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**JIMMY KEEFE**



**BOARD OF COMMISSIONERS**

**CANDICE WHITE**  
Clerk to the Board

**KELLIE BEAM**  
Deputy Clerk

**MEMORANDUM**

TO: Finance Committee Members (Commissioners Adams, Faircloth and Keefe)

FROM: Candice H. White, Clerk to the Board

DATE: February 23, 2018

SUBJECT: Finance Committee Regular Meeting – Thursday, March 1, 2018

There will be a regular meeting of the Board of Commissioners' committees (Finance, Policy and Facilities Committee) on Thursday, March 1, 2018 beginning at 8:30 a.m. in room 564 of the Judge E. Maurice Braswell Cumberland County Courthouse. All committee meetings will start as soon as the previous committee adjourns.

**AGENDA**

1. Consideration of Approval of Minutes
  - A. February 1, 2018 Regular Meeting (**Pg. 2**)
  - B. February 15, 2018 Special Meeting (**Pg. 26**)
2. Consideration of Annual School Funding for the Cumberland County School System (**Pg. 55**)
3. Consideration of Health Insurance Plan for FY18-19 (**Pg. 57**)
4. Consideration of Findings from Follow-Up Audit of Women's Programs at the Health Department (**Pg. 61**)
5. Consideration of Selection of Counsel to Pursue Opioid Litigation (**Pg. 62**)
6. Consideration of Pursuing Legislation to Establish County Small Business Enterprise Program (**Pg. 99**)
7. Monthly CDBG-DR Update (**Pg. 121**)
8. Monthly Financial Report (**Pg. 123**)
9. Other Items of Business (**NO MATERIALS**)

cc: Board of Commissioners; County Administration; Vicki Evans, Finance Director; Tammy Gillis, Director of Internal Audit and Wellness Services; County Legal; County Department Head(s); Sunshine List

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February 1, 2018 Regular Meeting

CUMBERLAND COUNTY FINANCE COMMITTEE  
COURTHOUSE, 117 DICK STREET, 5TH FLOOR, ROOM 564  
FEBRUARY 1, 2018 – 8:30 AM  
REGULAR MEETING MINUTES

MEMBERS PRESENT: Commissioner Marshall Faircloth, Chairman  
Commissioner Glenn Adams  
Commissioner Jimmy Keefe

OTHERS: Commissioner Michael Boose  
Commissioner Jeannette Council  
Commissioner Larry Lancaster  
Amy Cannon, County Manager  
Melissa Cardinali, Assistant County Manager  
Tracy Jackson, Assistant County Manager  
Sally Shutt, Assistant County Manager  
Duane Holder, Assistant County Manager  
Rick Moorefield, County Attorney  
Vicki Evans, Finance Director  
Robert Van Geons, Fayetteville Cumberland County Economic  
Development Corporation President/CEO  
Candice H. White, Clerk to the Board

Commissioner Faircloth called the meeting to order.

1. ELECTION OF 2018 FINANCE COMMITTEE CHAIR

Commissioner Faircloth nominated Commissioner Keefe.

MOTION: Commissioner Adams moved that nominations be closed, and that Commissioner Keefe be appointed by acclamation.

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (3-0)

2. APPROVAL OF MINUTES – DECEMBER 14, 2017 SPECIAL MEETING

MOTION: Commissioner Faircloth moved to approve the December 14, 2017 special meeting minutes.

SECOND: Commissioner Adams

VOTE: UNANIMOUS (3-0)

3. PROJECT “NANO2”/CAMPBELL SOUP SUPPLY COMPANY

A. CONSIDERATION OF THE ECONOMIC DEVELOPMENT INCENTIVES AGREEMENT FOR CAMPBELL SOUP SUPPLY COMPANY, LLC

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## B. CONSIDERATION OF SUBDIVISION OF THE CEDAR CREEK INDUSTRIAL PARK

### BACKGROUND:

On October 16, 2017, the Board conducted the advertised public hearing and approved incentives for Project "NANO2." Campbell Soup Supply Company, LLC, (the "Company") announced the project in January 2018.

The Company requires that the transfer of the land in Cedar Creek Industrial Park be done pursuant to a purchase-sale agreement which is to be incorporated into the incentives agreement. It has been difficult to develop a purchase-sale agreement that was acceptable to the Company because the Company's initial expectation was the purchase-sale agreement would include terms that are typically found in complex, commercial real estate sales contracts between private parties for privately-owned land. In addition, the Company insists on modification of some of the terms of the incentives offer. Since the incentives were approved by the Board, it will be necessary for the Board to approve the modifications.

There are now more than 50 pages contained in the documents that constitute this incentives agreement. For that reason, I have prepared a summary of the matters that need the Board's approval as follows:

1. A third party shall be the operator of the Project and create the jobs. That party has been identified as DHL. This does not create any significant issues for the incentives agreement; it just needs to be approved by the Board because this was not presented as a third party arrangement. (IA-Sec. 3.1)
2. G.S. § 158-7.1(d)(2) requires the Company to reconvey the land to the county if it fails to complete construction within 5 years. Because the construction costs of the project will be secured by a deed of trust on the land, the county would take the property subject to this large mortgage. This statute creates a harsh result for the county if the construction is not timely completed. This is a statutory requirement and is being provided to the Board as information only. (IA-Sec. 4.1.3)
3. The number of jobs the Project must create for the Company to qualify for the annual cash incentives payment has been decreased. The incentives approved by the Board required the Company to create 112 jobs the first year and to increase that to 140 jobs by the fifth year. The job numbers have been decreased to 100 the first year and going to 135 by the sixth year. The Board must approve this reduction in the job numbers. (IA-Sec. 4.4)
4. The Company requires that the county agree to the Company's designation of First American Title Insurance Company as an Escrow Agent for closing the land transaction. The Escrow Agent has significant powers. Only the Board of Commissioners can designate an agent to act on behalf of the county and the Board must approve this appointment of an agent. (PSA-Sec. 3(a))

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5. The Company has the right to assign its rights to purchase the land and all of its rights and obligations under the incentives agreement to another party. This was not disclosed in the incentives approved by the Board; however; the identity of the Company was not disclosed at that time either. This potential assignment does not create any significant issues, but the Board must approve it. (PSA-Sec. 11)
6. The Company insists on a term in the contract that if the county defaults on the sale of the land, the Company has the right to compel the county to sell the land or the recovery of damages from the county in the maximum amount of \$600,000. Neither of these remedies is consistent with the application of the statute governing the transfer of land as an economic development incentive; however; it is part of the contract and because it is beyond the scope of the incentives approved by the Board, the Board must approve this term. (PSA-13(a))
7. The county is obligated to indemnify the Escrow Agent for all liabilities and costs, including counsel fees, arising out of any dispute, litigation or liabilities imposed on the Escrow Agent. There must be a maximum amount stated for this liability in order for the contract to be pre-audited. That amount has not been provided at the time this memo was prepared. The Board must approve this term once the amount is provided. (PSA-Sec. 20(c))
8. The Company drafted the purchase-sale agreement but wants language in the agreement that the County contributed materially and substantially to the negotiation and drafting of it. The County did not contribute materially and substantially to the negotiation and drafting of this agreement. I have offered language to meet the Company's requirements but have not received a response at the time this memo was prepared. (PSA-Sec. 26(b))
9. The Title Insurance Company must approve the form of the deed from the county to the Company. The proposed deed will be submitted to the Company for approval before the contract is executed to avoid a dispute over the form of the deed. (TC-Sch. B-Sec. I.5.a)

Incident to the subdivision of the land to the Company, the remainder of the Cedar Creek Industrial Park was subdivided. A digital copy of the subdivision plat will be presented on the screen at the meeting. The Board must approve the subdivision.

#### RECOMMENDATION/PROPOSED ACTION:

If the terms are acceptable, the Board will need to approve the following provisions of the economic development incentives agreement with Campbell Soup Supply Company, LLC:

1. the jobs for this Project will be created and maintained by a third party identified as DHL;
2. the number of jobs for the Project to be eligible for the performance-based, annual cash incentives is decreased from 112 to 100 in the first year, going to 135 jobs by the sixth year instead of 140 by the fifth year;

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3. consent to the appointment of American Title Insurance Company as an Escrow Agent for closing the sale of the land to the Company;
4. consent to the Company's assignment of the agreement for the purchase and sale of the land to a different party if the Company chooses to make such an assignment;
5. agree that the County will be liable for not more than \$600,000 in damages to the buyer of the land if the County defaults on the sale of the land;
6. agree that the County will be liable to the Escrow Agent for a maximum amount to be provided at the meeting if the Escrow Agent incurs any costs or liabilities imposed on the Escrow Agent and arising out of any dispute or litigation related to its services for closing this real estate transaction; and
7. approve the subdivision of the remaining portion of Cedar Creek Industrial Park.

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Rick Moorefield, County Attorney, reviewed the background information recorded above. Mr. Moorefield stated Items 8 and 9 of the economic development incentives agreement with Campbell Soup Supply Company LLC have been resolved and the Committee need only take action on the seven items stated in the recommendation. Mr. Moorefield provided highlights of the seven remaining items. Questions and discussion followed about the sale of land and a provision that allows the company to transfer the contract for the purchase of property to another entity. Mr. Moorefield noted DHL is the operator of the facility. Robert Van Geons, Fayetteville Cumberland County Economic Development Corporation President/CEO, explained there is a PSA agreement on the sale of the land and an incentives agreement; the PSA allows for the transfer and the incentives agreement, which allows the County to make the sale, is tied to the PSA agreement and cannot be changed, transferred or modified without the Board's approval. Mr. Van Geons stated the two separate agreements provide a secondary level of protection so the only way to get the incentives, which includes the sale of the land, is to create the jobs. Mr. Van Geons also stated the only thing in play is who actually closes on the land.

MOTION: Commissioner Adams moved to approve the provisions of the economic development incentives agreement with Campbell Soup Supply Company, LLC.  
SECOND: Commissioner Faircloth  
VOTE: UNANIMOUS (3-0)

Mr. Moorefield displayed and reviewed a map of Cedar Creek Industrial Park and pointed out the area Campbell Soup Supply Company, LLC has selected to purchase. Mr. Moorefield stated the new map is new proposed subdivision of the entire park. Mr. Moorefield pointed out the line designating the 100 Year Flood Plain and stated although a manufacturing structure cannot be built in the flood plain, it can be used for parking lots in places where the topography is suitable. Mr.

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Moorefield stated the amount of useable land is much less than the 202 acres shown on the new Lot 4 because of this flood plain.

MOTION: Commissioner Faircloth moved to approve the new subdivision in Cedar Creek Industrial Park so the plat can be recorded incident to the sale of the property.

SECOND: Commissioner Adams

VOTE: UNANIMOUS (3-0)

#### 4. CONSIDERATION OF ENERGOV LAND MANAGEMENT SOFTWARE CONTRACT FOR PLANNING AND ENVIRONMENTAL HEALTH

##### BACKGROUND:

Cumberland County Planning and Inspections and Environmental Health have completed the RFP process for acquiring a new software solution for Permitting and Land Management. This solution will replace multiple outdated systems that do not currently work together or share information, to include Central Permits, Inspections, Code Enforcement, Land Use, and Parcel/Address Management. It will also replace a system currently used by Environmental Health to maintain septic systems, wells, mobile home parks, and public swimming pools. This new solution will provide much needed hand-offs between these areas to create a single system with one streamlined process. It will also maximize operational efficiency, which will greatly increase the level of customer service provided to the citizens of Cumberland County.

Information Services budgeted \$265,000 for FY18 for Phase 1 of this project, which was based on a preliminary estimate to replace only the Central Permits system. However, after a comprehensive business process review, it was determined that the scope of the project needed to expand to include Environmental Health and the other areas of Planning beyond just Central Permits. Therefore, the quoted cost of Phase 1 of this project has increased by \$106,000 for a total of \$371,000 for FY18. Environmental Health will contribute \$58,669, which leaves an unbudgeted balance of \$47,331.

##### RECOMMENDATION/PROPOSED ACTION:

Information Services recommends approval of the contract for Energov Land Management Software for Planning and Environmental Health at a total cost of \$371,000 for phase 1.

Approve Budget Ordinance Amendment #180590 in the amount of \$106,000 for Phase 1. This revision appropriates General fund balance in the amount of \$47,331 and Environmental Health fund balance of \$58,669.

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Keith Todd, Information Services Director, reviewed the background information and recommendations/proposed actions recorded above. Mr. Todd explained a phased approach was chosen because of the complexities of consolidating the current five systems into one system, changes to current processes and to ensure a complete system understanding prior to too many additional changes. Mr. Todd stated anyone who has undergone a massive ERP implementation knows there are a lot questions going from an old to a new system and changes that no one knows

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a lot about. Mr. Todd stated it is fundamental to understand the system entirely, establish a strong core and get the fundamentals correct in order to look at Phase 2 which will provide the ability to have mobiles in the field, make online payments, submit applications for permits and track the permits online. Mr. Todd responded to questions and stated Phase 1 will take about twelve months to implement and implementation of Phase 2 is projected to be three to six months after that.

MOTION: Commissioner Faircloth moved to approve the contract for Energov Land Management Software for Planning and Environmental Health at a total cost of \$371,000 for phase 1 and Budget Ordinance Amendment #180590 in the amount of \$106,000 for Phase 1.

SECOND: Commissioner Adams

VOTE: UNANIMOUS (3-0)

## 5. CONSIDERATION OF REQUEST FOR PROPOSALS (RFP) FOR WORKFORCE DEVELOPMENT

### BACKGROUND:

Cumberland County receives annual funding from the state to provide workforce development services through the Workforce Innovation & Opportunity Act (WIOA). These important services are focused on the following groups: local employers, the unemployed, underemployed adults, veterans, dislocated workers, In-School Youth (age 14-21) and Out-of-School Youth (age 16-24). These services are currently contracted to ResCare Workforce Services with a contract period ending June 30, 2018.

Workforce Development staff have prepared the Request for Proposals (RFP) for FY19 programs and services. This RFP seeks service providers who will work collaboratively with Cumberland County Workforce Development and the North Carolina Department of Commerce's Division of Workforce Solutions as part of an integrated services model. Estimated allocations for FY19 are anticipated to be as follows for these specific program areas in Cumberland County:

- 1) \$800,000 for adult services programs
- 2) \$550,000 for dislocated worker programs
- 3) \$800,000 for youth services programs

These not-to-exceed amounts may be subject to change as it is based upon a prior estimate of available funds. It is anticipated that the exact funding amount will be known at or about the time of the final contract negotiations. All contracts for services will be on a cost-reimbursement basis, based upon performance, and may be extended for two additional years at the discretion of the County.

### RECOMMENDATION/PROPOSED ACTION:

Approval to move forward with the RFP process for youth, adult, and dislocated worker workforce services in Cumberland County.

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Nedra Rodriguez, Workforce Development Director, reviewed the background information recorded above and stated Workforce Development is required to procure its services every year, which can be done in three-year increments if a contractor is working well. Ms. Rodriguez stated for the specific programs, an estimated \$1.5 million will be utilized in the RFP just for services. Ms. Rodriguez responded to questions and stated services will be for any citizen in Cumberland County with Cumberland County being the administrator.

MOTION: Commissioner Adams moved to approve moving forward with the RFP process for youth, adult, and dislocated worker workforce services in Cumberland County.

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (3-0)

## 6. CONSIDERATION OF COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY (CDBG-DR) INTERLOCAL AGREEMENT

### BACKGROUND:

The Community Development Block Grant – Disaster Recovery (CDBG-DR) is a program intended to address the impact of Hurricane Matthew on those that have a need for affordable housing. This grant is a pass-through from the Federal government to the State of North Carolina and then onward to counties that suffered the worst damage from the hurricane. Cumberland County and the City of Fayetteville have collaborated to develop a plan to address post-hurricane housing needs. This plan has been reviewed and approved by the State, and a Memorandum of Agreement between the County and the State has been executed so that funding can now be accessed by the County. In order to continue forward and allow the City of Fayetteville to request funding for its projects from the County, a subrecipient agreement between the County and the City is required.

The agreement recorded below adheres to HUD requirements and has been reviewed and approved by the State, the City Council, and the County Attorney’s Office. Proposed projects will be brought back to the Board of Commissioners for approval prior to being let.

### RECOMMENDATION/PROPOSED ACTION:

Staff recommends approval of the CDBG-DR subrecipient agreement between the County and the City and requests the County Manager be authorized to execute the agreement.

## AGREEMENT BETWEEN COUNTY OF CUMBERLAND AND CITY OF FAYETTEVILLE

### COMMUNITY DEVELOPMENT BLOCK GRANT–DISASTER RECOVERY PROGRAM

**THIS AGREEMENT**, entered into this \_\_\_ day of \_\_\_\_\_, by and between the COUNTY OF CUMBERLAND (hereinafter called the COUNTY), a body politic and

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corporate of the State of North Carolina, and CITY OF FAYETTEVILLE (hereinafter called the CITY), a body politic and corporate of the State of North Carolina with its principal address at 433 Hay Street, Fayetteville, North Carolina 28301.

**WHEREAS**, North Carolina General Assembly passed the Disaster Recovery Act of 2016 (S.L. 2016-124) requiring the NC Department of Commerce to transfer to the North Carolina Department of Public Safety - Division of Emergency of Management all Community Development Block Grant – Disaster Recovery (CDBG-DR) program funds; and

**WHEREAS**, the COUNTY has applied for and received the Community Development Block Grant Recovery Disaster Program (CDBG-DR) funding under the Continuing Appropriations Act of 2017 and Emergency Assistance Act and Public Law 114-254 from the United States Government; and; Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq); and

**WHEREAS**, the COUNTY desires to partner with the CITY to serve the citizens within the City of Fayetteville through the CDBG-DR program in utilizing such funds; and

**NOW, THEREFORE**, the parties agree that:

**I. SCOPE OF SERVICES**

**A. ACTIVITIES/PRINCIPAL TASKS**

The CITY shall provide services under the 2017 CDBG-DR Program Year in a manner satisfactory to the COUNTY and consistent with any standards required as a condition of providing these funds.

**1. Program Activities.** CITY shall conduct the following activities eligible under the Community Development Block Grant Program for the project site located within the city limits of Fayetteville.

**Activity #1. Housing Recovery:** The CITY will undertake housing activities to include single family homeownership rehabilitation, single family homeownership reconstruction; mobile home repair; housing repair reimbursement; small rental repair; and provide affordable single family ownership in the Oakridge Estates Community in Fayetteville.

**Activity #2. Multi-Family Rental Housing:** The CITY and the COUNTY will jointly choose a consultant to guide the parties in selecting an experienced individual that demonstrates the capacity and ability to carry out the activities in accordance with HUD's guidelines and contractual obligations.

**Activity #3. Economic Development (Small Business Recovery):** The CITY will undertake this activity in accordance with the coordination and administration of the Department of Commerce.

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**Activity #4.** Community Recovery: The CITY jointly with the COUNTY will collaborate as a part of the homelessness initiative in the development of a facility to provide supportive services and shelter to homeless individuals and families.

2. General Administration: The following general administration activities are necessary to provide the activities described in Activities/Principal Tasks.

**Activity #1** Assigned staff of the Cumberland County Community Development Department will conduct the required monitoring of activities as described in the Cumberland County Community Development Monitoring Handbook for Community Development Block Grant funds conveyed to CITY.

**Activity #2** The CITY shall be responsible for the preparation and submission of all documents and reports relative to final close-out of the grant.

**Activity #3** The CITY shall keep and maintain books, records and other documents relating directly to the receipt and disbursement of grant funds, and the fulfillment of this agreement and job creation.

**Activity #4** The CITY shall at all reasonable times agree to provide the staff of Cumberland County, the NC Department of Public Safety, Department of Commerce, the United States Department of Housing and Urban Development, and the Office of the Inspector General access to and the right to inspect, copy, audit and examine all of the books, records and other documents relating to the grant and the fulfillment of this agreement for a period of four years following the completion of all closeout procedures respecting the Community Development-DR funds, and the final settlement and conclusion of a for documentation required of the program by the Grantor.

**B. NATIONAL OBJECTIVES**

The CITY certifies that the activities carried out with funds provided under this Agreement shall meet the CDBG-DR Program National Objective of providing benefit to low/moderate income persons. All activities funded with CDBG-DR must meet one of the CDBG-DR program's national objectives: benefit low and moderate income persons; aid in the prevention or elimination of slum or blight; or meet community development needs having a particular urgency as defined in 24 CFR 570.208 and 4 NCAC 19L.1004.

**II. TIME OF PERFORMANCE**

The term of this Agreement shall begin on the 1st day of **March, 2018** and end on the 28th day of **February, 2020**.

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**III. FUNDING SOURCE - CDBG-DR**

The COUNTY will allocate **\$15,325,000** in CDBG-DR funds for the purpose of benefiting low/moderate income persons.

**IV. METHOD OF COMPENSATION/PAYMENT SCHEDULE**

The parties agree that the total amount to be paid by the COUNTY under this contract shall not exceed **\$15,325,000**. Reimbursements for the payment of eligible expenses will be charged to the program and will not exceed the allocated amount. If discrepancies are discovered during monitoring, the COUNTY reserves the right to restrict the CITY to payment for eligible expenses on a reimbursement basis only. The parties agree that any costs incurred prior to **March 1, 2018** of the Program Year in which the contract is executed will not be eligible for reimbursement. Payments will be contingent upon certification of the CITY'S financial management system in accordance with the standards specified in 2 CFR Part 200.

**V. NOTICES**

Communication and details concerning this contract shall be directed to the following contract representatives:

**CUMBERLAND COUNTY**

AMY H. CANNON, COUNTY MANAGER  
Cumberland County  
117 Dick Street  
Fayetteville, NC 28301  
(910) 678-7723

**CITY OF FAYETTEVILLE**

DOUG HEWETT, CITY MANAGER  
City of Fayetteville  
433 Hay Street  
Fayetteville, NC 28301  
(910) 433-1990

**VII. GENERAL CONDITIONS**

**A. GENERAL COMPLIANCE**

The CITY agrees to comply with the requirements of the Housing and Urban Development regulations concerning the Community Development Block Disaster Recovery Program (CDBG-DR). The CITY also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this contract. The CITY further agrees to use funds available under this Agreement to supplement rather than to supplant funds otherwise available.

**B. INDEPENDENT CONTRACTOR**

Nothing contained in this Agreement is intended or shall be construed to create or establish the relationship of employer/employee between the parties. The CITY shall at all times remain an "Independent Contractor" with respect to the services to be performed under this Agreement. The COUNTY shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the CITY is an independent contractor.

**C. HOLD HARMLESS**

To the extent allowed by North Carolina law, the CITY shall hold harmless, defend and indemnify the COUNTY from any and all claims, actions, suits, charges and

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judgments whatsoever that arise out of the CITY'S performance or nonperformance of the services or subject matter called for in this Agreement.

**D. WORKERS' COMPENSATION**

The CITY shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this contract.

**E. INSURANCE AND BONDING**

The CITY agrees to comply with 24 CFR Part 85 Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

**F. DEBARRED / SUPENDED**

The CITY must not make any award or permit any award (subgrant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 CFR part 2424. The requirement set forth in 24 CFR Part 5 apply to this program.

**G. COUNTY RECOGNITION**

The CITY shall ensure recognition of the role of the COUNTY agency in providing services through this contract. All activities, facilities and items use pursuant to this contract shall be prominently labeled to indicate Cumberland County CDBG-DR as a funding source. In addition, the Borrower shall include a reference to the support provided herein in all publications made possible with funds made available under this contract.

**H. AMENDMENTS**

The COUNTY or CITY may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations. Such amendments will not invalidate this Agreement, nor relieve or release the COUNTY or CITY from its obligations under this Agreement.

The COUNTY may, at its discretion, amend this Agreement to conform with Federal, State or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the Scope of Services, or schedule of activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both COUNTY and CITY.

**I. SUSPENSION OR TERMINATION**

Either party may terminate this contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial terminations of the Scope of Service in Paragraph 1.A above may only be

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undertaken with the prior approval of the COUNTY. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the CITY under this Agreement shall, at the option of the COUNTY, become the property of the COUNTY, and the CITY shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

The COUNTY may also suspend or terminate this Agreement, in whole or in part, if the CITY materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the COUNTY may declare the CITY ineligible for any further participation in the COUNTY'S contracts, as stated in the Monitoring Policy of Cumberland County Community Development, in addition to other remedies as provided by law. If there is probable cause to believe the CITY is in noncompliance with any applicable rules or regulations, the COUNTY may withhold all or any portion of said contract funds until such time as the CITY is found to be in compliance by the COUNTY, or is otherwise adjudicated to be in compliance.

## VIII. ADMINISTRATIVE REQUIREMENTS

### A. FINANCIAL AND PROGRAM MANAGEMENT

#### 1. Administrative Requirements

The CITY agrees to comply with 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments", as applicable, regarding financial and program management. The CITY further agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary source documentation as necessary.

#### 2. Cost Principles

The CITY will administer its program in conformance with 2 CFR Part 225, "Cost Principles for State, Local and Indian Tribal Governments". These principles will be applied for all costs incurred whether charged on a direct or indirect basis.

### B. DOCUMENTATION AND RECORD-KEEPING

#### 1. Records to be Maintained

The CITY shall maintain all records required by the Federal regulations specified in 24 CFR 507.506; 2 CFR 200 that are pertinent to the activities to be funded under this Agreement, such records shall include, but not be limited to:

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- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG Program;
- c. Records required to determine the eligibility of activities;
- d. Records documenting compliance with the Fair Housing and Equal Opportunity components of the CDBG Program;
- e. Financial records as required by 24 CFR Part 570.502, 2 CFR 200 and 24 CFR Part 85; and
- f. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. **Retention**

The CITY will retain all records pertinent to expenditures incurred under this contract for a period of four (4) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this contract will be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four (4) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claim(s), audit(s), negotiation(s) or other actions that involve any of the records cited and that have started before the expiration of the four (4) years, then such records must be retained until completion of the actions and resolution of all issues.

3. **Employee Data**

The CITY shall maintain data delineating those employees identified as being in the low/moderate income category. Such data shall include, but not be limited to, employee name, address, income level, or other basis for determining eligibility, and description or service provided. Such information shall be made available to COUNTY'S monitors or its designees for review upon request.

4. **Disclosure**

Employee and/or client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the COUNTY'S or CITY'S responsibilities with respect to services provided under this contract, is prohibited by Federal law under 42 U.S.C., Section 145(b) (HUD/CPD) unless written consent is obtained from such persons receiving service and, in the case of a minor, from a responsible parent/guardian.

5. **Close-Outs**

The CITY'S obligation to the COUNTY shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments and determining the custodianship of records.

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6. **Audits and Inspections**

The CITY agrees to have an annual agency audit conducted in accordance with OMB Circular A-133. If the CITY does not meet the threshold requirements for an annual audit in accordance with OMB Circular A-133 standards, the CITY will have an annual audit conducted by an independent certified public accountant in accordance with generally accepted government auditing standards (GAGAS). All CITY records with respect to any matters covered by this Agreement will be made available to the COUNTY, grantor agency, its designees or the Federal Government, at any time during normal business hours, as often as the COUNTY or grantor agency deems necessary, to audit, examine and make excerpts or transcripts of all relevant data. The COUNTY will send written notice of any deficiencies to the CITY within fifteen (15) days following audit/monitoring. Any deficiencies noted in monitoring reports must be fully cleared by the CITY within thirty (30) days after receipt by the CITY. Failure of the CITY to comply with the above monitoring requirements will constitute a violation of this contract and may result in the withholding of future payments.

C. **REPORTING AND PAYMENT PROCEDURES**

1. **Indirect Costs**

If indirect costs are charged, the CITY shall develop an indirect cost allocation plan for determining the appropriate CITY'S share of administrative costs and shall submit such plan to the COUNTY for approval, in a form specified by the COUNTY.

2. **Payment Procedures**

The COUNTY shall pay to the CITY funds available under this contract based upon information submitted by the CITY and consistent with any approved budget and COUNTY policy concerning payments. Payments shall be made for eligible expenses actually incurred by the CITY, and not to exceed actual cash requirements. In addition, the COUNTY reserves the right to allocate funds available under this contract for costs incurred by the COUNTY on behalf of the CITY.

3. **Progress Reports**

The CITY will submit regular monthly Progress Reports to the COUNTY in the form, content, and frequency as required by the COUNTY. If the CITY is more than 30 days delinquent in submitting its progress reports, **the COUNTY will discontinue processing all requests for payment until such time as the delinquent reports are received.**

D. **PROCUREMENT**

1. **OMB Standards**

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The CITY will procure all materials, property, or services in accordance with the requirements of 2 CFR 200, Procurement Standards, and will subsequently follow Property Management Standards as modified by 24 CFR 570.502(b), covering utilization and disposal of property.

**2. Compliance**

The CITY will comply with COUNTY'S policies concerning the procurement of services and the purchase of equipment and will maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) will revert to the COUNTY upon termination of this contract.

**IX. PERSONNEL AND PARTICIPANT CONDITIONS**

**A. CIVIL RIGHTS**

**1. Compliance**

The CITY agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, The Americans with Disabilities Act of 1990, The Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive orders 11375 and 12086.

**2. Nondiscrimination**

The CITY will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The CITY will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection from training, including apprenticeship. The CITY agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

**3. Section 504**

The CITY agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the disabled in any Federally assisted program. The COUNTY will

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provide the CITY with any guidelines necessary for compliance with that portion of the regulations in force during the term of this contract.

4. **EEO Statement**

The CITY will, in all solicitations or advertisements for employees placed by or on behalf of the CITY; state that it is an Equal Opportunity employer.

5. **Subcontract Provisions**

The CITY will include the provisions of Paragraph IX.A. Civil Rights in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

B. **EMPLOYMENT RESTRICTIONS**

1. **Prohibited Activity**

The CITY is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.

2. **Labor Standards**

The CITY agrees to comply with the requirements of the provisions of Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276a-276a-5; 40 U.S.C. 327 and 40 U.S.C. 276c) and all other applicable Federal, State and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this contract. The CITY shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantor for review upon request.

C. **CONDUCT**

1. **No Assignment or Transfer**

The CITY shall not assign or transfer any interest in this contract without the prior written consent of the COUNTY thereto; provided, that claims for money due or to become due to the CITY from the COUNTY under this contract may be assigned to a bank, trust company, or other financial institution without such approval, but notice of any such assignment or transfer shall be furnished promptly to the COUNTY.

2. **Subcontracts**

a. **Approvals**

The CITY shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the COUNTY prior to the execution of such agreement.

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**b. Monitoring**

The CITY shall monitor all contracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

**c. Content**

The CITY shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

**d. Selection Process**

The CITY shall undertake to insure that all contracts in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the COUNTY along with documentation concerning the selection process.

**3. Hatch Act**

The CITY agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

**4. Conflict of Interest**

The CITY agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The CITY further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the CITY hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the COUNTY, or of any designated public agencies or borrowers which are receiving funds under the CDBG-DR Program.

**5. Lobbying**

The CITY hereby certifies that:

- a.** No Federal appropriated funds have been paid or shall be paid, by or on behalf of it, to any person for influencing or attempting to influence 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

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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 agreements;

- b. If any funds other than Federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. It shall require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts, under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

6. **Lobbying Certification**

This certification is a material representative of fact upon which reliance was placed with this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

7. **Copyright**

If this contract results in any copyrightable material or inventions, the Grantor and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

8. **Religious Organization**

The CITY agrees that funds provided under this contract shall not be used for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200(j).

