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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: July 27, 2018
SUBJECT: Finance Committee Special Meeting – Thursday, August 2, 2018

The regular meeting of the Board of Commissioners' committees (Finance, Policy and Facilities Committee) has been **CANCELLED** and rescheduled as a **SPECIAL MEETING** on Thursday, August 2, 2018 beginning at 8:30 a.m. at the **Department of Social Services, 1225 Ramsey Street, conference rooms C and D**. All committee meetings will start as soon as the previous committee adjourns.

AGENDA

1. Approval of Minutes – June 7, 2018 Regular Meeting (**Pg. 2**)
2. Consideration of Request by United Developers, Inc. to Waive Landfill Disposal Fees (**Pg. 23**)
3. Consideration of Contract to Purchase Board of Election Voting Machines (**Pg. 25**)
4. Consideration of Engaging Outside Legal Counsel for DSS Independent Contractor for Children's Services (**Pgs. 40 & 66**)
5. Consideration of Participation in the National 2018 Clear the Shelter Event (**Pg. 92**)
6. Consideration of Waiving Permit Fees (**Pg. 95**)
7. Consideration of Contract to Purchase Tax Software (**Pg. 96**)
8. Consideration of a Hazard Mitigation Grant Agreement (HMGP) for Two FEMA Approved Projects (**Pg. 106**)
9. Monthly Updates
 - A. Health Insurance (**Pg. 144**)
 - B. CDBG-DR (**Pg. 148**)
 - C. Financial Report (**Pg. 149**)
10. Other Items of Business (**NO MATERIALS**)

June 7, 2018 Regular Meeting

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CUMBERLAND COUNTY FINANCE COMMITTEE
COURTHOUSE, 117 DICK STREET, 5TH FLOOR, ROOM 564
JUNE 7, 2018 – 8:30 AM
REGULAR MEETING MINUTES

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

OTHERS: Commissioner Michael Boose
Commissioner Jeannette Council
Commissioner Charles Evans
Commissioner Larry Lancaster
Amy Cannon, County Manager
Melissa Cardinali, Assistant County Manager
Duane Holder, Assistant County Manager
Rick Moorefield, County Attorney
Vicki Evans, Finance Director
Jeffery Brown, Engineering and Infrastructure Director
Brenda Jackson, Social Services Director
Julean Self, Human Resources Director
Nedra Rodriguez, Workforce Development Director
Sylvia McLean, Community Development
Dee Taylor, Community Development Director
Deborah Shaw, Budget Analyst
Heather Harris, Budget Analyst
Geneve Mankel, PIO Communications and Outreach Director
Candice H. White, Clerk to the Board

Commissioner Keefe called the meeting to order.

1. CONSIDERATION OF APPROVAL OF MINUTES – MAY 3, 2018 REGULAR MEETING

MOTION: Commissioner Faircloth moved to approve the May 3, 2018 regular meeting minutes.
SECOND: Commissioner Adams
VOTE: UNANIMOUS (3-0)

2. CONSIDERATION OF WORKFORCE DEVELOPMENT BOARD RECOMMENDATION TO AWARD THE WORKFORCE INNOVATION OPPORTUNITIES ACT (WIOA) TITLE 1 PROGRAM SERVICES CONTRACT TO EDUCATION DATA SYSTEMS, INC. (EDSI)

BACKGROUND:
Cumberland County receives annual funding from the state to provide workforce development services through the Workforce Innovation & Opportunity Act (WIOA). These important services

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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. 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.

The Cumberland County Workforce Development Board (WDB) selected and approved an ad hoc review team consisting of WDB members (Rodney Anderson, Charlene Cross, Isabella Effon, Pam Gibson, and Joy Miller) at the November 8, 2017 meeting. The RFP for WIOA Title I Program Services was released on March 26, 2018 and due by 4 pm on April 23, 2018. Proposals were received from Eckerd Concepts, EDSI, H4 Enterprises, ResCare Workforce Services, and Two Hawk Workforce Services. Proposals were evaluated by the ad hoc committee of Workforce Development Board members utilizing evaluation criteria as follows: customer flow, staffing, statement of work, and program design (40 points); organizational experience, past performance, and references (25 points); transition and staff training plan (10 points); program cost/budget proposal (15 points); and program metrics (10 points). Bidders made oral presentations (10 points) to supplement and explain their proposals on May 1 and 3, 2018. The recommendation below, which was based on the consensus of the review committee, was approved by the Workforce Development Board on May 15, 2018.

RECOMMENDATION/PROPOSED ACTION:

The Workforce Development Board recommends approval of EDSI as the successful proposer to provide WIOA Title I Youth, Adult, and Dislocated Worker program services for the Cumberland County NCWorks Career Center and to authorize the County Manager to execute the negotiated contracts.

**CONTRACT FOR SERVICES FOR
ADULT, DISLOCATED WORKER, AND YOUTH PROGRAM SERVICES
UNDER TITLE I OF
THE WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)**

THIS CONTRACT AGREEMENT is entered into by and between County of Cumberland (County), a body politic and political subdivision of the State of North Carolina established and operating pursuant to the laws of the State of North Carolina (hereinafter referred to as "COUNTY") and

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Educational Data Systems, Inc. (hereinafter referred to as "EDSI").

WITNESSETH THAT:

WHEREAS, the County desires to engage EDSI to render services in connection with activities to be operated and funded under Title I of the Workforce Innovation and Opportunity Act Public Law No: 113-128 (herein after referred to as the "Act" or "WIOA"), WIOA DOL ETA 20 CFR, Part 651, 652, 653, 654, 658, 675, 676, 677, 678, 679, 680, 681, 683, and 686; and DOE Office of Career, Technical and Adult Education, Rehabilitation Services Administration 34 CFR Parts 361 and 463; Jobs for Veterans Act Public Law 107-288 at 38 USC § 4215; and

WHEREAS, WIOA funds are anticipated to be made available to the County and the Cumberland County Workforce Development Board from the Division of Workforce Solutions of the North Carolina Department of Commerce (hereinafter referred to as the "State") contingent upon receipt of funds from the United States Department of Labor (herein after referred to as "USDOL") and/or the State; and

WHEREAS, EDSI desires to render services under the Act,

NOW THEREFORE, the parties hereto agree as follows:

1. Employment of EDSI

- a. The County hereby engages EDSI and EDSI hereby agrees to perform the services hereinafter set forth in accordance with the terms and conditions contained herein.

2. Scope of Services

- a. EDSI shall diligently perform and carry out in a satisfactory and proper manner the work and services described in Attachment A, "Statement of Work".

3. Time of Performance

- a. The services of EDSI shall commence on July 1, 2018 and EDSI shall provide such services in such manner and sequence as to ensure their expeditious completion and as may be required in Attachment A, Statement of Work. All services required hereunder shall be completed on or before the end of the contract period: June 30, 2019. For the purposes of the statute of limitation, and in recognition of the fact that closeout procedures, audit, audit resolution, and collection of disallowed costs will occur after the contract period, this contract shall not be considered completed until final action on any disallowed costs by USDOL has been taken and the time for appeal of disallowed costs has expired.

4. Compensation and Method of Payment

- a. In the case of activities covered by cost reimbursement provisions, EDSI shall be

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compensated for the work and services to be performed under this contract by monthly reimbursements based on allowable expenditures actually made, unless otherwise specifically agreed to the contrary. For any activities covered by fixed unit price/performance-based provisions, EDSI shall be compensated based upon the timely delivery of services included in Attachment A, Statement of Work. In no event, however, will the total compensation and reimbursement, if any, to be paid EDSI under this contract exceed the sum of two million one hundred and fifty thousand dollars (\$2,150,000) in WIOA funds as described in Attachment D, "Solicitation (Cumberland County WFB RFP No. 18-01-WFD) and EDSI's Proposal" and this offer to contract signed by Kevin Schnieders. Provided further, EDSI acknowledges that the County and the Cumberland County Workforce Development Board are receiving monies to fund WIOA activities on behalf of the State of North Carolina and the United States Department of Labor and that the County's obligations to pay any funds is conditional upon receipt of such funds. The County may impose restrictions upon the maintenance of excess cash by the contractor consistent with the restrictions placed upon the County by the State and the United States Treasury Department.

- b. EDSI, using funds available pursuant to this contract, shall be fully responsible for the WIOA Adult, Dislocated Worker, College-to-Careers, Incumbent Worker Training, and Youth Program services and activities as provided for in the Statement of Work attached hereto as Attachment A and hereby incorporated by reference as is fully set forth herein.
- c. EDSI shall be entitled to an "Administrative Fee" calculated by the Determination of Reasonableness of Profit Worksheet, Attachment XX. This Administrative Fee shall be paid to EDSI in twelve equal monthly installments.

5. Approval of Subcontract or Assignability

- a. EDSI shall not assign all or any portion of its interests in this contract, nor shall any of the work or services to be performed under this contract by EDSI be subcontracted, without the prior written approval of the County.

6. County as Contract Administrator

- a. The County and Cumberland County Workforce Development Board staff shall perform the administrative, enforcement, oversight, evaluation, and monitoring of this contract as agents of the County. However, EDSI shall be fully responsible for its compliance with this contract and all laws, rules, regulations, and guidance applicable to the use of WIOA funding. EDSI shall not be entitled to rely on County or the Cumberland County Workforce Development Board for such compliance issues.
- b. All notices, reports, and other information including a monthly financial status

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report shall be sent via e-mail to the Cumberland County Workforce Development Board, c/o, Nedra Clayborne Rodriguez nrodriguez@co.cumberland.nc.us with a copy of said electronic reports sent to paazam@co.cumberland.nc.us.

7. The County has the right to monitor program, fiscal, personnel, and management activities under this contract to ensure that performance goals are being met, and that appropriate administrative procedures, controls, and records are maintained, that Contract terms and conditions are being fulfilled, and that personnel and equal employment opportunity requirements are being met. EDSI for itself and for its sub-recipients does hereby authorize and agree to permit on-site visits by the County, Workforce Development Board Staff, State of North Carolina, USDOL or their designees, private questioning of employees and participants, and access for review or copying of EDSI or sub-recipient records of all programs. EDSI shall attend and shall require its sub-recipients to attend such meetings as requested by the Workforce Development Board regarding the monitoring or evaluation of programs.

The County may provide technical assistance to EDSI and its sub-recipients through periodic discussions and training sessions as the County deems necessary. Notwithstanding any such assistance provided by County, EDSI shall be fully responsible for complying with all applicable policy issuances, laws, and regulations.

