JAMES E. LAWSON
Deputy County Manager



CUMBERLAND
★ **COUNTY** ★
NORTH CAROLINA

ITEM NO. 2
MELISSA C. CARDINALI
Assistant County Manager

W. TRACY JACKSON
Assistant County Manager

OFFICE OF THE COUNTY MANAGER

**MEMO FOR THE AGENDA OF THE
AUGUST 6, 2015 FACILITIES COMMITTEE MEETING**

TO: FACILITIES COMMITTEE
FROM: AMY CANNON, COUNTY MANAGER *AKZ*
DATE: JULY 31, 2015
SUBJECT: UPDATE ON THE PWC INTERBASIN APPEAL BY
MICK NOLAND, PWC, CHIEF OPERATIONS OFFICER

Requested by: Mick Noland, PWC Chief Operations Officer
Presenter(s): Mick Noland, PWC Chief Operations Officer
Estimate of Committee Time Needed: 15 Minutes

BACKGROUND

Mr. Mick Noland, PWC Chief Operations Officer of the Water Services Division will be providing an update on the PWC Interbasin Appeal at the August 6, 2015 Facilities Committee Meeting.

Recommendation

Receive the update regarding the PWC Interbasin Appeal.

CM073115-2



MICHAEL G. LALLIER, COMMISSIONER
LYNNE B. GREENE, COMMISSIONER
DARSWEIL L. ROGERS, COMMISSIONER
WADE R. FOWLER, JR, COMMISSIONER

PUBLIC WORKS COMMISSION
OF THE CITY OF FAYETTEVILLE

955 OLD WILMINGTON RD
P.O. BOX 1089
FAYETTEVILLE, NORTH CAROLINA 28302-1089
TELEPHONE (910) 483-1401
WWW.FAYPWC.COM

ELECTRIC & WATER UTILITIES

June 30, 2015

Amy Cannon
County Manager
PO Box 1829
Fayetteville, NC 28302

Dear Ms. Cannon:

The City of Fayetteville Public Works Commission and the City of Fayetteville have filed a Petition for Contested Case Hearing to challenge the March 12, 2015 decision by the North Carolina Environmental Management Commission (EMC) to issue a modified interbasin transfer (IBT) certificate authorizing the Towns of Cary, Apex, and Morrisville and Wake County (on behalf of the Wake County portion of Research Triangle Park) to transfer up to approximately 9 MGD of additional water from the Haw River basin to the Neuse River basin, calculated as a daily average of a calendar month basis. This increased IBT could and should have been avoided by requiring the return of highly treated wastewater to the Cape Fear River through the Western Wake Regional Water Reclamation Facility (WWRWRF). Our petition will be heard by an Administrative Law Judge in the Office of Administrative Hearings.

Attached please find the following:

1. A press release related to the petition;
2. Our prehearing statement to the Administrative Law Judge in the Office of the Administrative Hearings; and
3. The EMC decision which we are appealing.

We believe your utility may be affected adversely, as is Fayetteville, because of the EMC's approval of this significantly increased water transfer out of the Cape Fear River basin. We therefore ask for your support of our challenge.

Please contact Mick Noland at (910) 223-4733 to discuss this matter. In the alternative, we have authorized our attorneys at Williams Mullen, in Raleigh, North Carolina, to discuss our petition with you or your attorneys. You may contact M. Keith Kapp of Williams Mullen at 919-981-4024 or Amos C. Dawson at 919-601-8751.

Ms. Cannon
June 30, 2015
Page 2

We greatly appreciate your help.

Sincerely yours,
PUBLIC WORKS COMMISSION

A handwritten signature in black ink that reads "Mick Noland". The signature is written in a cursive style with a long, sweeping underline.

Mick Noland, PE
Chief Operations Officer
Water Resources Division

Enclosures (3)
cc: M. Keith Kapp, Esq.

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EHR 03241

COUNTY OF CUMBERLAND

THE CITY OF FAYETTEVILLE AND THE)
PUBLIC WORKS COMMISSION OF THE CITY)
OF FAYETTEVILLE,)

PETITIONERS,)

**PREHEARING
STATEMENT**

v.)

NORTH CAROLINA ENVIRONMENTAL)
MANAGEMENT COMMISSION; NORTH)
CAROLINA DEPARTMENT OF ENVIRONMENT)
AND NATURAL RESOURCES,)

RESPONDENTS.)

Pursuant to 26 N.C.A.C. 3.0104 and the 14 May 2015 Order for Prehearing Statements, Petitioners the City of Fayetteville and the Public Works Commission of the City of Fayetteville (“Petitioners”) by and through their undersigned counsel, hereby file this Prehearing Statement. All allegations set forth by Petitioners in their Petition for Contested Case Hearing are incorporated herein by reference. Petitioners expressly reserve the right to supplement and otherwise modify their issues and positions as the contested case progresses.