X. ENVIRONMENTAL CONDITIONS  
A. **AIR AND WATER**

# DRAFT

The CITY agrees to comply with the following requirements insofar as they apply to the performance of this contract:

- Clean Air Act, 42 U.S.C. 7401, et seq.
- Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, § 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued hereunder.
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

**B. FLOOD DISASTER PROTECTION**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the CITY shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained.

**XI. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

**XII. NON-APPROPRIATION CLAUSE**

If appropriations of money to conduct and administer the presently scheduled program are lawfully reduced or terminated, or it is deemed in the public interest and necessity for the health, safety, or welfare of the public to so reduce or terminate this scheduled program, the COUNTY, at its option, has the right to terminate this Agreement effective upon the end of the fiscal year. The County shall give the CITY written notice of termination under the provisions of this paragraph immediately upon receipt of actual notice by the COUNTY of a reduction or termination of appropriations of money for the scheduled program, or any other necessity to reduce or terminate the program. Following the effective date of such termination the COUNTY shall have no further obligation to make any payments; the COUNTY shall have no right to recover any payments heretofore paid which were due and payable prior to the effective date of such termination.

**XIII. Environmental Review Clearance**

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by Cumberland County of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned on the County's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

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**XIV. UNDERLYING GRANT CONDITIONS AND REGULATIONS**

The parties acknowledge that the source of funds for this Agreement is U.S. Department of Housing and Urban Development ("HUD" Grantor) and granted the funds to the Department of Commerce ("DOC" Grantee). DOC has entered into an agreement with the NC Department of Emergency Management ("NCEM" Sub-Grantee) to administer the CDBG-DR funds. NCEM has entered into an agreement with the COUNTY to implement the approved CDBG-DR Action Plan approved on August 7, 2017. The COUNTY remains fully obligated to NCEM notwithstanding the designation of the SUBGRANTEE as the third party beneficiary for the undertaking of all or part of a program for which assistance is being originally provided to GRANTEE and in turn is being appropriated to the SUBGRANTEE under this Agreement. The SUBGRANTEE shall comply with all lawful requirements which may be imposed upon the GRANTEE and which may be deemed necessary to insure that such assistance is carried out in accordance with the GRANTEE's assurances and certifications to HUD regarding the use of such funds. Such assurances included, but are not limited to, representations that the use of such funds will fully comply with all applicable environmental laws, rules and regulations; that the funds will be used in a nondiscriminatory manner, etc. This Agreement shall be subject to all amendments, changes or other modifications appropriate from time to time to insure compliance with HUD guidelines, rules, and procedures. See Exhibit 1, Supplemental General Conditions.

**XV. IRAN DIVESTMENT ACT CERTIFICATION**

Contractor hereby certifies that Contractor, and all subcontractors, are not on the Iran Final Divestment List ("List") created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.55-69. Contractor shall not utilize any subcontractor that is identified on the List.

**XVI. E-VERIFY**

Contractor shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, by their respective duly authorized representatives.

\*\*\*\*\*

Tracy Jackson, Assistant County Manager, recognized Dee Taylor, Interim Community Development Director, and Sylvia McLean, CDBG-DR Consultant, and provided the following presentation as an update to help provide an understanding of what led up to interlocal agreement currently being considered. Mr. Jackson explained the grant has been in process for some time.

What is CDBG-DR?

- \* Adapted from HUD's CDBG program and used to address unmet disaster recovery needs for low to moderate income individuals

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February 1, 2018 Regular Meeting

- \* Grant from the Federal Government to a state (recipient) to declared counties (sub-recipients)

Mr. Jackson explained the County, subrecipient to the state, will be partnering with the City of Fayetteville that will be a sub-sub-recipient to the grant.

- \* Counties with the highest impact received the greatest percentage of assistance being passed down by the state
- \* State developed an Action Plan with funding priorities as required by HUD

Mr. Jackson explained the County's local priorities had to be established in conjunction with the City in order to get the plan approved.

## Milestones

- \* 8/7/2017 – Initial CDBG-DR Proposal approved by BOC
- \* 9/5/2017 – Public hearing held on CDBG-DR grant application with project summary; approved by BOC
- \* 10/16/2017 – Budget ordinance amendment for \$23,260,000 and permission to execute MOA with the state approved by the BOC

## Basis for Addressing Needs

- \* State of NC CDBG-DR Action Plan
- \* HUD Low to Moderate Income Criteria
- \* Cumberland County Resilient Redevelopment Plan

## Funding Priorities

- \* Housing (#1 priority is affordable housing)
  - \* Homeowner Recovery Program
  - \* Rental Housing Recovery Program
  - \* Multi-Family New Construction Program
  - \* Public Housing Restoration
  - \* Supportive Housing & Services
- \* Economic Recovery
  - \* Small Business Recovery
- \* Public Infrastructure and Facilities
  - \* Community Recovery Program

## CDBG-DR Aid

- \* \$34,760,000 (over a six-year period) or 22% of remaining grant award after the State deducts its share as the recipient
- \* Administered based on a two-year project budget of \$23,260,000
- \* State will evaluate progress after two years and determine if additional funding will be allocated

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## Program Administration

- \* State recognizes Cumberland County as lead entity and the City of Fayetteville will be a sub-sub-recipient
- \* An interlocal agreement must be executed between the County and City in order for the City to receive reimbursement for its proposed projects
- \* All projects must be administered and overseen per HUD requirements and will have multiple levels of review and approval

## ReBUILD NC Recovery Center Established in Cumberland County

- \* Applications are being accepted by appointment
- \* Call 211 to schedule an appointment
- \* Monday – Friday; 9 a.m. to 4 p.m.
- \* Located at the Department of Social Services

Commissioner Faircloth inquired about the County’s role for oversight. Ms. McLean explained the layers in place to ensure HUD compliance. Commissioner Adams expressed concern about the differences in the City and County’s procurement processes and the City’s combining its Community Development and Economic Development departments. Ms. McLean stated the City will have to follow the procurement process laid out in the CDGB-DR interlocal agreement. Ms. McLean also stated the process will be monitored and City and County Community Development staff are well aware of federal requirements under CDBG which are the same under CDBG-DR. In response to a question from Commissioner Keefe, Ms. Cannon pointed out the hold harmless provision in the interlocal agreement. Additional questions and discussion followed. Mr. Jackson stated the proposed projects still have to be vetted by HUD and the state along with a benefit cost analysis in order to prove the projects are viable, beneficial and worthwhile. Ms. McLean explained the projects in the interlocal agreement were identified in the initial application and all projects have not been clearly identified. Ms. McLean stated the City will bring their projects to the County for approval and all projects will have to be directly tied to Hurricane Matthew.

Additional questions followed. Commissioner Adams asked to strike references to specific project areas under Activity #1 such as Oakridge Estates and add language to the economic development project area under Activity #3 that includes involvement by the County. Mr. Jackson briefly reviewed proposed revisions to the interlocal agreement. Chairman Adams asked to add the language “residing in the City” to III. Funding Source -CDBG-DR.

- MOTION: Commissioner Adams moved to approve the CDBG-DR subrecipient agreement with the City to include the caveats as discussed.
- SECOND: Commissioner Faircloth
- VOTE: UNANIMOUS (3-0)

## 7. UPDATE ON THE STATEWIDE OPIOID LITIGATION PROCESS

### BACKGROUND:

Commissioner Glenn Adams requested an update on the statewide Opioid Litigation.

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## RECOMMENDATION/PROPOSED ACTION:

This item is for information and discussion only.

\*\*\*\*\*

Commissioner Adams stated other counties have already started litigation with the opioid problem and his belief is that the state will file a lawsuit and counties not having started litigation will fall under the state lawsuit. Commissioner Adams stated he did not feel Cumberland County should be predicated on what the state decides and the only way for the County to be at the table is to file a lawsuit. Commissioner Adams referenced information provided by the NCACC and asked Ms. Cannon and Mr. Moorefield for their input. Commissioner Adams stated he feels the earlier the County files the better chances it will have to a portion of any settlement and noted this is not a class-action lawsuit.

Mr. Moorefield stated as of January 24, 2018, twenty-one counties in the state were in some process involving this litigation, with ten having filed lawsuits and eleven in various other stages. Mr. Moorefield stated twelve have engaged the national firm of Baron and Budd, a consortium of four or five law firms, with Mecklenburg using the Hanly Conroy law firm. Mr. Moorefield stated there is no information on who the other eight counties are using but four are looking at Baron and Budd.

Mr. Moorefield stated the firms are handling this at no cost to the counties and they will hire local counsel to do the leg work. Mr. Moorefield stated one of his concerns is the theory of damages because there is no specific data to back up some of the damage claims. Mr. Moorefield stated if this is not going to be an issue, both firms are using a model of damages developed by John Hopkins University for community damages resulting from these types of public health issues. Mr. Moorefield stated the law suits are going after manufacturers only because there are specific federal regulations the lawyers say the manufacturers have violated, one of which is that the manufacturers failed to report to the DEA any distribution of an usual amount of these controlled substances to a single area or pharmacies.

Mr. Moorefield stated all of these cases will be decided by a single judge in the northern district of Ohio, and that 39 state attorney generals are investigating the issue and there will likely be litigation at the state level.

Commissioner Keefe recognized N. C. Representative Billy Richardson who stated it is essential that Cumberland County be involved and stated the law suit is not about manufacturers but distributors because under the federal Control Substance Act, big pharmaceuticals cannot distribute. Representative Richardson spoke further to issues this has created for communities. Representative Richardson stated he likes the model using local counsel for each of the communities and stated his firm is one of several firms serving as the local counsel around the state.

Mr. Moorefield stated there is no downside to moving forward and he recommends pursuing litigation. Mr. Moorefield stated he will work with management to develop a plan of action for moving forward. Mr. Moorefield asked whether he and management should make a

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recommendation for local counsel. Commissioner Adams stated contact has been made by several firms seeking to be selected as local counsel. Commissioner Keefe called for a motion for the resolution.

MOTION: Commissioner Adams moved that the county attorney move forward with the law suit with a recommendation to the full Board for a plan of action.  
SECOND: Commissioner Faircloth  
VOTE: UNANIMOUS (3-0)

Mr. Moorefield asked for clarification whether the plan of action should be presented at the February 5 meeting of the Board of Commissioners or just a resolution to develop a plan of action. Commissioner Adams responded that just the resolution to move forward was expected by February 5.

## 8. OTHER ITEMS OF BUSINESS

Ms. Cannon referenced correspondence to Mayor Colvin and a proposed amendment on the parking deck agreement. Ms. Cannon stated there was interest from the Board to amend the agreement to have an end date in the agreement. Ms. Cannon stated 2025 coincides with the date the parking deck debt is paid off. Ms. Cannon stated this was submitted to the City of Fayetteville as well as exempt properties. Ms. Cannon stated at present there is an assessed value but not a taxable value for exempt property. Ms. Cannon stated the amendment states if that property changes status to nonexempt, the basis for the tax increment will be the taxable value as of December 31, 2017. Ms. Cannon stated when the amendments were submitted to the City of Fayetteville, they requested that the additional provision regarding exempt property be taken out and that the end date in the agreement be extended to 2030. Ms. Cannon stated the County's members of the Baseball Committee met with staff and management and were comfortable recommending first to the Finance Committee and then the full Board that the provision regarding exempt property remain in the agreement and that the end date in the agreement be extended to 2030.

MOTION: Commissioner Adams moved to recommend approval of the parking deck agreement with the City of Fayetteville with the caveat for exempt property.  
SECOND: Commissioner Faircloth  
VOTE: UNANIMOUS (3-0)

Ms. Cannon referenced the baseball agreement and stated it is based on discussion by the Board in December. Commissioner Keefe stated the TIF is only the area around the baseball field.

MOTION: Commissioner Adams moved to forward the baseball stadium TIF to the Board of Commissioners on February 5, 2018.  
SECOND: Commissioner Faircloth  
VOTE: UNANIMOUS (3-0)

There being no further business, the meeting adjourned at 9:55 a.m.

CUMBERLAND COUNTY FINANCE COMMITTEE  
COURTHOUSE, 117 DICK STREET, 5TH FLOOR, ROOM 564  
FEBRUARY 15, 2018 – 1:00 PM  
SPECIAL MEETING MINUTES

MEMBERS PRESENT: Commissioner Jimmy Keefe, Chairman  
Commissioner Glenn Adams  
Commissioner Marshall Faircloth

OTHERS: Commissioner Michael Boose  
Commissioner Jeannette Council  
Commissioner Larry Lancaster  
Amy Cannon, County Manager  
Melissa Cardinali, Assistant County Manager  
Tracy Jackson, Assistant County Manager  
Sally Shutt, Assistant County Manager  
Duane Holder, Assistant County Manager  
Rick Moorefield, County Attorney  
Vicki Evans, Finance Director  
Heather Harris, Budget Analyst  
Jeffery Brown, Engineering and Infrastructure Director  
Joe Utley, Tax Administrator  
Tammy Gillis, Director of Internal Audit and Wellness Services  
William R. West, District Attorney  
Ennis Wright, Cumberland County Sheriff  
Ronnie Mitchell, Sheriff Office Legal Counsel  
Major Tandra Adams, Chief Jailer  
Tim Kinlaw, Cumberland County Schools Interim Superintendent  
Clyde Locklear, Cumberland County Schools Associate  
Superintendent  
Nick Sojka, Cumberland County Schools Attorney  
Carrie Sutton, Board of Education Chair  
Greg West, Board of Education  
Candice H. White, Clerk to the Board  
Press

Commissioner Keefe called the meeting to order and welcomed everyone in attendance.

1. APPROVAL OF AGENDA

MOTION: Commissioner Faircloth moved to approve the agenda.  
SECOND: Commissioner Adams  
VOTE: UNANIMOUS (3-0)

2. UPDATE FROM WILLIAM R. WEST, DISTRICT ATTORNEY ON COUNTY FUNDED ASSISTANT DISTRICT ATTORNEY (ADA) POSITION

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Amy Cannon, County Manager, stated this update was requested by the Finance Committee at its December 2017 meeting. District Attorney Billy West stated his office is indebted to the Board of Commissioners for funding an Assistant District Attorney since 2005 because this allows his Senior District Attorneys to deal with the jail population and other jail issues on a daily basis. District Attorney West introduced his staff members in attendance. District Attorney West explained the jail acceleration program and stated for the one- year period from January 1 – December 31, 2017, the number of inmate days of confinement through the jail acceleration program was reduced as follows:

Inmate cost per day	\$75.55
Number of days of confinement saved	6,165
Savings this period	\$465,765.75

District Attorney West stated many times felony cases are also expedited and can save at least 60 days. District Attorney West spoke to costs for transporting inmates to and from other counties and stated efforts are made to be sure they are needed in court to cut down on costs. District Attorney West also spoke to the high cost of medical issues and stated when possible, efforts are made to resolve these inmates' cases efficiently so the County's responsibility for this high cost medical care is greatly reduced. District Attorney West explained the strong working relationship with Cherry Hospital to appropriately address any Cumberland County inmate's mental health issues and to determine whether inmates are competent or not competent to proceed to trial. District Attorney West stated the goal of the Community Jail Initiative, which meets weekly and has court sessions every other Tuesday morning, is to help reduce the number of mental health inmates in the Cumberland County Detention Facility.

District Attorney West shared information about what other Boards of Commissioners fund in similar size counties and stated without the commitment of the Cumberland County Board of Commissioners and the ADA position, the jail would not be 100 under capacity as it is at present. District Attorney stated the Pre-Trail Release program is also very valuable. District Attorney West concluded his update by stating there are work load formulas that show the District Attorney's office is in need of two to three additional ADA positions. District Attorney West responded to questions. Commissioner Adams stated he felt the committee should come back together and have communication about looking at bonds and whether inmates can get out earlier. District Attorney West concurred.

### 3. PRESENTATION ON JAIL HEALTH FROM MAJOR TANDRA ADAMS, CHIEF JAILER ON JAIL HEALTH AND CONSIDERATION OF SOUTHERN HEALTH PARTNERS CONTRACT AMENDMENT AND ASSOCIATED BUDGET REVISION

#### BACKGROUND:

Southern Health Partners was awarded a contract to provide Jail Health Services at the Cumberland County Detention Center effective July 1, 2017 (other than mental health) and have been providing all Health Services with the exception of Mental Health service since that time. For the period of July 1, 2017 to December 31, 2017, the County continued to employ Mental Health professional for the provision of Mental Health services at the Detention Center. Effective January 1, 2018,

# DRAFT

the provision of Mental Health services was transferred to Southern Health Partners. A contract amendment has been prepared related to these additional services and costs. Further, an addendum to the contract has been proposed for the provision of mental health services by Southern Health Partners.

**RECOMMENDATION/PROPOSED ACTION:**

Recommendation is that the Finance Committee approve the following recommendations and forward this as a Consent Agenda item to the Board of Commissioners for its consideration at their February 19<sup>th</sup> meeting:

1. Accept the Jail Health Presentation.
2. Review and approve the Southern Health Partners Contract Amendment.
3. Approve Budget Ordinance Amendment #B180119 to utilize fund balance in the amount of \$339,824 for salaries and costs related to transition period of Mental Health services provided by County employees through December 31, 2017.
4. Adopt the addendum to the contract and fund the addendum to the contract to provide for the administration and provision of Mental Health Services by Southern Health Partners.

**ADDENDUM AND MODIFICATION #1  
HEALTH SERVICES AGREEMENT**

This ADDENDUM AND MODIFICATION #1, to Health Services Agreement dated June 30, 2017, between Cumberland County, North Carolina, (hereinafter referred to as "County"), and Southern Health Partners, Inc., a Delaware Corporation, (hereinafter referred to as "SHP"), with services commencing on July 1, 2017, is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**WITNESSETH:**

WHEREAS, County and SHP desire to modify the Health Services Agreement dated June 30, 2017, between County and SHP; and

WHEREAS, the Health Services Agreement dated June 30, 2017, contemplated the following:

"County acknowledges its election to independently provide and pay for on-site mental health services through County's mental health staff of providers. SHP agrees to work with County's mental health staff providers. The costs of all mental health services provided through County's mental health staff providers are specifically excluded from this Agreement and shall be the financial responsibility of County, or shall not otherwise be the financial responsibility of SHP.

[and]

Additionally, the parties contemplate that SHP, on or before January 1, 2018, will commence the provision of mental health services in a manner and at a price consistent with that set forth in SHP's Response to the Request for Proposals. The parties anticipate that SHP will recruit to provide staffing for the provision of mental health services on or prior to that date, and agree that a specific addendum to this contract will be executed by the parties consistent with such staffing and

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pricing models as set forth in SHP's Response to Request for Proposal (bid date May 18, 2017) which Response is incorporated and adopted by reference on or before January 1, 2018.”

NOW, THEREFORE, in consideration of the covenants and promises hereinafter made, the parties hereto agree as follows:

**Section 1.2 is hereby modified and replaced in its entirety by the following:**

1.2 Scope of General Services. The responsibility of SHP for medical care of an inmate commences with the booking and physical placement of said inmate into the Jail. The health care services provided by SHP shall be for all persons committed to the custody of the Jail, except those identified in Section 1.7. SHP shall provide and/or arrange for all professional medical, dental, mental health and related health care and administrative services for the inmates, regularly scheduled sick call, nursing care, regular physician care, medical specialty services, emergency medical care, emergency ambulance services when medically necessary, medical records management, pharmacy services management, administrative support services, and other services, all as more specifically described herein.

SHP shall be financially responsible for the costs of all physician and nurse staffing, routine on-site dental services (including dental supplies), over-the-counter medications, medical supplies, medical hazardous waste disposal, office supplies, forms, folders, files, travel expenses, publications, administrative services and nursing time to train officers in the Jail on various medical matters. SHP's financial responsibility for the costs of all emergency kits and restocking of emergency kit supplies, all necessary license and permit fees, all prescription pharmaceuticals, all biological products (used to prevent, diagnose or treat diseases and medical conditions), all clinical lab procedures (inside and outside the Jail), all x-ray procedures (inside and outside the Jail), all dental services other than those provided through SHP's contracted dental provider and all medical and mental health services rendered outside the Jail shall be limited by the annual cost pool described in Section 1.5 of this Agreement. All pool costs in excess of the annual cost pool limit shall be the financial responsibility of the County, or shall not otherwise be the financial responsibility of SHP.

Should new legislation require substantial or new medical directives to SHP in the provision of services under this Agreement, SHP will not be financially responsible for changes to its program, rather SHP would have the ability to seek from the County any additional monies to fund such directives.

**Section 2.1 is hereby modified and replaced in its entirety by the following:**

2.1 Staffing. SHP shall provide medical and support personnel reasonably necessary for the rendering of health care services to inmates at the Jail as described in and required by this Agreement, and as outlined in the proposal staffing model provided herein for reference.

Staff hours worked in excess of this contracted staffing plan, not to include SHP training hours, may be billed back to the County on a monthly basis, upon the consent of County, which

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consent shall not be unreasonably withheld, at the actual wage and benefit rate, for staffing services performed on-site at the facility, provided, however, that this term of this contract is not intended to, and shall not include, nor shall the County have liability for overtime pay, but, instead, this provision concerning excess hours shall be invoked and such charges incurred only if the staffing levels contemplated under this contract prove to be insufficient, and the parties agree that additional staff hours, whether of then-existing or additional staff are, in fact, needed.

Further, SHP may provide replacement or limited staffing coverage in absences, which may be due to vacation time or SHP-designated holidays. SHP reserves the right to make adjustments to the regular staffing schedule for flexible coverage on SHP-designated holidays. If any such absences exceed five (5) consecutive days, not to include vacation time or SHP-designated holidays, SHP will refund the County the cost of the staffing hours on the next month's base fee billing.

County acknowledges that, any additional hours worked in excess of the contracted staffing plan by a physician/physician extender or dental provider shall also be billed back to County for reimbursement to SHP. Such costs may, at the election of the County, be applied toward the annual cost pool accounting totals.

Further, it is understood the Professional Provider hours may be filled by a Physician, or Mid-Level Practitioner. Either will be duly licensed to practice medicine in the State of North Carolina, and will be available to our nursing staff for resource, consultation and direction twenty-four (24) hours per day, seven (7) days per week.

Staff shifts may be adjusted by SHP in order to maintain stability of the program and consistency with staff. Any adjustments or changes to fixed schedules would be made after discussions with the Sheriff and other involved County officials. Professional Provider visit times and dates will be coordinated with Jail Management, and may include the use of telehealth services. Some of the Professional Provider time may be used for phone consults with medical staff and for other administrative duties.

County and SHP acknowledge that, effective on or about January 1, 2018, SHP will incorporate psychiatrist staffing, for sixteen (16) hours per week, for the provision of mental health services, and further, that, SHP will incorporate additional mental health staffing positions (a psychologist and a QMHP/LCSW), for an increased staffing plan as outlined in the model (table) provided herein for reference. SHP's contract price will increase accordingly, as stated in Section No. 7.1 of this Agreement.

<b>Cumberland, NC - Staffing Model 24-hour coverage</b>									
<b>ADP - 778</b>									
<u>POSITION</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>	<u>HRS/W</u> <u>K</u>	<u>FTE</u>
<b><u>Professional Staff</u></b>									
Medical Director			5		5			10	0.25

# DRAFT

NP/PA		5	5	5	5	5		25	0.625
Dentist (Bi-weekly)				4				4	0.1
Dental Hygienist (Bi-weekly)				4				4	0.1
Psychologist		8	8	8	8	8		40	1
Psychiatrist		6		5		5		16	0.4
<b>Administrative Staff</b>									
Director of Nursing (RN)		8	8	8	8	8		40	1
Medical Team Administrator (RN/LPN)		8	8	8	8	8		40	1
Medical Clerk/Administrative Assistant		8	8	8	8	8		40	1
LPN Float	8	8	8	8	8	8	8	56	1.4
QMHP/LCSW		8	8	8	8	8		40	1
<b>Support Staff</b>									
<i>Day shift</i>									
RN - Weekends	1 2						1 2	24	0.6
LPN Booking	1 2	84	2.1						
LPN	1 2	84	2.1						
Med Tech/EMT	1 2	84	2.1						
<i>Evening shift</i>									
RN	1 2	84	2.1						
LPN Booking	1 2	84	2.1						
LPN	1 2	84	2.1						
Med Tech/EMT	1 2	84	2.1						
<b>TOTAL WEEKLY HOURS</b>								<b>927</b>	<b>23.18</b>

# DRAFT

**Section 7.1 is hereby modified and replaced in its entirety by the following:**

7.1 Base Compensation. Effective January 1, 2018, the amount of base contract compensation to SHP shall increase to the twelve-month annualized price of \$2,455,476.00, payable by County in monthly installments. Monthly installments based on the twelve-month annualized price of \$2,455,476.00 will be in the amount of \$204,623.00 each. SHP will bill County approximately thirty days prior to the month in which services are to be rendered. County agrees to pay SHP prior to the tenth day of the month in which services are rendered. In the event this Agreement should commence or terminate on a date other than the first or last day of any calendar month, compensation to SHP will be prorated accordingly for the shortened month.

**Section 7.2 is hereby replaced in its entirety by the following:**

7.2 Increases in Inmate Population. County and SHP agree that the annual base price is calculated based upon an average daily inmate population of up to 778. If the average daily inmate population exceeds 778 inmates for any given month, the compensation payable to SHP by County shall be increased by a per diem rate of \$1.25 for each inmate over 778. The average daily inmate resident population shall be calculated by adding the population or head count totals taken at a consistent time each day and dividing by the number of counts taken. The excess over an average of 778, if any, will be multiplied by the per diem rate and by the number of days in the month to arrive at the increase in compensation payable to SHP for that month. In all cases where adjustments become necessary, the invoice adjustment will be made on the invoice for a subsequent month's services. For example, if there is an average population for any given month of 783 inmates, resulting in an excess of five (5) inmates, then SHP shall receive additional compensation of five (5) times the per diem rate times the number of days in that month. The resulting amount will be an addition to the regular base fee and will be billed on a subsequent monthly invoice.

This *per diem* is intended to cover additional cost in those instances where minor, short-term changes in the inmate population result in the higher utilization of routine supplies and services. However, the per diem is not intended to provide for any additional fixed costs, such as new fixed staffing positions that might prove necessary if the inmate population grows significantly and if the population increase is sustained. In such cases, SHP reserves the right to negotiate for an increase to its staffing complement and its contract price in order to continue to provide services to the increased number of inmates and maintain the quality of care. This would be done with the full knowledge and agreement of the Sheriff and other involved County officials, and following appropriate notification to County.

IN WITNESS WHEREOF, the parties have executed this Agreement in their official capacities with legal authority to do so.

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Major Tandra Adams, Chief Jailer, stated Southern Health Partners has been providing all health services at the jail with the exception of mental health services since July 1, 2017 and has done an excellent job with helping the Detention Center scrub some of its bills. Major Adams reviewed figures for inmate medications, inmates admitted to the hospital, total emergency room visits for the year, total off site hospital visits, services for the year and cost savings therein. Major Adams

# DRAFT

also reviewed a breakdown of medical issues by type throughout the Detention Center, information about inmates with extremely low bonds which need very expensive medical care and a monthly service report from Southern Health Partners.

Ronnie Mitchell, Sheriff's Office Legal Counsel, stated effective January 1, 2018, the provision of mental health services was transferred to Southern Health Partners and the amendment to the contract has been prepared related to these additional services and costs. Mr. Mitchell stated Southern Health Partners has provided data on cost savings and has substantially cut down the number of complaints received for the inadequacy of treatment. Mr. Mitchell stated many of the inmates with mental health issues also have severe substance abuse problems and the belief is that costs will go up until this can be resolved. Mr. Mitchell urged the Finance Committee to recommend approval of the contract amendment.

Questions followed about costs related to the budget ordinance amendment and addendum to the contract. Commissioner Keefe inquired regarding Alliance Behavioral Healthcare. Major Adams stated Alliance employees come into the jail to counsel and Southern Health Partners provide treatment. In response to a question posed by Commissioner Adams, Ms. Evans explained Southern Health Partners started providing mental health services on January 1, 2018 but have not invoiced for those services and have continued to bill at the original contract monthly amount. Ms. Evans stated the amended contract monthly amount will now increase to include the provision mental health services January 1 through June 30, 2018. Commissioner Faircloth asked whether the County employees were budgeted through December 31, 2017 or June 30, 2018. Ms. Evans stated the contract with Southern Health Partners was approved by the Board on June 15, 2017 so a temporary amount was put in the budget to cover staffing through December 2017.

MOTION: Commissioner Adams moved to approve the Southern Health Partners contract amendment and budget ordinance amendment #B180119 to utilize fund balance in the amount of \$339,824.

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (3-0)

#### 4. CONSIDERATION OF ANNUAL SCHOOL FUNDING FOR THE CUMBERLAND COUNTY SCHOOL SYSTEM

##### BACKGROUND:

The current funding agreement with the Cumberland County School System(CCSS) expires June 30, 2018. This funding agreement allows both the County and CCSS to more accurately plan and prepare annual budgets. The current agreement provides CCSS revenue derived from \$0.3406 on the County's ad valorem property tax rate.

However, for FY18 the agreement held the school system harmless for revaluation resulting in \$0.3604 on the property tax rate being distributed to CCSS or \$80,362,412. The agreement also provides that actual taxes collected above the budget are split 75% (County) / 25% (CCSS).

**DRAFT**

CCSS is currently searching for a new Superintendent for the System. There has been general agreement that until a new Superintendent is in place and acclimated to the system and county, it is in the best interest of all parties to freeze funding for the next 2 fiscal years.

Therefore, management is proposing to freeze funding for CCSS at the FY17 level of \$79,463,109. This reflects the cumulative enrollment decrease of approximately 1.10% over the past 5 years.

**RECOMMENDATION/PROPOSED ACTION:**

Management recommends approving the annual funding for the Cumberland County School System at the fixed amount of \$79,463,109 for fiscal years 2018-19 and 2019-20.

The information below was presented at the November 2, 2017 Finance Committee meeting to provide assistance when arriving at a funding decision.

**Cumberland County Schools K-12 Enrollment (as used for resource allotment)**

Fiscal Year	CCSS	Charter Schools	Total	% Change (Cumulative)
2012-13	51,890	263	52,153	
2013-14	51,855	410	52,265	0.21%
2014-15	50,939	628	51,567	(1.12%)
2015-16	50,662	887	51,549	(1.16%)
2016-17	50,558	1,019	51,577	(1.10%)

**Cumberland County Schools Impact Aid – (used to pay teacher supplements)**

Fiscal Year	Funds Received	% Change (Cumulative)
2012-13	\$5,834,185	
2013-14	\$4,480,986	(23.19%)
2014-15	\$4,907,172	(15.89%)
2015-16	\$4,332,425	(25.74%)
2016-17	\$4,033,227	(30.87%)

**Annual Funding from Cumberland County to CCSS**

Fiscal Year	County Funding	Cumulative Increase	% Change (Cumulative)
2012-13	\$76,220,676		
2013-14	\$76,220,676	\$0	
2014-15	\$76,982,883	\$762,207	1.00%
2015-16	\$78,345,062	\$2,124,386	2.79%
2016-17	\$79,463,109	\$3,242,433	4.25%

**Cumberland County Schools Unassigned Fund Balance**

Fiscal Year	Unassigned Fund Balance
2012-13	\$28,150,619
2013-14	\$22,640,043
2014-15	\$23,371,510

# DRAFT

2015-16	\$28,441,184
2016-17	\$28,323,657

\*\*\*\*\*

Melissa Cardinali, reviewed the background information and the information that was presented at the November 2, 2017 Finance Committee meeting recorded above, and stated management recommends approving the annual funding for the Cumberland County School System at the fixed amount of \$79,463,109 for fiscal years 2018-19 and 2019-20.