The County may provide EDSI with written notification of deficiencies discovered in review of its activities and will endeavor to provide EDSI with reasonable time to take corrective action regarding deficiencies.

The failure of the County or the Workforce Development Board staff to discover or notify EDSI in writing of deficiencies does not relieve EDSI of its obligation to meet performance standards, maintain sound administrative and fiscal management, ensure equitable personnel policies and non-discrimination, and satisfy statutory, regulatory and contractual requirements.

8. Notification of Fraud or Abuse

EDSI shall immediately notify the County in writing of any charges or allegations of criminal misconduct, fraud, negligence, or other wrongdoing in connection with the program or any administering agency.

9. Maintenance of Records

EDSI shall maintain all fiscal and program records for periods required by federal regulations, but in no event less than four (4) years from the completion of obligations under this contract. Should audit proceedings be instituted concerning this contract, EDSI shall not destroy any records thereof until it is notified in writing that all audits are complete and such records are no longer needed. The County, the State, USDOL, and Comptroller General of the United States, or any of their designees shall have access to all records of any type of EDSI or its sub-recipient with regard to funded activities.

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10. Property

- a. EDSI acknowledges that all non-expendable property, that is, property with a useful life of more than one year and a unit cost of \$500 or more per unit, and, as outlined in the "Property" section 3.6 of the Grant Administration Agreement, purchased with funds received under this contract or made available to EDSI by the County or the State specifically for a WIOA funded activity, is the sole property of the State. The County may reclaim or relocate non-expendable property hereunder at its discretion, subject to state and federal law. EDSI, however, may not transfer, relocate or alter the use of any property hereunder without the prior written authorization of the County. EDSI shall report any non-WIOA use of non-expendable property to the County.
- b. EDSI is responsible for the proper identification, inventory and maintenance of all property under its control. EDSI shall complete and submit to the County an annual inventory listing, clearly identifying WIOA Property. EDSI shall permit on-site inspections of all property by the County, the State, USDOL, or their designees. EDSI shall adhere to all property policies from the County and the State.
- c. EDSI shall procure the prior written approval of the County to initiate any action involving acquisition by purchase, lease or trade, transfer, relation, changed use or disposition of non-expendable property. EDSI shall not be entitled to recover the costs of acquisition or transfer if such prior written approval is not obtained.
- d. EDSI shall not acquire real property with funds under this Contract.
- e. EDSI expressly assigns to the State any right it may acquire by operation of law or otherwise in any property under this Contract. If intangible property on which a patent or copyright is obtainable is developed with funds acquired under this contract, EDSI acknowledges and agrees to procure the acknowledgment of its sub-recipients that the property is work for hire funded by the State, and the State has ownership of such works unless specifically waived in writing by the Division of Workforce Solutions.
- f. On completion of the services under this Contract or upon earlier termination of this Contract, all non-expendable property and all expendable property covered by federal regulations shall be situated, transferred or disposed of according to instructions by the State.

11. Reporting Requirements

- a. In the case of reimbursable activities, EDSI shall furnish the County with a monthly financial status report in a format designated by the County. Such reports shall be furnished not later than ten (10) business days following the end of each month. Such reports shall consist of detailed information taken from records and official books of account of EDSI. In addition, the County, the State, and USDOL may require

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ad hoc reports for program management.

12. Supportive Services, PELL Grant Payments, and Other Financial Assistance

- a. Supportive Services provided by EDSI under this contract to participants shall not duplicate services provided by a public or private source(s), which are available at no cost to EDSI and/or participants. Additionally, EDSI is responsible for documenting a participant's receipt of all financial aid awards and maintaining such documentation. If other financial aid is received, adjustments to the cost of tuition and books paid through this contract shall be made accordingly.
- b. EDSI shall adhere to all Federal, State, and County mandated requirements regarding the use of PELL grant funds and other financial awards in conjunction with WIOA funds.

13. Accounting

- a. EDSI shall maintain complete accounting records sufficient to document receipts and expenditures of WIOA funds under this contract. For cost reimbursement activities, EDSI shall account separately for the expenses of each activity by cost category as described in the budget herein as Attachment B. For fixed unit price/performance based activities, EDSI shall submit the appropriate documentation as detailed in Attachment A, Statement of Work, for the amount described in the budget included as Attachment B. Program income must be accounted for, reported to the County by the appropriate program year fund allocation, and used during the contract period to offset the cost of the services provided or such additional income shall be forwarded to the County. Interest income on cash advances of sub-grant funds shall also be accounted for as additional program income and reported accordingly.
- b. All accounting records should be maintained in accordance with Uniform Guidance Requirements 2 CFR 200, 215, 225, 230, including any exceptions identified by the Department of Commerce at 2 CFR part 2900, the NC Local Government Budget and Fiscal Control Act, Federal and State Certifications and Assurances, State Policy Issuances, other applicable OMB Circulars and administrative provisions, implementing regulations, and Generally Accepted Accounting Principles.

14. Rights in Documents, Materials, and Data Produced

- a. EDSI agrees that all reports and other data prepared by and for it under the terms of this contract shall be delivered to, become, and remain the property of the County or its assigned designee upon termination or completion of the work. Both the County and EDSI shall have the right to use it without restriction or limitation and without compensation to one another. For the purposes of this contract, data includes writings, sound recordings, or other graphic representations, and works of similar nature. No reports of the documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of EDSI.

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15. Interest of EDSI

- a. EDSI covenants that neither EDSI nor its agents or employees presently has an interest, nor shall acquire an interest, direct or indirect, which conflicts in any manner or degree with the performance of its services hereunder, or which would prevent, or tend to prevent, the satisfactory performance of EDSI's service hereunder in an impartial and unbiased manner. EDSI further covenants that in the performance of this contract, no person having any such interest shall be employed by EDSI as an agent, subcontractor, or otherwise.

16. Interest of Members of the Council and Others

- a. No officer, member or employee of the County, Cumberland County Workforce Development Board, and/or no public official of any local government which is affected in any way by the WIOA activities, shall participate in any decisions relating to this contract which affects his/her personal interest or in the interest of any corporation, partnerships, or association in which s/he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this contract or the proceeds arising therefrom.

17. Location of Services

- a. EDSI shall co-locate its employees providing services pursuant to this contract at a location designated by the County. It is the intent of the County that said employees shall be co-located with employees of the Cumberland County Workforce Development Board and the Cumberland County NCWorks Career Center (to include employees of the North Carolina Department of Commerce's Divisions of Workforce Solutions and Services).

18. Maintenance of Effort

- a. EDSI sponsored training in existence prior to the initiation of this contract shall be continued and may not be reduced in any way as a result of this contract (except for reduction unrelated to the provisions or purposes of this contract). EDSI agrees that implementation of this contract will not result in the displacement of employed workers or impair existing contracts for services or result in the substitution of Federal or other funds in connection with work that would otherwise be performed.

19. Nepotism

- a. EDSI agrees for itself and its subcontractors that no two members of an immediate family shall be employed within the same agency if such employment will result in one supervising a member of his/her immediate family, or in one occupying a position which has influence over the other's employment, promotion, salary administration, and other related management or personnel considerations. Immediate family is described as wife, husband, mother, father, brother, sister, son,

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daughter, mother-in-law, father-in-law, daughter-in-law, son-in-law, grandmother, grandfather, grandson, granddaughter, stepmother, or stepfather. This section shall also apply to governing boards for contractors, EDSI staff, and subcontractor staff involved in WIOA activities.

20. Complaints and Hearings

- a. EDSI shall have a complaint and hearing procedure for complaints and grievances by its employees, participants, and other persons. The procedure may involve investigations by EDSI and shall result in an impartial hearing within 30 days and a written decision in 60 days after receipt of the formal complaint.
- b. The County shall have a complaint and hearing procedure for complaints and grievances as described in policy #11 Nondiscrimination – Workforce Innovation and Opportunity Act (WIOA) Nondiscrimination/Equal Opportunity Standards and Complaint Procedures. The procedures shall be conducted under and governed by the County policies and/or the North Carolina Administrative Code. As to complaints and appeals governed by this paragraph, the County shall have authority to investigate and make findings, determinations and orders, including orders imposing corrective conditions and ordering sanctions, after the opportunity for a hearing. Where permitted under this contract or by law, sanctions and conditions may be imposed prior to an oral hearing in an emergency situation.
- c. The County may, on its own complaint, initiate an investigation and conduct a hearing on any activity under this contract.
- d. The complaint and hearing procedure hereunder will comply with WIOA, the regulations thereunder, and with state law.
- e. EDSI shall designate a hearing officer and provide each participant with a copy of EDSI's complaint and hearing procedure including the names and addresses of EDSI's hearing officer, and the hearing officer of the County.

21. Protests, Disputes, and Claims

- a. Except as otherwise provided in this contract, any protest, dispute, or claim, concerning a question of fact arising under this contract which is not disposed of by agreement shall be resolved by the County, which shall issue a written determination and mail or otherwise furnish a copy to EDSI. The decision of the County shall be final and conclusive unless, within 30 days from the date of receipt of such copy, EDSI mails or otherwise furnishes to the County a written appeal. The decision of the County shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or as grossly erroneous as to imply bad faith or not to have been supported by substantial evidence. In connection with any appeal proceeding under this clause, EDSI shall be afforded an opportunity to be heard and to offer evidence in support of the appeal. Pending final decision of a dispute, EDSI shall proceed diligently with the

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performance of the contract and in accordance with the County's decision.

22. Indemnity and Insurance

- a. To the extent permitted by the North Carolina Tort Claims Act (Chapter 143, Article 31 of the North Carolina General Statutes) EDSI shall indemnify and save harmless the County from and against any and all claims, losses, costs, damages, expenses, judgements or liabilities caused or arising through EDSI's performance of this Agreement including, without limitation, negligent or other wrongful acts or omissions, accidents or other occurrence causing bodily injury, including death, sickness, and disease to any personnel, damage or destruction to property, real or personal, and sexual misconduct by EDSI and its employees and agents.
- b. EDSI shall provide the County written notice, in the form of Certificates of Insurance, for any and all insurance required by the RFP or by law. EDSI shall require its insurers to provide the County written notice of any cancellation or lapse in coverage of said insurance immediately upon said lapse or cancellation.