In response to the specific inquiries in the aforesaid Order, Petitioners state their present position as follows:

1. THE ISSUES TO BE PRESENTED.

Petitioners commenced this action to contest:

(A) The 12 March 2015 Environmental Management Commission (“EMC”) Certificate (the “2015 IBT Certificate”) authorizing the Towns of Cary, Apex and Morrisville

and Wake County (on behalf of the Wake County portion of Research Triangle Park) (collectively, the “Towns” or “Applicants”) to transfer water from the Haw River Basin to the Neuse and Cape Fear River Basins;

(B) Respondents’ Decision accompanying the 2015 IBT Certificate, which grants the Towns’ request to transfer water from the Haw River Basin to the Neuse River Basin in an amount to not exceed 31 million gallons per day (“MGD”), and from the Haw River Basin to the Cape Fear River Basin in an amount to not exceed 2 MGD, calculated as a daily average of a calendar month basis (the “Decision”); and

(C) All actions and findings of Respondents associated with the above.

The issues to be resolved in this case are whether the Respondents in taking the above actions exceeded their authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; and/or failed to act as required by law or rule. Based upon the preliminary facts and information available to Petitioners prior to conducting Discovery in this case, Respondents’ Decision violated the standards of N.C. Gen. Stat. § 150B-23 in the following ways:

1. Respondents’ Decision was erroneous in its determination under N.C. Gen. Stat. § 143-215.22L(k)(1) that the 24 MGD allowed transfer set forth in the 2001 IBT Certificate was not sufficient to meet the future population growth and water demand projections of the Towns between 2020 and 2025; 24 MGD is sufficient to meet projected growth. The EMC, in the Findings of Fact Section (1) of the March 2015 Hearing Officer’s Report to the 2015 IBT Certificate states the 24 MGD IBT may be exceeded between 2020 and 2025. The 2015 IBT Certificate is not based upon proper analysis of correct factual data. When the 2001 IBT Certificate was issued, it was issued to be sufficient for water transfers through 2030. Further, Respondents’ Decision is based on a 30-year planning period, which is excessive under the circumstances and compromises Petitioners’ ability to meet the demands of their expected population growth, given the unknown impacts of climate change, changes in statutes, regulations, customer demands and regional needs. A 30-year planning period allows the Applicants to “bank” water they may not need to the detriment of downstream users. Current Round Four Allocation requests for water supply from Jordan Lake could exhaust the

water supply pool, limiting the ability of Jordan Lake to meet all of its intended uses, including water supply, water quality and downstream flow. Therefore, Respondents violated N.C. Gen. Stat. § 150B-23(2),(3) and (5) as their Decision was erroneous, a failure to follow proper procedure and was a failure to act as required by law or rule.

2. Respondents' Decision was erroneous in its determination under N.C. Gen. Stat. § 143-215.22L(k)(2) that the detrimental effects on the source river basin will be insignificant. The modeling relied upon by Respondents shows substantial decreases in minimum flows. Minimum flows at Lillington and Fayetteville are dropping by one-third when comparing 2010 Baseline flows to any of the 2045 modeling scenarios. Average river flow is not a meaningful criterion when evaluating water supply availability. Using 20% of the 7Q10 flow, Petitioners' available Cape Fear River water supply is 47.8 MGD, which is less than Petitioners' projected water demand. Respondents erred by making this significant upstream interbasin transfer decision before understanding what can be done to minimize these large reductions in minimum flow levels. Respondents further erred by issuing the Modified 2015 IBT Certificate prior to completion of the Cape Fear Basin Water Supply Plan, which considers the future uses and needs of all the major waters users in the Cape Fear Basin. Furthermore, comments made by the N.C. Wildlife Resources Commission ("WRC") indicate concern that increased withdrawals from Jordan Lake and increased interbasin transfers to the Neuse River Basin could negatively impact fish populations in the Cape Fear River. The WRC recommended as much water as practicably possible be returned to the Cape Fear River Basin. Therefore, Respondents violated N.C. Gen. Stat. § 150B-23(2) and (3) as their Decision was erroneous and a failure to follow proper procedure.
3. For the reasons stated in subsection 2 above, Respondents' Decision was erroneous in its determination under N.C. Gen. Stat. § 143-215.22L(k)(3) that the cumulative effects of the transfer of 31 MGD from the Haw River Basin to the Neuse River Basin and 2 MGD from the Haw River Basin to the Cape Fear River Basin under modeled 2045 basin demand conditions will be insignificant when compared against 2010 or existing baseline conditions. Therefore, Respondents violated N.C. Gen. Stat. § 150B-23(2) and (3) as their Decision was erroneous and a failure to follow proper procedure.
4. Respondents' Decision was erroneous in its determination under N.C. Gen. Stat. § 143-215.22L(k)(5) that the selected Alternative 2a – "Increase Interbasin Transfer to Meet 2045 Demands," a 33 MGD total interbasin transfer – is the appropriate alternative under N.C. Gen. Stat. § 143-215.22L for meeting the Applicants' water supply needs while minimizing detrimental impacts to the Cape Fear River Basin. In violation of N.C. Gen. Stat. § 143-215.22L(m), the Respondents erred in finding the Applicants had established by a preponderance of the evidence all of the following: (i) that the benefits of the proposed transfer outweigh the detriments of the proposed transfer; (ii) the detriments have been or