Commissioner Keefe asked whether this number would be affected should there be a change in the sales tax distribution method. Ms. Cannon stated it would not be affected because sales tax is related to the capital side which is a different segregated fund, and this is local recurring expense funding. Commissioner Adams posed questions about the school system’s fund balance of \$28 million and the County’s fund balance. Ms. Cannon clarified the County’s general fund fund balance includes the school capital outlay fund balance and stated they have to be combined together for GAAP (General Accepted Accounting Principles) purposes. Discussion followed about the school’s fund balance, whether to freeze funding until a new Superintendent is in place, the tax rate and the General Assembly’s education funding.

Tim Kinlaw, Cumberland County Schools Interim Superintendent, stated the formula has served the school system well because it gives an annual defined amount so the boards do not have to negotiate and at the same time it protects County taxpayers because it has kept the increase at a manageable rate based on expenses. Mr. Kinlaw stated capital outlay funds from the state have gone from \$13 million in 2008 to \$3.5 million from the lottery fund which eliminated the school construction fund. Mr. Kinlaw stated the school system is facing school facility needs that will be overwhelming in the next five years and the Board of Education has purposefully tried to take funds to put in the fund balance for capital outlay needs. Mr. Kinlaw outlined some of the issues facing the school system and referenced a conversation he had with the County Manager about considering a capital outlay clause in the agreement so that when the County retired school debt, a percentage of those funds could be allocated to a capital outlay fund for school renovation and construction. Mr. Kinlaw stated he believes what is being requested by the Board of Education is to maintain what the school system has already been given. Consensus was to table until the March 1 meeting of the Finance Committee.

5. GRAYS CREEK WATER CONTAMINATION - FINANCIAL UPDATE ON COST TO RUN PUBLIC WATER TO THE AREA DESIGNATED AS CONTAMINATED AROUND THE CHEMOURS PLANT

**BACKGROUND:**

We were briefed at the retreat on the cost to do an analysis of the area of \$187K. For budgeting purposes and in the interest of public health, have we determined a budget amount for planning purposes in next year's budget? In addition, is there plan of action and updated costs on expenditures absorbed by Cumberland County in response to this situation?

# DRAFT

## RECOMMENDATION/PROPOSED ACTION:

A proactive plan for working with local, state, Chemours and the citizens affected by the contamination.

### A. CONSIDERATION OF PLAN TO WORK WITH LOCAL, STATE, CHEMOURS AND CITIZENS AFFECTED BY THE CONTAMINATION

A proactive plan for working with local, state, Chemours and the citizens affected by the contamination.

#### **Local**

- PWC partnership – assess the area and determine cost of running water lines. The utility is willing to pay half the cost of hiring an engineering firm to review the earlier feasibility study and determine the engineering requirements and cost of extending water lines into the Gray’s Creek Water and Sewer District.
- Complete a preliminary engineering study and environmental assessment
- Communicate with Bladen and other counties in the river basin to compare and share information about activities to assist and inform citizens and collectively work with state and federal authorities to hold Chemours accountable and ensure safe water and air quality

#### **State**

- County Management and Health Department continue to participate in weekly conference calls with NCDHHS (DEQ and DPH) and stay updated on:
  - o Ground and surface water testing
  - o Discharge and other regulatory issues
  - o Air quality
  - o Health impact
- Health Department officials attend Science Advisory Board meetings (NC Division of Public Health) to stay updated on the health effects findings
- State Legislature (County delegation, House and Senate select committees on water quality)
  - o request funding for extending water lines
  - o maintain awareness of the impact on our citizens
  - o stress importance of holding Chemours accountable
- Seek grant and loan funding for projects

#### **Federal**

- Seek federal support for water infrastructure
- Involve federal delegation in seeking EPA assistance on testing and setting regulatory standards

#### **Chemours**

- Set up meetings between the company and the commissioners and management to learn about the company’s action plan and share citizen concerns

# DRAFT

## Citizens

- Provide information and facilitate communication with state officials
- Serve as a link to state resources
- Communicate appeals process currently in place to address possible tax relief for contaminated properties
- Use various platforms to provide information to citizens, including County's GenX webpage, social media and press releases

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Ms. Cannon provided highlights of the plan for working with local, state, Chemours and citizens affected by the contamination as recorded above. In response to a question from Commissioner Keefe, Ms. Cannon stated she recommends any request of the Cumberland County Legislative Delegation be done by formal resolution.

## B. CONSIDERATION OF PROFESSIONAL SERVICES AGREEMENT WITH MOORMAN, KIZER & REITZEL, INC. FOR THE GRAY'S CREEK WATER AND SEWER DISTRICT AND INTERLOCAL AGREEMENT WITH PWC

### BACKGROUND:

At the Board of Commissioner's Planning Retreat on January 26, 2018, a brief presentation was presented on the Gray's Creek Water & Sewer District regarding the creation of the district and what steps had previously been taken by Cumberland County to extend public water into the district. In August of 2009, the Board of Commissioners approved a contract with Marziano & McGougan, P.A. to complete a Preliminary Engineering Report (PER) and Environmental Assessment (EA). The documents that were completed in 2010 are extremely outdated. The previous documents completed were for a rural system and did not include fire flow protection to the residents of the district. Not to mention, population densities and water demands have changed drastically within the district since the completion of these documents. For these reasons, the PER needs to be updated. An updated PER will provide current, realistic construction costs that are needed to adequately develop a funding model to pay for the installation of a potable water system.

It is important to note that the Marziano & McGougan, PA firm is no longer in business. In December of 2017, PWC and E&I Staff decided that from the County's list of qualified firms, Moorman, Kizer & Reitzel, Inc. (MKR) had the most local knowledge and experience working with PWC and the County on public utility infrastructure. A Request for Qualifications Process (RFQ) would take a minimum of 90 days to select a firm once the process is initiated. On January 10, 2018, E&I Staff received a proposal from MKR to update the PER and complete an Environmental Assessment (EA). PWC has agreed to equally share the cost of updating the PER and completing the EA.

E&I Staff has had several discussions with PWC Staff and MKR after receiving and reviewing the proposal. We believe the first step is to update the PER. Once this is finalized, then the EA can be updated in phases as specific projects are defined and outlined. This will eliminate the duplication of efforts and eliminate the possibility of the EA from becoming outdated before all phases of construction can be completed for the entire district.

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## RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director and County Management recommend that the Facilities Committee approve the following recommendations and forward them to the Board of Commissioners for its consideration at their February 19<sup>th</sup> meeting.

1. Approve the Professional Services Agreement with Moorman, Kizer & Reitzel, Inc. in the amount of \$129,330.
2. Approve the Interlocal Agreement with the Public Works Commission contingent on the approval of the agreement by the County Attorney.
3. Approve Budget Ordinance Amendment #B180656 in the amount of \$129,330 for the completion of a Preliminary Engineering Report for the Grays Creek Water & Sewer District.

North Carolina  
Cumberland County

THIS INTERLOCAL GOVERNMENT AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Fayetteville Public Works Commission ("PWC"), a public authority, and Cumberland County ("County"), a body politic organized and existing under the laws of the State of North Carolina (each of PWC and County is a "Party" and both are collectively the "Parties") in accordance with Article 20 of Chapter 160A of the North Carolina General Statutes in order to engage in inter-local cooperation.

The Parties agree as follows:

1. PWC and County are interested in extending PWC water service in the Gray's Creek area of Cumberland County. This extension requires a review of an existing feasibility study ("Project") to determine the engineering requirements and cost of such an extension.
2. The County will select an engineering firm from a list of qualified firms that were previously selected from a Request for Qualifications (RFQ) process for the Project and the Parties will jointly develop the scope and manage the completion of Project.
3. The County shall pay the Expert for its services in accordance with the engagement agreement. PWC shall promptly reimburse the County for fifty percent (50%) of the amount paid by the County to the Expert; provided, however, notwithstanding any provision herein to the contrary, PWC's reimbursement obligation shall not exceed ninety-three thousand four hundred fifty and 00/100 dollars (\$93,450.00). The County shall not amend the Expert engagement agreement or consent to an amendment thereto without the prior written consent of PWC
4. This Agreement may be terminated by either Party by giving ten (10) days written notice of termination to the other Party. Notice may be given to the other Party by either hand delivery or US Mail, postage prepaid. If the agreement is terminated by either Party, the amount to be reimbursed by PWC to the County shall be fifty percent (50%) of the amount paid by the County to the Expert for services rendered through the date of the termination of this Agreement, subject to the limitation set forth in Section 3 of this Agreement.

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5. Neither this Agreement nor the Expert engagement agreement is intended to compel PWC to extend water service in the Gray's Creek area, which extension may be undertaken in PWC's sole discretion.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

## SERVICE AGREEMENT

This Agreement, made this the \_\_\_ day of \_\_\_\_\_ 2018, by and between the County of Cumberland, a body politic and corporate of the State of North Carolina, hereinafter referred to as COUNTY, and Moorman, Kizer & Rietzel Inc., a consulting engineer with an office located at 115 Broadfoot Avenue, Fayetteville, NC, hereinafter referred to as ENGINEER.

### WITNESSETH

WHEREAS, the COUNTY requires professional engineering services in connection with the Gray's Creek Water and Sewer District Preliminary Engineering Report; and

WHEREAS, the COUNTY has through a qualifications based process selected the ENGINEER to provide necessary surveying and engineering services; and

WHEREAS, the ENGINEER has represented that it can provide qualified services which will meet the needs of the COUNTY; and

WHEREAS, the services are of a technical nature and are temporary in character; and

WHEREAS, funds are available in the project budget for the performance of said services.

NOW THEREFORE, the parties agree to the following terms and conditions:

PURPOSE: The COUNTY agrees to purchase and the ENGINEER agrees to provide the necessary engineering services for this project as set forth below.

TERM: The term of this Agreement shall be from February \_\_\_, 2018 through, October 31, 2018, unless sooner terminated or extended by mutual agreement. The COUNTY may terminate this Agreement prior to the expiration of the above stated period if in the judgment of the COUNTY; The ENGINEER has completed all services required.

The ENGINEER failed or neglected to furnish or perform the necessary services to the reasonable satisfaction of the COUNTY.

The COUNTY shall have given the ENGINEER seven (7) days written notice of the COUNTY's intent to terminate this Agreement. The COUNTY will make all payments due the ENGINEER

# DRAFT

for services rendered and/or expenses actually incurred up to and including the date of such notice of termination.

**SERVICES:** ENGINEER shall perform such expert and technical services as are indicated in the proposal from Moorman, Kizer & Reitzel, Inc., dated January 9, 2018, attached and incorporated herein. ENGINEER warrants that it shall perform such ancillary work as may be necessary to insure the effective performance of the services cited above. Insofar as practical, the ENGINEER shall cooperate with the operation schedule of the COUNTY, and with other personnel employed, retained, or hired by the COUNTY.

**PRICE:** Compensation for services rendered shall be time and materials at the hourly rate outlined in the proposal. The total contract price shall not exceed \$186,900.00 without the authorization from the County Manager.

**PAYMENT:** The COUNTY shall pay the ENGINEER within 15 working days of receipt of invoice.

**BENEFIT:** This Agreement shall be binding upon and it shall inure to the benefit of the parties, their legal representatives, successors, and assigns, provided that the provisions with respect to assignment and delegation are fully complied with.

**ASSIGNMENT:** The ENGINEER shall not assign all or any part its contract rights under this Agreement, nor delegate any performance hereunder, nor subcontract, without first obtaining the COUNTY's written approval.

**COMPLIANCE WITH LAW:** The ENGINEER agrees it shall comply with all laws, rules, regulations, and ordinances, proclamations, demands, directives, executive orders, or other requirements of any government or subdivisions thereof which now govern or may hereafter govern this Agreement, including, but limited to, the provisions of the Fair Labor Standards Act of 1938, equal employment laws, and any other applicable law.

**AGENCY AND AUTHORITY:** The COUNTY hereby designates the Engineering & Infrastructure (E&I) Director as its exclusive agent with respect to this Agreement. The E&I Director is authorized, on behalf of the COUNTY, to negotiate directly with the ENGINEER on all matters pertaining to this Agreement. The ENGINEER agrees that all of its dealings with the COUNTY in respect to the terms and conditions of this Agreement shall be exclusively with the E&I Director. Further, the ENGINEER specifically agrees that it shall not modify any of the specifications of any of the services subject to this Agreement except pursuant to the paragraph entitled MODIFICATIONS.

**REMEDIES:** If either party shall default with respect to any performance hereunder, it shall be liable for reasonable damages as provided by law and for all costs and expenses incurred by the other party on account of such default. Waiver by either party of any breach of the other's obligation shall not be deemed a waiver of any other or subsequent breach of the same obligation. No right or remedy of any party is exclusive of any other right or remedy provided or permitted

# DRAFT

by law or equity, but each shall be cumulative of every other right or remedy now or hereafter existing at law or in equity, or by statute, and may be enforced concurrently or from time to time.

**APPLICABLE LAW:** This Agreement shall be governed by the laws of the State of North Carolina. The parties mutually agree that the courts of the State of North Carolina shall have exclusive jurisdiction of any claim arising under the terms of this Agreement with appropriate venue being Cumberland County.

**NOTICES:** Any notices to be given by either party to the other under the terms of this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by hand, with written acknowledgment of receipt, or mailed by certified mail return receipt requested to the other party at the following addresses or to such other addresses as either party from time to time may designate in writing to the other party for receipt of notice:

**ENGINEER:**

Moorman, Kizer & Reitzel, Inc.  
115 Broadfoot Avenue  
Fayetteville, NC 28305

**COUNTY:**

Jeffery P. Brown, Engineering & Infrastructure Director  
130 Gillespie Street  
Fayetteville, NC 28301

Such notice, if mailed, shall be deemed to have been received by the other party on the date contained in the receipt.

**SEVERABILITY:** If any term, duty, obligation or provision of this Agreement should be found invalid or unenforceable, such finding shall not affect the validity of any other terms, duties, obligations, and provisions, which shall remain valid, enforceable and in full force and effect.

**MODIFICATION:** This Agreement may be modified only by an instrument duly executed by the parties or their respective successors.

**MERGER CLAUSE:** The parties intend this instrument as a final expression of their Agreement and as a complete and exclusive statement of its terms. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior Agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings, or agreements have been made or relied upon making this Agreement other than those specifically set forth herein.

**DISPUTE RESOLUTION:** The parties must resolve any claim, dispute or other matter in contention arising out of, or relating to, this Agreement through the following procedure. The parties shall first negotiate in good faith to reach an equitable settlement to the dispute. If a negotiated settlement cannot be reached within 10 business days, the parties shall submit to mediation. The parties shall select a mediator, approved by either the North Carolina or federal courts and mutually agreeable to all parties in the dispute to conduct the proceedings which shall be held at the Owner's place of business. If the parties cannot select a mediator within 10 business days, then the Owner shall select a mediator (or, if the Owner is a party to the dispute, the

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Cumberland County Trial Court Administrator). The mediator's cost shall be equally shared by all parties to the dispute. If a mediated settlement cannot be reached, the final recourse to the aggrieved party is legal action instituted and tried in the General Court of Justice of North Carolina under North Carolina Law with venue for trial being Cumberland County. No party shall have a right to resort to litigation until mediation shall first have occurred and not been successful.

INDEPENDENT CONTRACTOR: ENGINEER is an independent CONTRACTOR and not an agent, officer or employee of the COUNTY and shall have no authority to act as an agent of the COUNTY, nor enter any Agreement for or in behalf of the COUNTY. The relationship of ENGINEER with the COUNTY is as an "independent contractor" as that term is defined by the law of the State of North Carolina.

NON-APPROPRIATION CLAUSE: This agreement is subject to and contingent upon appropriation of funds for fiscal years subsequent to FY18.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the \_\_\_\_ day of February 2018 by their respective duly authorized representatives.

\*\*\*\*\*

Ms. Cannon recognized PWC representatives Joe Glass and Mark Brown. Jeffery Brown, Engineering and Infrastructure Director, reviewed the background information and recommendation/proposed action for the Finance Committee as recorded above. Discussion followed about whether there needs to be declaration of a public health risk in areas affected by contamination and whether there is consensus to look at moving water throughout the County where feasible, including the Grays Creek area where the previous referendum failed. Ms. Cannon stated as part of the PER, different options for funding need to be developed for the Grays Creek area. Ms. Cannon also stated for any person that has a well that is tested above the 140 parts per trillion, it is a health issue. Mr. Holder stated with contaminated and uncontaminated parcels being all over the place, coupled with the fact that the edge of contamination is not known, he does not think there is enough to make a declaration without getting more information. Ms. Cannon stated it may be premature. Commissioner Keefe asked Mr. Brown to include a sunset in the agreement. Commissioner Boose noted the dispute resolution of the service agreement and stated he did not want the Cumberland County Trial Administrator to pick the mediator for the County. Consensus was for the County Attorney to pick the mediator

MOTION: Commissioner Faircloth moved to approve the following recommendations and forward them to the Board of Commissioners for its consideration at their February 19<sup>th</sup> meeting:

1. Approve the Professional Services Agreement with Moorman, Kizer & Reitzel, Inc. in the amount of \$129,330, with the caveat that the County Attorney pick the mediator for the County and a time limit be put in the contract.
2. Approve the Interlocal Agreement with the Public Works Commission contingent on the approval of the agreement by the County Attorney.
3. Approve Budget Ordinance Amendment #B180656 in the amount of \$129,330 for the completion of a Preliminary Engineering Report for the Grays Creek Water & Sewer District.

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SECOND: Commissioner Adams

VOTE: UNANIMOUS (3-0)

6. FINANCIAL UPDATE OF DECREASING PROPERTY VALUES ASSOCIATED WITH THE ATLANTIC COAST PIPELINE AND PROPERTIES AFFECTED BY THE CHEMOURS CONTAMINATION

BACKGROUND:

We have heard that having the ACP contiguous or running through properties will significantly reduce the value of these properties. There is also credible evidence that owning a property that shows contamination of GEN-X will also decrease the value of a property. Has our tax department made any assessment of these decreases and the affect that it will have on property tax revenue? Furthermore, what consideration or appeal process does a homeowner have to submit documentation that their property values have been reduced?

RECOMMENDATION/PROPOSED ACTION:

Our tax office set up an appeals process for homeowners affected by either of these situations and understand that the values of property when assessed last year did not take into consideration either of these matters.

A. UPDATE ON PROPERTY VALUES AFFECTED BY THE ATLANTIC COAST PIPELINE

BACKGROUND:

A concern about how property values might be impacted by easements for the Atlantic Coast Pipeline has been expressed.

The Tax Office utilizes a document, the Schedule of Values to provide a consistent basis or guide for all facets of property valuation. The value adjustment is driven by the easement itself, not the intended use of the easement. This is the case for all types of easements such as other utility easements, water and sewer, etc. The methodology for easement value adjustments is a standard practice.

The following is the process the Tax Office uses in reviewing value adjustments for easements:

- A survey map of the permanent right of way is submitted to the tax office. This map is attached to the deed where the Atlantic Coast Pipeline bought the easement rights from the owner.
- The tax office appraiser will reduce the value of the land for the permanent easement portion only.
- Tax value *may* further be impacted by the location of the easement on the land – if the easement runs through the middle of the property versus the edge of the property

# DRAFT

The easement size, and to some degree location, is what is considered in assessing the value, not the use of the easement. There is not an adjustment based on the usage of the easement.

## RECOMMENDATION/PROPOSED ACTION:

This presentation was provided for information purposes only. No action is required.

\*\*\*\*\*

Joe Utley, Tax Administrator, reviewed the background information recorded above. Mr. Utley stated he would expect land values as a whole to go down for those properties in the path of the pipeline and although appraisers are working those properties, figures are not yet available. In response to a question posed by Commissioner Adams, Mr. Utley explained the appeals process through the Equalization and Review Board and stated the board is currently accepting appeals. Mr. Utley stated individuals will have until June 29 to appeal; however, the notice states they have 15 days to appeal. Mr. Utley stated should anyone receive a notice on June 25, they will still have the 15 days to appeal.

## B. UPDATE ON PROPERTY VALUES AFFECTED BY THE CHEMOURS (GENX) CONTAMINATION

### BACKGROUND:

In June 2017, Chemours disclosed that it had been discharging Gen X into the Cape Fear River for decades from its Fayetteville Plant, located in Bladen County. Testing has been conducted since this past fall and varying levels of contamination have been found in private wells within Cumberland County and the surrounding areas. The testing continues to expand and the number of properties that may be affected continues to change.

The Tax office has received 2 appeals so far concerning the potential effect on value due to the Gen X contamination. One appeal consists of 30 vacant lots and the other appeal is an improved property in the Point East neighborhood. We have had 8 other taxpayers indicate they will potentially appeal. Additionally, we have fielded a limited number of phone calls. Some of the appeals and/or potential appeals are based on positive test results from the state, while others are based on the contamination in general.

We contacted Bladen, Robeson and New Hanover counties to find out if they have had appeals or if they were going to make property value adjustments due to this Gen X issue. As of last week, none the counties indicated they were going to make valuation adjustments.

There is an appeals process in place for all taxpayers to request an adjustment to their property value. This process is open to any taxpayer who believes the contamination from Gen X has affected their property value. As with all appeals, we ask the appellant to provide appropriate documentation supporting their reason for adjustment. Our office will accept documentation provided by the taxpayer and would give priority consideration to test results from the state or any other licensed environmental expert that deems the property to be contaminated.

# DRAFT

Appeals to the Board of Equalization and Review are currently being accepted and will continue to be accepted until the board adjourns on June 29<sup>th</sup>. Appeals after the adjournment date cannot be accepted for the current tax year; however, they can be accepted for the upcoming year.

Tax Administration will be working with Sally Shutt, Assistant County Manager to develop a communications plan to ensure the residents of the affected areas are aware of the appeals process and the timeframes involved.

## RECOMMENDATION/PROPOSED ACTION:

This presentation was provided for information purposes only. No action is required.

\*\*\*\*\*

Mr. Utley reviewed the background information recorded above and stated the other appeal involving an improved property in the Point East neighborhood turned out not to be a contamination appeal. Mr. Utley also stated since February 9, 12 other appeals were received the Marsh Wood Lake area. Mr. Utley stated the International Association of Assessing Officers set standards for how tax offices operate and there is a standard for properties which helps treat people equitably. Mr. Utley also stated if an individual comes to the office in October after the board adjourns and has a documentation of a test conducted in March 2017 or 2018, an adjustment will still be made for their value. Mr. Utley responded to questions.

## 7. UPDATE OF HEALTH BENEFITS OF CUMBERLAND COUNTY EMPLOYEES AND POSSIBLE ALTERNATIVE TO OUR CURRENT PROGRAM

### BACKGROUND:

Last year before budget season, a number of commissioners requested that the staff research alternate health benefit programs that will continue to give Cumberland County employees a high level of health care with more stable premiums, greater flexibility and additional options for savings and convenience. At that time, it was determined that we were too close to the budget and the renewal period. In an effort to collect information, a RFP was drafted and there were responses from other agencies interested in providing health benefits services.

### RECOMMENDATION/PROPOSED ACTION:

Update on current status of Employee Health benefits, status of the RFP results and recommendations by management on a new program or merging with other groups for cost savings.

#### A. UPDATE ON CUMBERLAND COUNTY HEALTH BENEFITS AND BROKER/CONSULTANT ARRANGEMENT

### BACKGROUND:

At the August 3, 2017 Finance Committee, a request to move forward to solicit Request for Proposals (RFP) for Employee Benefits/Insurance Broker & Consultant was approved. The RFP responses were not received until mid-September at which time staff began an initial

# DRAFT

review. As you may recall, it was at this time that questions arose about the structure of one of the health insurance options offered to employees and all RFPs were rejected. At the end of November 2017, the Board was advised to “unwind” that option and the Board engaged Chernoff Diamond (Cherry Bekaert) to serve as the broker / consultant until a complete resolution could be obtained.

In the four weeks following November 20, Chernoff Diamond was entirely focused on the “unwind” process as this had to be accomplished before December 31, 2017. Then the group was able to focus on the details of broker transition. All relationships previously brokered by Mark III on behalf of Cumberland County had to be transitioned to Chernoff Diamond. The brokered agreements include not only BCBS but all other voluntary plans offered to employees (dental, short-term disability, etc.).

As is evident, Chernoff Diamond has had shy of 2 months to delve into and learn the structure put in place by Mark III, begin to understand our claims and history, and begin formulating a path forward. Chernoff Diamonds’ typical approach is more from a strategic planning process which typically includes financial considerations and Board objectives as opposed to a single focus on claims.

There remain aspects of the health benefits program in review. Realizing that decisions need to be made regarding program design for FY19 and future years, Chernoff Diamond representatives will be at the March 1, 2018 Finance Committee meeting. At that meeting they plan to discuss –

- Compliance audit of program structure and incentives
- Strategic plan for health benefits – what are the Board’s primary objectives?
- Challenges that have arisen during the transition
- Ways to modernize the process (benefits administration)

#### RECOMMENDATION/PROPOSED ACTION:

No action needed. Consensus on primary objectives can be provided in order to incorporate into the March 1 presentation.

\*\*\*\*\*

Ms. Cardinali reviewed the background recorded above and stated she discussed with Chernoff Diamond that there is a strong desire to have a financially strong and sound fund and approach to health insurance and not just a reactive approach to claims. Ms. Cardinali requested input from the committee. Commissioner Faireloth asked about the status of Cape Fear Valley’s input. Ms. Cardinali stated this is just the piece to get to open enrollment for employees for next year and the next piece after the plan is in place is to bring back that RFP process at which time the County could reach out to Cape Fear Valley. In response to a question from Commissioner Faireloth, Ms. Cardinali stated the original goal was to have this in place by July 1 but due to unexpected challenges encountered by Chernoff Diamond, it may take more time to be able to enter into a healthy relationship with the next broker. A brief discussion followed. Request was for Cape Fear Valley to attend the March 1 or March 15 meeting.

# DRAFT

## B. MONTHLY HEALTH INSURANCE REPORT

### BACKGROUND:

Claims for the December 2017 are up 20.2% from December 2016 (month to month). To provide some perspective on the claims, below is the 6-month average for the past 5 fiscal years. This average represents the average claims for July – December of each fiscal year.

Average claims per fiscal year for July – December:

- FY13 \$1,214,727
- FY14 \$1,243,501
- FY15 \$1,584,932
- FY16 \$1,763,110
- FY17 \$1,376,609
- FY18 \$1,467,373

Graphs are provided as an aid to the analysis.

### RECOMMENDATION/PROPOSED ACTION:

No action needed – for information only.

\*\*\*\*\*

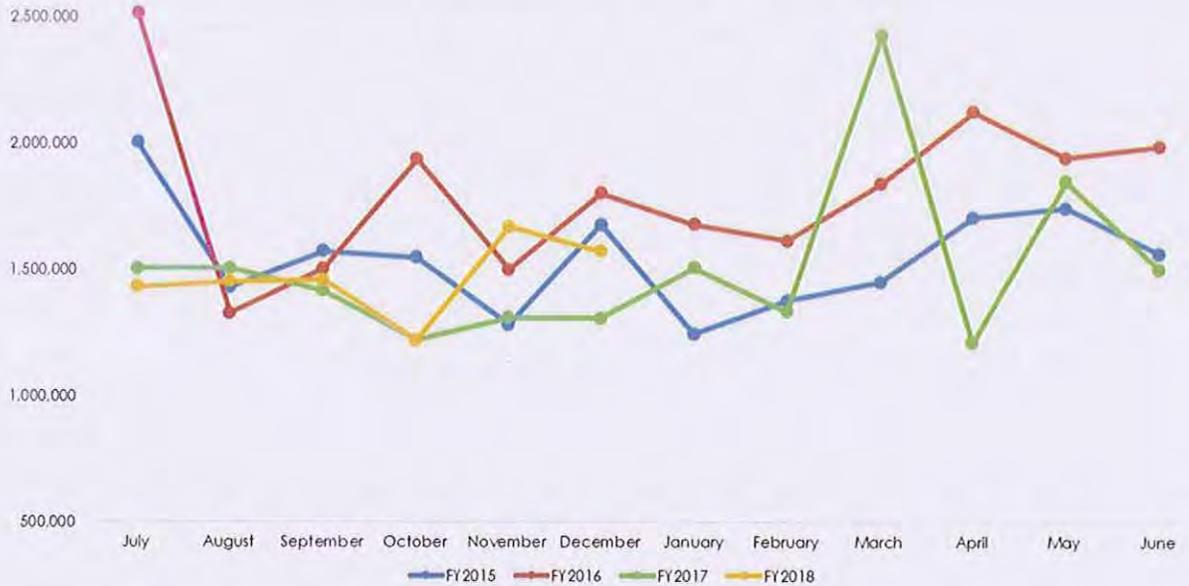
Ms. Cardinali briefly reviewed the background information recorded above and the following graphs. Ms. Cardinali stated there are a couple of high cost claimants so she expects some of the claims may rise. Ms. Cardinali stated BCBS has kept the County up to date on that information so the County is watching it as well.

### Monthly Insurance Claims FY15-FY18



# DRAFT

Monthly Insurance Claims FY15 - FY18



## 8. CONSIDERATION OF INTERNAL AUDIT PLAN

### BACKGROUND:

At the June 15, 2015 Board of Commissioner’s meeting, an Audit/Finance Committee Charter was adopted. The Charter requires that an audit plan be submitted to the Audit Committee for approval. The Audit/Finance Committee approved a July – December 2017 audit plan at the June 8, 2017 Finance Committee meeting.

A summary of audits/projects completed during the July – December time period and a plan for the January - June 2018 time period are being submitted at this time. In June a plan for the first half of fiscal year 2019 will be submitted.

### RECOMMENDATION/PROPOSED ACTION:

Staff recommends accepting the summary of completed July – December 2017 audits/projects report and approving the January – June 2018 Internal Audit Plan.

Cumberland County Internal Audit  
 Completed Audits  
 July – December 2017

<u>Audit/Project</u>	<u>Department</u>
Physical inventories	Central Maintenance Facility (CMF) Solid Waste garage Employee Pharmacy Health Department Pharmacy Health Department supply room

# DRAFT

Inventory account reconciliations	CMF Solid Waste Employee Pharmacy
Bank accounts	Sheriff – Detention Center Social Services
Special Review of Women’s Programs	Health Department
Cash counts	Sample of depts with petty cash or change funds
Expenditure of County Funds	Sample of community agencies & volunteer fire departments
Schedule of Federal & State Expenditures	For FY 2016-17 audit
Single Audit with Cherry Bekaert, CPA firm	For FY 2016-17 audit (Aug 2017 –Oct 2017)
Review of CMF Inventory System	Central Maintenance Facility (CMF)
Purchase Card Review	Finance

Cumberland County Internal Audit  
Audit Plan  
January – June 2018

<u>Audit/Project</u>	<u>Department</u>
Physical inventories	Central Maintenance Facility (CMF) Solid Waste garage Employee Pharmacy Health Department supply room
Cash Counts change funds	Sample of departments with petty cash or
Expenditure of County Funds	Sample of community agencies
Follow Up Audit of Women’s Clinics	Health Department
Audit of internal controls	Solid Waste
Accts Receivable/Expenditure review	Animal Control
Sales Tax Distribution Expenses	Board of Education

\*\*\*\*\*

Tammy Gillis, Director of Internal Audit and Wellness Services, reviewed the background information, summary of completed July – December 2017 audits/projects and the January – June 2018 Internal Audit Plan recorded above.