23. Audit

- a. EDSI agrees to have completed a fiscal and compliance audit covering the appropriate period of the contract and submit a copy to the County within 30 days after EDSI receives its completed audit but no later than six months from the end of the audit period. An independent firm of Certified Public Accountants or the State Auditor shall perform the audit. The audit of the contract shall include additional statements of WIOA revenues and expenditures as of June 30th when the contractor has a fiscal year other than June 30th and for the entire contract period when it has been performed during more than one fiscal year. WIOA grant funds may be used to pay the costs of such audit. The audit should include, at a minimum, an accountant's opinion, a balance sheet, a statement of revenues, expenditures, and fund balance, an opinion letter and a management letter, a Schedule of Federal and State Financial Assistance, Compliance Report, and Internal Control Report. The examination must be made in accordance with Generally Accepted Accounting Practices and the Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the U.S. General Accounting office. EDSI audits will have all findings and questioned costs (including a note about all payables to and unearned receipts from WIOA) in the Compliance Section of the Audit. Furthermore, to ensure compliance with GS 159-40, non-profit corporations or organizations receiving funds under this contract of \$1000.00 or more and not exempted by Section 1(d) of GS 159-40, are required to file a copy of the independent audit report with the Office of the State Auditor. Also, audits of EDSI performed by the Office of the State Auditor or USDOL directly may satisfy the requirements of this paragraph. The County under state mandate may unilaterally impose additional reasonable conditions on audit activity.

24. Audit Resolution and Disallowed Costs

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- a. In the event the County, State, or USDOL disallows any expenditures of funds made by EDSI under this contract, EDSI shall within 10 days reimburse such funds to the County from non-federal funds, after attempted resolution of the disallowed costs under the 120-day Audit Resolution Procedure. The County has adopted the 120-day Audit Resolution Procedure that allows EDSI a 30-day comment period after receipt of the final audit. Within 30 days after the comment period, the County will issue an initial determination stating disallowed costs, then EDSI will have 60 days to produce documentation attesting to the allowed ability of the costs, request a hearing, or otherwise seek a settlement of the disallowed costs. At the end of the 120 days, a final determination will be issued stating all disallowed costs that shall be reimbursed. The County may, in the case of EDSI's default or actions which the County believes are not in good faith by EDSI, withhold future payments under this or any other contract with EDSI or impose other sanctions until the disallowed costs are resolved. If interest on disallowed costs accrues to the County or the State, EDSI shall also be liable for such interest charges.

25. Contract Closeout

- a. Within 30 days from the ending or termination of the contract, EDSI shall submit to the County a final performance report, financial report, closeout document, and a reimbursement for WIOA funds received in excess of final expenditures. Receipt of the closeout documents will complete all transactions under the contract except for property maintenance, audit, and audit resolution. No later than the date the final performance report is due, EDSI shall return to the County any and all County property purchased hereunder and any and all unexpended and surplus funds EDSI obtained pursuant to this Contract.

26. Changes

- a. Any changes in the terms of the Agreement must be in writing and signed by both parties to be effective, except if necessitated by unavailability of or reduction in funding.

27. Contracting Period

- a. The contracting period shall be as stated in section 3a (Time of Performance). As stated in the RFP, the County shall have the option of extending this contract for two additional one-year terms. The County shall give EDSI written notice of its intent to renew, including any additional provisions which the County determines necessary to include in this contract for the renewal period, no less than 60 days prior to the expiration of said period. If the County elects to renew, EDSI shall respond within 30 days of said notice with any requests for exceptions or changes to the original contract terms and any additional provisions provided by the County. If there are no exceptions noted, this contract, including said additional provisions, shall be renewed for the additional term.

28. Termination of the Contract

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- a. If through any fault of its own, EDSI shall fail to fulfill in a timely and proper manner its obligations under this contract, or if EDSI shall violate any of the material covenants, agreements, representations or stipulations of this contract, the County shall have the right to terminate this contract by giving written notice to EDSI of such termination and specifying the effective date thereof. In such event, all finished documents and other materials collected or produced under this contract shall, at the option of the County, become its property. EDSI shall be entitled to receive just and equitable compensation for any work performed in accordance with this contract, except for the extent such work must be duplicated in order to complete the contract. Notwithstanding the foregoing, EDSI shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of this contract by EDSI, and the County may withhold payment of any additional sums as security for payment of damages caused by EDSI's breach, until such time as the exact amount of the damages resulting from such breach is determined.
- b. EDSI shall repay to the County within 30 days of termination of the contract any and all cash advances received which exceed actual expenditures for work performed in accordance with this contract. EDSI shall work closely with the County in the liquidation of advances and recovery of unexpended funds.
- c. The County may unilaterally terminate or modify this contract if necessitated by unavailability of or reduction in funding, and/or non-performance by EDSI.
- d. EDSI shall have the right to terminate this contract if the County breaches any of the material covenants, agreements, representations, or stipulations of this contract and has failed to correct such breach within 30 days after receiving written notification from the contractor of the breach. Upon termination, the County shall not be relieved of its duty to pay EDSI for services performed in accordance with the contract and prior to the effective date of termination.

29. Incorporated Documents and Definitions

- a. Documents Included in the Contract
 - i. The following documents are hereby made a part of this Contract by reference, and compliance with the applicable provisions of the documents is a condition of this Contract: Workforce Innovation and Opportunity Act Public Law No: 113-128 (herein after referred to as the "Act" or "WIOA"), WIOA DOL ETA 20 CFR, Part 651, 652, 653, 654, 658, 675, 676, 677, 678, 679, 680, 681, 683, and 686; and DOE Office of Career, Technical and Adult Education, Rehabilitation Services Administration 34 CFR Parts 361 and 463; other applicable federal laws, regulations, orders, circulars and issuances; applicable state laws, regulations, instructions and issuances; Attachment A, "Statement of Work"; Attachment B, "Budget"; Attachment C "Certifications and Assurances"; and Attachment D "Solicitation (Cumberland County WFB RFP No. 18-01-WFD), and EDSI's Proposal" and

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this Offer to Contract.

- b. Definitions Incorporated in the Contract
 - i. All definitions included in WIOA and the regulations promulgated under WIOA, in other applicable federal statutes, regulations, circulars and directives, and in applicable sections of the North Carolina General Statutes and the North Carolina Administrative Code are incorporated herein by reference, whether defined at the time of this agreement or at any time during the period of the agreement.
- c. Special Definitions
 - i. Whenever WIOA and the regulations promulgated thereunder permit or require the Governor or the State to define certain words or phrases, or whenever the State or County determines that a definition is necessary, the State or County may define such words or phrases by issuance, rule, directive, bulletin or instruction, and such definitions shall be incorporated herein by reference.
- d. Changes in Incorporated Documents and Definitions
 - i. The parties are bound by any change in federal and state law that occurs subsequent to the Contract. EDSI shall notify the County of any budget transfers or adjustments made to Attachment B.
 - ii. If the cumulative amount of all transfers to and from that budget line item equals or exceeds five percent (5%) of the original amount as stated in Attachment B, no transfer or adjustment to that line item may be made without the written consent of the County. All budget transfer requests must include a brief explanation letter and a revised Attachment B prior to the County issuing written approval.

30. Severability, Discretion of the County, and Open Meetings Law

- a. In the event any provision of this Contract shall be considered unlawful or without effect, it shall be considered severable and shall not affect the remainder of the Contract.
- b. The County shall have the power and discretion to enforce any provision of this contract and to select from among its remedies under this Contract and at law. The failure of the County to enforce a provision shall not constitute waiver of the provision or the Contract.
- c. No action taken by EDSI or its sub-recipients in violation of any applicable provision of the state open meetings law shall be valid.

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31. Force Majeure

- a. The performance of this Contract may be delayed and/or suspended by any act of God, war, civil disorder, employment strike, hazardous or harmful condition, any alleged criminal or reckless act not caused by EDSI, its employees, agents, and subcontractors, or other cause beyond the control of either party ("Force Majeure Event"). Should performance under this Contract be delayed and/or suspended due to any Force Majeure Event, neither party shall be held liable for any default, damage, and/or breach of contract resulting therefrom.

32. Notices

- a. Written notices required by this Contract shall be directed to the following representatives:

Cumberland County Workforce Development Board
C/O Nedra Clayborne Rodriguez
410 Ray Avenue
Fayetteville, North Carolina 28301

EDSI
Kevin Schneiders - CEO
15300 Commerce Dr. North
Dearborn, MI 48120

Or to such other persons and such other addresses as one of the above parties may designate in writing.

33. Order of Precedence of Attachments

- a. In the event of a conflict between this Contract and its attachments, this Contract shall have precedence over all attachments. Attachment B shall have precedence over Attachment A.

34. Entire Contract

- a. This is the entire agreement between the parties and there are no terms or conditions relative to this matter except those specifically set forth herein; time of completion and performance is of the essence in this contract.
- b. IN WITNESS WHEREOF, the parties have caused this agreement to be executed by its designated officials pursuant to the policies and procedures of their respective governing bodies, as of the day and year first above written.

DRAFT

Nedra Rodriguez, Workforce Development Director, reviewed the background information recorded above and stated the FY19 award will be \$2.15 million. Commissioner Keefe inquired regarding last year's amount and stated this is a new provider. Ms. Rodriguez stated the initial award is always based on estimated allocations and that information is not available until late June or early July. Ms. Rodriguez stated the initial award was similar last year to the one this year and once expenditures are reconciled and the audit is complete, the contract will be amended and brought back to the Board. Ms. Rodriguez stated EDSI, as part of their proposals, stated they will be reaching out and working with community partners as well as veterans in the community.

MOTION: Commissioner Adams moved to award the WIOA Title I Program Services contract to Education Data Systems, Inc. (EDSI).

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (3-0)

3. CONSIDERATION OF A STANDING OBJECTION TO THE WAIVER OF ANY COURT COST OR FINE IN RESPONSE TO SESSION LAW 2017-57 SECTION 18B.6(A)(B)

BACKGROUND

In late November 2017, the County was notified that we would have the opportunity to appear and be heard on any waiver of court costs or fines imposed in criminal and infraction cases, to be effective December 1, 2017. Since that time, the Administrative Office of the Courts has provided the option of completing the attached form in lieu of having the attorney appear in court.

On the basis of fiscal responsibility, staff is requesting approval to register its objection to waiver or remission of any cost or fine that may be due to the County. We are also requesting approval to waive the request for notice as we no longer wish to receive monthly notices.

RECOMMENDATION/PROPOSED ACTION

Management recommends the Finance Committee approve and forward to the Board of Commissioners the following action:

Approve for the County Attorney to submit the standing objection/waiver of objection by objecting to waiver or remission of any cost under G.S. 7A-304 or fine that may be due the County (check box 1.a.); a waiver for the monthly notice to be discontinued (check box 2.a.).