will be mitigated to the maximum degree practicable; (iii) the amount of the transfer does not exceed the amount of the projected shortfall under the applicants' water supply plans after first taking into account all other sources of water available to the Applicants; and (iv) there are no reasonable alternatives to the proposed transfer. In their Decision, Respondents incorrectly stated: "According to N.C. Gen. Stat. § 143-215.L(m), the EMC shall grant a certificate modification if the benefits of the proposed modification outweigh the detriments of the proposed modification, **and the detriments have been or will be mitigated to a reasonable degree.**" (emphasis added). In fact N.C. Gen. Stat. § 143-215.22L(m) requires the EMC to find that: "The detriments have been or will be mitigated **to the maximum degree practicable.**" (emphasis added). Showing that the detriments will be mitigated "to the maximum degree practicable" is a higher standard than merely showing that the detriments will be "mitigated to a reasonable degree." The Applicants clearly failed to establish that the detriments have been or will be mitigated to the "maximum degree practicable" and that there are no reasonable alternatives to the proposed transfer. Accordingly, the EMC erred in issuing the 2015 Certificate by failing to properly ascertain the detriments to the Cape Fear River Basin and by failing to apply the correct standard for detriment mitigation. Within the Decision, Respondents further erred by failing to make adequate findings as to why the Applicants' need for water cannot be satisfied by alternatives within the receiving basin.

In addition, the Respondents erred by not requiring selection of Alternative 3a, "Avoid Interbasin Transfer by Sending Additional Untreated Wastewater to the Western Wake Regional Water Reclamation Facility" ("WWRWF"). The analysis of the actual costs of Alternative 3a by the Applicants was deficient and misleading, and the Respondents erred in relying on the Applicant's analysis. The Environmental Assessment ("EA") describes Alternate 3a as technically feasible and meeting the project purpose and need. The fact that Alternate 2a is simply less expensive does not justify or support its selection. The Respondents erred by not requiring that detriments to the Cape Fear Basin be mitigated to the "maximum degree practicable." Respondents should have required that a specified percentage of the allowed interbasin transfer volume be returned to the Cape Fear Basin within a specified period of time, as was required in the 2001 Interbasin Transfer Certificate issued to the Applicants. The failure to include such a condition was erroneous, arbitrary and capricious and in violation of the statute. The Decision does not contain an adequate analysis of the proposed alternatives and their actual costs.

Therefore, Respondents violated N.C. Gen. Stat. § 150B-23(2), (3), (4) and (5) as their Decision was erroneous, arbitrary and capricious, a failure to follow proper procedure, and a failure to act as required by law or rule.

5. Respondents' Decision was erroneous in its determination under N.C. Gen. Stat. § 143-215.22L(k)(9) by failing to consider other facts and circumstances reasonably necessary to carry out the purposes of the statute. Respondents'

Decision does not require the return of treated wastewater to the Cape Fear River. The 2001 IBT Certificate issued by Respondents required the Towns of Cary, Apex and Morrisville and Wake County to “return water supplied from the Haw River Basin used in the Neuse River Basin to either the Haw or Cape Fear River Basins...[in that] [a]ny water used in the Neuse River Basin in excess of 16 MGD adjusted on an average daily basis shall be returned.” See the EMC Decision accompanying the 2001 IBT Certificate, p. I-14. The 2015 IBT Certificate contains no such requirement. The Applicants’ modeling and purported lack of impacts, upon which Respondents relied, assumes specific projected rates of return flow to the Cape Fear River by the Applicants. Hence, retaining a numeric return flow condition is reasonable and prudent and required by N.C. Gen. Stat. § 143-215.22L(m). Furthermore, to comply with the 2001 IBT Certificate, the Applicants, through the Western Wake Partnership, installed infrastructure to return highly treated wastewater to the Cape Fear River at a cost of approximately \$290 million, and one of the primary reasons for this expenditure was to alleviate the necessity for the Applicants to request future increased interbasin transfers. Respondents’ Decision wrongfully fails to require the Applicants to return treated wastewater from the WWRWF to the Cape Fear River. The increased interbasin transfer could have been avoided by calculating the transfer as a “daily average of a maximum calendar month” basis, as opposed to a “maximum daily” basis, and requiring increased discharges over time from the WWRWF.