# DRAFT

- MOTION: Commissioner Keefe moved to accept the summary of completed July – December 2017 audits/projects report and approve the January – June 2018 Internal Audit Plan.
- SECOND: Commissioner Faircloth
- VOTE: UNANIMOUS (3-0)

## 9. CONSIDERATION OF STATEWIDE OPIOID LITIGATION PROCESS

### BACKGROUND:

As a measure of the extent of the opioid crisis in Cumberland County, I have included data on opioid prescription rates and opioid poisoning deaths which is posted on the NCACC’s website. The data shows, that although Cumberland County ranks in the bottom one-third of all counties for opioid pills per resident and opioid prescriptions per resident, it still had the fifth highest number of opioid poisoning deaths among all counties in 2015, the last year for which data has been published on this website. The rankings for all counties with more than 30 opioid poisoning deaths for 2015 were:

Mecklenburg	39 deaths
Wake	38 deaths
Forsyth	33 deaths
New Hanover	32 deaths
<b>Cumberland</b>	<b>31 deaths</b>
Burke	30 deaths

Based on the relative populations, it might be expected that Cumberland would rank in the top six counties for opioid poisoning deaths; however; this result is surprising with Cumberland’s low ranking in the prescription use data.

The NCACC has been very active in assisting counties with the response to the opioid crisis. Staff at the NCACC interviewed a number of national law firms and groups of national law firms and selected two of those groups of law firms to make presentations to the county attorneys at a forum in November, 2017. Cumberland County has received proposals from each of those groups. A synopsis of each proposal follows:

### **The McHugh Fuller Group:**

The group of national firms and local counsel for which Michael Jay Fuller, Jr., Esq., has been designated lead counsel are fully identified in the proposed contract. Local attorneys William O. Richardson, Esq., and Terry Hutchens, Esq., have been identified as the contact attorneys for Cumberland County. This group will sue the manufacturers and distributors. The abatement of the opioid epidemic as a public nuisance is one of many causes of action this group will pursue. That is the reason they require the counties they represent to adopt a resolution declaring the opioid crisis a public nuisance which must be abated.

This group’s contract for legal representation provides for attorney’s fees as a 25% contingency of the gross amount of any settlement/resolution/judgment in favor of the client and for

# DRAFT

reimbursements of all costs and expenses of the litigation from the balance. I have requested clarification on two issues with this contract. One is with respect to the language on how the attorney' fee and costs are paid if the relief is equitable in nature, and the other is whether they will provide representation against any claim for sanctions or a counterclaim. I have also asked for a modification for some of the language in the resolution to eliminate any findings by the Board that are not substantiated.

I received communication from one of the lawyers in the group shortly before this memo had to be submitted for the agenda and he confirmed that my questions about the contract and the resolution would be answered.

### **The Crueger Dickinson Group:**

The group of national firms and local counsel for which Erin Dickinson, Esq., has been a spokesperson in N.C. are fully identified in the proposed contract which is attached. Although this group has engaged Janet Ward Black, Esq., of Greensboro as local counsel in North Carolina, they have agreed to engage a Cumberland County attorney as local counsel for Cumberland County. This group intends to only sue the manufacturers which are identified in the proposed contract. They have not asked for a declaration of public nuisance but have asked for a resolution in support of the litigation.

This group's contract for legal representation provides for attorney's fees as a 25% contingency of the gross amount of any settlement/resolution/judgment in favor of the client and for reimbursements of all costs and expenses of the litigation from the balance. This group's contract does not create a fee unless there is a monetary recovery acceptable to the county. This group will represent the county at no additional fee in any claim for sanctions or a counter-claim.

I requested a modification of some of the language in the resolution and that was accepted but I had not received the new draft by the time of submitting this memo for the agenda.

Under either of these contracts, the county could be liable for damages or attorney fees to the defendants if the defendants prevailed on any motion for sanctions or a counterclaim. Each of these groups of firms is exceptionally qualified to pursue this litigation.

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

I expect to have the answers to my questions about the contract with the McHugh Fuller Group, the identity of the local counsel for the Crueger Dickinson Group, and the final language for the resolutions requested by both groups at the time of the Committee meeting. That information is necessary to fairly compare these proposals.

Of course, the Board may elect not to use either of these groups and seek other counsel.

\*\*\*\*\*

Rick Moorefield, County Attorney highlighted the background information recorded above to include issues that remain to be resolved with the national firms, the McHugh Fuller Group and the Crueger Dickinson Group.

**DRAFT**

Commissioner Adams asked whether the CDC data takes in all of Ft. Bragg, Womack, the Veterans Hospital and community retirees. Mr. Moorefield stated it does not say on the data sheet but with respect to prescriptions and pills, the data covers distribution points. Commissioner Adams stated should federal data be available, it will be important to local counsel because it will likely jettison the County up much higher.

Mr. Moorefield stated it is likely that these cases will be settled globally but no matter where these cases are filed for individual counties, they will all be heard in the northern district of Ohio by a single judge. Mr. Moorefield stated following any settlement, each county, city and/or state will have go through a process to retrieve those funds.

Discussion followed.

**MOTION:** Commissioner Adams moved to table until the March 1 Finance Committee meeting.

**SECOND:** Commissioner Faircloth

**VOTE:** UNANIMOUS (3-0)

## 10. MONTHLY FINANCIAL REPORT

REVENUES	FY16-17 AUDITED	FY17-18 ADOPTED BUDGET	FY17-18 REVISED BUDGET	YTD ACTUAL AS OF DECEMBER 31, 2017	PERCENT OF BUDGET TO DATE
<b>Ad Valorem Taxes</b>					
Current Year	\$ 156,131,527	\$ 160,312,162	\$ 160,312,162	\$ 118,783,375	74.1% (1)
Prior Years	1,046,732	1,121,000	1,121,000	730,393	65.2%
Motor Vehicles	17,683,864	18,070,242	18,070,242	7,447,574	41.2% (2)
Penalties and Interest	650,368	667,602	667,602	203,967	30.6%
Other	1,018,563	930,279	930,279	470,065	50.5%
<b>Total Ad Valorem Taxes</b>	<b>176,531,054</b>	<b>181,101,285</b>	<b>181,101,285</b>	<b>127,635,374</b>	<b>70.5%</b>
<b>Other Taxes</b>					
Sales	41,517,943	41,760,036	41,760,036	10,617,685	25.4% (3)
Real Estate Transfer	1,091,362	700,000	700,000	504,772	72.1%
Other	1,114,408	1,111,500	1,111,500	322,609	29.0%
<b>Total Other Taxes</b>	<b>43,723,713</b>	<b>43,571,536</b>	<b>43,571,536</b>	<b>11,445,066</b>	<b>26.3%</b>
<b>Unrestricted &amp; Restricted Intergovernmental Revenues</b>	<b>75,613,483</b>	<b>67,300,253</b>	<b>70,367,342</b>	<b>21,836,590</b>	<b>31.0% (4)</b>
<b>Charges for Services</b>	<b>13,832,010</b>	<b>12,056,608</b>	<b>12,078,008</b>	<b>4,726,823</b>	<b>39.1%</b>
<b>Other Sources (includes Transfers In)</b>	<b>8,945,521</b>	<b>6,988,890</b>	<b>7,028,020</b>	<b>957,942</b>	<b>13.6% (5)</b>
Proceeds Refunding Bonds	-	-	23,005,000	23,005,000	100.0% (6)
Premium on COPS Sold	-	-	4,285,558	4,285,557	100.0% (6)
County Closing Contribution	-	-	254,736	254,735	100.0% (6)
Lease Land CFVMC	3,714,637	3,714,637	3,714,637	3,474,492	93.5% (7)
<b>Total Other</b>	<b>12,660,158</b>	<b>10,703,527</b>	<b>38,287,951</b>	<b>31,977,726</b>	<b>83.5%</b>
<b>Total Revenue</b>	<b>\$ 322,360,418</b>	<b>\$ 314,733,209</b>	<b>\$ 345,406,122</b>	<b>\$ 197,621,579</b>	<b>57.2%</b>
<b>Fund Balance Appropriation</b>		<b>8,889,652</b>	<b>8,236,525</b>	<b>-</b>	<b>0.0% (8)</b>
<b>Total Funding Sources</b>	<b>\$ 322,360,418</b>	<b>\$ 323,622,861</b>	<b>\$ 353,642,647</b>	<b>\$ 197,621,579</b>	<b>55.9%</b>

# DRAFT

DEPARTMENTS	FY16-17	FY17-18	YTD ACTUAL		PERCENT OF BUDGET TO DATE	..
	AUDITED	ADOPTED BUDGET	FY17-18 REVISED BUDGET	EXPENDITURES AS OF DECEMBER 31, 2017		
Governing Body	\$ 591,731	\$ 617,587	\$ 617,587	\$ 309,117	50.1%	
Administration	2,515,558	1,501,201	1,501,201	670,273	44.6%	
Public Affairs/Education	76,879	497,199	497,199	255,497	51.4%	
Human Resources	30,245	828,896	828,896	378,708	45.7%	
Print, Mail, and Design	754,908	875,345	875,345	357,468	40.8%	
Court Facilities	55,786	129,370	168,010	58,953	35.1%	
Facilities Maintenance	1,936,136	2,009,030	2,110,875	636,738	30.2%	
Landscaping & Grounds	606,364	607,577	607,577	276,986	45.6%	
Carpentry	231,715	234,884	234,884	91,519	39.0%	
Facilities Management	1,238,266	1,267,781	1,267,781	588,836	46.4%	
Public Buildings Janitorial	721,041	710,946	710,946	324,975	45.7%	
Central Maintenance	798,075	672,386	672,386	309,640	46.1%	
Information Services	3,388,444	3,958,479	4,067,447	1,914,680	47.1%	
Board of Elections	1,180,015	2,237,762	2,237,762	542,548	24.2% (1)	
Finance	1,205,572	1,201,225	1,201,225	547,140	45.5%	
Legal	668,776	813,554	813,554	319,694	39.3%	
Register of Deeds	2,092,298	2,321,099	2,761,865	903,661	32.7%	
Tax	5,567,709	5,589,154	5,620,154	2,318,861	41.3%	
Debt Service	23,400,669	21,464,283	21,466,328	15,291,222	71.2%	
General Government Other	3,828,293	4,237,882	4,331,276	1,336,653	30.9%	
Sheriff	47,212,707	50,250,550	50,503,775	21,599,693	42.8%	
Emergency Services	3,064,405	3,320,934	3,392,791	1,529,072	45.1%	
Criminal Justice Pretrial	434,987	426,673	426,673	173,918	40.8%	
Youth Diversion	325	25,000	25,000	784	3.1% (2)	
Animal Control	2,932,986	2,922,717	2,947,717	1,360,348	46.1%	
Public Safety Other (Medical Examiners, NC Detention Subsidy, etc.)	1,007,220	1,075,666	1,075,666	399,140	37.1%	
Heath	22,269,462	22,506,054	22,987,565	9,906,322	43.1%	
Mental Health	3,148,761	5,452,507	3,281,366	2,186,543	66.6%	
Social Services	71,524,059	66,425,182	67,141,445	28,763,119	42.8%	
Veteran Services	\$ 371,189	\$ 385,725	\$ 385,725	\$ 184,990	48.0%	
Child Support	\$ 4,893,727	\$ 5,044,200	\$ 5,044,200	\$ 2,177,890	43.2%	
Spring Lake Resource Administration	31,524	34,332	34,332	12,043	35.1%	
Library	11,105,397	10,530,428	10,761,396	4,847,110	45.0%	
Stadium Maintenance	110,288	117,296	117,296	36,632	31.2%	
Culture Recreation Other (Some of the Community Funding)	312,816	268,069	268,069	143,967	53.7%	
Planning	3,077,126	3,446,758	3,455,653	1,366,562	39.5%	
Engineering	439,678	510,090	2,434,498	244,040	10.0% (3)	
Cooperative Extension	570,083	705,596	705,596	228,226	32.3%	
Location Services	357,095	447,221	447,221	149,214	33.4%	
Soil Conservation	141,234	136,400	135,920	66,570	49.0%	
Public Utilities	87,442	110,270	124,474	48,576	39.0%	
Economic Physical Development Other	20,000	20,000	20,000	20,000	100.0% (4)	
Industrial Park	3,296	23,148	23,148	474	2.0% (5)	
Economic Incentive	420,423	548,418	710,918	28,749	4.0% (6)	
Water and Sewer	-	250,000	250,000	-	0.0% (7)	
Education	91,394,940	93,341,404	93,341,404	46,034,071	49.3%	
Other Uses:						
Transfers Out	2,264,613	3,522,583	3,465,252	86,367	2.5% (8)	
Refunding of 2009A and 2011B LOBS	-	-	27,543,249	27,530,230	100.0% (9)	
<b>TOTAL</b>	<b>\$ 318,084,263</b>	<b>\$ 323,622,861</b>	<b>\$ 353,642,647</b>	<b>\$ 176,557,819</b>	<b>49.9%</b>	

Expenditures by Category	FY16-17	FY17-18	FY17-18	EXPENDITURES AS OF	PERCENT OF
	UNAUDITED	ADOPTED BUDGET	REVISED BUDGET	DECEMBER 31, 2017	BUDGET TO DATE
Personnel Expenditures	\$ 131,620,131	\$ 136,744,346	\$ 135,622,863	\$ 58,253,028	43.0%
Operating Expenditures	158,133,695	157,914,300	161,059,225	73,795,127	45.8%
Capital Outlay	2,118,869	3,460,456	3,968,837	1,167,500	29.4% (10)
Debt Service	23,946,955	21,981,176	21,983,221	15,725,567	71.5%
Refunding of 2009A and 2011B LOBS	-	-	27,543,249	27,530,230	100.0%
Transfers To Other Funds	2,264,613	3,522,583	3,465,252	86,367	2.5%
<b>TOTAL</b>	<b>\$ 318,084,263</b>	<b>\$ 323,622,861</b>	<b>\$ 353,642,647</b>	<b>\$ 176,557,819</b>	<b>49.9%</b>

# DRAFT

## Fiscal Year 2018 - December Year-to-Date Actuals

### Additional Detail

#### General Fund Revenues

\*

- (1) **Current Year Ad Valorem** 74.1% - the bulk of revenues are typically recorded between November - January.
- (2) **Motor Vehicles** 41.2% - YTD Actual reflects 5 months of collections.
- (3) **Sales Tax** 25.4% - YTD Actual reflects three months of collections.
- (4) **Unrestricted/Restricted Intergovernmental** Revenues 31.0% - lag in revenue is typically one month.
- (5) **Other Sources** (includes Transfers In) 13.6% - Rental income makes up majority of actual receipts. The majority of remaining balance is budgeted as a transfer from the School Fund into fund the Board of Ed debt payment toward year-end.
- (6) **Proceeds, Premium, Closing** 100% - COPS/LOBS refunding of \$23M closed in August 2017. (Correlates with item (9) on report of expenditures.)
- (7) **Lease Land CFVMC** 93.5% - typically paid in the beginning of the fiscal year. Staff are following up on the balance remaining.
- (8) **Fund Balance Appropriation** 0% - Direct entries are not made to fund balance throughout the fiscal year.

#### General Fund Expenditures

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- (1) **Board of Elections** 24.2% - new voting equipment budgeted for \$809,045 has not yet been purchased.
- (2) **Youth Diversion** 3.1% - expenditures for this program tend to occur later in the fiscal year. Conference scheduled during the month of December.
- (3) **Engineering** 10.0% - Revised budget reflects \$1.2M addition for stream debris removal grant for which no expenditures have been incurred. A budget revision was completed in December to move this grant into Engineering as that department is handling the projects.
- (4) **Economic Physical Development** 100% - NC Southeast contribution has been paid in full.
- (5) **Industrial Park** 2.0% - maintenance at Cedar Creek Industrial Park has not yet been completed.
- (6) **Economic Incentive** 4% - economic incentives are budgeted at 100% of agreements but are not paid unless/until the company complies.
- (7) **Water and Sewer** 0% - Funds budgeted for Overhills W&S have not yet been expended.
- (8) **Transfers Out** 2.5% - transfers out typically occur near year-end.
- (9) **Refunding** of 2009A and 2011B LOBS 100% - refunding of \$23M closed in August 2017. (Correlates with item (6) on report of revenues.)
- (10) **Capital Outlay** 29.4% - Board of Elections capital equipment and FTCC capital outlay budgeted but not incurred or encumbered makes up the majority of unutilized budget.

\*\*\*\*\*

MOTION: Commissioner Faircloth moved to accept the monthly financial report.  
 SECOND: Commissioner Adams  
 VOTE: UNANIMOUS (3-0)

There being no further business, the meeting adjourned at 3:05 p.m.

AMY H. CANNON  
County Manager

MELISSA C. CARDINALI  
Assistant County Manager



**CUMBERLAND**  
★ **COUNTY** ★  
NORTH CAROLINA

ITEM NO. 2.

DUANE T. HOLDER  
Assistant County Manager

TRACY JACKSON  
Assistant County Manager

SALLY S. SHUTT  
Assistant County Manager

**OFFICE OF THE COUNTY MANAGER**

**MEMO FOR THE AGENDA OF THE MARCH 1, 2018  
MEETING OF THE FINANCE COMMITTEE**

**TO:** FINANCE COMMITTEE

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

**DATE:** FEBRUARY 21, 2018

**SUBJECT:** CONSIDERATION OF ANNUAL SCHOOL FUNDING FOR THE  
CUMBERLAND COUNTY SCHOOL SYSTEM

**Presenter:** Melissa C. Cardinali, Assistant County Manager

**Estimate of Committee Time Needed:** 15 Minutes

**BACKGROUND:**

At the February 15, 2018 Special Meeting of the Finance Committee, the Committee moved the consideration of the current school funding agreement forward to the March 1, 2018 Committee meeting. As you may recall, the current funding agreement with the Cumberland County School System (CCSS) expires June 30, 2018. This funding agreement allows both the County and CCSS to more accurately plan and prepare annual budgets. The current agreement provides CCSS revenue derived from \$0.3406 on the County's ad valorem property tax rate.

However, for FY18 the agreement held the school system harmless for revaluation resulting in \$0.36 on the property tax rate being distributed to CCSS or \$80,362,412 [see option #3 below]. The agreement also provides that actual taxes collected above the budget are split 75% (County) / 25% (CCSS).

Management proposed freezing the funding for CCSS at the FY17 level of \$79,463,109. This reflects the cumulative enrollment decrease of approximately 1.10% over the past 5 years. This recommendation led to discussion of additional options that the Committee may wish to explore.

Summary of potential options:

1. Freeze funding for 2 years at **\$79,463,109**. This represents a 1.1% reduction from the hold harmless level of FY18.
  
2. Enter into 3-year funding agreement based on funding formula of existing agreement:

Note: Amount is what CCSS *would have* received in FY18 without hold harmless clause.

Current formula =	.3406 cents of ad valorem tax rate	.3406 / .7990 =42.63%
Tax revenue FY18 budget		CCSS funding
\$178,382,404	42.63%	<b>\$76,044,419</b>

3. Enter into 3-year funding agreement based on funding formula of FY18 that held CCSS harmless for reduced property tax values:

FY17 Tax Rate	CCSS Share	FY18 Tax @ Revenue Neutral	CCSS Share @ 46.03%
.740	.3406 / .740 = 46.03%	\$174,587,033	<b>\$80,362,412</b>

**RECOMMENDATION/PROPOSED ACTION:**

Management recommends renewing the annual CCSS funding agreement based on one of the options from prior Committee discussions with no additional distribution of taxes collected above budget.

AMY H. CANNON  
County Manager

MELISSA C. CARDINALI  
Assistant County Manager



**CUMBERLAND**  
★ **COUNTY** ★  
NORTH CAROLINA

ITEM NO. 3

DUANE T. HOLDER  
Assistant County Manager

TRACY JACKSON  
Assistant County Manager

SALLY S. SHUTT  
Assistant County Manager

**OFFICE OF THE COUNTY MANAGER**

**MEMO FOR THE AGENDA OF THE MARCH 1, 2018  
MEETING OF THE FINANCE COMMITTEE**

**TO:** FINANCE COMMITTEE

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

**DATE:** FEBRUARY 23, 2018

**SUBJECT:** UPDATE ON CUMBERLAND COUNTY HEALTH BENEFITS AND  
BROKER/CONSULTANT ARRANGEMENT

**Presenter:** Melissa C. Cardinali, Assistant County Manager

**Estimate of Committee Time Needed:** 15 Minutes

**BACKGROUND:**

Chernoff Diamond will attend the March 1, 2018 committee meeting to discuss what has transpired since their engagement in November 2017 as well as provide recommendations for the FY19 plan.

**RECOMMENDATION/PROPOSED ACTION:**

Consideration of FY19 plan recommendations as presented.

AMY H. CANNON  
County Manager

MELISSA C. CARDINALI  
Assistant County Manager



CUMBERLAND  
★ COUNTY ★  
NORTH CAROLINA

DUANE T. HOLDER  
Assistant County Manager

TRACY JACKSON  
Assistant County Manager

SALLY S. SHUTT  
Assistant County Manager

OFFICE OF THE COUNTY MANAGER

MEMO FOR THE AGENDA OF THE MARCH 1, 2018  
MEETING OF THE FINANCE COMMITTEE

**TO:** FINANCE COMMITTEE

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

**DATE:** FEBRUARY 20, 2018

**SUBJECT:** MONTHLY HEALTH INSURANCE REPORT

**Presenter:** Melissa C. Cardinali, Assistant County Manager

**Estimate of Committee Time Needed:** 5 Minutes

**BACKGROUND:**

Claims for the January 2018 are down 4.1% from January 2017 (month to month). To provide some perspective on the claims, below is the 7-month average for the past 5 fiscal years. This average represents the average claims for July – January of each fiscal year.

**Average claims per fiscal year for July – January:**

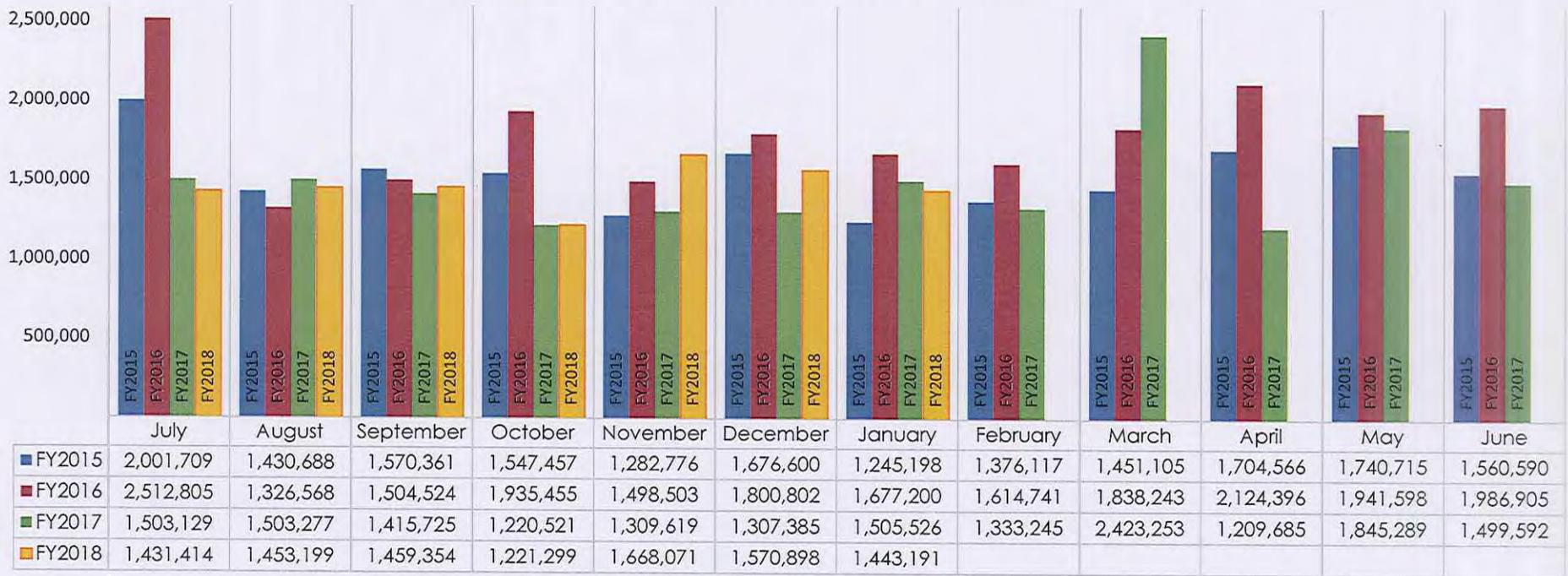
FY13 \$1,239,169  
FY14 \$1,237,943  
FY15 \$1,536,398  
FY16 \$1,750,837  
FY17 \$1,395,026  
FY18 \$1,463,919

The attached graphs are provided as an aid to the analysis.

**RECOMMENDATION/PROPOSED ACTION:**

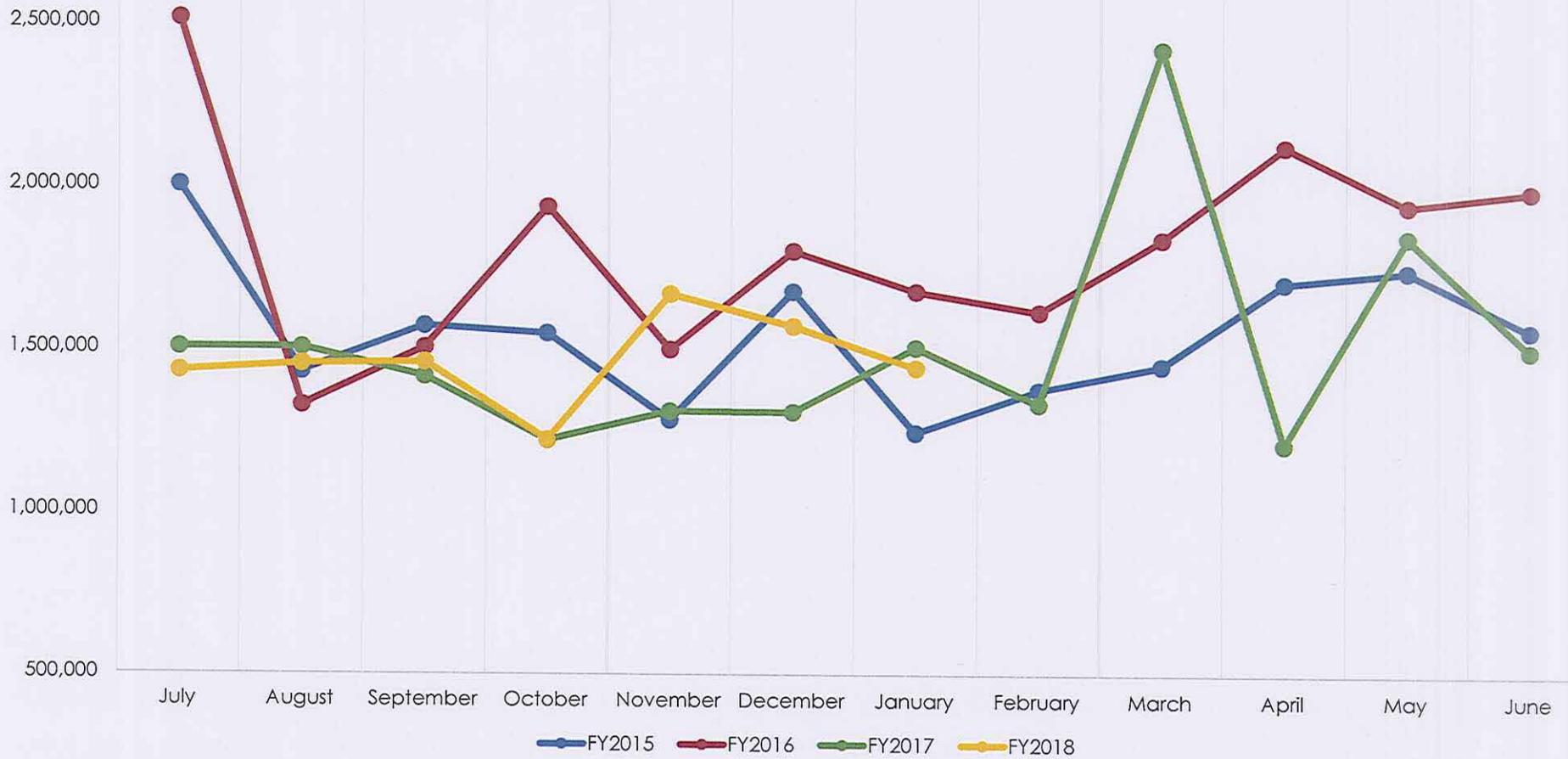
No action needed – for information only.

# Monthly Insurance Claims FY15-FY18



■ FY2015 ■ FY2016 ■ FY2017 ■ FY2018

# Monthly Insurance Claims FY15 - FY18



AMY H. CANNON  
County Manager

MELISSA C. CARDINALI  
Assistant County Manager



**CUMBERLAND**  
★ **COUNTY** ★  
NORTH CAROLINA

ITEM NO. 4.

DUANE T. HOLDER  
Assistant County Manager

TRACY JACKSON  
Assistant County Manager

SALLY S. SHUTT  
Assistant County Manager

**OFFICE OF THE COUNTY MANAGER**

**MEMO FOR THE AGENDA OF THE MARCH 1, 2018  
MEETING OF THE FINANCE COMMITTEE**

**TO:** FINANCE COMMITTEE MEMBERS  
**FROM:** TAMMY GILLIS, INTERNAL AUDIT DIRECTOR  
**DATE:** FEBRUARY 20, 2018  
**SUBJECT:** CONSIDERATION OF FINDINGS FROM FOLLOW-UP AUDIT OF  
WOMEN'S PROGRAMS AT THE HEALTH DEPARTMENT

**Presenter(s):** Tammy Gillis, Internal Audit Director

**Estimated of Committee Time Needed:** 15 Minutes

**BACKGROUND**

Internal Audit has completed a follow-up audit of the Women's Programs at the Health Department for the time period of July 1, 2017 – December 31, 2017.

The report for will be distributed at the Committee meeting.

**RECOMMENDATION**

Staff recommends accepting the Internal Audit report for the Women's Programs at the Health Department.

RICKEY L. MOOREFIELD  
County Attorney



ITEM NO. 5.

PHYLLIS P. JONES  
Assistant County Attorney

ROBERT A. HASTY, JR.  
Assistant County Attorney

**OFFICE OF THE COUNTY ATTORNEY**

5<sup>th</sup> Floor, New Courthouse • P.O. Box 1829 • Suite 551 • Fayetteville, North Carolina 28302-1829  
(910) 678-7762

**MEMO FOR THE AGENDA OF THE MARCH 1, 2018,  
MEETING OF THE FINANCE COMMITTEE**

**TO:** Asst. Co. Manager Melissa Cardinali  
**FROM:** Co. Atty. *R. Moorefield*  
**DATE:** February 21, 2018  
**SUBJECT:** Selection of Counsel to Pursue Opioid Litigation

**Requested by Finance Committee**  
**Estimate of Time Needed: 15 minutes**

**Attachments:**

- (1) County Leadership Forum on Opioid Abuse-Prescription Data
- (2) Opioid Prescribing Rates by County (5 pages)
- (3) Number of Opioid Pills Dispensed by County (5 pages)
- (4) Proposed contract with McHugh Fuller Group (3 pages)
- (4) Resolution requested by McHugh Fuller Group with Exhibit A (7pages)
- (5) Unmodified proposed contract with Crueger Dickinson Group (7 pages)
- (6) Resolution requested by Crueger Dickinson Group (2 pages)
- (7) Buncombe County Resolution

**BACKGROUND:**

As a measure of the extent of the opioid crisis in our County, I have included in the attachments data on opioid prescription rates and opioid poisoning deaths which are posted on the NCAACC's website. The data shows, that although Cumberland County ranks in the bottom one-third of all counties for opioid pills per resident and opioid prescriptions per resident, it still had the fifth highest number of opioid poisoning deaths among all counties in 2015, the last year for which data has been published on this website. The rankings for all counties with more than 30 opioid poisoning deaths for 2015 were:

Mecklenburg	39 deaths	2015 population of 1,034,070, rank 1
Wake	38 deaths	2015 population of 1,024,198, rank 2
Forsyth	33 deaths	2015 population of 369,019, rank 4
New Hanover	32 deaths	2015 population of 220,358, rank 9
<b>Cumberland</b>	<b>31 deaths</b>	<b>2015 population of 323,838, rank 5</b>
Burke	30 deaths	2015 population of 88,824, rank 33

Based on the relative populations, it might be expected that Cumberland would rank in the top six counties for opioid poisoning deaths; however; this result is surprising with Cumberland's low ranking in the prescription use data. At the February 15, 2018, Finance Committee meeting, Commissioner Adams asked for information on the source of the data posted on the NCACC's website. The data is from the CDC US Prescribing Rate Maps with the prescribing data source being QuintilesIMS Transactional Data Warehouse (TDW). That data is based on a sample of approximately 59,000 retail (non-hospital) pharmacies, which dispense nearly 88% of all retail prescriptions in the U.S. For this database, a prescription is an initial or refill prescription dispensed at a retail pharmacy in the sample, and paid for by commercial insurance, Medicaid, Medicare, or cash or its equivalent. The database does not include mail order pharmacy data. The population data is derived from the official annual estimate of population on July 1 by the Census Bureau. Military personnel are included in the official estimate in the same manner as they are counted in the decennial census.