Vicki Evans, Finance Director, reviewed the background information and recommendation/proposed action recorded above.

Commissioner Adams stated he would seek to recuse himself from as the matter has a direct consequence to day job (attorney). Commissioner Faircloth asked whether management's recommendation was to approve to which Amy Cannon, County Manager, responded in the affirmative.

DRAFT

- MOTION:** Commissioner Faircloth moved to approve for the County Attorney to submit the standing objection/waiver as recommended.
- SECOND:** Commissioner Keefe
- VOTE:** UNANIMOUS (2-0) (Commissioner Adams was recused)

Commissioner Keefe referenced the monthly updates recorded below. There were no questions or discussion.

4. MONTHLY UPDATES

A. HEALTH INSURANCE

BACKGROUND:

Claims for April 2018 are up 28% from April 2017 (month to month) and running comparable to FY17. To provide some perspective on the claims, below is the 10-month average for the past 5 fiscal years. This average represents the average claims for July – April of each fiscal year.

Average claims per fiscal year for July – April:

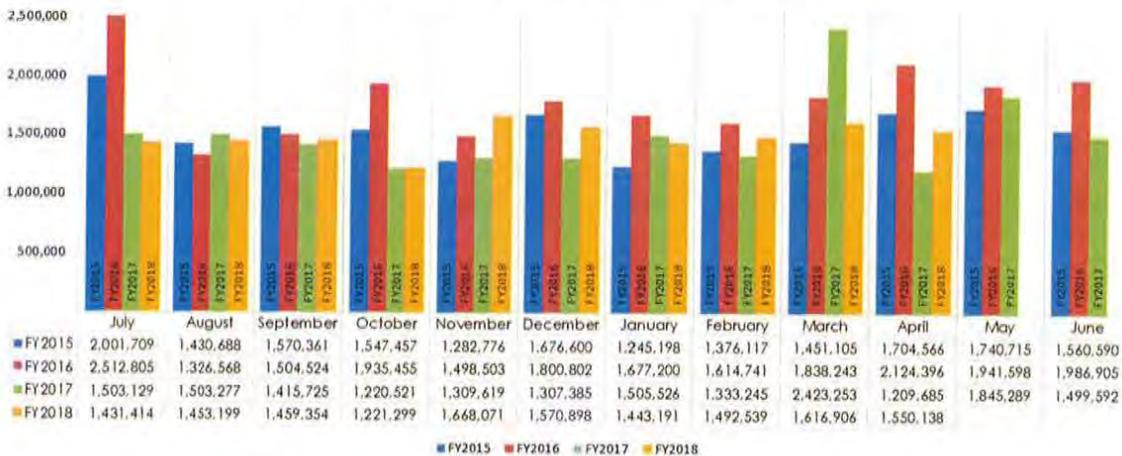
- FY13 \$1,249,846
- FY14 \$1,246,703
- FY15 \$1,528,658
- FY16 \$1,783,324
- FY17 \$1,473,137
- FY18 \$1,490,701

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

RECOMMENDATION/PROPOSED ACTION:

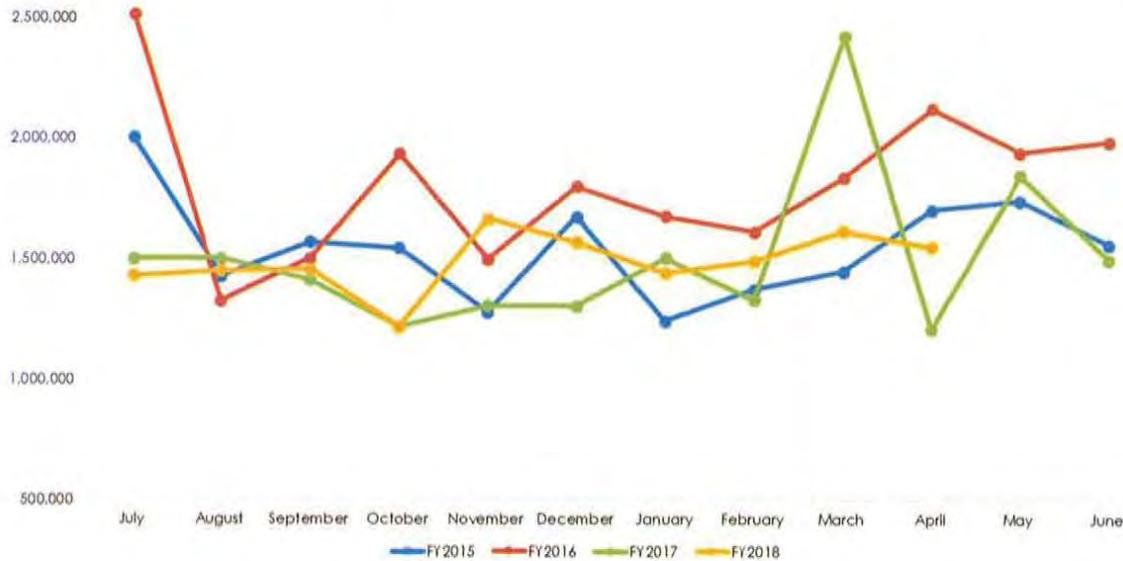
No action needed – for information only.

Monthly Insurance Claims FY15-FY18



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Monthly Insurance Claims FY15 - FY18



B. CDBG-DR

**CUMBERLAND COUNTY CDBG-DR PROGRAM UPDATE
FOR THE JUNE 7, 2018
FINANCE COMMITTEE MEETING**

Status as of May 29, 2018:

Total Applications	Application Intake (Step 1)	State Eligibility Check (Step 2)	State Duplication of Benefits Check (Step 3)	Under Further Review
237	102 (19 county/83 city)	43 (4 county/39 city)	70 (14 county/56 city)	22
Inspection & Environmental Review (Step 4)	Grant Determination (Step 5)	Contractor Selection (Step 6)	Construction (Step 7)	Completion (Step 8)
11	0	0	0	0

*Steps 2-3 performed by State; Steps 1, 4-8 performed by County/City

DRAFT

Milestones/Activities:

- Request for Project Management Proposal – Selection Committee Review June 4, 2018
- Ongoing– County will process applications, incomplete applications and submit for review; State will determine eligibility; State will handle environmental review processes;
- County CD Rehab staff have conducted site inspections on properties that are in the Step 3 DOB stage – 2 completed; 5 in progress
- City CD staff have conducted site inspections on properties that are in the Step 3 DOB stage – 2 completed; 2 in progress
- Prepare project detail form for State environmental review process – Robins Meadow Phase II; Day Resource Center in Homeless Initiative Committee for discussion on site determination

Current Staffing:

- State: – David Cauthorn, CD Specialist II, Dept. of Public Safety – (Community Outreach for CDBG-DR) – Temporary Office Room 119 – Historic Courthouse; 130 Gillespie St.
- Cumberland County:
 - Sylvia McLean, P.T. Community Development (CD) Consultant; Terrinique Washington, Admin Support Specialist; Tye Vaught, Admin Program Officer II;
 - Temporary Staff: Interviews completed –Admin Housing Coordinator II; - *projected June 25; Housing Project Manager – re-advertised 5/30/18*
- City of Fayetteville: Jay Reinstein and Cindy Blot are City representatives/contacts

Hours of Operation:

- Monday – Friday, 9 a.m. to 4 p.m.

C. FINANCIAL REPORT

BACKGROUND:

The financial report is included which shows the fiscal year 2018 April 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.

RECOMMENDATION/PROPOSED ACTION:

No action needed – for discussion and information purposes only.

DRAFT

REVENUES	FY16-17 AUDITED	FY17-18 ADOPTED BUDGET	FY17-18 REVISED BUDGET	YTD ACTUAL AS OF April 30, 2018	PERCENT OF BUDGET TO DATE
Ad Valorem Taxes					
Current Year	\$ 156,131,527	\$ 160,312,162	\$ 160,312,162	\$ 161,845,610	101.0% (1)
Prior Years	1,046,732	1,121,000	1,121,000	987,022	88.0%
Motor Vehicles	17,683,864	18,070,242	18,070,242	13,557,985	75.0% (2)
Penalties and Interest	650,368	667,602	667,602	648,109	97.1%
Other	1,018,563	930,279	930,279	808,723	86.9%
Total Ad Valorem Taxes	176,531,054	181,101,285	181,101,285	177,847,448	98.2%
Other Taxes					
Sales	41,517,943	41,760,036	41,760,036	23,976,259	57.4% (3)
Real Estate Transfer	1,091,362	700,000	700,000	852,674	121.8%
Other	1,114,408	1,111,500	1,111,500	508,617	45.8%
Total Other Taxes	43,723,713	43,571,536	43,571,536	25,337,549	58.2%
Unrestricted & Restricted Intergovernmental Revenues	75,613,483	67,300,253	70,826,215	39,669,317	56.0% (4)
Charges for Services	13,832,010	12,056,608	12,078,908	8,828,460	73.1%
Other Sources (includes Transfers In)	8,945,521	6,988,890	7,045,838	6,297,399	89.4% (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	3,813,452	102.7% (7)
Total Other	12,660,158	10,703,527	38,305,769	37,656,143	98.3%
Total Revenue	\$ 322,360,418	\$ 314,733,209	\$ 345,883,713	\$ 289,338,919	83.7%
Fund Balance Appropriation		8,889,652	16,550,834	-	0.0% (8)
Total Funding Sources	\$ 322,360,418	\$ 323,622,861	\$ 362,434,547	\$ 289,338,919	79.8%