Further, Respondents erred by issuing the 2015 IBT Certificate to Applicants prior to completion of the Round Four Jordan Lake Allocation process, upon which the Applicants’ 2015 IBT Certificate is dependent. Respondents must engage in a formal rulemaking process if they intend to exceed the 50% cap on diversions out of the Jordan Lake watershed established by 15A N.C.A.C. 2G .0504(h): “To protect the yield of Jordan Lake for water supply and water quality purposes, the Commission will limit water supply allocations that will result in diversions out of the lake’s watershed to 50% of the total water supply yield. The Commission may review and revise this limit based on experience in managing the lake and on the effects of changes in the lake’s watershed that will affect its yield.” *Id.* Hence, Respondents’ Decision will effectively bypass the rulemaking process required by Section 150B-21.2 of the Administrative Procedure Act (“APA”).

Therefore, Respondents violated N.C. Gen. Stat. § 150B-23(2), (3), (4) and (5) as their Decision was erroneous, arbitrary and capricious, a failure to use proper procedure and a failure to act as required by law or rule.

2. A BRIEF STATEMENT OF THE FACTS AND REASONS SUPPORTING THE PARTY'S POSITION ON EACH MATTER IN DISPUTE.

Without waiving the reservation of rights stated above and based upon the facts and information available to Petitioners prior to Discovery in this case, Petitioners assert that Respondents in issuing their Decision and awarding the 2015 IBT Certificate to the Applicants exceeded their authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; and/or failed to act as required by law or rule. The facts and assertions set forth above in Section 1 of this Prehearing Statement are re-alleged and fully incorporated by reference in this Section 2.

A. The 2001 IBT Certificate.

On 13 September 2000, the Towns of Cary, Apex, and Morrisville and Wake County (for RTP South) petitioned the EMC for an increase in the existing Cary/Apex interbasin transfer certificate from 16.0 to 27.0 MGD. The purpose of the proposed water transfer was to meet the water needs of the expected population growth of the Towns. In addition, as part of the 27 MGD request, it was assumed and understood that the towns of Cary and Apex would construct the WWRWF, thereby limiting the need for additional transfers and future IBT requests.

On 12 July 2001, the EMC issued an Interbasin Transfer Certificate allowing the Towns to increase their transfer of water from the Haw River Basin to the Neuse River Basin from 16.0 to 24 MGD on a maximum day basis (the "2001 IBT Certificate").

As a condition to this 2001 IBT Certificate, the Towns of Cary, Apex, Morrisville and Wake County were required to return water supplied from the Haw River Basin used in the Neuse River Basin to either the Haw or Cape Fear River Basins after 2010. *See* 2001 IBT Certificate, p. I-14. Any water "used in the Neuse River Basin in excess of 16 MGD adjusted on an average daily basis" was required to be returned. *Id.*

The water transfer amounts established by the 2001 IBT Certificate should remain in place. The purpose for construction of the WWFWR was to enable the standards set in the 2001 IBT Certificate to meet the demands of the Towns without the need for future IBT transfer requests. *See* 2001 IBT Certificate, p. I-4. By issuing the 2015 IBT Certificate, Respondents have negated the very purpose behind the development of the \$290 million WWFWR facility, because there is no condition in the 2015 IBT Certificate and Decision requiring the return of water to either the Haw or Cape Fear River Basin, to the detriment of Petitioners. Without such a condition, Petitioners are harmed, and Respondents' Decision violated the standards of N.C. Gen. Stat. § 143-215.22L.

B. The 2015 IBT Certificate.

On 30 September 2013, the Towns of Cary, Apex and Morrisville and Wake County (on behalf of the Wake County portion of Research Triangle Park) filed a notice of intent with the EMC to request a modification to their jointly held 2001 IBT Certificate. Their request was granted on March 12, 2015. In making the modification, the EMC was to specifically consider:

1. The necessity, reasonableness, and beneficial effects of the transfer;
2. Detrimental effects on the source river basin;
3. Cumulative effects on the source major river basin of any current or projected water transfer or consumptive water use;
4. Detrimental effects on the receiving basin;
5. Reasonable alternatives to the proposed transfer;
6. Applicants' use of impounded storage capacity;
7. Purposes of any U.S. Army Corps of Engineers multi-purpose reservoir relevant to the certificate modification;
8. Whether applicants' service area is located in both the source and receiving river basins; and
9. Any other facts or circumstances necessary to carry out the law.

See N.C. Gen. Stat. § 143-215.22L(k).