All these opioid cases against manufacturers or distributors filed in any U. S. District Court have been assigned to a judge in the Northern District of Ohio as multi-district litigation. That will happen with any case filed by Cumberland in the Eastern District of North Carolina.

The NCACC has been very active in assisting counties with the response to the opioid crisis. As of January 22, 2018, the NCACC reported that 22 counties had either filed suit or were in the process of selecting counsel to do so. The county attorney is aware of at least five other counties becoming involved in this process since that date. Staff at the NCACC interviewed a number of national law firms and groups of national law firms and selected two of those groups of law firms to make presentations to the state's county attorneys at a forum in November, 2017. Cumberland County has received proposals from each of those groups. A synopsis of each proposal follows:

**The McHugh Fuller Group:**

The group of national firms and local counsel for which Michael Jay Fuller, Jr., Esq., has been designated lead counsel are fully identified in the proposed contract which is attached. Local attorneys William O. Richardson, Esq., and Terry Hutchens, Esq., have been identified as the contact attorneys for Cumberland County. This group will sue the manufacturers and distributors. The abatement of the opioid epidemic as a public nuisance is one of many causes of action this group will pursue. That is the reason they require the counties they represent to adopt a resolution declaring the opioid crisis a public nuisance which must be abated. The resolution this group has requested is attached. Note that Bladen and Columbus Counties are identified as neighboring counties in which the prescription rates are much higher than the state average. The City of Fayetteville has contracted with this group to pursue opioid litigation.

**The Crueger Dickinson Group:**

The group of national firms and local counsel for which Erin Dickinson, Esq., has been a spokesperson in N.C. are fully identified in the proposed contract which is attached. Although

this group has engaged Janet Ward Black, Esq., of Greensboro as local counsel in North Carolina, they have agreed to engage a Cumberland County attorney as local counsel for Cumberland County. They have proposed engaging Mike Williford of the Williford, Hollers, Crenshaw, Boliek & Frangakis Law Firm as local counsel but have expressed their willingness to engage any local counsel the Board of Commissioners prefers. This group intends to only sue the manufacturers which are identified in the proposed contract. They have not asked for a declaration of public nuisance but have asked for a resolution in support of the litigation which is attached. This group did tailor the resolution to fit the data for Cumberland County.

**Both Groups:**

The contract terms for both groups are now basically the same. Each is a 25% contingency fee contract with the fee to be applied to the gross amount of any recovery with the costs of litigation to be reimbursed from the balance after deducting the attorneys' fees. Each will provide defense for any counterclaims or claims for sanctions at no additional fee. Neither contract requires the county to expend any funds for attorneys' fees or costs except out of monies received out of settlement with or a judgment against the defendants. Under either of these contracts, the county could be liable for damages or attorney fees to the defendants if the defendants prevailed on any motion for sanctions or a counterclaim. Each of these groups of firms has experience with opioid and multi-district litigation and each is exceptionally qualified to pursue this litigation.

**Other Options:**

The Board does not have to choose either of these firms to pursue this litigation; however; at this time no other counties have filed suit with a firm other than one of these. Alamance County has done a RFP for counsel and is in the selection process. The Catawba County Attorney was designated as local counsel for the McHugh Fuller Group and has already filed suit. Included in the attachments is the resolution that was adopted by Buncombe County on November 7, 2017, as an example of a resolution that was drafted by the county and specific to that county's circumstances. Buncombe was the first North Carolina County to file a lawsuit. This information is provided for the Board to understand that it has a range of options to consider and should proceed as it deems appropriate to Cumberland's circumstances.

**RECOMMENDATION/PROPOSED ACTION:**

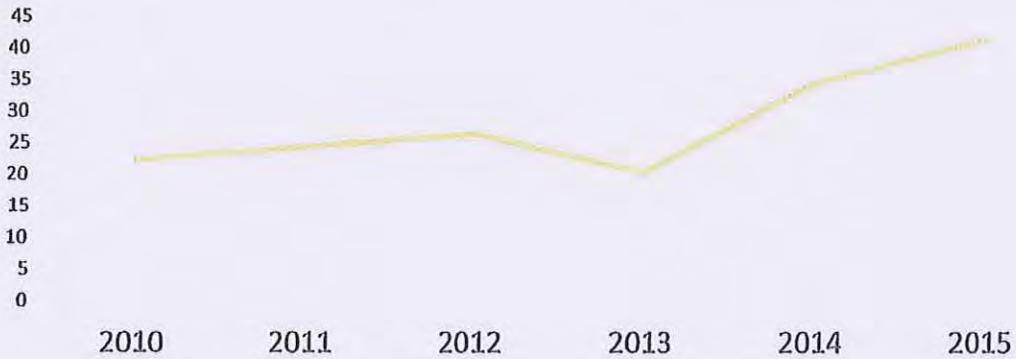
The county attorney recommends the Board select counsel to join the litigation and advises that the two groups of firms whose proposals are summarized above are as qualified as any firm that might be solicited with a RFP. If the Board is satisfied with either of these proposals, the Board should proceed to select one of these groups as counsel under the terms of the proposals as presented or subject to such further conditions as the Board deems appropriate.



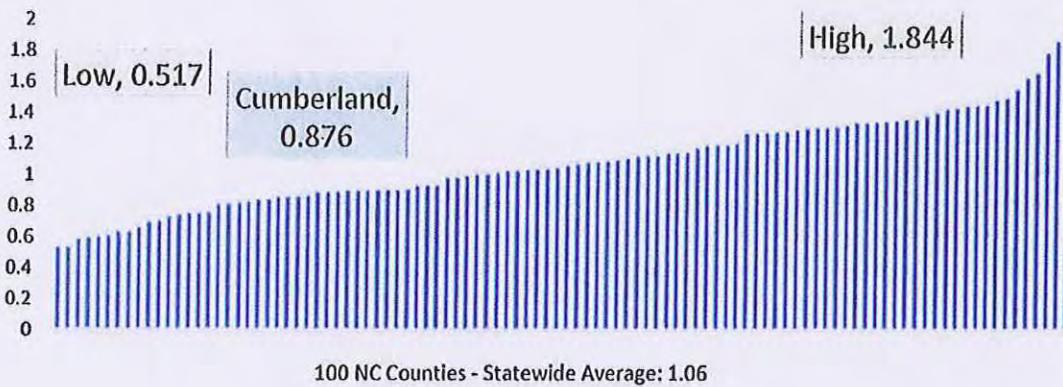
# County Leadership Forum on Opioid Abuse



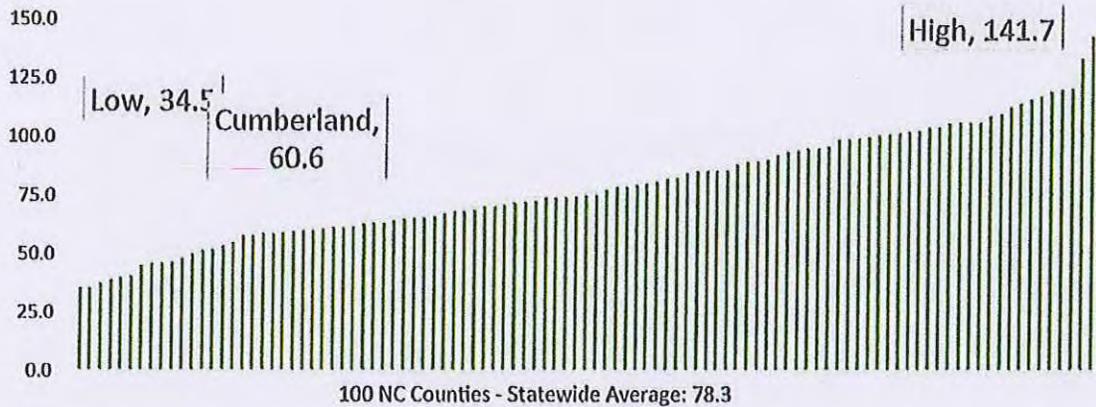
Prescription Opioid Poisoning Deaths



Opioid Prescriptions per Resident (2016)



Opioid Pills per Resident (2016)



Data on [Prescription Rates](#) and [Poisoning Deaths](#) courtesy of NC Dept. of Health and Human Services



**Opioid Prescribing Rates (prescriptions per 100 residents) By County, CDC: N.C. Residents, 2006-2016**

County	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	Rate										
Alamance	87.3	90.5	90.7	91.7	95.9	98.7	104.4	98.1	96	87.6	82.9
Alexander	19.1	23.6	35.9	35.7	25.2	21.8	28.4	28.9	33.6	29	25.4
Alleghany	81.8	94.5	94.4	93.8	107.1	103.1	101.2	107.9	103.2	101.2	85.3
Anson	64.6	67.4	69.1	68.5	58.9	59.5	86.7	93.3	91.3	86.9	77.1
Ashe	89.1	102.7	105.1	103.7	100.6	93.6	105.5	107.5	110.3	106	103.3
Avery	118.1	121.3	120.9	132.1	119.3	115.8	109.9	102.8	95.1	89.4	82.9
Beaufort	109.2	122.4	132.4	135.5	142.7	146.5	156.1	152.3	141.3	143.4	141
Bertie	50.5	56.8	64.2	62.8	68.9	70.4	63	59.8	65	64.8	51.6
Bladen	104.9	102.3	100	90	93.6	90.8	107.7	108.5	114.8	118.3	114.3
Brunswick	116.7	116.9	119.8	123.3	121.7	119.1	125.9	124.8	123.7	116.8	110.7
Buncombe	109.3	115.2	106.6	104.1	105.3	105.7	105.3	99	95.6	88.5	80.8
Burke	123.6	138.5	139.8	134.2	146.5	153.1	175.2	167	159.3	154.9	151.5
Cabarrus	104	108.7	111	108.8	114.1	115.7	116.6	113.3	110.3	101.4	95.2
Caldwell	118.1	118	113.7	116.9	141.4	141.5	154.5	151	148.9	140.7	135.6
Camden	-	-	-	-	-	-	-	-	-	-	-
Carteret	110.9	112	113.2	114.3	122.7	114.3	118.2	122.8	119.1	114.1	101.2
Caswell	-	-	-	-	-	-	5.8	8.3	15.2	14.1	12.6
Catawba	124.9	125.5	127.8	131.7	134.7	139.2	152.8	149.2	142.6	133.5	129.2
Chatham	37.8	38.7	40.9	44.3	47.6	48.4	50.4	50.8	47.9	43.7	43.4
Cherokee	124.9	115.5	116.3	128.3	143.6	143.7	151.7	140.5	125.8	111.3	125
Chowan	80.3	87.9	86.3	84.2	89.2	103.6	114.8	114.6	113.1	108.6	111.5
Clay	78.1	79	111.4	108.4	113.9	116.7	122.2	115.4	133.9	139.8	120.2
Cleveland	130.8	139.7	137.3	144.3	154.3	154.3	159.2	156.3	148.5	139	128



**Opioid Prescribing Rates (prescriptions per 100 residents) By County, CDC: N.C. Residents, 2006-2016**

County	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	Rate										
Columbus	166.9	176.5	178.4	175.9	173.6	174.5	191.8	205	198	189.1	177.8
Craven	118.6	123.2	126.7	128	160.9	160.8	178.8	161	129	128.6	110.8
Cumberland	73.3	75.3	80	84.2	91.5	94.2	103.1	100.7	96.5	96.6	86
Currituck	23.9	21	21.7	22.3	24.3	22.8	21.2	20.8	21.3	19.8	19
Dare	120.9	120.1	126.6	130.9	134.1	138.5	142.5	138.7	132.3	118.3	107.6
Davidson	84.5	86.1	87.9	91.4	94.8	93.1	96.5	91.8	84.5	78.1	80.4
Davie	95.6	92.7	98.2	99.9	102.6	100.4	114.2	119	120.9	112.5	95.5
Duplin	62.2	73	75.4	74.1	78.7	80.3	92.6	96.1	90.9	80.3	78.1
Durham	70.2	75.8	76.3	70.6	69.4	65.8	63.6	60.5	57.8	54.4	49.1
Edgecombe	50.3	50.2	46.8	47.6	47.8	47.4	55.7	57	55.5	54.7	78.2
Forsyth	80.4	83.8	86.7	87.9	91.6	94	101.3	98	92.6	83.9	76
Franklin	46.9	46.5	43.2	49.2	54	55.2	64.1	67.4	67.5	62.9	56.6
Gaston	132.2	141.1	146.6	141.7	143.8	141.8	148.7	144.6	138.1	126.6	119
Gates	-	-	-	-	-	-	-	-	3	3	2.3
Graham	132.5	128.6	129.3	119	116.5	109.6	124.5	110.3	111.2	114.8	101.8
Granville	46.8	53.3	56.5	65.8	79.8	77.3	81.1	84.1	87.6	85.9	79.7
Greene	49.4	49.7	49.3	50.2	27.7	33.3	36.2	42.2	34	34.6	28.2
Guilford	90.3	92.6	90	86.7	90.1	88.2	94.2	90.2	88.9	84	74.5
Halifax	109.7	117.1	121.1	122.1	121.9	124.4	131.6	136.1	128	123	116
Harnett	71.1	80.2	78.3	76	72.8	72.1	84.5	91.5	93.7	86.5	79.8
Haywood	113.2	117.3	114	113.4	103.2	100.2	123.8	115.1	111.6	105.2	102.7
Henderson	97.3	90.8	101.8	98.9	102.7	101.8	107	97.8	94	89.7	84.2
Hertford	116.2	130.9	124.1	120.3	118.2	115.9	131.6	133.9	139.6	132.9	136.4
Hoke	29	34.8	39.5	30.3	30.7	35.2	49	51.8	66.5	60.2	61.2
Hyde	-	-	-	-	-	-	-	-	52.7	68.5	64.1



**Opioid Prescribing Rates (prescriptions per 100 residents) By County, CDC: N.C. Residents, 2006-2016**

County	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	Rate										
Iredell	125.2	105.9	105.1	106.6	113.2	112.4	122.1	119	116.4	108.8	102
Jackson	55.8	59.6	61.2	55.5	80.6	97.1	102	103.6	109.9	101.4	91.7
Johnston	73.2	76.6	75.7	73.7	72.8	72	77.3	75	74.8	73.6	70.2
Jones	22.6	46.7	51.2	48.7	—	—	—	—	5.3	5.4	24.2
Lee	126.5	120.2	136.1	134.9	160.6	168	159	144.9	130.6	119.9	129.6
Lenoir	69.8	76.7	78.8	84.6	97.5	97.5	107.6	109.2	91.8	82.7	88.2
Lincoln	97.6	95.4	96.1	98.9	110.4	114.9	134	132.5	130.6	123.5	115.7
McDowell	82.2	88.6	96.8	94.8	88.2	91.4	93.3	95.2	97.6	92.7	87.4
Macon	115.9	118.4	111.6	112.6	112	110.3	120.6	115.6	107.1	93.8	91.1
Madison	68.6	69.7	73.7	73.8	81.3	79.6	74.3	70.8	63.3	60.9	58.8
Martin	67.7	63.5	57.6	72.6	70.3	73.8	92.5	96.3	93.5	82.3	102.1
Mecklenburg	64	62.4	63.4	64.3	66.6	65.9	68.7	65.7	63.7	59.7	54.4
Mitchell	136.7	128.5	120.1	110	118.4	123.7	149	142.7	167	164.1	150.3
Montgomery	84.8	76.7	73.9	74.1	63.3	63.1	79.4	77.7	74.9	70.9	65.3
Moore	88.8	103.9	113.4	114.7	113	118.3	122.5	129.3	135.7	134.3	127.3
Nash	94	102.7	109.2	111.4	112.7	114.9	112.9	111.1	114.9	107.8	92.3
New Hanover	106.9	110.1	109.7	114.9	122	119	120.7	118.9	119.1	114.4	102.7
Northampton	5	—	—	—	—	—	—	—	1.6	1.4	15.6
Onslow	62	66.9	71.4	79.1	84.2	91.6	94.1	95.2	86.1	80.4	76.9
Orange	45.6	44.9	43.6	43.3	44.5	46.2	47.3	47.5	46.8	43.9	42.1
Pamlico	58.6	58.1	60.3	60.2	77.5	66.1	67.4	70.4	74	79.8	86.9
Pasquotank	94.9	103.3	105.4	120.5	127.8	134	146.5	149.3	141.5	136.6	130.8
Pender	45.9	52.6	53.8	52.6	57.5	54.5	48.4	45.5	46.1	46.3	50.6
Perquimans	47.3	50.6	49.8	44.7	41.7	42.7	45.5	44.2	40.2	37.8	36.1
Person	90	95.5	93.8	94.3	95	94.3	110.6	113.7	112.2	109.8	104.6



**Opioid Prescribing Rates (prescriptions per 100 residents) By County, CDC: N.C. Residents, 2006-2016**

County	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	Rate										
Pitt	78	82.5	84.5	87.7	95.6	98.7	99.4	99.4	94	89.4	82.9
Polk	67.5	66.4	69.2	74	82.7	64.2	56.6	65.4	68.9	72.6	64.7
Randolph	67.7	72.3	73.6	78.4	82	85.3	83.9	81.9	79.8	76.1	71.5
Richmond	152.4	137.3	137.3	144.8	156.5	159	170.2	170.2	160.3	134.9	151.6
Robeson	107.1	104	105.3	106.9	114.9	118.9	132	132.4	141.1	140.1	129.7
Rockingham	143.9	153.1	147.1	143.3	149	150.7	166.3	162.9	148.4	131.8	131.9
Rowan	84.6	86.1	90.5	92.4	96.8	97.6	103.4	100.3	96.4	90.3	80.8
Rutherford	90.7	79.6	68.3	71.1	63.3	78.4	106.5	106.1	106.4	103.1	97.3
Sampson	84.1	83.7	87.7	85	89.9	89.4	93.6	93.4	95.4	92.8	87.2
Scotland	103.5	143.9	141	140.5	156.7	157	175	196.8	225.1	216.7	191.5
Stanly	107.3	102.9	107.2	116.2	128.7	126.1	140.3	142.6	139.1	128.3	111.1
Stokes	76.5	82.8	87.2	87.6	86.9	88.7	96.9	92.8	91.2	85.4	86.1
Surry	151.1	153.1	161.6	169	185.5	183.3	187	195.3	191.5	181.6	164
Swain	67.4	71.1	89.2	98.7	98.2	98.2	83	98	104.8	97.2	88.5
Transylvania	103.3	99.5	96	101.3	109.5	117.7	119.5	114.7	115.8	106.2	98.9
Tyrrell	89	85.6	75.1	91.8	0	-	-	-	74.3	94.8	88.8
Union	66.5	68.3	68.7	71	73.5	74.6	77.3	78.1	76.6	73.2	67.9
Vance	132	137.9	142	152	148.5	146	148.2	154	146.4	133.9	120.9
Wake	61.2	63.2	64.6	64.7	66.8	67.2	65.1	64	61.3	58.6	54.5
Warren	40.1	34.5	32	32.7	32.8	29.2	29.9	30.3	31.6	33.9	32.3
Washington	61.7	71.9	71.1	67.9	76.4	75	74.4	91.1	103.2	98.7	87.1
Watauga	80.1	95.7	94.5	95.2	93	89	92.1	95	92.1	85.5	76.8
Wayne	67.3	68.8	69.3	67.8	73.1	76.2	88.6	88.6	88.8	80.2	78.6



**Opioid Prescribing Rates (prescriptions per 100 residents) By County, CDC: N.C. Residents, 2006-2016**

County	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	Rate										
Wilkes	119.6	112.4	109	109.4	110.4	109.9	108.4	105.4	100.2	97.4	91.4
Wilson	87.8	98.4	96.6	96.1	105.5	102.8	108.5	108.6	105.7	98.6	90.7
Yadkin	72.5	76.7	75.2	83.5	88.5	90.7	90.8	84.9	74.4	64.6	69.3
Yancey	110	115.7	128.9	134.9	112.1	96.2	95.3	121.1	111.6	109.4	98.7
<b>STATE</b>	<b>85.2</b>	<b>87.5</b>	<b>88.6</b>	<b>89.3</b>	<b>93.1</b>	<b>93.5</b>	<b>98.6</b>	<b>96.7</b>	<b>93.7</b>	<b>88.4</b>	<b>82.5</b>

These data are the rate of retail opioid prescriptions dispensed per 100 persons; from the CDC U.S. Prescribing Rates:  
<https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html>

**Notes:** Data is from the CDC US Prescribing Rate Maps and is subject to change. Prescribing data source: QuintilesIMS Transactional Data Warehouse (TDW) 2006–2016. QuintilesIMS TDW is based on a sample of approximately 59,000 retail (non-hospital) pharmacies, which dispense nearly 88% of all retail prescriptions in the U.S. For this database, a prescription is an initial or refill prescription dispensed at a retail pharmacy in the sample, and paid for by commercial insurance, Medicaid, Medicare, or cash or its equivalent. Does not include mail order pharmacy data.



**Number of Opioid Pills Dispensed By County, CSRS: N.C. Residents, 2011-2016**

County	2011	2012	2013	2014	2015	2016	Total
	N	N	N	N	N	N	N
Alamance	6,446,424	6,716,131	6,952,726	7,837,463	10,791,034	10,445,039	49,188,817
Alexander	2,600,701	2,782,652	2,796,886	2,982,966	3,829,261	3,683,272	18,675,738
Alleghany	683,502	668,101	675,539	887,747	826,389	959,521	4,700,799
Anson	1,350,627	1,444,216	1,486,084	1,602,615	1,983,652	1,768,578	9,635,772
Ashe	1,518,571	1,598,139	1,595,413	1,840,791	2,625,668	2,411,347	11,589,929
Avery	925,320	940,802	969,243	1,084,022	1,443,056	1,325,435	6,687,878
Beaufort	2,734,212	2,947,036	3,097,782	3,653,656	4,999,110	5,080,849	22,512,645
Bertie	1,205,707	1,208,010	1,224,034	1,369,559	1,715,883	1,645,866	8,369,059
Bladen	2,880,296	2,950,254	3,118,768	3,378,834	3,940,987	3,538,061	19,807,200
Brunswick	7,356,021	7,699,408	7,931,600	8,745,540	11,424,140	11,484,062	54,640,771
Buncombe	12,057,255	12,362,529	11,930,943	13,067,643	18,621,051	17,853,479	85,892,900
Burke	6,944,275	7,441,855	7,605,677	8,490,057	11,309,787	10,741,789	52,533,440
Cabarrus	8,382,995	8,633,088	8,650,026	10,156,329	13,987,355	13,036,559	62,846,352
Caldwell	6,591,412	6,856,508	6,895,020	7,795,708	10,102,948	9,927,736	48,169,332
Camden	319,428	339,434	329,872	364,506	550,129	561,116	2,464,485
Carteret	4,245,883	4,404,314	4,807,360	5,546,103	7,363,484	7,036,936	33,404,080
Caswell	652,438	715,711	820,060	903,395	1,166,371	1,058,515	5,316,490
Catawba	9,760,650	10,647,607	10,850,965	11,897,086	15,794,656	15,102,240	74,053,204
Chatham	2,252,532	2,263,504	2,330,799	2,620,884	3,459,416	3,297,985	16,225,120
Cherokee	2,531,377	2,553,641	2,410,656	2,400,694	3,050,150	2,978,852	15,925,370
Chowan	577,158	571,646	573,061	678,918	916,818	964,611	4,282,212
Clay	743,890	790,530	780,596	862,890	1,166,004	1,112,653	5,456,563
Cleveland	6,588,164	6,814,574	6,863,042	7,692,155	10,255,725	9,726,890	47,940,550



**Number of Opioid Pills Dispensed By County, CSRS: N.C. Residents, 2011-2016**

County	2011	2012	2013	2014	2015	2016	Total
	N	N	N	N	N	N	N
Columbus	6,358,627	6,598,994	6,932,828	7,004,914	8,281,236	8,144,173	43,320,772
Craven	6,027,063	6,657,870	6,877,217	7,408,739	10,155,149	9,699,129	46,825,167
Cumberland	13,965,026	14,890,828	15,160,951	16,054,939	19,783,126	20,010,637	99,865,507
Currituck	837,049	812,439	815,175	890,678	1,225,910	1,137,960	5,719,211
Dare	2,058,496	2,060,337	2,037,197	2,087,118	2,726,549	2,539,614	13,509,311
Davidson	8,587,237	9,163,193	8,982,783	9,923,561	13,153,045	12,213,514	62,023,333
Davie	2,283,182	2,446,885	2,483,100	2,724,677	3,754,330	3,503,836	17,196,010
Duplin	2,602,500	2,851,792	2,775,670	3,031,027	3,775,350	3,878,929	18,915,268
Durham	7,566,725	7,671,895	7,899,137	8,977,862	12,155,508	11,530,304	55,801,431
Edgecombe	2,144,115	2,136,459	2,229,635	2,602,144	3,398,242	3,291,068	15,801,663
Forsyth	14,006,133	15,108,706	14,999,253	16,725,436	23,638,469	22,360,271	106,838,268
Franklin	2,785,911	2,884,770	2,857,288	3,242,533	4,339,553	4,023,218	20,133,273
Gaston	13,613,763	14,312,715	14,822,061	16,439,131	22,008,989	20,508,606	101,705,265
Gates	287,215	277,017	288,144	345,138	497,044	469,398	2,163,956
Graham	768,392	759,491	715,959	726,316	908,062	914,245	4,792,465
Granville	2,374,508	2,343,659	2,515,227	2,939,525	3,587,615	3,341,587	17,102,121
Greene	707,792	724,704	759,141	838,420	1,142,459	1,172,462	5,344,978
Guilford	16,725,466	17,616,437	17,866,941	20,025,972	28,136,563	26,868,179	127,239,558
Halifax	2,400,573	2,476,387	2,534,048	2,802,026	3,820,132	3,848,117	17,881,283
Harnett	6,157,456	6,669,845	7,220,358	7,972,431	9,898,043	9,505,599	47,423,732
Haywood	3,503,709	3,754,005	3,698,216	4,106,160	5,845,400	5,630,693	26,538,183
Henderson	6,186,529	6,151,632	6,077,958	6,632,596	9,154,630	8,582,867	42,786,212
Hertford	987,984	990,319	1,014,330	1,120,191	1,505,479	1,440,820	7,059,123



**Number of Opioid Pills Dispensed By County, CSRS: N.C. Residents, 2011-2016**

County	2011	2012	2013	2014	2015	2016	Total
	N	N	N	N	N	N	N
Hoke	1,650,611	1,847,682	1,730,864	1,886,361	2,400,964	2,404,851	11,921,333
Hyde	137,192	162,582	187,905	239,504	349,214	351,922	1,428,319
Iredell	8,114,920	8,460,377	8,512,225	9,339,817	12,524,501	12,155,086	59,106,926
Jackson	1,851,192	2,046,586	1,881,865	2,130,927	2,959,087	2,866,644	13,736,301
Johnston	6,940,376	7,462,925	7,736,606	8,645,413	11,435,244	11,126,210	53,346,774
Jones	385,024	424,371	424,415	437,111	626,269	614,972	2,912,162
Lee	3,355,515	3,551,310	3,684,993	4,185,605	5,166,837	5,099,982	25,044,242
Lenoir	2,418,940	2,569,025	2,616,987	2,909,803	3,887,980	4,151,189	18,553,924
Lincoln	4,344,397	4,626,285	4,709,141	5,457,139	7,848,704	7,242,486	34,228,152
McDowell	1,706,497	1,892,934	2,005,015	1,998,712	2,391,191	2,323,375	12,317,724
Macon	3,419,914	3,403,058	3,271,884	3,974,248	5,354,209	5,222,900	24,646,213
Madison	1,852,534	1,827,839	1,797,501	2,185,588	2,765,467	2,863,109	13,292,038
Martin	1,515,826	1,513,338	1,369,285	1,307,403	1,814,495	1,691,952	9,212,299
Mecklenburg	23,517,673	24,475,733	24,409,784	27,699,286	41,640,413	38,661,869	180,404,758
Mitchell	1,220,083	1,154,001	1,193,068	1,356,356	1,862,183	1,783,122	8,568,813
Montgomery	1,591,851	1,695,764	1,773,223	1,997,254	2,607,540	2,504,453	12,170,085
Moore	4,549,925	4,747,372	4,957,001	5,666,101	7,369,603	7,473,214	34,763,216
Nash	4,715,899	4,835,128	4,962,953	5,654,886	7,312,120	7,085,429	34,566,415
New Hanover	10,300,157	10,529,859	10,650,636	11,879,873	16,141,775	15,301,444	74,803,744
Northampton	835,452	843,922	827,908	899,841	1,354,313	1,316,618	6,078,054
Onslow	7,152,859	7,205,782	7,556,285	8,386,335	11,127,027	11,043,171	52,471,459
Orange	3,461,746	3,472,183	3,518,925	3,854,620	5,139,166	4,930,950	24,377,590
Pamlico	691,189	750,358	838,387	962,393	1,237,373	1,163,591	5,643,291



**Number of Opioid Pills Dispensed By County, CSRS: N.C. Residents, 2011-2016**

County	2011	2012	2013	2014	2015	2016	Total
	N	N	N	N	N	N	N
Pasquotank	1,410,006	1,425,904	1,385,013	1,552,071	2,429,345	2,329,798	10,532,137
Pender	2,984,359	3,095,568	3,151,617	3,449,053	4,665,444	4,632,414	21,978,455
Perquimans	498,871	435,635	445,799	567,620	759,437	802,701	3,510,063
Person	2,744,088	2,775,165	2,973,541	3,289,323	4,270,216	4,009,051	20,061,384
Pitt	6,995,528	7,188,145	7,333,438	8,314,699	11,132,028	10,823,047	51,786,885
Polk	1,019,745	982,908	984,375	1,083,369	1,483,017	1,439,899	6,993,313
Randolph	8,512,442	8,937,165	8,726,191	9,934,889	13,578,943	12,664,137	62,353,767
Richmond	4,170,774	4,352,167	4,559,556	5,109,985	6,116,186	6,179,376	30,488,044
Robeson	9,878,278	11,175,811	12,442,328	13,435,138	15,991,408	15,524,446	78,447,409
Rockingham	7,809,338	8,082,480	8,549,304	8,860,990	11,114,250	10,847,201	55,263,563
Rowan	9,236,294	9,196,412	9,089,661	9,943,495	12,972,216	12,049,217	62,487,295
Rutherford	4,465,954	4,585,975	4,611,579	5,366,877	7,213,986	7,379,882	33,624,253
Sampson	3,777,130	4,001,975	3,966,785	4,410,642	5,508,408	5,425,167	27,090,107
Scotland	2,823,163	3,037,626	3,428,733	3,722,057	4,586,092	4,186,638	21,784,309
Stanly	3,303,039	3,384,711	3,507,830	4,033,109	5,361,877	5,118,750	24,709,316
Stokes	3,232,509	3,545,061	3,573,115	3,849,023	5,033,579	4,768,764	24,002,051
Surry	5,696,300	5,743,340	5,657,881	6,100,617	7,589,332	7,439,470	38,226,940
Swain	974,015	1,206,088	1,101,844	1,233,859	1,649,242	1,582,794	7,747,842
Transylvania	1,866,455	1,783,836	1,835,156	2,019,062	2,724,042	2,629,785	12,858,336
Tyrrell	216,939	239,671	204,916	234,747	320,960	284,272	1,501,505
Union	6,252,738	6,683,736	6,819,365	7,801,346	11,522,563	10,689,960	49,769,708
Vance	2,901,436	3,139,143	3,154,344	3,364,037	4,028,954	3,697,656	20,285,570
Wake	23,031,977	23,996,760	24,686,161	28,431,371	41,394,885	40,560,612	182,101,766



**Number of Opioid Pills Dispensed By County, CSRS: N.C. Residents, 2011-2016**

<b>County</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Total</b>
	N	N	N	N	N	N	N
Warren	733,417	793,302	827,294	907,302	1,117,811	1,052,684	5,431,810
Washington	697,663	771,615	767,884	811,706	1,087,049	1,006,274	5,142,191
Watauga	1,694,017	1,710,165	1,781,614	2,113,991	2,846,223	2,709,506	12,855,516
Wayne	5,235,300	5,588,669	5,667,553	6,197,069	7,902,479	7,719,589	38,310,659
Wilkes	5,656,706	5,501,753	5,517,975	5,906,681	7,651,283	6,952,973	37,187,371
Wilson	3,931,456	3,936,028	3,984,693	4,383,639	5,519,071	5,325,386	27,080,273
Yadkin	2,962,472	3,146,473	3,251,390	3,425,069	4,317,089	4,001,745	21,104,238
Yancey	1,217,926	1,148,342	1,116,692	1,232,701	1,777,501	1,747,025	8,240,187
<b>STATE</b>	<b>443,944,396</b>	<b>463,800,112</b>	<b>471,979,252</b>	<b>524,621,208</b>	<b>703,194,548</b>	<b>675,315,375</b>	<b>3,282,854,891</b>

Data Source: North Carolina Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Controlled Substance Reporting System (CSRS), 2011-2017

Notes: Data from NC Opioid Action Plan Metrics, October 2017. Data are subject to change.