DRAFT

DEPARTMENTS	FY16-17	FY17-18	FY17-18	YTD ACTUAL	PERCENT OF
	AUDITED	ADOPTED BUDGET	REVISED BUDGET	EXPENDITURES AS OF April 30, 2018	BUDGET TO DATE **
Governing Body	\$ 591,731	\$ 617,587	\$ 617,587	\$ 473,037	76.6%
Administration	2,515,558	1,501,201	1,501,201	1,102,228	73.4%
Public Affairs/Education	76,879	497,199	497,199	384,761	77.4%
Human Resources	30,245	828,896	828,896	658,018	79.4%
Print, Mail, and Design	754,908	875,345	861,871	580,623	67.4%
Court Facilities	55,786	129,370	173,610	121,032	69.7%
Facilities Maintenance	1,936,136	2,009,030	2,493,508	1,191,135	47.8%
Landscaping & Grounds	606,364	607,577	612,237	456,027	74.5%
Carpentry	231,715	234,884	234,884	144,152	61.4%
Facilities Management	1,238,266	1,267,781	1,273,221	979,217	76.9%
Public Buildings Janitorial	721,041	710,946	710,946	571,635	80.4%
Central Maintenance	798,075	672,386	672,386	483,630	71.9%
Information Services	3,388,444	3,958,479	4,173,447	2,694,118	64.6%
Board of Elections	1,180,015	2,237,762	2,237,762	773,816	34.6% (1)
Finance	1,205,572	1,201,225	1,201,225	911,554	75.9%
Legal	668,776	813,554	813,554	557,908	68.6%
Register of Deeds	2,092,298	2,321,099	2,761,865	1,510,311	54.7%
Tax	5,567,709	5,589,154	5,620,154	3,954,179	70.4%
Debt Service	23,400,669	21,464,283	21,466,328	15,484,305	72.1% (2)
General Government Other	3,828,293	4,237,882	4,554,690	2,405,614	52.8%
Sheriff	47,212,707	50,250,550	50,518,813	36,989,337	73.2%
Emergency Services	3,064,405	3,320,934	3,405,291	2,343,865	68.8%
Criminal Justice Pretrial	434,987	426,673	456,673	353,135	77.3%
Youth Diversion	325	25,000	25,000	1,730	6.9% (3)
Animal Control	2,932,986	2,922,717	2,947,717	2,312,863	78.5%
Public Safety Other (Medical Examiners, NC Detention Subsidy, etc.)	1,007,220	1,075,666	1,396,928	863,863	61.8%
Heath	22,269,462	22,506,054	23,541,742	16,685,479	70.9%
Mental Health	3,148,761	5,452,507	3,281,366	2,964,003	90.3%
Social Services	71,524,059	66,425,182	67,147,945	46,500,495	69.3%
Veteran Services	371,189	385,725	385,725	305,241	79.1%
Child Support	4,893,727	5,044,200	5,044,200	3,711,444	73.6%
Spring Lake Resource Administration	31,524	34,332	34,332	20,899	60.9%
Library	11,105,397	10,530,428	10,779,572	8,004,089	74.3%
Stadium Maintenance	110,288	117,296	117,296	59,565	50.8%
Culture Recreation Other (Some of the Community Funding)	312,816	268,069	268,069	250,502	93.4%
Planning	3,077,126	3,446,758	3,455,653	2,240,565	64.8%
Engineering	439,678	510,090	2,437,872	836,375	34.3% (4)
Cooperative Extension	570,083	705,596	705,596	410,005	58.1%
Location Services	357,095	447,221	447,221	251,715	56.3%
Soil Conservation	141,234	136,400	357,543	112,574	31.5%
Public Utilities	87,442	110,270	124,474	73,408	59.0%
Economic Physical Development Other	20,000	20,000	20,000	20,000	100.0% (5)
Industrial Park	3,296	23,148	23,148	844	3.6% (6)
Economic Incentive	420,423	548,418	710,918	100,315	14.1% (7)
Water and Sewer	-	250,000	379,330	-	0.0% (8)
Education	91,394,940	93,341,404	93,341,404	76,479,641	81.9%
Other Uses:					
Transfers Out	2,264,613	3,522,583	10,230,899	6,971,746	68.1% (9)
Refunding of 2009A and 2011B LOBS	-	-	27,543,249	27,531,480	100.0% (10)
TOTAL	\$ 318,084,263	\$ 323,622,861	\$ 362,434,547	\$ 271,832,480	75.0%

Expenditures by Category	FY16-17	FY17-18	FY17-18	EXPENDITURES AS OF	PERCENT OF
	UNAUDITED	ADOPTED BUDGET	REVISED BUDGET	April 30, 2018	BUDGET TO DATE
Personnel Expenditures	\$ 131,620,131	\$ 136,744,346	\$ 134,299,527	\$ 97,031,800	72.3%
Operating Expenditures	158,133,695	157,914,300	164,203,250	122,328,401	74.5%
Capital Outlay	2,118,869	3,460,456	4,127,401	2,051,654	49.7% (11)
Debt Service	23,946,955	21,981,176	21,983,221	15,917,400	72.4%
Refunding of 2009A and 2011B LOBS	-	-	27,543,249	27,531,480	100.0%
Transfers To Other Funds	2,264,613	3,522,583	10,277,899	6,971,746	67.8%
TOTAL	\$ 318,084,263	\$ 323,622,861	\$ 362,434,547	\$ 271,832,480	75.0%

DRAFT

June 7, 2018 Regular Meeting

Fiscal Year 2018 - April Year-to-Date Actuals

Additional Detail

General Fund Revenues

*

- (1) **Current Year Ad Valorem** - Actuals are at 101.0% of budget as of 4/30/18. 98.35% of the levied tax as of 4/30/18.
- (2) **Motor Vehicles** 88.0% - YTD Actual reflects 9 months of collections.
- (3) **Sales Tax** 57.4% - YTD Actual reflects 7 months of collections.
- (4) **Unrestricted/Restricted Intergovernmental Revenues** 55.5% - lag in revenue is typically one month.
- (5) **Other Sources** (includes Transfers In) 89.5% - 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 (9) on report of expenditures.)
- (7) **Lease Land CFVMC** 102.7% - paid in full.
- (8) **Fund Balance Appropriation** 0% - Direct entries are not made to fund balance throughout the fiscal year.

General Fund Expenditures

**

- (1) **Board of Elections** 34.6% - capital purchase budgeted for \$809,045 has not yet been purchased.
- (2) **Debt Service** 72.1% - large debt payment was made in December
- (3) **Youth Diversion** 6.9% - expenditures for this program tend to occur later in the fiscal year. Conference scheduled during the month of December.
- (4) **Engineering** 34.3% - 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** 3.6% - maintenance at Cedar Creek Industrial Park has not yet been completed.
- (7) **Economic Incentive** 14.1% - 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** 68.1% - 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** 49.7% - Board of Elections capital equipment and FTCC capital outlay budgeted but not incurred or encumbered makes up the majority of unutilized budget.

5. OTHER ITEMS OF BUSINESS

There were no other items of business.

MOTION: Commissioner Keefe moved to go into closed session for Attorney Client Matter(s) pursuant to NCGS 143-318.11(a)(3).

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (3-0)

MOTION: Commissioner Faircloth moved to reconvene in open session.

SECOND: Commissioner Adams

VOTE: UNANIMOUS (3-0)

There being no further business, the meeting adjourned at 9:25 a.m.



CUMBERLAND
★ **COUNTY** ★
NORTH CAROLINA

ENGINEERING & INFRASTRUCTURE DEPARTMENT

Engineering Division · Facilities Management Division · Landscaping & Grounds Division · Public Utilities Division

**MEMO FOR THE AGENDA OF THE
AUGUST 2, 2018 MEETING OF THE FINANCE COMMITTEE**

TO: FINANCE COMMITTEE MEMBERS
FROM: JEFFERY P. BROWN, PE, E & I DIRECTOR
THROUGH: AMY CANNON COUNTY MANAGER
DATE: JULY 24, 2018
SUBJECT: CONSIDERATION OF REQUEST BY UNITED
DEVELOPERS, INC. TO WAIVE LANDFILL DISPOSAL
FEES
Requested by: AMY CANNON, COUNTY MANAGER
Presenter(s): JEFFERY P. BROWN, PE, E & I DIRECTOR
Estimate of Committee Time Needed: 10 MINUTES

BACKGROUND:

Attached is a request from United Developers, Inc., and the Fayetteville Metropolitan Housing Authority for the “grandfathering” of concrete disposal fees for the Grove View Terrace Project. When the subcontractor’s demolition proposals were received by United Developers in April of 2017, the County fee schedule did not have a disposal fee for concrete at the Ann Street Landfill.

A disposal fee of \$18 per ton was adopted as part of the FY 18 budget which was effective July 1, 2018. The demolition contractor has estimated disposal of approximately 25,000 tons of concrete and brick at a cost of \$450,000.

RECOMMENDATION/PROPOSED ACTION:

Consider the request to “grandfather” the disposal fees for the Grove View Terrace project.

Amy Cannon

Subject:

FW: Landfill Issue

Good afternoon Ms. Cannon,

In light of the below email, United Developers, Inc. and FMHA, is requesting to be "grandfathered" from the payment of the concrete disposal fees generated from the Grove View Terrace Demolition. Please see the below email from our Demo and Abatement contractor. As you can see, and I believe Jonathan Charleston has made you aware, these fees were never contemplated or factored into the demolition budget.

Thank you in advance for your time and consideration.

Sincerely,

Jim Smith
United Developers, Inc.

Good afternoon Jim and Shawna,

During the RFP phase of this project in April of 2017- Trifecta called around local landfills for disposal pricing for Construction Debris and concrete. At that time- Cumberland County landfill was accepting concrete free of charge. Trifecta Services Company was notified approx. 2 weeks after the bids were due; that we were the low bidder and would be awarded the project. Unfortunately this project was delayed approx. 15 Months. Around Mid-June of 2018, we received notification that the loan was to close on or before June 30th 2018. It was at this time, Trifecta Services Company began to preplan for the abatement and demolition activity. Part of this planning was to have accounts setup at the landfills. While setting up the account, we were told that the Management at the landfill had changed this past year and additionally- that "due to the current capacity of the landfill" and "change of management" that concrete was no longer accepted for disposal free of charge. It was at this time I made a call to Wade Duggins to inform him of the concrete disposal discrepancy.

Please feel free to call or email should you need any further information.

Thank you,

Joseph Stritmatter
Trifecta Services Company
704.320.0766 (M)
704.900.1977 (O)

**COUNTY of CUMBERLAND****Board of Elections**Bobby Swilley
ChairHarvey Raynor, III
Vice-ChairVikki S. Andrews
SecretaryTerri Robertson
DirectorJeff Long
Member**MEMO FOR THE AGENDA OF THE AUGUST 2, 2018
MEETING OF THE FINANCE COMMITTEE**

TO: FINANCE COMMITTEE MEMBERS
FROM: TERRI ROBERTSON, DIRECTOR
THROUGH: SALLY SHUTT, ASSISTANT COUNTY MANAGER
DATE: JULY 23, 2018
SUBJECT: CONSIDERATION OF CONTRACT TO PURCHASE BOARD OF ELECTION
VOTING EQUIPMENT

Requested by: Amy Cannon, County Manager
Presenter(s): Terri Robertson, Director
Estimate of Committee Time Needed: 5 minutes

BACKGROUND:

The Board of Elections obtained the current M100 tabulators and 650 High Speed Counter in 2006 and they use old technology. We have begun experiencing memory card and machine failures on Election Day. We are proposing to upgrade our current equipment to the DS200 tabulators to replace the M100 tabulators and the 850 High Speed Counter to replace the 650 High Speed Counter. The contract for the purchase between the Board of Elections and Election Systems and Software has been reviewed by the Cumberland County Legal Department.