On 12 March 2015, the EMC concluded by a preponderance of the evidence based upon the Findings of Fact which analyzed (1) through (9) above, that the benefits of the proposed

transfer outweighed the detriments of the requested modification, that any detriments of the proposed certificate modification would be mitigated to a reasonable degree (rather than to the statutorily required “maximum extent practicable”) under the conditions in the 2015 IBT Certificate and that there are no reasonable alternatives to the proposed transfer. *See* N.C. Gen. Stat. § 143-215.22L(m). The EMC granted the requested modification and issued the 2015 IBT Certificate allowing the Applicants to increase their transfer of water from the Haw River Basin to the Neuse River Basin to 31 MGD and from the Haw River Basin to the Cape Fear River Basin to 2 MGD, as a daily average of a calendar month basis. The allowed increased IBT is effectively more than a 9 MGD increase, because the 2001 24 MGD IBT limit was calculated as a maximum day amount basis, while the 2015 modified amount is not a maximum day amount, but rather calculated on a daily average of a calendar month basis.

For the reasons set forth in Sections 1 and 2A above, which are re-alleged and fully incorporated by reference herein, in issuing the 2015 IBT Certificate to the Applicants, Respondents exceeded their authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; and/or failed to act as required by law or rule in their application of N.C. Gen. Stat. § 143-215.22(L) to the Applicants’ request for modification of the 2001 IBT Certificate. Petitioners reserve the right to supplement this response after further investigation and Discovery.

3. THE STATUTES, RULES AND LEGAL PRECEDENT, IF KNOWN:

The statutes, rules, and legal precedents involved in this case are as follows:

- (a) N.C. Administrative Procedure Act, N.C. Gen. Stat. ch. 150B, art. 3;
- (b) Rules of the Office of Administrative Hearings, 26 N.C.A.C. ch. 3;

- (c) Rules of the Office of Administrative Hearings, 15A N.C.A.C. ch. 2, Section .0400;
- (d) N.C. Gen. Stat. § 143-215.22L;
- (e) Prior cases/actions by Respondents in like circumstances; specifically, the 2001 IBT Certificate; and
- (f) North Carolina case law and OAH Rulings, specifically including decisions in similar matters.

The above referenced issues, statutes, rules and legal precedents are those that Petitioners currently believe, at this early stage of the proceeding, are involved in this contested case. Petitioners reserve the right to raise additional issues and rely upon additional statutes, rules and legal precedents as further information is gained through discovery and investigation.

4. A LIST OF PROPOSED WITNESSES.

Petitioners may call any one or more of the following persons to testify as witnesses in this contested case. However, Petitioners reserve the right to call additional witnesses based upon information learned through discovery and investigation in the course of this contested case.

- (a) Mick Noland, COO Water Resources, Fayetteville Public Works Commission;
- (b) Paul Peterson, Project Manager, ARCADIS;
- (c) Evan Kane, Hearing Officer, North Carolina Division of Water Resources;
- (d) Thomas Fransen, Section Chief, Water Planning Section of North Carolina Division of Water Resources;
- (e) Expert witnesses who may be retained to testify on behalf of Petitioners;
- (f) Individuals identified in discovery;

- (g) All individuals identified or called as witnesses by Respondents; and
 - (h) All individuals whose testimony as rebuttal witnesses is needed.
5. WHETHER YOU WISH TO PURSUE DISCOVERY. IF SO, THE LENGTH OF TIME REQUIRED.

Petitioners will pursue discovery, including, but not limited to interrogatories, requests for production, requests for admissions and depositions. At this time, Petitioners request additional time beyond the 14 May 2015 Scheduling Order discovery deadline of 31 August 2015. Petitioners and Respondents have conferred and propose a discovery schedule as appears in the Joint Motion to Amend Scheduling Order and Proposed Order filed on 3 June 2015.

6. REQUESTED LOCATION OF HEARING.

Petitioners are agreeable to conduct the hearing in Fayetteville, as set forth in the Scheduling Order, but are also willing to hold the hearing in Raleigh for the convenience of the Administrative Law Judge, the Respondents, and their respective witnesses.

7. IF YOU DO NOT HAVE AN ATTORNEY, YOUR HOME AND BUSINESS ADDRESS AND TELEPHONE NUMBER.

Petitioners are represented by undersigned counsel.

8. ESTIMATED LENGTH OF HEARING.

At this time, Petitioners expect the length of the hearing to be three to five days.

9. OTHER SPECIAL MATTERS.

Petitioners respectfully request the parties pursue a mediation of the issues in this

contested case as set forth in the 14 May 2015 Order for Mediated Settlement Conference.

Respectfully submitted, this the 15th day of June, 2015.