## AUTHORITY TO REPRESENT

RE: Cumberland County, North Carolina civil suit against those legally responsible for the wrongful distribution of prescription opiates and damages caused thereby.

CUMBERLAND COUNTY, NORTH CAROLINA (hereinafter "CLIENT") hereby retains the law firm MCHUGH FULLER LAW GROUP, PLLC, pursuant to the North Carolina Rules of Professional Responsibility, on a contingent fee basis, to pursue all civil remedies against those in the chain of distribution of prescription opiates responsible for the opioid epidemic which is plaguing Cumberland County, North Carolina, including, but not limited to, filing a claim for public nuisance to abate the damages caused thereby. **Michael Jay Fuller, Jr., Esq.** of the law firm MCHUGH FULLER LAW GROUP, PLLC shall serve as LEAD COUNSEL. CLIENT authorizes lead counsel to employ and/or associate additional counsel, with consent of CLIENT, to assist LEAD COUNSEL in the just prosecution of the case. CLIENT consents to the participation of the following firms:

GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP  
419 11th Street  
Huntington, West Virginia

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA  
316 South Baylen Street  
Pensacola, Florida

BARON & BUDD, PC  
3102 Oak Lawn Avenue #1100  
Dallas, Texas

HILL PETERSON CARPER BEE & DEITZLER PLLC  
500 Tracy Way  
Charleston, West Virginia

MCHUGH FULLER LAW GROUP  
97 Elias Whiddon Rd  
Hattiesburg, Mississippi

POWELL & MAJESTRO, PLLC  
405 Capitol Street, Suite P-1200  
Charleston, West Virginia

DONALD R. VAUGHAN AND ASSOCIATES  
612 W. Friendly Avenue  
Greensboro, North Carolina

PINTO, COATES, KYRE & BOWERS, PLLC  
3203 Brassfield Road  
Greensboro, North Carolina

GEORGE B. DANIEL, P.A.  
139 E. Main Street  
Yanceyville, North Carolina

THE RICHARDSON FIRM, PLLC  
4200 Morganton Road, Suite 150  
Fayetteville, North Carolina

HUTCHENS LAW FIRM  
4317 Ramsey Street  
Fayetteville, North Carolina

In consideration, CLIENT agrees to pay twenty-five percent (25%) of the total recovery (gross) in favor of the CLIENT as an attorney fee whether the claim is resolved by compromise, settlement, or trial and verdict (and appeal). The gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses. CLIENT grants Attorneys an interest in a fee based on the gross recovery. If a court awards attorneys' fees, Attorneys shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded. **There is no fee if there is no recovery.**

MCHUGH FULLER LAW GROUP, PLLC and the other law firms, hereinafter referred to as the "Attorneys," agree to advance all litigation expenses necessary to prosecute these claims. All such litigation expenses, including the reasonable internal costs of electronically stored information (ESI) and electronic discovery generally or the direct costs incurred from any outside contractor for those services, will be deducted from any recovery after the contingent fee is calculated. **There is no reimbursement of litigation expenses if there is no recovery.**

The CLIENT acknowledges this fee is reasonable given the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, the likelihood this employment will preclude other employment by the Attorneys, the fee customarily charged in the locality for similar legal services, the anticipated (contingent) litigation expenses and the anticipated results obtained, the experience, reputation, and ability of the lawyer or lawyers performing the services and the fact that the fee is contingent upon a successful recovery.

This litigation is intended to address a significant problem in the community. The litigation focuses on the manufacturers and wholesale distributors and their role in the diversion of millions of prescription opiates into the illicit market which has resulted in opioid addiction, abuse, morbidity and mortality. There is no easy solution and no precedent for such an action against this sector of the industry. Many of the facts of the case are locked behind closed doors. The billion dollar industry denies liability. The litigation will be very expensive and the litigation expenses will be advanced by the Attorneys with reimbursement contingent upon a successful recovery. The outcome is uncertain, like all civil litigation, with compensation contingent upon a successful recovery. Consequently, there must be a clear understanding between the CLIENT and the Attorneys regarding the definition of a "successful recovery."

The Attorneys intend to present a damage model designed to abate the public health and safety crisis. This damage model may take the form of money damages or equitable remedies (e.g., abatement fund). The purpose of the lawsuit is to seek reimbursement of the costs incurred in the past fighting the opioid epidemic and/or to recover the funds necessary to abate the health and safety crisis caused by the unlawful conduct of the manufacturers and wholesale distributors. The CLIENT agrees to compensate the Attorneys, contingent upon prevailing, by paying 25% of any settlement/resolution/judgment, in favor of the CLIENT, whether it takes the form of monetary damages or equitable relief. For instance, if the remedy is in the form of monetary damages, CLIENT agrees to pay 25% of the gross amount to Attorneys as compensation and then reimburse the reasonable litigation expenses. If the remedy is in the form of equitable relief (e.g., abatement fund), CLIENT agrees to pay 25% of the gross value of the equitable relief to the Attorneys as compensation and then reimburse the reasonable litigation expenses. To be clear, Attorneys shall not be paid nor receive reimbursement from public funds. However, any judgment arising from successful prosecution of the case, or any consideration arising from a settlement of the matter, whether monetary or

equitable, shall not be considered public funds for purposes of calculating the contingent fee. Under no circumstances shall the CLIENT be obligated to pay any Attorneys fee or any litigation expenses except from moneys expended by defendant(s) pursuant to the resolution of the CLIENT's claims. If the defendant(s) expend their own resources to abate the public health and safety crisis in exchange for a release of liability, then the Attorneys will be paid the designated contingent fee from the resources expended by the defendant(s). CLIENT acknowledges this is a necessary condition required by the Attorneys to dedicate their time and invest their resources on a contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then the Attorneys should be compensated based upon the consideration offered to induce the dismissal of the lawsuit. The foregoing notwithstanding, Client shall not be obligated to pay any attorney fees and/or litigation expenses except from funds furnished by Defendants.

The division of fees, expenses and labor between the Attorneys will be decided by private agreement between the law firms and subject to approval by the CLIENT. Any division of fees will be governed by the North Carolina Rules of Professional Conduct including: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the CLIENT; (2) the CLIENT agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in this writing; and (3) the total fee is *reasonable*.

LEAD COUNSEL shall appoint a contact person in Cumberland to keep the CLIENT reasonably informed about the status of the matter in a manner deemed appropriate by the CLIENT. If in the course of litigation it becomes apparent that CLIENT will be subject to any counter-claim or sanctions, CLIENT shall be notified as soon as is practicable and Attorneys shall defend CLIENT on any such counterclaim or claim for sanctions at no additional fee. The CLIENT at all times shall retain the authority to decide the disposition of the case and maintain absolute control of the litigation.

Upon conclusion of this matter, LEAD COUNSEL shall provide the CLIENT with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyers' fees with a lawyer not in the same firm, as required in Rule 1.05 (e)(3) of the North Carolina Rules of Professional Conduct. The closing statement shall be signed by the CLIENT and each attorney among whom the fee is being divided.

Nothing in this Agreement and nothing in the Attorneys' statement to the CLIENT may be construed as a promise or guarantee about the outcome of this matter. The Attorneys make no such promises or guarantees. Attorneys' comments about the outcome of this matter are expressions of opinion only and the Attorneys make no guarantee as to the outcome of any litigation, settlement or trial proceedings.

SIGNED, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Cumberland County Board of Commissioners

\_\_\_\_\_  
Larry L. Lancaster, Chairman

\_\_\_\_\_  
Jeannette M. Council, Vice-Chair

\_\_\_\_\_  
Michael C. Boose, Commissioner

\_\_\_\_\_  
Charles Evans, Commissioner

\_\_\_\_\_  
W. Marshall Faircloth, Commissioner

\_\_\_\_\_  
Jimmy Keefe, Commissioner

\_\_\_\_\_  
Glenn B. Adams, Commissioner

Accepted:

MCHUGH FULLER LAW GROUP, PLLC  
97 Elias Whiddon Rd  
Hattiesburg, MS 39402  
(601) 261-2220



By \_\_\_\_\_  
Michael J. Fuller, Jr., Esq.  
*Lead Counsel*

\_\_\_\_\_  
Date

RESOLUTION OF THE BOARD OF COMMISSIONERS OF  
CUMBERLAND COUNTY, NORTH CAROLINA

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

RESOLUTION NO. \_\_\_\_\_ (2018)

WHEREAS, Cumberland County Board of Commissioners has the authority to adopt resolutions with respect to county affairs of Cumberland County, North Carolina;

WHEREAS, the Cumberland County Board of Commissioners has the authority to take action to protect the public health, safety, and welfare of the residents and citizens of Cumberland County;

WHEREAS, there exists a serious public health and safety crisis involving opioid abuse, addiction, morbidity, and mortality in Cumberland County;

WHEREAS, the opioid crisis unreasonably interferes with rights common to the general public of Cumberland County; involves a significant interference with the public health, safety, peace, comfort, and convenience of citizens and residents of Cumberland County; which upon information and belief includes the delivery of controlled substances in violation of State and Federal law and regulations; and therefore constitutes a public nuisance;

WHEREAS, the opioid crisis is having an extended and far reaching impact of the general public, health, and safety, of residents and citizens of Cumberland County and must be abated;

WHEREAS, the violation of any laws of the State of North Carolina, or of the United States of America controlling the distribution of a controlled substance is inimical, harmful, and adverse to the public welfare of the residents and citizens of Cumberland County constitutes a public nuisance;

WHEREAS, the Cumberland County Board of Commissioners has the authority to abate, or cause to be abated, any public nuisance including those acts that unreasonably interfere with rights common to the general public of Cumberland County and/or involve a significant interference with the public health, safety, peace, comfort, and convenience of citizens and residents of Cumberland County;

WHEREAS, Cumberland County has expended, is expending, and upon information and belief, will continue to expend in the future County funds to respond to the serious public health and safety crisis involving opioid abuse, addiction, morbidity, and mortality within Cumberland County; and

WHEREAS, the Cumberland County Board of Commissioners have received information as shown in attached Exhibit "A" that indicates that the manufacturers and wholesale distributors of controlled substances have distributed in areas surrounding Cumberland County, North Carolina, may have violated Federal and/or State laws and regulations that were enacted to prevent the diversion of legally produced controlled substances into the illicit market.

NOW, THEREFORE, BE IT RESOLVED by the Cumberland County Board of Commissioners, assembled on this day at which a quorum is present, that based upon the above the Cumberland County Board of Commissioners are declaring the opioid crisis a public nuisance which must be abated for the benefit of Cumberland County and its residents and citizens.

The motion to approve the foregoing resolution was made by Commissioner \_\_\_\_\_,  
seconded by Commissioner \_\_\_\_\_, and the following vote was recorded:

Larry Lancaster, Chairman \_\_\_\_\_

Dr. Jeanette M. Council, Vice-Chair \_\_\_\_\_

Glenn Adams, Commissioner \_\_\_\_\_

Michael Boose, Commissioner \_\_\_\_\_

Charles Evans, Commissioner \_\_\_\_\_

W. Marshall Faircloth, Commissioner \_\_\_\_\_

Jimmy Keefe, Commissioner \_\_\_\_\_

Exhibit "A"

Opioid Prescribing Rates (prescriptions per 100 residents) By County, CDC: N.C. Residents, 2006-2016

County	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	Rate										
Alamance	87.3	90.5	90.7	91.7	95.9	98.7	104.4	98.1	96	87.6	82.9
Alexander	19.1	23.6	35.9	35.7	25.2	21.8	28.4	28.9	33.6	29	25.4
Alleghany	81.8	94.5	94.4	93.8	107.1	103.1	101.2	107.9	103.2	101.2	85.3
Anson	64.6	67.4	69.1	68.5	58.9	59.5	86.7	93.3	91.3	86.9	77.1
Ashe	89.1	102.7	105.1	103.7	100.6	93.6	105.5	107.5	110.3	106	103.3
Avery	118.1	121.3	120.9	132.1	119.3	115.8	109.9	102.8	95.1	89.4	82.9
Beaufort	109.2	122.4	132.4	135.5	142.7	146.5	156.1	152.3	141.3	143.4	141
Bertie	50.5	56.8	64.2	62.8	68.9	70.4	63	59.8	65	64.8	51.6
Bladen	104.9	102.3	100	90	93.6	90.8	107.7	108.5	114.8	118.3	114.3
Brunswick	116.7	116.9	119.8	123.3	121.7	119.1	125.9	124.8	123.7	116.8	110.7
Buncombe	109.3	115.2	106.6	104.1	105.3	105.7	105.3	99	95.6	88.5	80.8
Burke	123.6	138.5	139.8	134.2	146.5	153.1	175.2	167	159.3	154.9	151.5
Cabarrus	104	108.7	111	108.8	114.1	115.7	116.6	113.3	110.3	101.4	95.2
Caldwell	118.1	118	113.7	116.9	141.4	141.5	154.5	151	148.9	140.7	135.6
Camden	-	-	-	-	-	-	-	-	-	-	-
Carteret	110.9	112	113.2	114.3	122.7	114.3	118.2	122.8	119.1	114.1	101.2
Caswell	-	-	-	-	-	-	5.8	8.3	15.2	14.1	12.6
Catawba	124.9	125.5	127.8	131.7	134.7	139.2	152.8	149.2	142.6	133.5	129.2
Chatham	37.8	38.7	40.9	44.3	47.6	48.4	50.4	50.8	47.9	43.7	43.4
Cherokee	124.9	115.5	116.3	128.3	143.6	143.7	151.7	140.5	125.8	111.3	125
Chowan	80.3	87.9	86.3	84.2	89.2	103.6	114.8	114.6	113.1	108.6	111.5
Clay	78.1	79	111.4	108.4	113.9	116.7	122.2	115.4	133.9	139.8	120.2
Cleveland	130.8	139.7	137.3	144.3	154.3	154.3	159.2	156.3	148.5	139	128



**Opioid Prescribing Rates (prescriptions per 100 residents) By County, CDC: N.C. Residents, 2006-2016**

County	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	Rate										
Columbus	166.9	176.5	178.4	175.9	173.6	174.5	191.8	205	198	189.1	177.8
Craven	118.6	123.2	126.7	128	160.9	160.8	178.8	161	129	128.6	110.8
Cumberland	73.3	75.3	80	84.2	91.5	94.2	103.1	100.7	96.5	96.6	86
Currituck	23.9	21	21.7	22.3	24.3	22.8	21.2	20.8	21.3	19.8	19
Dare	120.9	120.1	126.6	130.9	134.1	138.5	142.5	138.7	132.3	118.3	107.6
Davidson	84.5	86.1	87.9	91.4	94.8	93.1	96.5	91.8	84.5	78.1	80.4
Davie	95.6	92.7	98.2	99.9	102.6	100.4	114.2	119	120.9	112.5	95.5
Duplin	62.2	73	75.4	74.1	78.7	80.3	92.6	96.1	90.9	80.3	78.1
Durham	70.2	75.8	76.3	70.6	69.4	65.8	63.6	60.5	57.8	54.4	49.1
Edgecombe	50.3	50.2	46.8	47.6	47.8	47.4	55.7	57	55.5	54.7	78.2
Forsyth	80.4	83.8	86.7	87.9	91.6	94	101.3	98	92.6	83.9	76
Franklin	46.9	46.5	43.2	49.2	54	55.2	64.1	67.4	67.5	62.9	56.6
Gaston	132.2	141.1	146.6	141.7	143.8	141.8	148.7	144.6	138.1	126.6	119
Gates	-	-	-	-	-	-	-	-	3	3	2.3
Graham	132.5	128.6	129.3	119	116.5	109.6	124.5	110.3	111.2	114.8	101.8
Granville	46.8	53.3	56.5	65.8	79.8	77.3	81.1	84.1	87.6	85.9	79.7
Greene	49.4	49.7	49.3	50.2	27.7	33.3	36.2	42.2	34	34.6	28.2
Guilford	90.3	92.6	90	86.7	90.1	88.2	94.2	90.2	88.9	84	74.5
Halifax	109.7	117.1	121.1	122.1	121.9	124.4	131.6	136.1	128	123	116
Harnett	71.1	80.2	78.3	76	72.8	72.1	84.5	91.5	93.7	86.5	79.8
Haywood	113.2	117.3	114	113.4	103.2	100.2	123.8	115.1	111.6	105.2	102.7
Henderson	97.3	90.8	101.8	98.9	102.7	101.8	107	97.8	94	89.7	84.2
Hertford	116.2	130.9	124.1	120.3	118.2	115.9	131.6	133.9	139.6	132.9	136.4
Hoke	29	34.8	39.5	30.3	30.7	35.2	49	51.8	66.5	60.2	61.2
Hyde	-	-	-	-	-	-	-	-	52.7	68.5	64.1



**Opioid Prescribing Rates (prescriptions per 100 residents) By County, CDC: N.C. Residents, 2006-2016**

County	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	Rate										
Iredell	125.2	105.9	105.1	106.6	113.2	112.4	122.1	119	116.4	108.8	102
Jackson	55.8	59.6	61.2	55.5	80.6	97.1	102	103.6	109.9	101.4	91.7
Johnston	73.2	76.6	75.7	73.7	72.8	72	77.3	75	74.8	73.6	70.2
Jones	22.6	46.7	51.2	48.7	-	-	-	-	5.3	5.4	24.2
Lee	126.5	120.2	136.1	134.9	160.6	168	159	144.9	130.6	119.9	129.6
Lenoir	69.8	76.7	78.8	84.6	97.5	97.5	107.6	109.2	91.8	82.7	88.2
Lincoln	97.6	95.4	96.1	98.9	110.4	114.9	134	132.5	130.6	123.5	115.7
McDowell	82.2	88.6	96.8	94.8	88.2	91.4	93.3	95.2	97.6	92.7	87.4
Macon	115.9	118.4	111.6	112.6	112	110.3	120.6	115.6	107.1	93.8	91.1
Madison	68.6	69.7	73.7	73.8	81.3	79.6	74.3	70.8	63.3	60.9	58.8
Martin	67.7	63.5	57.6	72.6	70.3	73.8	92.5	96.3	93.5	82.3	102.1
Mecklenburg	64	62.4	63.4	64.3	66.6	65.9	68.7	65.7	63.7	59.7	54.4
Mitchell	136.7	128.5	120.1	110	118.4	123.7	149	142.7	167	164.1	150.3
Montgomery	84.8	76.7	73.9	74.1	63.3	63.1	79.4	77.7	74.9	70.9	65.3
Moore	88.8	103.9	113.4	114.7	113	118.3	122.5	129.3	135.7	134.3	127.3
Nash	94	102.7	109.2	111.4	112.7	114.9	112.9	111.1	114.9	107.8	92.3
New Hanover	106.9	110.1	109.7	114.9	122	119	120.7	118.9	119.1	114.4	102.7
Northampton	5	-	-	-	-	-	-	-	1.6	1.4	15.6
Onslow	62	66.9	71.4	79.1	84.2	91.6	94.1	95.2	86.1	80.4	76.9
Orange	45.6	44.9	43.6	43.3	44.5	46.2	47.3	47.5	46.8	43.9	42.1
Pamlico	58.6	58.1	60.3	60.2	77.5	66.1	67.4	70.4	74	79.8	86.9
Pasquotank	94.9	103.3	105.4	120.5	127.8	134	146.5	149.3	141.5	136.6	130.8
Pender	45.9	52.6	53.8	52.6	57.5	54.5	48.4	45.5	46.1	46.3	50.6
Perquimans	47.3	50.6	49.8	44.7	41.7	42.7	45.5	44.2	40.2	37.8	36.1
Person	90	95.5	93.8	94.3	95	94.3	110.6	113.7	112.2	109.8	104.6



**Opioid Prescribing Rates (prescriptions per 100 residents) By County, CDC: N.C. Residents, 2006-2016**

County	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	Rate										
Pitt	78	82.5	84.5	87.7	95.6	98.7	99.4	99.4	94	89.4	82.9
Polk	67.5	66.4	69.2	74	82.7	64.2	56.6	65.4	68.9	72.6	64.7
Randolph	67.7	72.3	73.6	78.4	82	85.3	83.9	81.9	79.8	76.1	71.5
Richmond	152.4	137.3	137.3	144.8	156.5	159	170.2	170.2	160.3	134.9	151.6
Robeson	107.1	104	105.3	106.9	114.9	118.9	132	132.4	141.1	140.1	129.7
Rockingham	143.9	153.1	147.1	143.3	149	150.7	166.3	162.9	148.4	131.8	131.9
Rowan	84.6	86.1	90.5	92.4	96.8	97.6	103.4	100.3	96.4	90.3	80.8
Rutherford	90.7	79.6	68.3	71.1	63.3	78.4	106.5	106.1	106.4	103.1	97.3
Sampson	84.1	83.7	87.7	85	89.9	89.4	93.6	93.4	95.4	92.8	87.2
Scotland	103.5	143.9	141	140.5	156.7	157	175	196.8	225.1	216.7	191.5
Stanly	107.3	102.9	107.2	116.2	128.7	126.1	140.3	142.6	139.1	128.3	111.1
Stokes	76.5	82.8	87.2	87.6	86.9	88.7	96.9	92.8	91.2	85.4	86.1
Surry	151.1	153.1	161.6	169	185.5	183.3	187	195.3	191.5	181.6	164
Swain	67.4	71.1	89.2	98.7	98.2	98.2	83	98	104.8	97.2	88.5
Transylvania	103.3	99.5	96	101.3	109.5	117.7	119.5	114.7	115.8	106.2	98.9
Tyrrell	89	85.6	75.1	91.8	0	-	-	-	74.3	94.8	88.8
Union	66.5	68.3	68.7	71	73.5	74.6	77.3	78.1	76.6	73.2	67.9
Vance	132	137.9	142	152	148.5	146	148.2	154	146.4	133.9	120.9
Wake	61.2	63.2	64.6	64.7	66.8	67.2	65.1	64	61.3	58.6	54.5
Warren	40.1	34.5	32	32.7	32.8	29.2	29.9	30.3	31.6	33.9	32.3
Washington	61.7	71.9	71.1	67.9	76.4	75	74.4	91.1	103.2	98.7	87.1
Watauga	80.1	95.7	94.5	95.2	93	89	92.1	95	92.1	85.5	76.8
Wayne	67.3	68.8	69.3	67.8	73.1	76.2	88.6	88.6	88.8	80.2	78.6



**Opioid Prescribing Rates (prescriptions per 100 residents) By County, CDC: N.C. Residents, 2006-2016**

County	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	Rate										
Wilkes	119.6	112.4	109	109.4	110.4	109.9	108.4	105.4	100.2	97.4	91.4
Wilson	87.8	98.4	96.6	96.1	105.5	102.8	108.5	108.6	105.7	98.6	90.7
Yadkin	72.5	76.7	75.2	83.5	88.5	90.7	90.8	84.9	74.4	64.6	69.3
Yancey	110	115.7	128.9	134.9	112.1	96.2	95.3	121.1	111.6	109.4	98.7
<b>STATE</b>	<b>85.2</b>	<b>87.5</b>	<b>88.6</b>	<b>89.3</b>	<b>93.1</b>	<b>93.5</b>	<b>98.6</b>	<b>96.7</b>	<b>93.7</b>	<b>88.4</b>	<b>82.5</b>

These data are the rate of retail opioid prescriptions dispensed per 100 persons; from the CDC U.S. Prescribing Rates:

<https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html>

Notes: Data is from the CDC US Prescribing Rate Maps and is subject to change. Prescribing data source: QuintilesIMS Transactional Data Warehouse (TDW) 2006–2016. QuintilesIMS TDW is based on a sample of approximately 59,000 retail (non-hospital) pharmacies, which dispense nearly 88% of all retail prescriptions in the U.S. For this database, a prescription is an initial or refill prescription dispensed at a retail pharmacy in the sample, and paid for by commercial insurance, Medicaid, Medicare, or cash or its equivalent. Does not include mail order pharmacy data.



Crueger  
Dickinson



SIMMONS HANLY CONROY  
A NATIONAL LAW FIRM

VonBriesen  
vonBriesen & Roper, s.c. | Attorneys at Law

February 7, 2018

VIA EMAIL

Cumberland County

**RE:** *Engagement of Simmons Hanly Conroy LLC, Crueger Dickinson LLC, von Briesen & Roper, s.c., and Ward Black Law as Counsel in Relation to Claims Against Opioid Manufacturers*

Dear Cumberland County:

The purpose of this letter (“Engagement Letter”) is to set out in writing the terms and conditions upon which the law firms of Simmons Hanly Conroy LLC, Crueger Dickinson LLC, von Briesen & Roper, s.c., and Ward Black Law (collectively “Counsel”) will provide legal services to Cumberland County (“County”) in relation to the investigation and prosecution of certain claims against the following manufacturers and other parties involved with the manufacture of opioid medications: Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company, Inc., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., OrthoMcNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc. (collectively “Opioid Manufacturers”). Depending upon the results of initial investigations of the facts and circumstances surrounding the potential claim(s), there may be additional parties sought to be made responsible and/or certain of the aforementioned parties may be removed from the potential claim.

This Engagement Letter shall apply solely and exclusively to the services set forth herein in relation to the investigation and Lawsuit, as defined below. This Engagement Letter does not govern, nor does it apply to, any services of either Counsel unrelated thereto.

#### **SCOPE OF SERVICES**

Counsel will work with County in the collection of information necessary to form a good faith basis for filing a claim against the Opioid Manufacturers. County hereby authorizes Counsel to file a lawsuit against one or all of the Opioid Manufacturers (“Lawsuit”) upon the terms and conditions set forth herein.

#### **RESPONSIBILITIES**

Counsel will prosecute the Lawsuit with diligence and keep County reasonably informed of progress and developments, and respond to County’s inquiries. County understands and agrees that all fees paid to Counsel shall be as set forth in this Engagement Letter. County agrees to cooperate with Counsel in the gathering of information necessary to investigate and prosecute the Lawsuit. County further understands and agrees that the law firm of von Briesen & Roper, s.c., shall not be identified on any pleading as counsel of record for County in relation to the Lawsuit, but shall be available to assist County and Counsel in relation to the Lawsuit.

The following additional terms apply to the relationship between County and Counsel:

- A. Counsel shall remain sufficiently aware of the performance of one another and the performance to ascertain if each firm's handling of the Lawsuit conforms to the Rules of Professional Conduct. Counsel shall be available to County regarding any concerns on the part of County relating to the performance of Counsel. Counsel shall at all times remain ethically and financially responsible to the County for the services of Counsel set forth herein.
- B. As set forth below, County's responsibility for attorney fees and expenses is contingent upon the successful outcome of the Lawsuit, as further defined below. Counsel have agreed in writing as to the appropriate split of attorney fees and expenses. Specifically, in the event of a Recovery (as defined below), the attorney fees will be split between the law firms as follows:

<u>Firm Name</u>	<u>Percentage of Fees if Successful</u>
Ward Black Law	10%
von Briesen & Roper, s.c.	10%
Crueger Dickinson LLC	40%
Simmons Hanly Conroy LLC	40%

The split of attorneys' fees between Counsel may be subject to change. In the event of such an amendment, the County will be notified in writing of that amendment.

- C. Counsel and County understand and agree that Counsel will all be considered attorneys for County. As such, each and all of Counsel will adhere to the Rules of Professional Responsibility governing the relationship between attorney and client.

#### **ACTUAL AND POTENTIAL CONFLICTS OF INTEREST AND WAIVER OF CONFLICT**

As County is aware, Counsel contemplate entering into the same arrangement as that set forth in this Engagement Letter with other counties and municipalities in North Carolina and elsewhere. Counsel believe that the goals and objectives of County are aligned with the goals and objectives of all other counties and municipalities with respect to the Lawsuit. Counsel do not believe that to achieve the goals of the Lawsuit, either County or another county or municipality must take a position that is adverse to the interests of the other. However, to the extent any issue may arise in this matter about which County disagrees with another county or municipality, and one of you may wish to pursue a course that benefits one but is detrimental to the interest of the other, we cannot advise County or assist County or any other county or municipality in pursuing such a course. That is to say, Counsel cannot advocate for County's individual interests at the expense of the other counties or municipalities that Counsel represent in a Lawsuit. Counsel do not believe that this poses a problem because County's interests are currently aligned with the other counties and municipalities that are or may be in the Lawsuit. Counsel are confident that their representation of County will not be limited in this matter by representation of any other county or municipality, but County should consider these consequences of joint representation in deciding whether to waive this conflict.

In addition to the material limitation discussed above, there are other consequences for County in agreeing to joint representation. Because each county or municipality would be a client of Counsel, Counsel owe equal duties of loyalty and communication to each client. As such, Counsel must share all relevant information with all counties and municipalities who are clients in relation to the Lawsuit and Counsel cannot, at the request of one county or municipality, withhold relevant information from the other client. That is to say, Counsel cannot keep secrets about this matter among the counties and municipalities who are clients of Counsel with respect to the Lawsuit. Also, lawyers normally cannot be forced to divulge information about communications with their clients because it is protected by the attorney-client privilege. However, because County would be a joint client in the same matter with other counties and municipalities, it is likely that were there to be a future legal dispute between County and other counties or municipalities that engage Counsel about this matter, the attorney-client privilege would not apply, and each would not be able to invoke the privilege against the claims of the other.