Election Systems and Software is our current vendor. They are currently the only certified voting equipment vendor in North Carolina. The total cost is \$514,739.91 for the purchase of the equipment with Election Systems and Software. We will receive a trade-in value of \$67,338.50 for current equipment and \$23,400 credit from previous rental fees paid. Funding was approved in the Fiscal Year 2019 budget.

After the first year, the vendor will invoice the Board of Elections for \$88,260 for hardware maintenance fees and firmware license, maintenance and support fees over a three-year period.

RECOMMENDATION/PROPOSED ACTION:

Recommend the Board of Commissioners approve the contract with Election Systems and Software for the purchase of the DS200 tabulators and the 850 High Speed Counter at the August 6, 2018 regular meeting of the Commission.



RECEIVED
7/16/18
ct

COUNTY of CUMBERLAND

Board of Elections

Harvey Raynor III
Chair

Jeff Long
Vice-Chair

Vikki S. Andrews
Secretary

Terri Robertson
Director

Bobby Swilley
Member

MEMORANDUM

DATE: July 12, 2018

TO: Cumberland County Board of Commissioners

THROUGH: Amy Cannon, County Manager

FROM: Harvey Raynor, III, Chairman - *Harvey W. Raynor III*

RE: Voting Equipment

The Board of Elections is requesting permission to move forward with the purchase of voting equipment, specifically the DS200 Tabulator and the 850 High Speed Counter. Sufficient DS200 Tabulators will be purchased to replace all M100's currently used on Election Day and during the One Stop Early Voting period and one 850 High Speed Counter will be purchased to replace the 650 High Speed Counter which is currently being used.

As the equipment being purchased are ballot tabulators and are not ADA compliant voting systems, the Board of Elections will need to purchase an ADA compliant voting system to be used in each of the 77 precincts and One Stop Early Voting sites once one has been certified. Until such a voting system is certified and purchased the Board of Elections will continue to lease a system for use during elections.

Should the Commissioners need further information or have any questions, please contact this office.



11208 JOHN GALT BLVD
 OMAHA, NE 68137-2364
 (402) 593-0101

Sales Order Agreement

Customer P.O. #: _____

1st Election Date: To be Agreed Upon by the Parties

Estimated Delivery Date: To be Agreed Upon by the Parties

Phone Number: (910) 678-7736

Fax Number: (910) 678-7738

Customer Contact, Title: Terri Robertson - Director

Customer Name: Cumberland County, North Carolina

Type of Sale: NEW

Type of Equip: NEW REFURBISHED

Bill To: _____
Cumberland County, North Carolina
Terri Robertson - Director
227 Fountainhead Lane
Fayetteville, NC 28301

Ship To: _____
Cumberland County, North Carolina
Terri Robertson - Director
227 Fountainhead Lane
Fayetteville, NC 28301

Item	Description	Qty	Price	Total
1	DS200 Model DS200 Scanner with Internal Backup Battery, Plastic Ballot Box with Steel Door and e-Bin, 4GB Jump Drive, and Paper Roll	87	\$5,750.00	\$500,250.00
2	DS200 Model DS200 Scanner with Internal Backup Battery, Plastic Rolling Carrying Case, 4GB Jump Drive, and Paper Roll	3	\$5,300.00	\$15,900.00
3	DS200 Tote Bin	87	\$225.00	\$19,575.00
4	DS200 4GB Jump Drive	40	\$105.00	\$4,200.00
5	DS850 Model DS850 High Speed Digital Image Scanner with Steel Table, Report Printer, Audit Printer, Start-Up Kit, Dust Cover, Battery Backup, Two (2) USB Cables, and Three (3) 8GB Thumb Drives	1	\$111,500.00	\$111,500.00
6	DS850 8GB Thumb Drive (Additional)	1	\$210.00	\$210.00
7	DS850 Initial Annual License Fee	1	Included	Included
8	DS200 Equipment Installation	90	\$115.00	\$10,350.00
9	DS850 Equipment Installation / Training Fee (1st Unit)	1	\$3,575.00	\$3,575.00
10	Services Project Management Day	2	\$1,650.00	\$3,300.00
11	Services Election On-Site Support Event	1	\$4,525.00	\$4,525.00
12	Rental Credit Credit from Previous Rental Fees Paid	1	(\$23,400.00)	(\$23,400.00)
13	Trade-In Allowance Equipment Being Traded-In by Customer Includes: 80 - Model 100 Scanner 80 - Model 100 Ballot Box 1 - Model 650 Scanner 216 - iVotronic Terminal 216 - iVotronic Booth with RTAL Printer	1	(\$67,338.50)	(\$67,338.50)
14	Shipping Shipping & Handling	1	\$13,240.00	\$13,240.00

Freight Billable: yes no

Order Subtotal	\$	595,886.50
Customer Discount		(\$81,146.59)
Order Total	\$	514,739.91

Sales Order Agreement

Mac Beeson
Regional Sales Manager

Customer Signature

Date

V.P. of Finance

Date

Title

Trade-In Equipment:

ES&S will coordinate and pay for the pickup and transportation of the trade-in equipment from Customer's site on a date to be mutually agreed upon by the parties. ES&S is responsible for preparing, packaging and palletizing the trade-in equipment for shipment.

Special Notes:**Payment Terms**

100% of Order Total due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of Corresponding ES&S Invoice.

Note 1: Any applicable state and local taxes are not included, and are the responsibility of the Customer.

Note 2: In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.

Warranty Period (Years):

One (1) Year From Equipment Delivery

Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period)

The terms, conditions, and pricing for the Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period) are set forth in Exhibit A attached hereto.

SEE GENERAL TERMS AND CONDITIONS

GENERAL TERMS

1. **Purchase/License Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell and/or license, and Customer agrees to purchase and/or license, the ES&S Equipment, ES&S Software and ES&S Firmware described on the front side of this Agreement. The ES&S Firmware and ES&S Software are collectively referred to hereinafter as the "ES&S Software." The payment terms for the ES&S Equipment and ES&S Software are set forth on the front side of this Agreement. Title to the ES&S Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on the front side of this Agreement for the ES&S Equipment. The consideration for ES&S' grant of the license during the Initial Term for the ES&S Firmware is included in the cost of the ES&S Equipment.

2. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses for its bona fide full time, part time or temporary employees to use the ES&S Software and related Documentation in the Jurisdiction while Customer is using the ES&S Equipment and timely pays the applicable annual ES&S Software License, Maintenance and Support Fees set forth on Schedule A1. The licenses allow such bona fide employees to use and copy the ES&S Software (in object code only) and the Documentation, in the course of operating the ES&S Equipment and solely for the purposes of defining and conducting elections and tabulating and reporting election results in the Jurisdiction.

3. **Prohibited Uses.** Customer shall not take any of the following actions with respect to the ES&S Software or the Documentation:

a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the ES&S Software;

b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software or Documentation, in whole or in part, to or by any third party without ES&S' prior written consent; or

c. Cause or permit any change to be made to the ES&S Software without ES&S' prior written consent; or

d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the ES&S Software (except finished ballots by ballot printers selected by Customer) in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

4. **Term of Licenses.** The licenses granted in Section 2 shall commence upon the delivery of the ES&S Software described in Section 2 and shall continue for a one (1) year period (the "Initial License Term"). Upon expiration of the Initial License Term, the licenses shall automatically renew for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by Customer of the annual software license and software maintenance and support fee as set forth on the front side of this Agreement. ES&S may terminate either license if Customer fails to pay the consideration due for, or breaches Sections 2, 3, or 9 with respect to, such license. Upon the termination of either of the licenses granted in Section 2 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

5. **Updates.** During the Initial License Term or any License Renewal Term, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates as well as the cost of any replacements, retrofits or modifications to the ES&S Equipment which may be necessary in order to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) install the Updates; (ii) train Customer on Updates, if such training is requested by Customer or (iii) provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely or properly install an Update. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S. If Customer proposes changes in the ES&S Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. In the event that any Updates are required due to changes in state law, ES&S reserves the right to charge Customer for the following:

- (i) the total cost of any third party items that are required in order to operate the Updates;
- (ii) the total cost of any replacements, retrofits or modifications to the ES&S Equipment contracted for herein that may be developed and offered by ES&S in order for such ES&S Equipment to remain compliant with applicable laws and regulations; and
- (iii) Customer's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates.

Customer's pro-rata share of the costs included under subsection (iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the Equipment and/or Licensed Software purchased and licensed by Customer under this Agreement. Customer shall pay ES&S the entire costs incurred for design, development and certification of any Update which is required due to a change in local law or is otherwise requested or required by Customer.

6. **Delivery; Risk of Loss.** The Estimated Delivery Dates and First Election Use (if any) set forth on the front side of this Agreement are estimates and may only be established or revised, as applicable, by the parties, in a written amendment to this Agreement, because of delays in executing this Agreement, changes requested by Customer, product availability and other events. ES&S will notify Customer of such revisions as soon as ES&S becomes aware of such revisions. Risk of loss for the ES&S Equipment and ES&S Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the ES&S Equipment and ES&S Software and shall name ES&S as an additional insured thereunder and, at ES&S' request, shall deliver written evidence thereof to ES&S until all amounts payable to ES&S under this Agreement have been paid by Customer.