WILLIAMS MULLEN



Amos C. Dawson, III

N.C. Bar No. 6584

M. Keith Kapp

N.C. Bar No. 8850

Ruth A. Levy

N.C. Bar No. 43011

301 Fayetteville Street, Suite 1700

Raleigh, NC 27601

Telephone: (919) 981-4024

E-mail: kkapp@williamsmullen.com

Attorneys for Petitioners

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Prehearing Statement was served on Respondent by U.S. Mail, postage pre-paid, and via electronic mail, addressed as follows:

Jennie Wilhelm Hauser
Special Deputy Attorney General
Elizabeth J. Weese
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
jhauser@ncdoj.gov
jweese@ncdoj.gov
Attorneys for Respondents

This, the 15th day of June, 2015


Ruth A. Levy
WILLIAMS MULLEN
301 Fayetteville Street, Suite 1700
Raleigh, NC 27601
Telephone: (919) 981-4029
E-mail: rlevy@williamsmullen.com
Attorney for Petitioners



CUMBERLAND
★ **COUNTY** ★
NORTH CAROLINA

ENGINEERING & INFRASTRUCTURE DEPARTMENT

JEFFERY P. BROWN, PE
Engineering & Infrastructure Director

**MEMO FOR THE AGENDA OF THE
AUGUST 6, 2015 MEETING OF THE FACILITIES COMMITTEE**

TO: FACILITIES COMMITTEE
FROM: JEFFERY P. BROWN, PE, E & I DIRECTOR
THROUGH: AMY H. CANNON, COUNTY MANAGER
DATE: JULY 23, 2015
**SUBJECT: RADIO TOWER AGREEMENT WITH NC DIVISION OF
FOREST RESOURCES**

Requested by: JEFFERY P. BROWN, PE, E & I DIRECTOR
Presenter(s): JEFFERY P. BROWN, PE, E & I DIRECTOR

Estimate of Committee Time Needed: 10 MINUTES

BACKGROUND:

The Emergency Management Department was contacted by the NC Division of Forest Resources to see if Cumberland County had available radio tower space for installation of an antenna. Their existing agreement for the tower on Palestine Road has expired and their goal is to find a more centrally located site within Cumberland County to provide better radio communication coverage. The Emergency Management Department then contacted the Engineering & Infrastructure Department to discuss the possibility of the Forestry Service using available space on the tower located atop of the County facility located at 109 Bradford Avenue, the former Mental Health Building.

There is available space on one of the existing towers located at the facility and there is actually an existing VHF antenna that is currently not in service that the Forestry Division utilized to test the communication coverage. It was determined from the test that this location did indeed meet their needs and it was also determined that their antenna would not have a negative impact on the existing communication antennas, as their antenna will be on a different frequency from the existing antennas. The use of the available space on the tower will provide more effective and efficient services to the citizens of Cumberland County without any negative impact to existing operations.

This was initially presented and approved by the Facilities Committee on November 6, 2014, however there was liability language within the tower agreement that the County Attorney requested to be changed after it was presented. Therefore, it was determined that this should be brought back to the Committee for review and approval. The County Attorney has reviewed and approved the attached revised agreement.

RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director along with County Management recommend that the Facilities Committee approve the use of available space on the radio tower located atop of 109 Bradford Avenue for the purposes of the NC Division of Forest Resources operating a radio antenna and forward it to the Board of Commissioners for its consideration at their August 17, 2015 meeting.

**CUMBERLAND COUNTY
RADIO TOWER AGREEMENT**

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

This Lease Agreement, made and entered into this _____ day of _____, 20____, by and between **CUMBERLAND COUNTY**, hereinafter referred to as "Lessor", and the **STATE OF NORTH CAROLINA**, through the North Carolina Department of Agriculture & Consumer Services, hereinafter referred to as "Lessee".

WITNESSETH

THAT WHEREAS, authority to approve and execute this lease agreement was delegated to the Department of Administration by resolution adopted by the Governor and Council of State on the 1st day of September, 1981; and amended on September 8th, 1999 and April 1, 2003.

WHEREAS, the Department of Administration has delegated to the Department of Agriculture the authority to execute this lease agreement by a memorandum dated the 26th day of March, 1982; and

WHEREAS, the parties hereto have mutually agreed to the terms of this lease agreement as hereinafter set out,

WHEREAS, the Lessor owns, operates and maintains a Radio Signal Tower, (Registration No. 1015942) located on a County facility that is located at 109 Bradford Avenue in Cumberland County, North Carolina, at latitude of 35-03-19N, longitude 78-53-30W, NAD 17, and the Lessor hereby leases to Lessee and the Lessee hereby leases from the Lessor space on the Tower and all access and utility easements, if any, (collectively, the "Premises").

WHEREAS, the Lessor desires to grant to the Lessee a lease to install, operate and maintain an antenna and coaxial cable upon said tower and to install related cabling, wiring and accessories inside the "headend" building located at the base of the radio tower. The headend" building is a masonry environmentally-controlled building which is storage space for all repeaters and accessories related to such antennas and cables on the tower.