Further, while County's position is in harmony with other counties and municipalities presently, and the conflict discussed above is waivable, facts and circumstances may change. For example, County may change its mind and wish to pursue a course that is adverse to the interests of another county or municipality and the conflict may become unwaivable. In that case, depending upon the circumstances, Counsel may have to withdraw from representing either County or another county or municipality and County would have to bear the expense, if County chooses, of hiring new lawyers who would have to get up to speed on the matter.

County is not required to agree to waive this conflict, and County may, after considering the risks involved in joint representation, decline to sign this Engagement Letter. By signing this Engagement Letter, County is signifying its consent to waiving the conflict of interest discussed herein.

Other than the facts and circumstances related to the joint representation of numerous counties and municipalities, Counsel are unaware of any facts or circumstances that would prohibit Counsel from providing the services set forth in this Engagement Letter. However, it is important to note that the law firm of von Briesen & Roper, s.c., is a relatively large law firm based in Wisconsin and represents many companies and individuals. It is possible that some present and future clients of von Briesen & Roper, s.c., will have business relationships and potential or actual disputes with County. von Briesen & Roper, s.c., will not knowingly represent clients in matters that are actually adverse to the interests of County without County's permission and informed consent. von Briesen & Roper, s.c., respectfully requests that County consent, on a case by case basis, to von Briesen & Roper, s.c.'s representation of other clients whose interests are, or maybe adverse to, the interests of County in circumstances where County has selected other counsel and where von Briesen & Roper, s.c., has requested a written conflict waiver from County after being advised of the circumstances of the potential or actual conflict and County has provided informed consent.

## **FEES FOR LEGAL SERVICES AND RESPONSIBILITY FOR EXPENSES**

### **A. Calculation of Contingent Fee**

There is no fee for the services provided herein unless a monetary recovery acceptable to County is obtained by Counsel in favor of County, whether by suit, settlement, or otherwise ("Recovery"). County understands and agrees that a Recovery may occur in any number of different fashions such as final judgment in the Lawsuit, settlement of the Lawsuit, or appropriation to County following a nationwide settlement or extinguishing of claims in lawsuits and matters similar to the Lawsuit. Counsel agree to advance all costs and expenses of Counsel, and the Lawsuit associated with investigating and prosecuting the Lawsuit provided, however, that the costs and expenses associated

with County cooperating with Counsel in conjunction with the Lawsuit and otherwise performing its responsibilities under this Engagement Letter are the responsibility of County. In consideration of the legal services to be rendered by Counsel, the contingent attorneys' fees for the services set forth in this Engagement Letter shall be a gross fee of 25% of the Recovery, which sum shall be divided among Counsel as set forth in the above chart.

Upon the application of the applicable fee percentage to the gross Recovery, and that dollar amount set aside as attorneys' fees to Counsel, the amount remaining shall first be reduced by the costs and disbursements that have been advanced by Counsel, and that amount shall be remitted to Counsel. By way of example only, if the gross amount of the Recovery is \$1,000,000.00, and costs and disbursements are \$100,000.00, then the fee to Counsel shall be \$250,000, the costs amount of \$100,000 shall be deducted from the balance of \$750,000.00, and the net balance owed to County shall be \$650,000. The costs and disbursements which may be deducted from a Recovery include, but are not limited to, the following, without limitation: court fees, process server fees, transcript fees, expert witness fees and expenses, courier service fees, appellate printing fees, necessary travel expenses of attorneys to attend depositions, interview witnesses, attend meetings related to the scope of this Engagement Letter and the like, and other appropriate matter related out-of-pocket expenses. In the event that any Recovery results in a monetary payment to County that is less than the amount of the costs incurred and/or disbursements made by Counsel, County shall not be required to pay Counsel and any more than the sum of the full Recovery.

B. Nature of Contingent Fee

No monies shall be paid to Counsel for any work performed, costs incurred or disbursements made by Counsel in the event no Recovery to County has been obtained. In the event of a loss at trial due to an adverse jury verdict or a dismissal of the Lawsuit by the court, no monies shall be paid to Counsel for any work performed, costs incurred or disbursements made by Counsel. In such an event, neither party shall have any further rights against the other.

C. Disbursement of Recovery Proceeds to County

The proceeds of any Recovery on County's behalf under the terms of this Engagement Letter shall be disbursed to County as soon as reasonably practicable after receipt by Counsel. At the time of disbursement of any proceeds from a Recovery, County will be provided with a detailed disbursement sheet reflecting the method by which attorney's fees have been calculated and the expenses of litigation that are due to Counsel from such proceeds. Counsel are authorized to retain out of any moneys that may come into their hands by reason of their representation of County the fees, costs, expenses and disbursements to which they are entitled as determined in this Engagement Letter.

**TERMINATION OF REPRESENTATION**

This Engagement Letter shall cover the period from the date first indicated below until the termination of the legal services rendered hereunder, unless earlier terminated as provided herein. This Engagement Letter may be terminated by County at any time, and in the event of such termination, neither party shall have any further rights against the other, except that in the event of a Recovery by County against the Opioid Manufacturers subsequent to termination, Counsel shall have a statutory lien on any such recovery as provided by applicable law and further maintain rights in the nature of *quantum meruit* to recover fees, costs and expenses reasonably allocable to their work prior to termination. Counsel may withdraw as County's attorneys at any time for the following reasons:

- A. If Counsel determine, in their sole discretion, that County's claim lacks merit or that it is not worthwhile to pursue the Lawsuit further; or
- B. For Good Cause. For purposes of this Paragraph, Good Cause may include County's failure to honor the terms of the Engagement Letter, County's failure to follow Counsel's advice on a material matter, or any fact or circumstance that would, in the view of Counsel, impair an effective attorney-client relationship or would render continuing representation unlawful or unethical. If terminated for Good Cause, County will take all steps necessary to free Counsel of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete withdrawal provided, however, that Counsel shall have a statutory lien on any Recovery as provided by applicable law and further maintain rights in the nature of *quantum meruit* to recover fees, costs and expenses reasonably allocable to their work prior to termination.

#### **SETTLEMENT**

County has the authority to accept or reject any final settlement amount after receiving the advice of Counsel. County understands settlements are a "compromise" of its claim(s), and that Counsel's fee, as set forth above, applies to settlements also. For example, if a settlement is reached, and includes future or structured payments, Counsel's fee shall include its contingent portion of those future or structured payments.

#### **NO GUARANTEE OF RECOVERY**

County understands and acknowledges that dispute resolution through litigation often takes years to achieve. County understands and acknowledges that there is no guarantee or assurances of any kind regarding the likelihood of success of the Lawsuit, but that Counsel will use their skill, diligence, and experience to diligently pursue the Lawsuit.

#### **LIMITED LIABILITY**

von Briesen & Roper, s.c., and Crueger Dickinson LLC are limited liability entities under Wisconsin law. This means that if Counsel fails to perform duties in the representation of County and that failure causes County damages, the firms comprising Counsel and the shareholder(s) or principals directly involved in the representation may be responsible to County for those damages, but the firm's other shareholders or principals will not be personally responsible. Counsel's professional liability insurance exceeds the minimum amounts required by the Wisconsin Supreme Court for limited liability entities of similar size.

#### **COMMUNICATION BY E-MAIL**

Counsel primarily communicates with its clients via unencrypted internet e-mail, and this will be the way in which communications occur with County. While unencrypted e-mail is convenient and fast, there is risk of interception, not only within internal networks and the systems used by internet service providers, but elsewhere on the internet and in the systems of our clients and their internet service providers.

### **FILE RETENTION AND DESTRUCTION**

In accordance with Counsel's records retention policy, most paper and electronic records maintained are subject to a 10-year retention period from the last matter activity date or whatever date deemed appropriate. Extended retention periods may apply to certain types of matters or pursuant to County's specific directives.

After the expiration of the applicable retention period, Counsel will destroy records without further notice to County, unless County otherwise notifies in writing.

### **MISCELLANEOUS**

This Engagement Letter shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to conflicts of law rules. In the event of any dispute arising out of the terms of this Engagement Letter, venue for any such dispute shall be exclusively designated in the state or federal courts of North Carolina.

It is expressly agreed that this Engagement Letter represents the entire agreement of the parties, that all previous understandings are merged in this Engagement Letter, and that no modification of this Engagement Letter shall be valid unless written and executed by all parties.

It is expressly agreed that if any term or provision of this Engagement Letter, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Engagement Letter, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby; and every other term and provision of this Engagement Letter shall be valid and shall be enforced to the fullest extent permitted by law.

The parties acknowledge that they have carefully read and fully understand all of the provisions of this Engagement Letter, and that they have the capacity to enter into this Engagement Letter. Each party and the person signing on behalf of each party, represents that the person signing this Engagement Letter has the authority to execute this document and thereby bind the party hereto on whose behalf the person is signing. Specifically, County acknowledges that it is bound by this Engagement Letter, has satisfied all conditions precedent to execution of this Engagement Letter and will execute all the necessary documents that may be required by its governing statutes and/or code.

### **CONCLUSION**

Counsel are pleased to have this opportunity to be of service to County. If at any time during the course of representation you have any questions or comments about our services or any aspect of how we provide services, please don't hesitate to call one or all of the individuals listed below.

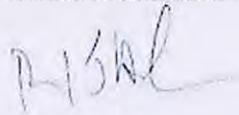
Very truly yours,

**CRUEGER DICKINSON LLC**



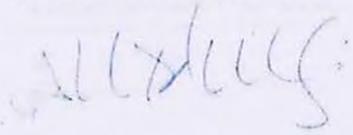
Erin K. Dickinson

**SIMMONS HANLY CONROY LLC**



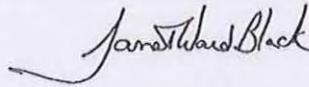
Paul J. Hanly

**von BRIESEN & ROPER, s.c.**



Andrew T. Phillips

**WARD BLACK LAW**



Janet Ward Black

CUMBERLAND COUNTY agrees to retain the services of Counsel all upon the terms and conditions specified above.

By:

Title:

Date:

RESOLUTION NO. \_\_\_\_\_

TO THE HONORABLE BOARD OF COMMISSIONERS OF CUMBERLAND COUNTY

**WHEREAS**, Cumberland County ("County") is concerned with the recent rapid rise in troubles among County citizens, residents, and visitors in relation to problems arising out of the use, abuse and overuse of opioid medications, which according to certain studies, impacts millions of people across the country; and

**WHEREAS**, issues and concerns surrounding opioid use, abuse and overuse by citizens, residents and visitors are not unique to County and are, in fact, issues and concerns shared by all other counties in North Carolina and, for that matter, states and counties across the country, as has been well documented through various reports and publications, and is commonly referred to as the Opioid Epidemic ("Opioid Epidemic"); and

**WHEREAS**, the societal costs associated with the Opioid Epidemic are staggering and, according to the Centers for Disease Control and Prevention, amount to over \$75 billion annually; and

**WHEREAS**, the National Institute for Health has identified the manufacturers of certain of the opioid medications as being directly responsible for the rapid rise of the Opioid Epidemic by virtue of their aggressive and, according to some, unlawful and unethical marketing practices; and

**WHEREAS**, certain of the opioid manufacturers have faced civil and criminal liability for their actions that relate directly to the rise of the Opioid Epidemic; and

**WHEREAS**, County is informed and believes that the Opioid Epidemic has substantially impacted the need for and use of programs administered by the County's Department of Social Services for children whose parent or parents are addicted to opioids; for the treatment and medical care of opioid-addicted detainees held in the County's Detention Center; for the response of law enforcement and emergency medical personnel to persons in a medical crisis resulting from the use of opioids; for the health care services and medications provided by the County's Department of Public Health to persons suffering from addiction to opioids or seeking treatment; for the mental health and substance abuse services for opioid-addicted persons funded by the County through its Managed Care Organization; and for a myriad of other programs and services such as housing, job training and pre-trial release programs for persons whose lives have been reduced to crisis circumstances because of addiction to opioids; and

**WHEREAS**, County is responsible for a multitude of programs and services, all of which require County to expend resources generated through state and federal aid, property tax levy, fees and other permissible revenue sources; and

**WHEREAS**, the need for County to provide these programs and services shall continue for years to address the long-term impacts of the Opioid Epidemic, particularly for growing numbers of children who have lost their parents, grandparents and other family members to the ravages of this Epidemic; and

**WHEREAS**, all sums that County expends in addressing, combatting and otherwise dealing with the Opioid Epidemic are sums that cannot be used for other critical programs and services that County provides to County citizens, residents and visitors; and

**WHEREAS**, County has been informed that numerous counties and states across the country have filed or intend to file lawsuits against certain of the opioid manufacturers in an effort to force the persons and entities responsible for the Opioid Epidemic to assume financial responsibility for the costs associated with addressing, combatting and otherwise dealing with the Opioid Epidemic; and

**WHEREAS**, County has engaged in discussions with representatives of the law firms of Crueger Dickinson LLC, Simmons Hanly Conroy LLC, and von Briesen & Roper, s.c., (the "Law Firms") related to the potential for County to pursue certain legal claims against certain opioid manufacturers; and

**WHEREAS**, County has been informed that the Law Firms have the requisite skill, experience and wherewithal to prosecute legal claims against certain of the opioid manufacturers on behalf of public entities seeking to hold them responsible for the Opioid Epidemic; and

**WHEREAS**, the Law Firms have proposed that County engage the Law Firms to prosecute the aforementioned claims on a contingent fee basis whereby the Law Firms would not be compensated unless County receives a financial benefit as a result of the proposed claims and the Law Firms would advance all claim-related costs and expenses associated with the claims; and

**WHEREAS**, all of the costs and expenses associated with the claims against certain of the opioid manufacturers would be borne by the Law Firms; and

**WHEREAS**, the Law Firms have prepared an engagement letter, which is submitted as part of this Resolution ("Engagement Letter") specifying the terms and conditions under which the Law Firms would provide legal services to County and otherwise consistent with the terms of this Resolution; and

**WHEREAS**, County is informed that the North Carolina Counties Association has engaged in extensive discussions with the Law Firms and has expressed a desire to assist the Law Firms, County and other counties in the prosecution of claims against certain of the opioid manufacturers; and

**WHEREAS**, County would participate in the prosecution of the claim(s) contemplated in this Resolution and the Engagement Letter by providing information and materials to the Law Firms and, as appropriate, the North Carolina Counties Association as needed; and

**WHEREAS**, County believes it to be in the best interest of County, its citizens, residents, visitors and taxpayers to join with other counties in and outside North Carolina in pursuit of claims against certain of the opioid manufacturers, all upon the terms and conditions set forth in the Engagement Letter; and

**WHEREAS**, by pursuing the claims against certain of the opioid manufacturers, County is attempting to hold those persons and entities that had a significant role in the creation of the Opioid Epidemic responsible for the financial costs assumed by County and other public agencies across the country in dealing with the Opioid Epidemic.

**NOW, THEREFORE, BE IT RESOLVED:**

County authorizes, and agrees to be bound by, the Engagement Letter and hereby directs the appropriate officer of the County to execute the Engagement Letter on behalf of the County; and

**BE IT FURTHER RESOLVED:**

County shall endeavor to faithfully perform all actions required of County in relation to the claims contemplated herein and in the Engagement Letter and hereby directs all County personnel to cooperate with and assist the Law Firms in relation thereto.

The County Clerk shall forward a scanned copy of this Resolution, together with the signed Engagement Letter, to the Law Firms at Krista Baisch, Crueger Dickinson LLC, 4532 N. Oakland Ave., Whitefish Bay, WI 53211 via email to [kkb@cruegerdickinson.com](mailto:kkb@cruegerdickinson.com).

Respectfully submitted this \_\_\_\_\_ day of February 2018.

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RESOLUTION # \_\_\_\_\_

Resolution Supporting Legal Action Regarding the Opioid Crisis

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- WHEREAS, Buncombe County is in the midst of an opioid crisis that is taking an enormous toll on the people and families of Buncombe County, as well as impacting Law Enforcement, Emergency Management, and Health and Human Services with significant increased demand for services; and
- WHEREAS, over seventeen million opioid prescription pills were dispensed in 2016 to Buncombe County residents resulting in increased numbers of overdoses; and
- WHEREAS, over seventy percent of children entering foster care enter as a result of substance use by a parent or parents; and
- WHEREAS, the fiscal impact to Buncombe County related to health care costs, jail administration and incarceration, emergency management services, child welfare, and public assistance will likely exceed \$19 Million dollars in federal, state, and county funding; and
- WHEREAS, beyond the fiscal impact, the human impact of this epidemic on the parents, spouses, children, siblings, and friends who have witnessed and experienced the suffering – and all too often the loss of life – of a loved one is beyond measure. The loss of the gifts and talents of those individuals to their families, communities, and employers remains forever; and
- WHEREAS, treatment options for people with substance use disorders are limited, particularly for the under and uninsured; and
- WHEREAS, the usage of Narcan by EMS increased to nearly 500 incidents in 2016 with nearly 800 inmates on a detox protocol in the jail; and
- WHEREAS, several units of local government across the nation have filed lawsuits against prescription pain manufacturers in an effort to hold the same accountable for their role in the opioid epidemic; and
- WHEREAS, the North Carolina Attorney General is working with a bipartisan coalition of a majority of the state Attorneys General across the country in an ongoing investigation to evaluate whether manufacturers have engaged in unlawful practices in the marketing and sale of opioids; and
- WHEREAS, such investigations are sometimes a precursor to litigation, which could be an appropriate avenue for the recovery of damages for Buncombe County; and
- WHEREAS, Buncombe County strongly believes that it may be entitled to recovery against painkiller manufacturers and wishes to pursue recovery in the most efficient way possible. It further believes that the state is in the best position to efficiently procure such a result; however, the County is willing to proceed on its own if any action or inaction by the state does not appropriately address its concerns.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That it supports the state of North Carolina's involvement in the bipartisan coalition of the majority of states across the country investigating whether prescription painkiller manufacturers have engaged in unlawful practices in the marketing and sale of opioids.

2. That it recommends legal action be taken and compensation be sought by the state of North Carolina on behalf of North Carolina counties if it is found that painkiller manufacturers have engaged in unlawful practices in the marketing and selling of opioids.
3. That, notwithstanding its recommendation above, the County of Buncombe intends to investigate the feasibility of taking legal action itself against prescription painkiller manufacturers.
4. That the Buncombe County Legal Department is instructed to monitor the ongoing investigation by the State and evaluate its effect on the County, to investigate the feasibility of joining any lawsuits or potential lawsuits, to publish a Request for Information seeking an attorney(s) and/or law firm(s) competent to handle any litigation the County might pursue and to report the findings to the County Manager.
5. That, by and with the consent of the County Legal Department, County staff is hereby instructed to proceed with this undertaking and all acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.
6. That the Chairman and County Manager, or either of them, or their designee, are hereby authorized to execute such documents as may be required to effect the purposes and intents of this resolution and to interview prospective law firms that respond to the aforementioned Request for Information.
7. That this resolution shall become effective upon its adoption.

This the \_\_\_\_ of \_\_\_\_\_, 2017.

ATTEST

BOARD OF COMMISSIONERS FOR THE  
COUNTY OF BUNCOMBE

\_\_\_\_\_  
Kathy Hughes, Clerk

By: \_\_\_\_\_  
Brownie Newman, Chairman

APPROVED AS TO FORM

\_\_\_\_\_  
County Attorney

AMY H. CANNON  
County Manager

MELISSA C. CARDINALI  
Assistant County Manager



**CUMBERLAND**  
★ **COUNTY** ★  
NORTH CAROLINA

ITEM NO. 6.

DUANE T. HOLDER  
Assistant County Manager

TRACY JACKSON  
Assistant County Manager

SALLY S. SHUTT  
Assistant County Manager

## OFFICE OF THE COUNTY MANAGER

### MEMO FOR THE AGENDA OF THE MARCH 1, 2018 MEETING OF THE FINANCE COMMITTEE

**TO:** FINANCE COMMITTEE MEMBERS  
**FROM:** SALLY SHUTT, ASSISTANT COUNTY MANAGER  
**THROUGH:** MELISSA CARDINALI, ASSISTANT COUNTY MANAGER  
**DATE:** FEBRUARY 21, 2018  
**SUBJECT:** CONSIDERATION OF PURSUING LEGISLATION TO ESTABLISH  
COUNTY SMALL BUSINESS ENTERPRISE PROGRAM

**Requested by:** Commissioner Glenn Adams  
**Presenter(s):**  
**Estimate of Committee Time Needed:** 15 minutes

**BACKGROUND:** The Board of Commissioners will meet with the N.C. Legislative Delegation on March 9 at 8:30 a.m. in Room 119 of the Judge E. Maurice Braswell Courthouse. Commissioners were asked to submit items they wanted included on the state legislative agenda.

Commissioner Jimmy Keefe requested that the County discuss pursuing legislative action that mirrors House Bill 198/Session Law 2017-81 – “An Act to Amend the Charter of the City of Fayetteville to Authorize the City to Establish a Small Business Enterprise Program to Promote the Development of Small Businesses in the City and Enhance the Opportunities for Small Businesses to Participate in City Contracts.”

The item below was included in a DRAFT 2018 State Legislative Agenda approved by the Policy Committee on Feb. 15, 2018; and appeared on the consent agenda for the Board of Commissioners meeting on Feb. 19, 2018.

*Consider pursuing legislative action to allow Cumberland County the flexibility to participate with local companies and vendors through a small business enterprise program like the legislative action approved last year for the City of Fayetteville. (Session Law 2017-81)*

Commissioner Adams asked that the small business enterprise program item be removed from the State Legislative Agenda and referred to the Finance Committee on March 1 for consideration prior to discussing with the legislative delegation.

A copy of the City's legislation, which was ratified on June 29, 2017, is attached, along with information on how the City has implemented their program. The information includes a presentation by the School of Government on "Local Preferences in Public contracting: Legal Limitations and HB198 and the resolution establishing the Small Local Business Enterprise Program.

**RECOMMENDATION/PROPOSED ACTION:** Consider whether Cumberland County should pursue legislative action to allow it the flexibility to participate with local companies and vendors through a small business enterprise program.

**TO:** Mayor and Members of City Council

**THRU:** Doug Hewett, City Manager

**FROM:** Bob Morgan, Interim Projects Manager and Kim Toon, Purchasing Manager

**DATE:** August 7, 2017

**RE:** Strategy for Supporting Small Local Business Enterprises

**COUNCIL DISTRICT(S):** City Wide

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**Relationship To Strategic Plan:**

Strong, Diverse, and Viable Local Economy

**Executive Summary:**

The City Council has taken several actions to increase the number of City contracts with small local businesses. On June 28, 2017 the General Assembly adopted House Bill 198 guided through the legislature by Senator Ben Clark. The City Administration has put together a single strategy to support small local businesses combining the Council's actions to date and to be in compliance with State Law.

**Background:**

The City aspires to spend 40% of eligible contract dollars with small local businesses. The challenge is that local governments can only do those things the legislature specifies it can do. The City is required to award contracts to the lowest, responsible, and responsive bidder. H.B. 198 does allow the City to establish bid and proposal specifications that include contracting goals and good faith effort requirements to enhance participation of small local businesses in Cumberland and Hoke Counties. The City has the authority to refuse to award a contract to a bidder if it determines the bidder has failed to comply with small business enterprise program requirements of H.B. 198. The City would then award the contract to the next lowest, responsible and responsive bidder if it met the requirements of the small business enterprise program.

The attached strategy would implement the City's approach to supporting small local business enterprises. It also establishes the goal of 10% for construction and repair contract dollars going to small local businesses. The City would also comply with State procurement statutes relative to minority, disadvantaged and historically underutilized businesses.

The City Purchasing Division will track dollars spent by the following business categories: local, local small, local disadvantage, and local veteran. A report will be

submitted twice a year to inform Council on progress to meet the 40% threshold by these categories. i

**Issues/Analysis:**

The General Assembly decides what authority it desires local governments to have. State purchasing laws are intended to be restrictive. With H.B. 198 the City has more authority than other local government jurisdictions.

**Budget Impact:**

The proposed strategy can be achieved within current resources. Implementing this strategy will affect the workloads of Purchasing and the Department of Community Development...

**Options:**

The Council may choose to adopt or not adopt the strategy or provide further guidance to the City Administration on the topic.

**Recommended Action:**

It is recommended that the Council adopt the strategy for Supporting Small Local Business Enterprises which will supersede previous actions by the City Council on this topic.

**Attachments:**

Memo on Small Local Business Enterprises, A Strategy for Supporting Small Local Business Enterprises, H.B.198 and Norma Houston's power point presentation.



*Local Preferences in Public Contracting:  
Legal Limitations and HB198*

Norma Houston

Fayetteville City Council Workshop

August 7, 2017

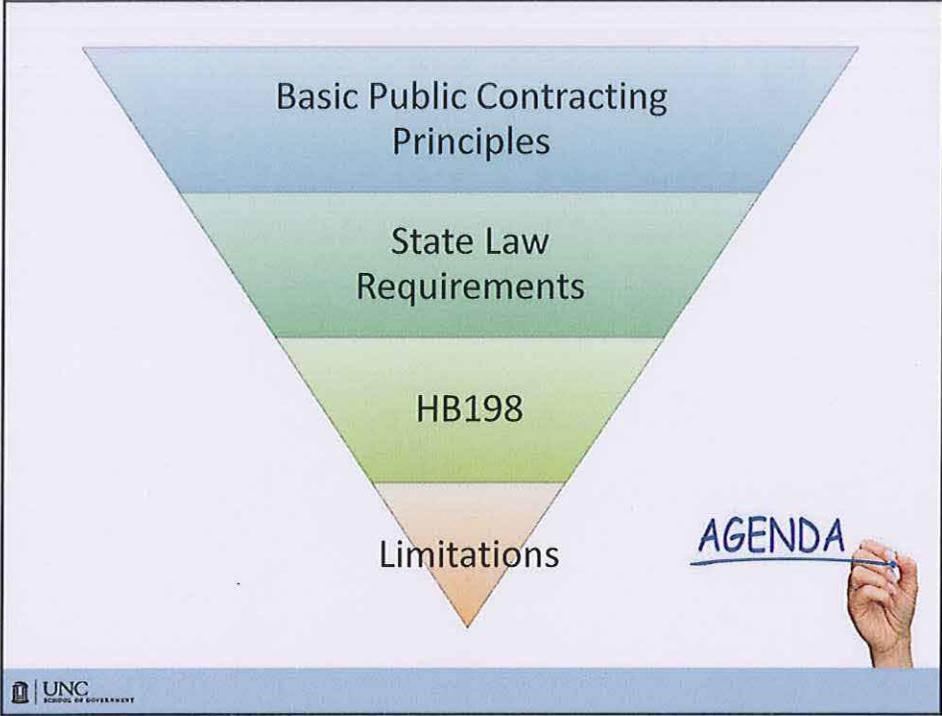


PUT YOUR \$  
WHERE  
YOUR ♥ IS  
BUY LOCAL

BUY LOCAL

BUY LOCAL

Fayetteville  
North Carolina



**BASIC PUBLIC CONTRACTING PRINCIPLES**

Acquisitions  
Contracts  
Bids  
Buying  
P-Card  
Analysis  
Supplies  
Proposals  
Best Practices  
Vendor  
Invitations  
Negotiation  
Projects  
Quotes  
Purchase Order

**PURCHASING**



## Local Government Authority



North Carolina



## Statutory Requirements

### Article 8. Public Contracts.

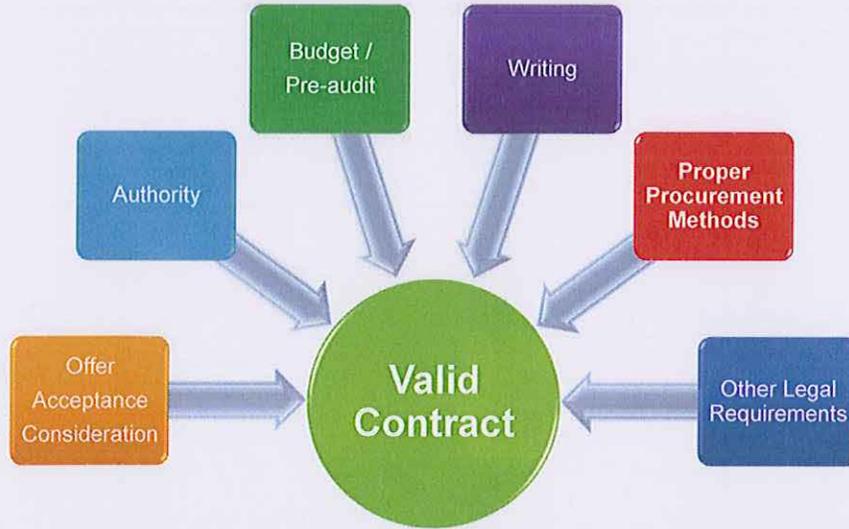
#### § 143-129. Procedure for letting of public contracts.

(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than five hundred thousand dollars (\$500,000) or purchase of apparatus, supplies, materials, or equipment requiring the estimated expenditure of public money in an amount equal to or more than ninety thousand dollars (\$90,000) may be performed or any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with; provided that The University of North Carolina and its constituent institutions may award contracts for construction or repair work that requires an estimated expenditure of public money of less than five hundred thousand dollars (\$500,000) without complying with the provisions of this section.