7. Warranty.

a. **ES&S Equipment/ES&S Software.** ES&S warrants that for a one (1) year period (the "Warranty Period"), it will repair or replace any component of the ES&S Equipment or ES&S Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty Period will commence upon delivery. The Warranty shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the ES&S Equipment, including printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. Any repaired or replaced item of ES&S Equipment or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Equipment or ES&S Software will become the property of ES&S. This warranty is effective provided that (i) Customer notifies ES&S within three (3) business days of the discovery of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (ii) the ES&S Equipment or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by ES&S, (iii) the ES&S Equipment or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by ES&S or causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (iv) Customer has installed and is using the most recent update provided to it by ES&S. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product. The terms of post-warranty license, maintenance and support are set forth on Exhibit A.

b. **Exclusive Remedies/Disclaimer.** IN THE EVENT OF A BREACH OF SUBSECTION 7(a), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHER, IN THE EVENT CUSTOMER DECLINES ES&S' INSTALLATION AND ACCEPTANCE TESTING SERVICES OR IN ANY WAY AT ANY TIME ALTERS, MODIFIES OR CHANGES ANY EQUIPMENT, SOFTWARE, THIRD PARTY ITEMS AND/OR NETWORK (COLLECTIVELY "SYSTEM") CONFIGURATIONS WHICH HAVE BEEN PREVIOUSLY INSTALLED BY ES&S OR WHICH ARE OTHERWISE REQUIRED IN ACCORDANCE WITH THE CERTIFIED VOTING SYSTEM CONFIGURATION, ALL WARRANTIES OTHERWISE PROVIDED HEREUNDER WITH RESPECT TO THE SYSTEM PURCHASED, LEASED, RENTED AND/OR LICENSED UNDER THIS AGREEMENT SHALL BE VOID AND OF NO FURTHER FORCE AND EFFECT.

8. **Limitation Of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the ES&S Equipment or ES&S Software; or (b) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent update provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the ES&S Software Maintenance and Support.

9. **Proprietary Rights.** Customer acknowledges and agrees as follows:

ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S, the design and configuration of the ES&S Equipment and the format, layout, measurements, design and all other technical information associated with the ballots to be used with the ES&S Equipment. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S. Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Equipment, the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

10. **Termination.** This Agreement may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within 30 days after it receives written notification thereof from the non-breaching party.

11. Disputes.

a. **Payment of Undisputed Amounts.** In the event of a dispute between the parties regarding (1) a product or service for which payment has not yet been made to ES&S, (2) the amount due ES&S for any product or service, or (3) the due date of any payment, Customer shall nevertheless pay to ES&S when due all undisputed amounts. Such payment shall not constitute a waiver by Customer or ES&S of any of its rights and remedies against the other party.

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than 30 days, ES&S may suspend performance under this Agreement until such amount is paid. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

12. **Assignment.** Except in the case of a reorganization of the assets or operations of ES&S with one or more affiliates of ES&S or the sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed.

13. **Compliance with Laws.** ES&S warrants to Customer that, at the time of delivery, the ES&S Equipment and ES&S Software sold and licensed under this Agreement will comply with all applicable

requirements of federal and state election laws and regulations that are mandatory and effective as of the Effective Date and will have been certified by the appropriate state authorities for use in Customer's state. The ES&S Equipment and ES&S Software, including all components will be provided to Customer with a hardened network for the election management software ("EMS"), in accordance with the guidelines of the United States Election Assistance Commission. During the Term of this Agreement, in the event Customer fails to maintain EMS in the hardened network or allows any internal or external access to the hardened network, Customer agrees to indemnify and hold harmless ES&S from and against any and all claims, damages, losses, liens, obligations, liabilities, judgments, assessed damages, costs, expenses (including reasonable attorney's fees) and the like arising out of or related to the Customer's breach of its obligations hereunder.

14. **Voting System Reviews.** In the event that the Jurisdiction or the State require any future reviews or examinations ("Reviews") of current or previous versions of state-certified ES&S voting systems or components thereof that are not otherwise required as a result of any changes or modifications voluntarily made by ES&S to the ES&S Software and/or ES&S Equipment licensed and sold hereunder, Customer shall be responsible for:

(i) Customer's pro-rata share of such Review costs;

(ii) Customer's pro-rata share of the costs of designing, developing, manufacturing and/or certification by applicable federal and state authorities of any mandated modifications to the ES&S Equipment and/or ES&S Software that may result from such Reviews; and

(iii) the total cost of any third party items that are required in order for the ES&S Equipment and/or ES&S Software to satisfy any new requirements resulting from such Reviews in order to remain certified;

Customer's pro-rata share of the costs included under subsections 14(ii) and 14(iii) above shall be determined at the time by dividing the number of registered voters in Customer's Jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the ES&S Equipment and/or ES&S Software purchased and licensed by Customer under this Agreement.

15. **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement, including all Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State in which the Customer resides. ES&S is providing equipment, software and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the equipment, software or services, but shall remain fully responsible for such performance. The provisions of Sections 1-5, 7(b), 8, 9, 11(b), 12-15 these General Terms shall survive the termination of this Agreement, to the extent applicable.

EXHIBIT A
HARDWARE MAINTENANCE AND SOFTWARE LICENSE, MAINTENANCE AND SUPPORT
SERVICES
(POST-WARRANTY PERIOD)

ARTICLE I
GENERAL

1. **Term; Termination.** This Exhibit A for Hardware Maintenance and Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Schedule A1 (the "Initial Term"). Upon expiration of the Initial Term, this Exhibit A shall automatically renew for an unlimited number of successive **One-Year Periods** (each a "Renewal Period") until this Exhibit A is terminated by the first to occur of (a) either party's written election not to renew, which shall be delivered to the other party at least thirty (30) days prior to the end of the Initial Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Exhibit A, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after ES&S notifies Customer that it is no longer able to procure replacement parts that may be needed in order to perform the Hardware Maintenance Services contemplated hereunder, (d) the date on which the Equipment or firmware installed thereon is no longer certified by federal and/or state authorities for use in Customer's jurisdiction, or (e) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Exhibit A. The termination of this Exhibit A shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder and shall only entitle Customer to a prorated refund of any fees already paid to ES&S in the event that this is Exhibit A is terminated pursuant to subsection 1(c) or 1(d) above.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance and Software License, Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Schedule A1 for the Initial Term. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Initial Term are due as set forth on Schedule A1. ES&S may increase the Hardware Maintenance and Software License, Maintenance and Support Fees for a Renewal Period by not more than 5% of the amount of the most recent Fees paid by Customer. All fees for any Renewal Period shall be due and payable no later than thirty (30) days prior to the beginning of such Renewal Period. The Software License, Maintenance and Support Fee shall be comprised of (i) a fee for the Software License, Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software License, Maintenance and Support provided for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit A. If Customer elects to receive Software License, Maintenance and Support for an Add-On or New Product during the Initial Term or any Renewal Period thereof, ES&S will charge an incremental Software License, Maintenance and Support Fee for such services.

ARTICLE II
HARDWARE

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Agreement for the ES&S equipment set forth on Schedule A1 (the "Products") shall be subject to the following terms and conditions:

a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products working in accordance with their Documentation, normal wear and tear excepted ("Normal Working Condition"). The services provided by ES&S pursuant to this Subsection 1(a) are referred to herein as "Routine Maintenance Services. Routine Maintenance Services shall be provided once each **Twelve (12) Months** during the Initial Term or any Renewal Period thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration

services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. Customer may request that Routine Maintenance Services be performed more than once during the Initial Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Schedule A1 and shall be due within thirty (30) days after invoice date. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided at Customer's Designated Location. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services.

b. **Repair Services.**

i. **Defects Under Normal Use and Service.** If a defect or malfunction occurs in any Product while it is under normal use and service, Customer shall promptly notify ES&S, and ES&S shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. The services provided by ES&S pursuant to this Subsection 1(b)(i) are referred to herein as "Repair Services". ES&S will perform Repair Services in conjunction with a Routine Maintenance Service event at the Customer's Designated Location.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, rodent infestation, or if Customer does not notify ES&S within 72 hours after it knows of the defect or malfunction, Customer shall pay ES&S for the Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

iii. **Timing.** The date(s) on which any Repair Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided by ES&S within 48 hours after Customer notifies ES&S of the need therefore), and such emergency Repair Services are not needed as a result of an action, error or omission by ES&S, Customer shall pay a surcharge, as set forth on Schedule A1.

iv. **Loaner Unit.** At Customer's request and if such product is available, ES&S shall use reasonable efforts to promptly make available to Customer a product that is the same as, or substantially similar to, the Product for which Repair Services are being performed (a "Loaner Unit"). If the Repair Services are being performed pursuant to Subsection 1(b)(ii) above, Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping.

c. **Exclusions.** ES&S has no obligation under this Agreement to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components that are consumed in the normal course of operating the Product, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices, or (iii) repair any Product from which the serial number has been removed or altered. In addition, ES&S may, at any time in

its discretion, determine that any Product is no longer fit for Hardware Maintenance Services because it is in such poor condition that it cannot practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current value of the Product. If such a determination is made, ES&S shall no longer be required to provide Hardware Maintenance Services for such Product. ES&S shall also refund to Customer an amount equal to (1) that portion of the most recent fee paid for Hardware Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the respective period within the Initial Term or Renewal Period for which such fee was paid and the denominator of which is the total number of days in the respective period within such Initial Term or Renewal Period.

d. **Sole Provider; Access.** Customer shall not permit any individual other than an ES&S Representative to provide maintenance or repairs with respect to the Products for so long as the Initial Term or any Renewal Period is in effect. Customer shall provide ES&S Representatives with all information necessary to enable them to provide Hardware Maintenance Services. Customer shall likewise provide full access to the Products and adequate working space for all Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets.

e. **Environmental Conditions.** Products should be stored in a clean, dry and secure environment. During the storage and operation of the Products, the temperature and moisture ranges should be maintained in accordance with the Products' Documentation.

f. **Reinstatement of Hardware Maintenance Services; Inspection.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter resume receiving Hardware Maintenance Services upon (a) notification to ES&S and (b) the granting to ES&S of access to the Products. ES&S requires Customer to allow it to inspect such Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are in Normal Working Condition. The cost of such inspection will be at ES&S' then current rates and shall be due from Customer within thirty (30) days of its receipt of ES&S' invoice therefore. If any of the Products is not in Normal Working Condition, ES&S, at the option of Customer, (i) shall provide such repairs and replacements as it deems reasonable and necessary to restore such item to Normal Working Condition, at Customer's expense with respect to the cost of any labor (charged at ES&S' then current rates) and parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s).

ARTICLE III **SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES**

1. **License and Services Provided.** ES&S shall provide license, maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively, "ES&S Software"), to allow Customer to continue to license and use the software in accordance with the license terms set forth in Sections 2-4 of the General Terms as well as to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software License, Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Schedule A1.

2. **Updates.** During the Initial Term and any Renewal Period thereof, ES&S may continue to provide Updates in accordance with the terms of Section 5 of the General Terms.