NOW THEREFORE, in consideration of the rents, covenants and agreements hereinafter set forth, the Lessor and Lessee agree as follows:

- 1) The Lessor agrees to lease to the Lessee space on its radio tower to install, operate and maintain an antenna and coaxial cable on Lessor's tower and to install, operate and maintain other related cabling, wiring and accessories inside the Lessor's "headend" building located at the base of said radio tower.

<u>TYPE</u>	<u>HEIGHT</u>
VHF Hi Band Repeater	

- 2) The Lessor agrees to furnish such power as may be required by the Lessee for operation of its installation, however, it is expressly understood and agreed that the Lessor will not be responsible for any power outage, but will endeavor to correct the condition causing the outage as soon as it is reasonably possible.

- 3) The term of the lease shall be for a period of 3 years commencing on _____, 20__ and terminate _____, 20__.
- The Lessor or Lessee may terminate this agreement at any time with or without cause, upon thirty (30) days written notice to the other party, sent by certified mail to the address so designated for this purpose; and further provided that this agreement may be canceled on twenty-four (24) hours notice to Lessee in the event that Lessee's base station, antenna or other equipment on said premises of the Lessor are causing or contributing to noticeable degradation of the radio equipment of the Lessor or of any persons with antenna leases on the Lessor's tower.
- 4) The rental fee for the lease shall be **Ten and 00/100 Dollars (\$10.00)** and should be paid with the commencement of this lease.
- 5) The Lessee will have access to the Lessor's tower site and to Lessor's "headend" building. Only personnel or contractors of North Carolina Division of Forest Resources approved by the Lessor will be permitted to go on or install equipment of the tower.
- 6) **Insurance & Liability.**
- (a) Lessor agrees that Lessee's decision to self-insure satisfies all insurance requirements of this Lease applicable to Lessee.
- (b) As between Lessor and Lessee, Lessee, subject to the terms of this Lease, will be primarily liable for the negligent or intentional acts or omissions of its agents, contractors or employees. As to third parties, Lessee is an immune sovereign and is not ordinarily subject to suit. However, Lessee has enacted Chapter 143, Article 31, of the North Carolina General Statutes (the "Tort Claims Act"), pursuant to which the Lessee may be liable for the torts of its officers and employees, within the terms of the Tort Claims Act, and accordingly, Lessee will be primarily liable for any claims within the coverage of the Tort Claims Act.
- (c) Lessor shall be liable to Lessee for any loss or damages suffered by Lessee which are a direct result of the failure of Lessor to perform an act required by this Lease, provided that Lessor could reasonably have complied with said requirement.
- 7) **Utilities / Maintenance.** Lessor shall be responsible for the maintenance and operation of the Tower and the Building, including, but not limited to all utility charges attributable to Lessee's use of the Premises. Lessee shall repair at its own expense damage to the Premises, the Tower, the Building or the Communications Equipment, which is the result of Lessee's use of the Premises except if such cost arises out of the negligent or wrongful acts or omissions of Lessor, its contractors or agents.
- 8) **Security.** Lessor agrees and acknowledges that the Tower and the Building will be secured by a locked fenced. Lessor shall provide Lessee with keys to the locks.
- 9) The Lessee's base station and related equipment shall be installed and maintained in accordance with the following:
- a) Base Antennae shall have no more than 3.3 square feet of projected wind surface.
 - b) Antennae shall be installed at a location and in a manner designated by the Lessor.
 - c) All mounting brackets, clamps and bolts shall be galvanized.
 - d) All coaxial cable shall be fastened to a designated tower leg at intervals of no more than three feet. Stainless Steel Wraplock or Copper Wire shall be used to fasten coaxial cable to tower leg.
 - e) Form a Drip Loop at building cable entrance.
 - f) Base stations shall be installed at a location designated by the Lessor.
 - g) Base stations shall be ground with AWC #6 Copper Conductor to Ground Buss.
 - h) Install GE Surge Protector or equivalent at Base Station AC Outlet.
 - i) Traps and Filters shall be placed in transmitter output in order to eliminate potential harmful interference with other radio users.

- 10) The Lessee, its agents, or any persons using the Lessee's antenna and equipment for the transmission and reception of radio signals shall comply with all laws and governmental regulations respecting such use and shall hold the Lessor harmless from any responsibility from the failure of the Lessee, its agents or any persons using the Lessee's antenna and equipment. The Lessee shall maintain all licenses required by the FCC for the antenna and other equipment on the Lessor's property, said copy of license to be provided to the Lesser.
- 11) The failure of either party to insist in any instance on strict performance of any covenant thereof, or to exercise any option herein contained, shall not be construed as a waiver of such covenant or option in any other instance. No modification or any provision hereof and no cancellation or surrender hereof shall be valid unless in writing and signed by parties.
- 12) All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows:

To the Lessor: County Manager
 Cumberland County
 117 Dick Street
 Fayetteville, N.C., 28301

To the Lessee: NC Department of Agriculture & Consumer Services
 Property & Construction Division
 Attn: Real Property Agent
 1001 Mail Service Center
 Raleigh, NC 27699-1001

Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this instrument the day and year first above written.