#### § 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

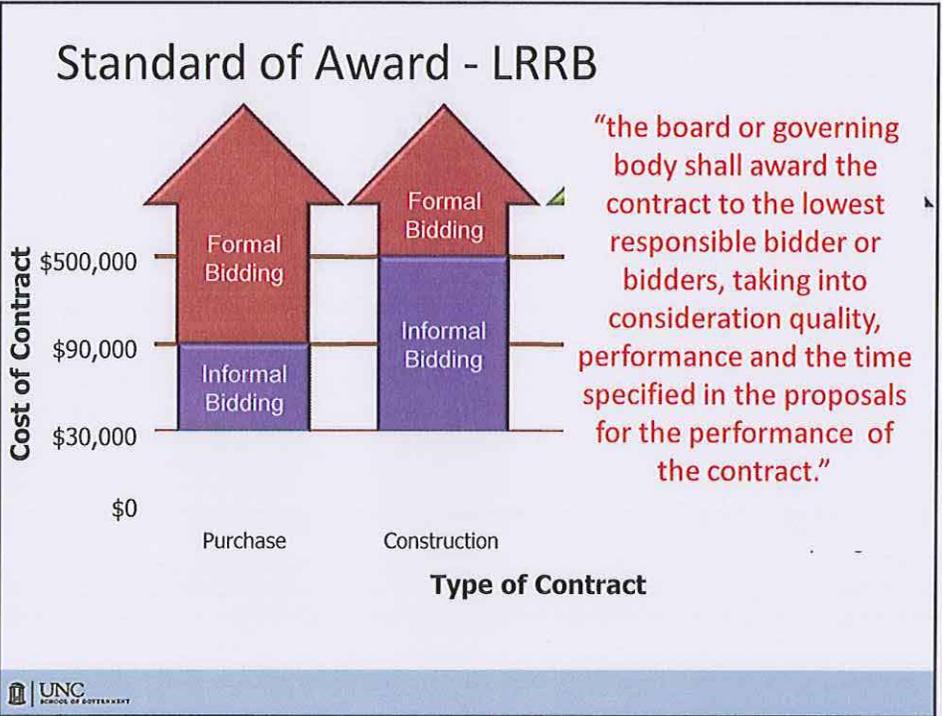
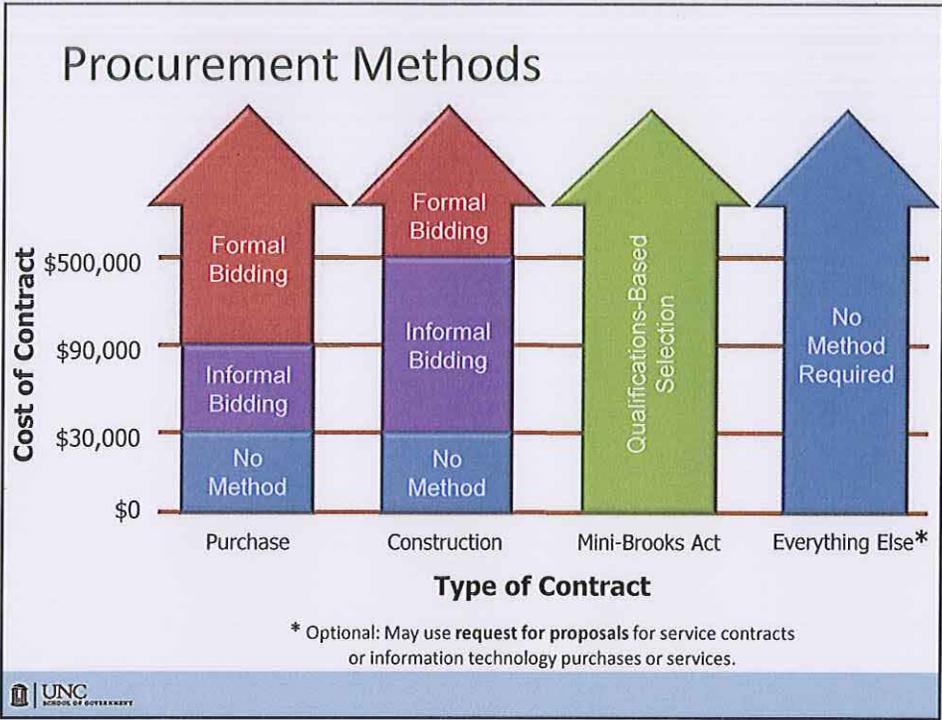
(a) All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment requiring the expenditure of public money in the amount of thirty thousand dollars (\$30,000) or more, but less than the amount specified in § 143-129, made by any officer, department, board, local school administrative unit, or commission of any subdivision of this State shall be made after informal bids have been secured. All such contracts shall be made by the responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the contract. It shall be the duty of any officer, department, board, local school administrative unit, or commission to secure the best value for the State.

## What is a Valid **Public** Contract?



## Legal Requirements Violated

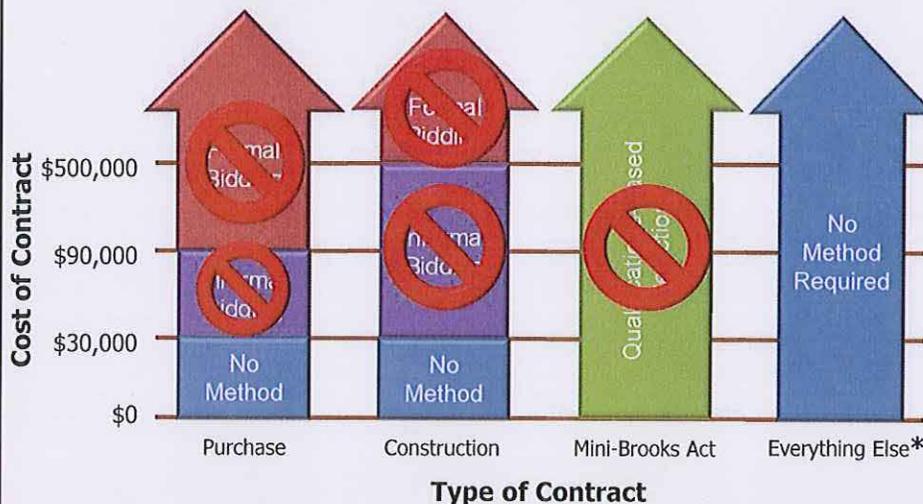




## Standard of Award – Best Qualified



## Local Preferences Prohibited



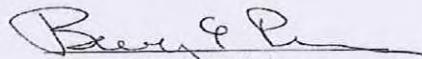
\* Optional: May use request for proposals for service contracts or information technology purchases or services.

## What about Executive Order 50?

2. I particularly direct the Secretary of Administration, through the authority given to him by the General Assembly pursuant to N.C. Gen. Stat. § 143-59, to develop a price-matching preference for North Carolina resident bidders on contracts for the purchase of goods so that qualified North Carolina companies whose price is within five percent (5%) or \$10,000.00 of the lowest bid, whichever is less, may be awarded contracts with the State of North Carolina.
3. The Secretary of Administration shall take all appropriate steps to implement the terms of this Executive Order, consistent with the terms of N.C. Gen. Stat. § 143-59, and apply them to invitations for bids from the State of North Carolina by no later than March 1, 2010.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventeenth day of February in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fourth.



  
Beverly Haves Perdue

# HB198



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

SESSION LAW 2017-81  
HOUSE BILL 198

AN ACT TO AMEND THE CHARTER OF THE CITY OF FAYETTEVILLE TO AUTHORIZE THE CITY TO ESTABLISH A SMALL BUSINESS ENTERPRISE PROGRAM TO PROMOTE THE DEVELOPMENT OF SMALL BUSINESSES IN THE CITY AND TO ENHANCE THE OPPORTUNITIES FOR SMALL BUSINESSES TO PARTICIPATE IN CITY CONTRACTS AND

## What HB198 Authorizes

- ✓ **WHAT:** Establish “Small Business Enterprise” Program
- ✓ **WHY:** To promote small businesses & enhance their participation in City contracts
- ✓ **WHERE:** Within Fayetteville Metropolitan Statistical Area
- ✓ **WHO:** City defines “Small Business Enterprise”
- ✓ **WHO:** Must be race- and gender-neutral
- ✓ **HOW:** City sets participation goals and subcontracting goals
- ✓ **HOW:** City sets good-faith effort requirements
- ✓ **HOW:** City may reject bidder for failure to comply with good-faith efforts (bid is non-responsive)

## LIMITATIONS

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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AN ACT TO AMEND THE CHARTER OF THE CITY OF FAYETTEVILLE TO AUTHORIZE THE CITY TO ESTABLISH A SMALL BUSINESS ENTERPRISE PROGRAM TO PROMOTE THE DEVELOPMENT OF SMALL BUSINESSES IN THE CITY AND TO ENHANCE THE OPPORTUNITIES FOR SMALL BUSINESSES TO PARTICIPATE IN CITY CONTRACTS AND

## What HB198 Does **NOT** Authorize

- ✗ Not a quota system
  - goals are aspirational
  - Cannot reject for failure to meet goals
- ✗ Does not override legal standard of award
  - May reject for failure to comply with good faith efforts (non-responsive bid), but cannot award to local business simply because local
- ✗ Must be race- and gender-neutral
- ✗ Does not override state HUB requirements
  - State HUB requirements still apply
  - State HUB goals supersede SBE goals

## Federal Grants

### Federal Uniform Rules:

“Non-federal entities must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed State, local or tribal geographical preferences in the evaluation of bids or proposals...”

2 CFR § 200.319(b)

# Procurement Administration

## City of Fayetteville North Carolina Organizational Chart



# Thank You!



Norma Houston  
UNC School of Government  
[nhouston@sog.unc.edu](mailto:nhouston@sog.unc.edu)

**TO:** Mayor and Members of City Council

**THRU:** Doug Hewett, City Manager

**FROM:** Bob Morgan, Interim Projects Manager and Kim Toon, Purchasing Manager

**DATE:** August 28, 2017

**RE:** Resolution Establishing a Small Local Business Enterprise Program

**COUNCIL DISTRICT(S):** City Wide

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**Relationship To Strategic Plan:**

Strong, Diverse, and Viable Local Economy

**Executive Summary:**

The City Council has taken several actions to increase the number of City contracts with local businesses. On June 28, 2017 the General Assembly adopted House Bill 198 guided through the legislature by Senator Ben Clark and the rest of the delegation. The City Administration has put together a resolution establishing a small local business program that combines the Council's actions to date and complies with State Law. Some minor changes have been included in the resolution to reflect discussions with the Council at the August 7, 2017 work session.

**Background:**

The City aspires to spend 40% of its total contract dollars with local businesses. The challenge is that local governments can only do those things the legislature specifies it can do. The City is required to award contracts to the lowest, responsible, and responsive bidder. H.B. 198 does allow the City to establish bid and proposal specifications that include contracting goals and good faith effort requirements to enhance participation of small local businesses in construction and repair contracts. The City has the authority to refuse to award a contract to a bidder if it determines the bidder has failed to comply with small business enterprise program requirements of H.B. 198. The City would then award the contract to the next lowest, responsible and responsive bidder if it met the requirements of the small business enterprise program.

The attached resolution would implement the City's approach to supporting small local business enterprises. It would also establish the goal of 10% for construction and repair contract dollars going to small local businesses. The City would also comply with state and federal procurement statutes and regulations relative to minority, disadvantaged and historically underutilized businesses.

This program would be available to all local businesses if they meet the definition for a small business. The City Purchasing Division will track dollars spent by the following business categories: local, local small, local disadvantage, local minority and local veteran. A report will be submitted twice a year to inform Council on progress to meet the 40% threshold by these categories. |

**Issues/Analysis:**

The General Assembly decides what authority it desires local governments to have. State purchasing laws are intended to be restrictive. With H.B. 198 the City has more authority than other local government jurisdictions.

**Budget Impact:**

The proposed program can be achieved within current resources. Implementing this strategy will affect the workloads of Purchasing and the Department of Community Development...

**Options:**

The Council may choose to adopt or not adopt the resolution or provide further guidance to the City Administration on the topic.

**Recommended Action:**

It is recommended that the Council adopt the Resolution for Establishing a Small Local Business Enterprise program which will supersede previous actions by the City Council relative to purchasing from local, small, disadvantaged, minority and veteran businesses.

**Attachments:**

Resolution for Establishing a Small Local Business Enterprise Program,

**RESOLUTION ESTABLISHING A SMALL LOCAL BUSINESS ENTERPRISE PROGRAM**

WHEREAS, the City of Fayetteville is fully committed to provide Small Local Business Enterprises (SLBE's) an equal opportunity to participate in all aspects of City contracting including but not limited to participation in the procurement of contracts relating to the construction and improvements to facilities throughout the City; and

WHEREAS, the City of Fayetteville is fully committed to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race ,sex, color, religion or national origin and will conduct its contracting and purchasing programs so as to prevent such discrimination; and

WHEREAS, the City of Fayetteville is also committed to follow all applicable State and Federal law as they relate to procurement practices; and

WHEREAS, in 2017 the General Assembly amended the City Charter to allow the City to establish a race and gender neutral small business enterprise program to promote the development of small business enterprises.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fayetteville, North Carolina in accordance with applicable federal and state laws:

1. That the City of Fayetteville is fully committed to ensuring local businesses have an equal opportunity to participate in the procurement of contracts with the City and aspire to reach 40% of City purchasing dollars go to local businesses; and
2. That the City is further committed to ensuring that small local businesses have an equal opportunity to participate in the procurement of contracts relating to the construction and repair to facilities throughout the city by establishing a good faith effort goal of 10%.
3. That as allowed by applicable federal and state laws, the City of Fayetteville will do the following:
  - A. Actively seek and identify qualified Small Local Business Enterprises (SLBE's) to create a data base.
  - B. Offer regular training to SLBE's on how to participate and compete for City of Fayetteville contracts.

- C. Post on the City website upcoming informal and formal biddings or proposals at least seven business days prior to taking bids or proposals unless there is an emergency.
- D. Train departmental staff to improve awareness of local vendors and the commodities and services they provide.
- E. Provide one-on-one consultation with SLBE's about the City's procurement process.
- F. Track purchasing contracts by local, local small, local disadvantaged, local minority and local veteran categories and report to Council twice a year.
- G. Make construction plans, specification and requirements available for review ten business days prior to bidding unless an emergency.
- H. Work with City Departments to discuss the de bundling of contracts into economical feasible units to facilitate SLBE's participation.
- I. Identify low risk contracts to ease bond and insurance requirements as well as assist through City partners in getting required bonding or insurance for subcontractors.
- J. Ensure all parties negotiate in good faith with interested SLBE's and not just rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a SLBE will be documented in writing as part of the good faith effort requirements for construction and repair bids.
- K. Implement programs to assist qualified SLBE's in seeking equipment loan capital, lines of credit or joint payment agreement to secure loans, supplies or letter of credit whenever possible.
- L. Encourage in developing joint venture and partnership arrangements for SLBE's in order to increase opportunities and participation.
- M. Assist in developing quick pay agreements and policies to enable SLBE's to meet cash flow demands.
- N. Assist SLBE's in establishing credit.
- O. Use the following program definitions:

- 1) Local Business: a business that pays personal or real property taxes in either Cumberland or Hoke Counties and have their principle place of business in either county or employs at least two residents from either county and has a place of business in either county.
- 2) Small Business: as identified in the Small Business Administration's Table of Small Business Size Standards.
- 3) Minority Business: This is for profit business concern where a minority (Black, Hispanic, Asian American, American Indian, Female and Disabled) person owns at least 51% interest/ownership and also controls management and daily business operations.
- 4) Disadvantaged Business: This is for profit business concern where social and economically disadvantaged persons own at least 51% interest/ownership and also control management and daily business operations.
- 5) Veteran Business: This is for profit business concern where veteran persons own at least 51% interest/ownership and also controls management and daily business operations.

4. That this program combines previous actions by Council to assist local businesses to compete for City contracts.

By: \_\_\_\_\_  
NAT ROBERTSON, MAYOR

ATTEST:

\_\_\_\_\_  
PAMELA J. MEGILL, CITY CLERK

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

SESSION LAW 2017-81  
HOUSE BILL 198

AN ACT TO AMEND THE CHARTER OF THE CITY OF FAYETTEVILLE TO AUTHORIZE THE CITY TO ESTABLISH A SMALL BUSINESS ENTERPRISE PROGRAM TO PROMOTE THE DEVELOPMENT OF SMALL BUSINESSES IN THE CITY AND TO ENHANCE THE OPPORTUNITIES FOR SMALL BUSINESSES TO PARTICIPATE IN CITY CONTRACTS AND TO AUTHORIZE CALDWELL COUNTY TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter VIII of the Charter of the City of Fayetteville, being Chapter 557 of the 1979 Session Laws, as amended, is amended by adding a new Article to read as follows:

"Article 10. Small Business Enterprise Program.

"§ 8.40. Small Business Enterprise Program. (a) The City may establish a race- and gender-neutral small business enterprise program to promote the development of small businesses in the Fayetteville Metropolitan Statistical Area and to enhance opportunities for small businesses to participate in City contracts. The City may define the term "small business enterprise" as appropriate and consistent with the City's contracting practices. The City may establish bid and proposal specifications that include subcontracting goals and good-faith effort requirements to enhance participation by small business enterprises in City contracts. Notwithstanding the provisions of G.S. 143-129 and G.S. 143-131(b), the City may consider a bidder's efforts to comply with small business enterprise program requirements in its award of City contracts and, if a bidder is determined to have failed to comply with the requirements, the City may, within its discretion, refuse to award a contract to the bidder.

(b) The small business enterprise program authorized by this section is intended to supplement and not replace the requirements of G.S. 143-128.2, 143-131(b), or 143-135.5. Any goals or efforts established to achieve veteran, minority, and women's business participation consistent with the requirements of G.S. 143-128.2, 143-131(b), or 143-135.5 shall take precedence over goals for small business enterprise participation established under the program authorized by this section. A small business enterprise program established pursuant to this section shall be deemed consistent with the public policy of the State of North Carolina to promote and utilize small and underutilized business enterprises as set forth in G.S. 143-128.2, 143-128.3, and 143-135.5."

**SECTION 2.** G.S. 161-31 reads as rewritten:

**"§ 161-31. Tax certification.**

(a) Tax Certification. – The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.



(a) Exception to Tax Certification. – If a board of county commissioners adopts a resolution pursuant to subsection (a) of this section, notwithstanding the resolution, the register of deeds shall accept without certification a deed submitted for registration under the supervision of a closing attorney and containing this statement on the deed: "This instrument prepared by: \_\_\_\_\_, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

(b) Applicability. – This section applies only to Alamance, Alexander, Anson, Beaufort, Bertie, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Columbus, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Sampson, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, Yadkin, and Yancey Counties."

**SECTION 3.** If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or applications, and, to this end, the provisions of this act are severable.

**SECTION 4.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29<sup>th</sup> day of June, 2017.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

AMY H. CANNON  
County Manager

MELISSA C. CARDINALI  
Assistant County Manager



DUANE T. HOLDER  
Assistant County Manager

TRACY JACKSON  
Assistant County Manager

SALLY S. SHUTT  
Assistant County Manager

**OFFICE OF THE COUNTY MANAGER**

**MEMORANDUM FOR THE AGENDA OF THE MARCH 1, 2018  
MEETING OF THE FINANCE COMMITTEE**

**TO:** MEMBERS OF THE FINANCE COMMITTEE  
**FROM:** TRACY JACKSON, ASST. COUNTY MANAGER  
**THROUGH:** AMY CANNON, COUNTY MANAGER  
**DATE:** FEBRUARY 22, 2018  
**SUBJECT:** MONTHLY CDBG-DR UPDATE  
**Requested by:** Board of Commissioners  
**Presenter(s):** Tracy Jackson, Asst. County Manager  
**Estimate of Committee Time Needed:** 5 Minutes

Status as of February 7, 2018:

Total Applications	Incomplete Applications	Applications Submitted For Review	*Complete Applications Ready for State Eligibility Review
206	104	64	38

\*Ready for Eligibility Review and determination of Duplication of Benefits (DOB) by the State

#### Milestones:

- November 29, 2017 – State’s directive - Intake Center opens in Cumberland County
- January 16, 2018 – County received Transition Plan for Intake Center (effective 1/24/18)
- January 22, 2018 – County received executed State MOU
- January 25 & 26, 2018 – Salesforce software training for County & City staffs
- February 7, 2018 – State contractor ends support for Intake Center; County & City provide supplemental staffing to assist State
- February 7, 2018 – County staff identified as QC Reviewers (Dee Taylor) and Center Manager (Sylvia McLean) in the interim
- February 19, 2018 - State began transfer of Intake Center to Cumberland County
- March 23, 2018 – Intake Center totally transfers to Cumberland County
- Next step process – incomplete applications process
- Environmental assessment review processes to be done by the counties

#### Current Staffing:

- State: (2) NCEM staff - Application Specialist - as of to-date
- Cumberland County: supplemental staffing (2) CD staff
- City of Fayetteville: supplemental staffing (2) CD staff
- Advertised time-limited positions week of February 12, 2018

#### Hours of Operation:

- Monday – Friday, 9 a.m. to 4 p.m.

VICKI EVANS  
Finance Director

ROBERT TUCKER  
Accounting Supervisor

IVONNE MENDEZ  
Accounting Supervisor



**FINANCE OFFICE**

4<sup>th</sup> Floor, Room No. 451, Courthouse • PO Box 1829 • Fayetteville, North Carolina 28302-1829

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**MEMO FOR THE AGENDA OF THE MARCH 1, 2018  
MEETING OF THE FINANCE COMMITTEE**

**TO:** FINANCE COMMITTEE  
**FROM:** VICKI EVANS, FINANCE DIRECTOR  
**DATE:** FEBRUARY 21, 2018  
**SUBJECT:** MONTHLY FINANCIAL REPORT – FISCAL YEAR 2018,  
JANUARY YEAR-TO-DATE

**Presenter(s):** Vicki Evans, Finance Director

**Estimate of Committee Time Needed:** 5 Minutes

**BACKGROUND**

The financial report is included which shows the fiscal year 2018 January year-to-date budget to actual (cash received/cash paid) comparison. Additional detail has been provided on a separate page explaining any percentages that may appear inconsistent with year-to-date budget expectations. Overall, general fund revenues and expenditures are consistent with the same time as last fiscal year.

**RECOMMENDATION/PROPOSED ACTION**

No action needed – for discussion and information purposes only.

*Celebrating Our Past...Embracing Our Future*

## COUNTY OF CUMBERLAND

### Fiscal Year 2018 - January Year-to-Date Actuals

#### Additional Detail

#### General Fund Revenues

\*

- (1) **Current Year Ad Valorem** 97.2% - the bulk of revenues are typically recorded between November - January.
- (2) **Motor Vehicles** 48.9% - YTD Actual reflects 6 months of collections.
- (3) **Sales Tax** 33.5% - YTD Actual reflects four months of collections.
- (4) **Unrestricted/Restricted Intergovernmental** Revenues 42.1% - lag in revenue is typically one month.
- (5) **Other Sources** (includes Transfers In) 15.6% - Rental income makes up majority of actual receipts. The majority of remaining balance is budgeted as a transfer in to fund the Board of Ed debt payment toward year-end.
- (6) **Proceeds, Premium, Closing** 100% - COPS/LOBS refunding of \$23M closed in August 2017. (Correlates with item (10) on report of expenditures.)
- (7) **Lease Land CFVMC** 93.5% - typically paid in the beginning of the fiscal year. Staff continue to follow up on the balance remaining.
- (8) **Fund Balance Appropriation** 0% - Direct entries are not made to fund balance throughout the fiscal year.

#### General Fund Expenditures

\*\*

- (1) **Board of Elections** 26.4% - capital purchase budgeted for \$809,045 has not yet been purchased.
- (2) **Debt Service** 71.2% - debt payment made in December
- (3) **Youth Diversion** 3.1% - expenditures for this program tend to occur later in the fiscal year. Conference scheduled during the month of December.
- (4) **Engineering** 11.8% - Revised budget reflects \$1.2M addition for stream debris removal grant for which no expenditures have been incurred. A budget revision was done in December to move this grant over to Engineering since they will be completing the projects.
- (5) **Economic Physical Development** 100% - NC Southeast contribution has been paid in full.
- (6) **Industrial Park** 2.4% - maintenance at Cedar Creek Industrial Park has not yet been completed.
- (7) **Economic Incentive** 5.4% - economic incentives are budgeted at 100% of agreements but are not paid unless/until the company complies.
- (8) **Water and Sewer** 0% - Funds budgeted for Overhills W&S have not yet been expended.
- (9) **Transfers Out** 3.5% - transfers out typically occur near year-end.
- (10) **Refunding** of 2009A and 2011B LOBS 100% - refunding of \$23M closed in August 2017. (Correlates with item (6) on report of revenues.)
- (11) **Capital Outlay** 43.1% - Board of Elections capital equipment and FTCC capital outlay budgeted but not incurred or encumbered makes up the majority of unutilized budget.

**County of Cumberland  
General Fund Expenditures**

DEPARTMENTS	FY16-17	FY17-18	FY17-18	YTD ACTUAL	PERCENT OF BUDGET TO DATE	**
	AUDITED	ADOPTED BUDGET	REVISED BUDGET	EXPENDITURES AS OF JANUARY 31, 2018		
Governing Body	\$ 591,731	\$ 617,587	\$ 617,587	\$ 355,093	57.5%	
Administration	2,515,558	1,501,201	1,501,201	799,438	53.3%	
Public Affairs/Education	76,879	497,199	497,199	291,405	58.6%	
Human Resources	30,245	828,896	828,896	450,940	54.4%	
Print, Mail, and Design	754,908	875,345	861,871	393,673	45.7%	
Court Facilities	55,786	129,370	168,010	63,145	37.6%	
Facilities Maintenance	1,936,136	2,009,030	2,110,875	753,140	35.7%	
Landscaping & Grounds	606,364	607,577	612,237	329,944	53.9%	
Carpentry	231,715	234,884	234,884	109,045	46.4%	
Facilities Management	1,238,266	1,267,781	1,273,221	690,480	54.2%	
Public Buildings Janitorial	721,041	710,946	710,946	412,752	58.1%	
Central Maintenance	798,075	672,386	672,386	366,146	54.5%	
Information Services	3,388,444	3,958,479	4,067,447	2,129,830	52.4%	
Board of Elections	1,180,015	2,237,762	2,237,762	591,062	26.4%	(1)
Finance	1,205,572	1,201,225	1,201,225	661,249	55.0%	
Legal	668,776	813,554	813,554	394,486	48.5%	
Register of Deeds	2,092,298	2,321,099	2,761,865	1,069,263	38.7%	
Tax	5,567,709	5,589,154	5,620,154	2,849,274	50.7%	
Debt Service	23,400,669	21,464,283	21,466,328	15,291,865	71.2%	(2)
General Government Other	3,828,293	4,237,882	4,331,276	1,739,653	40.2%	
Sheriff	47,212,707	50,250,550	50,518,813	26,393,317	52.2%	
Emergency Services	3,064,405	3,320,934	3,392,791	1,833,948	54.1%	
Criminal Justice Pretrial	434,987	426,673	426,673	199,953	46.9%	
Youth Diversion	325	25,000	25,000	784	3.1%	(3)
Animal Control	2,932,986	2,922,717	2,947,717	1,628,357	55.2%	
Public Safety Other (Medical Examiners, NC Detention Subsidy, etc.)	1,007,220	1,075,666	1,075,666	601,136	55.9%	
Heath	22,269,462	22,506,054	23,004,565	11,794,298	51.3%	
Mental Health	3,148,761	5,452,507	3,281,366	2,240,562	68.3%	
Social Services	71,524,059	66,425,182	67,141,445	33,895,670	50.5%	
Veteran Services	371,189	385,725	385,725	215,733	55.9%	

**County of Cumberland  
General Fund Expenditures**

DEPARTMENTS	FY16-17	FY17-18	FY17-18	YTD ACTUAL	PERCENT OF	**
	AUDITED	ADOPTED BUDGET	REVISED BUDGET	EXPENDITURES AS OF JANUARY 31, 2018	BUDGET TO DATE	
Child Support	4,893,727	5,044,200	5,044,200	2,692,723	53.4%	
Spring Lake Resource Administration	31,524	34,332	34,332	14,088	41.0%	
Library	11,105,397	10,530,428	10,778,172	5,829,766	54.1%	
Stadium Maintenance	110,288	117,296	117,296	40,573	34.6%	
Culture Recreation Other (Some of the Community Funding)	312,816	268,069	268,069	236,948	88.4%	
Planning	3,077,126	3,446,758	3,455,653	1,657,955	48.0%	
Engineering	439,678	510,090	2,437,872	287,915	11.8%	(4)
Cooperative Extension	570,083	705,596	705,596	277,251	39.3%	
Location Services	357,095	447,221	447,221	182,620	40.8%	
Soil Conservation	141,234	136,400	354,807	82,835	23.3%	
Public Utilities	87,442	110,270	124,474	54,203	43.5%	
Economic Physical Development Other	20,000	20,000	20,000	20,000	100.0%	(5)
Industrial Park	3,296	23,148	23,148	564	2.4%	(6)
Economic Incentive	420,423	548,418	710,918	38,282	5.4%	(7)
Water and Sewer	-	250,000	250,000	-	0.0%	(8)
Education	91,394,940	93,341,404	93,341,404	53,638,636	57.5%	
Other Uses:						
Transfers Out	2,264,613	3,522,583	3,465,252	121,217	3.5%	(9)
Refunding of 2009A and 2011B LOBS	-	-	27,543,249	27,531,480	100.0%	(10)
<b>TOTAL</b>	<b>\$ 318,084,263</b>	<b>\$ 323,622,861</b>	<b>\$ 353,910,348</b>	<b>\$ 201,252,698</b>	<b>56.9%</b>	

Expenditures by Category	FY16-17	FY17-18	FY17-18	EXPENDITURES AS OF	PERCENT OF	
	UNAUDITED	ADOPTED BUDGET	REVISED BUDGET	JANUARY 31, 2018	BUDGET TO DATE	
Personnel Expenditures	\$ 131,620,131	\$ 136,744,346	\$ 135,634,683	\$ 70,303,583	51.8%	
Operating Expenditures	158,133,695	157,914,300	161,300,068	85,854,676	53.2%	
Capital Outlay	2,118,869	3,460,456	3,983,875	1,716,783	43.1%	(11)
Debt Service	23,946,955	21,981,176	21,983,221	15,724,960	71.5%	
Refunding of 2009A and 2011B LOBS	-	-	27,543,249	27,531,480	100.0%	
Transfers To Other Funds	2,264,613	3,522,583	3,465,252	121,217	3.5%	
<b>TOTAL</b>	<b>\$ 318,084,263</b>	<b>\$ 323,622,861</b>	<b>\$ 353,910,348</b>	<b>\$ 201,252,698</b>	<b>56.9%</b>	

**County of Cumberland  
General Fund Revenues**

REVENUES	FY16-17 AUDITED	FY17-18 ADOPTED BUDGET	FY17-18 REVISED BUDGET	YTD ACTUAL	PERCENT OF BUDGET TO DATE
				AS OF JANUARY 31, 2018	
<b>Ad Valorem Taxes</b>					
Current Year	\$ 156,131,527	\$ 160,312,162	\$ 160,312,162	\$ 155,807,963	97.2% (1)
Prior Years	1,046,732	1,121,000	1,121,000	787,535	70.3%
Motor Vehicles	17,683,864	18,070,242	18,070,242	8,831,292	48.9% (2)
Penalties and Interest	650,368	667,602	667,602	313,779	47.0%
Other	1,018,563	930,279	930,279	574,632	61.8%
<b>Total Ad Valorem Taxes</b>	<b>176,531,054</b>	<b>181,101,285</b>	<b>181,101,285</b>	<b>166,315,202</b>	<b>91.8%</b>
<b>Other Taxes</b>					
Sales	41,517,943	41,760,036	41,760,036	14,002,425	33.5% (3)
Real Estate Transfer	1,091,362	700,000	700,000	586,454	83.8%
Other	1,114,408	1,111,500	1,111,500	334,432	30.1%
<b>Total Other Taxes</b>	<b>43,723,713</b>	<b>43,571,536</b>	<b>43,571,536</b>	<b>14,923,311</b>	<b>34.3%</b>
Unrestricted & Restricted Intergovernmental Revenues	75,613,483	67,300,253	70,609,410	29,697,650	42.1% (4)
Charges for Services	13,832,010	12,056,608	12,078,008	5,526,180	45.8%
Other Sources (includes Transfers In)	8,945,521	6,988,890	7,043,058	1,096,613	15.6% (5)
Proceeds Refunding Bonds		-	23,005,000	23,005,000	100.0% (6)
Premium on COPS Sold		-	4,285,558	4,285,557	100.0% (6)
County Closing Contribution		-	254,736	254,735	100.0% (6)
Lease Land CFVMC	3,714,637	3,714,637	3,714,637	3,474,492	93.5% (7)
<b>Total Other</b>	<b>12,660,158</b>	<b>10,703,527</b>	<b>38,302,989</b>	<b>32,116,397</b>	<b>83.8%</b>
<b>Total Revenue</b>	<b>\$ 322,360,418</b>	<b>\$ 314,733,209</b>	<b>\$ 345,663,228</b>	<b>\$ 248,578,740</b>	<b>71.9%</b>
Fund Balance Appropriation		8,889,652	8,247,120	-	0.0% (8)
<b>Total Funding Sources</b>	<b>\$ 322,360,418</b>	<b>\$ 323,622,861</b>	<b>\$ 353,910,348</b>	<b>\$ 248,578,740</b>	<b>70.2%</b>