LESSOR:
Cumberland County

Amy H. Cannon, County Manager

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

I, _____, a Notary Public of the State and County aforesaid, do hereby certify that **Amy H. Cannon** personally came before me this day and acknowledged that she is **County Manager**, and that she, as Manager, being authorized to do so, executed the foregoing instrument on behalf of the County of Cumberland.

WITNESS my hand and official seal this ____ day of _____,
20____.

Notary Public

My Commission Expires: _____

LESSEE:

State of North Carolina

G. Kent Yelverton, Director
NCDA&CS Property & Construction Division

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, _____, a Notary Public for County and State aforesaid, do hereby certify that **G. Kent Yelverton** personally appeared before me this day and acknowledged the due execution by him of the foregoing instrument as Director of Property and Construction Division, for the North Carolina Department of Agriculture and Consumer Services, in accordance with the authority vested in him and for the purposes therein expressed.

WITNESS my hand and official seal this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

AMY H. CANNON
County Manager

JAMES E. LAWSON
Deputy County Manager



CUMBERLAND
★ **COUNTY** ★
NORTH CAROLINA

ITEM NO. 4.

MELISSA C. CARDINALI
Assistant County Manager

W. TRACY JACKSON
Assistant County Manager

OFFICE OF THE COUNTY MANAGER

**MEMO FOR THE AGENDA OF THE AUGUST 6, 2015
MEETING OF THE FACILITIES COMMITTEE**

TO: FACILITIES COMMITTEE MEMBERS

FROM: W. TRACY JACKSON, ASST. COUNTY MANAGER

THROUGH: AMY H. CANNON, COUNTY MANAGER *ATC*

DATE: JULY 24, 2015

SUBJECT: DELI FRANCHISE UPDATE

Presenter(s): W. Tracy Jackson, Asst. County Manager

Estimate of Committee Time Needed: 15 Minutes

BACKGROUND

In 2011, Cumberland County entered into a franchise agreement allowing The Happy Deli to provide food services at two County-owned facilities. That particular agreement was set to expire in 2014, but during the November 6, 2014, Facilities Committee Meeting, a motion was made by Commissioner Edge to recommend to the full board consideration of approval to extend the franchise agreement for operation of the Courthouse and DSS snack bars until September 15, 2015 and then look into bidding it out. In addition, the committee requested that our Internal Auditor complete a compliance review based upon the franchise agreement, and for County Management to pursue a discussion with the Happy Deli regarding acceptance of debit/credit cards and other suggested changes. Attached is a memorandum from the Internal Auditor addressing these items.

RECOMMENDATION/PROPOSED ACTION:

Consider the development of an RFQ process for a deli franchise that will service the Courthouse and DSS.



CUMBERLAND
★ **COUNTY** ★
NORTH CAROLINA

**INTERNAL AUDIT AND
WELLNESS SERVICES DEPARTMENT**

TO: AMY H. CANNON, COUNTY MANAGER

FROM: TAMMY GILLIS, INTERNAL AUDIT AND
WELLNESS SERVICES DIRECTOR *Tammy*

DATE: JULY 28, 2015

SUBJECT: HAPPY DELI REVIEW

As requested, I conducted a review of the Happy Deli. The purpose of the review was to verify the accuracy of daily sales reported to the County as well as to identify any changes that had been implemented in the deli.

Daily sales receipts generated by the deli's cash register system for the months of **October 2014 through June 2015 were compared to the monthly sales reports submitted to County Finance. All reports and rent payments were submitted to the County on time. On eight occasions the proprietor over reported sales amounts and on six occasions sales were under reported. The result was a net overpayment of \$181.03 to the County.

In November the proprietor began accepting debit/credit cards as payment. This has resulted in an approximate 20% increase in the deli's monthly sales.

In February the tables in the deli were rearranged and many decorative items were removed, which has resulted in a less cluttered appearance. The deli consistently has a sanitation rating in the high 90's to 100. Currently it has a 99 rating.

The deli offers a menu with a wide variety of items to choose from and is willing and does prepare special order items that are within their abilities.

In conclusion, during FY15 the Happy Deli reported accurate sales information and paid the correct amount of rent timely. They made changes and improvements as requested by the County and customers.

**** July – Sept 2014 were not reviewed because the proprietors van was broken into and his backpack containing his sales receipts and other items was stolen. Reviewed police report.**