3. **Conditions.** ES&S shall not provide Software License, Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes

beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) Customer's failure to timely and properly install and use the most recent update provided to it by ES&S, or (e) Customer's failure to notify ES&S within three (3) business days after Customer knows of the need for such services. Any such Software License, Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software License, Maintenance and Support arises. Replacement versions of Software requested by Customer as a result of items set forth in this Section 3 or as a result of Customer's actions or inactions shall be billable to Customer at ES&S' then current rates.

4. **Proprietary Rights.** ES&S shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Exhibit A, including all proprietary rights therein or based thereon. Subject to the payment of all Software License, Maintenance and Support Fees, ES&S hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that ES&S actually delivers to Customer pursuant to this Exhibit A. All licensed items shall be deemed to be ES&S Software for purposes of this Exhibit A. Except and to the extent expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Exhibit A.

5. **Reinstatement of Software License, Maintenance and Support.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter receive a Software License and resume receiving Software Maintenance and Support upon (a) notification to ES&S, (b) payment of all fees, which would have been due to ES&S had the Initial Term or any Renewal Period not expired, and (c) the granting to ES&S of access to the ES&S Software, so that ES&S may analyze it and perform such maintenance as may be necessary before resuming the Software License, Maintenance and Support services.

Schedule A1
Pricing Summary

Summary:		
Description	Refer To	Amount
ES&S Hardware Maintenance Fees	ES&S Hardware Maintenance Description and Fees Below	\$61,935.00
ES&S Firmware License, Maintenance and Support Fees	ES&S Firmware License, Maintenance and Support Description and Fees Below	\$26,325.00
Total Maintenance Fees for the Initial Term:		\$88,260.00
Payment Terms:		
ES&S shall Invoice Customer annually for each year of the Initial Term. Payment is due before the start of each period within the Initial Term.		
Terms & Conditions:		
Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer.		
Note 2: In the event the Customer subsequently acquires any ES&S Equipment and or ES&S Software, the post warranty maintenance and support periods will be adjusted to synchronize the dates in order to conform with the current term.		

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Initial Term: Expiration of the Warranty Period through the **third** anniversary thereof

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
90	Model DS200 Scanner	Year 1	\$185.00	\$16,650.00
1	Model DS850 Scanner	Year 1	\$3,995.00	\$3,995.00
Total Maintenance Fees for Year 1				\$20,645.00
<hr/>				
90	Model DS200 Scanner	Year 2	\$185.00	\$16,650.00
1	Model DS850 Scanner	Year 2	\$3,995.00	\$3,995.00
Total Maintenance Fees for Year 2				\$20,645.00
<hr/>				
90	Model DS200 Scanner	Year 3	\$185.00	\$16,650.00
1	Model DS850 Scanner	Year 3	\$3,995.00	\$3,995.00
Total Maintenance Fees for Year 3				\$20,645.00
<hr/>				
Total Hardware Maintenance Fees for the Initial Term				\$61,935.00

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 12-month period shall be 55% of the then current maintenance fee per unit.

Note 2: Surcharge for Emergency Repair Services shall be the daily maintenance service rate in effect at the time such service is requested.

Note 3: Customer's Designated Location: Cumberland County, North Carolina

Note 4: The Per Unit Surcharge for performance of Routine Maintenance visit at more than one Customer Designated Location shall be \$25.00 per unit for all units located at second or more locations.

Hardware Maintenance Services Provided by ES&S Under this Schedule A1

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.
4. Routine Maintenance Services.
 - Onsite scheduled maintenance inspection per Article II, Section 1(a). The Inspection includes:
 - Service performed by an ES&S trained and certified technician.

- Performance of factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.
- Replacement of worn or defective parts with new or remanufactured federally and state certified parts.
- Conducting a final test to verify that the unit is working according to manufacturer's specifications.
- Use of a checklist tailored for each piece of ES&S Equipment.

5. Repair Services.

- Customer will receive coverage for interim repair calls.
 - Interim repair calls may be provided during a scheduled Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity to Customer's location if such repairs are not election critical.
 - A Product may be sent to ES&S' Depot location for repairs at a time to be mutually agreed upon by ES&S and Customer.

6. Priority Services.

- Customer has access to the ES&S Help Desk for assistance.
- The customer receives priority on service calls.
- The customer receives priority on response time.
- The customer receives priority on certified ES&S parts inventory.

Note: Except for those Hardware Maintenance Services specifically set forth herein, ES&S is under no obligation and shall not provide other Hardware Maintenance Services to the Customer unless previously agreed upon in writing by the parties.

**ES&S SOFTWARE LICENSE, MAINTENANCE AND SUPPORT DESCRIPTION AND FEES
FIRMWARE**

Initial Term: Expiration of the Warranty Period through the third anniversary thereof

Listed below are the Hardware Products and Fees for which Firmware License, Maintenance and Support will be provided:

Qty	Description	Coverage Period	Annual Firmware License, Maintenance and Support Fee Per Unit	Firmware License, Maintenance and Support Fee In Total
90	Model DS200 Scanner	Year 1	\$80.00	\$7,200.00
1	Model DS850 Scanner	Year 1	\$1,575.00	\$1,575.00
Total License, Maintenance and Support Fees for Year 1				\$8,775.00
<hr/>				
90	Model DS200 Scanner	Year 2	\$80.00	\$7,200.00
1	Model DS850 Scanner	Year 2	\$1,575.00	\$1,575.00
Total License, Maintenance and Support Fees for Year 2				\$8,775.00
<hr/>				
90	Model DS200 Scanner	Year 3	\$80.00	\$7,200.00
1	Model DS850 Scanner	Year 3	\$1,575.00	\$1,575.00
Total License, Maintenance and Support Fees for Year 3				\$8,775.00
<hr/>				
Total Firmware License, Maintenance and Support Fees for the Initial Term				\$26,325.00

Software License, Maintenance and Support Services Provided by ES&S under the Agreement

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.

Note: Except for those Software License, Maintenance and Support services specifically set forth herein, ES&S is under no obligation and shall not provide other Software License, Maintenance and Support services to the Customer unless previously agreed upon by the parties.

Software License, Maintenance and Support and Hardware Maintenance and Support Services – Customer Responsibilities

1. Customer shall have completed a full software training session for each product selected.
 - Customer shall have completed training at a proficiency level to successfully use the hardware (firmware) and software products.
 - Customer shall have the ability to install firmware and application software and make changes to date and time settings.

- Customer shall have the ability to change consumable items. Any other changes made by the customer must be pre-approved in writing by ES&S.
2. Customer shall have reviewed a complete set of User Manuals.
 3. Customer shall be responsible for the installation and integration of any third party hardware or software application or system purchased by the Customer, unless otherwise agreed upon, in writing, by the parties.
 4. Customer shall be responsible for data extraction from Customer voter registration system.
 5. Customer shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the ES&S Equipment and ES&S Software.
 6. Customer shall be responsible for the acceptance of the Equipment and Software, unless otherwise agreed upon, in writing, by the parties.
 7. Customer shall be responsible for the design, layout, set up, administration, maintenance or connectivity of the Customer's network.
 8. Customer shall be responsible for the resolution of any errors associated with the Customer's network or other hardware and software not purchased or recommended by ES&S and not otherwise identified in the User Guides as part of ES&S' Equipment and Software.
 9. Customer shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-ES&S Ballot Partner Printers ballots.
 10. Customer shall be responsible for the payment of additional or replacement Software CDs or DVDs requested by Customer. The price for such additional or replacement Software CDs or DVDs shall be at ES&S' then current rates.

BRENDA REID JACKSON

Director

ASSISTANT DIRECTORS

Bobbie Redding
Legal ServicesCrystal Black
Adult ServicesSandy Connor
Children's ServicesJohn Nalbone
Business Operations

CUMBERLAND COUNTY

NORTH CAROLINA

DEPARTMENT OF SOCIAL SERVICES

SECTION CHIEFS

Sharon McLeod
Children's ServicesVivian Tookes
Economic ServicesKristin Bonoyer
Adult ServicesVacant
Business Operations

MEMORANDUM FOR THE COUNTY FINANCE COMMITTEE

August 2, 2018 – AGENDA

MEMORANDUM**TO:** County Finance Committee Members**FROM:** Brenda Reid Jackson, CCDSS Director**DATE:** July 24, 2018**SUBJECT:** CONSIDERATION OF ENGAGING OUTSIDE LEGAL COUNSEL FOR DSS INDEPENDENT CONTRACTOR FOR CHILDREN'S SERVICES

Background: The overriding and primary need for this contract is to have a knowledgeable and capable attorney to handle the many cases being appealed from Juvenile Court to the North Carolina Court of Appeals. Cases are being appealed in record numbers. Seven cases are pending. Every case must be professionally addressed meeting stringent Court of Appeals requirements. These cases are time consuming with drop dead deadlines. These cases are decided on the written, not oral argument. They required research, extensive knowledge of the law, and excellent writing ability which allows this work to be managed remotely. When time allows, this contract attorney would be able to assist with legal research, termination of parental rights petitions and other legal duties as assigned.

Proposed Action: We respectfully request your approval to contract with Elizabeth Gurnee in the amount of \$6,000.00 (not to exceed 32 hours per week) effective July 1, 2018 through June 30, 2019. Ms. Gurnee has a record of successful appeals for this agency. At this time, no other Cumberland County Department of Social Services attorney can take on this added work. This position is needed until the new attorney approved in County Fiscal Year 2019 is hired and trained.

Please let me know if you have any questions or need any additional information.

BRJ/jml

Cc: Cumberland County Board of Social Services
CCDSS Management Team
File

We stand united to strengthen individuals and families and to protect children and vulnerable adults...

Contract # _____ Fiscal Year Begins July 1, 2018 Ends June 30, 2019

This contract is hereby entered into by and between the Cumberland County Department of Social Services (the "County") and Elizabeth Gurnee, Attorney at Law (the "Contractor") (referred to collectively as the "Parties"). Contractor's federal tax identification number is on file with the Cumberland County Finance Department.

- 1. Contract Documents:** This Contract consists of the following documents:
- (1) This contract
 - (2) The General Terms and Conditions (Attachment A)
 - (3) The Scope of Work, description of services, and rate (Attachment B)
 - (4) Federal Certification Regarding Drug-Free Workplace & Certification Regarding Nondiscrimination (Attachment C)
 - (5) Conflict of Interest (Attachment D)
 - (6) No Overdue Taxes (Attachment E)
 - (7) Federal Certification Regarding Environmental Tobacco Smoke (Attachment F)
 - (8) Federal Certification Regarding Lobbying (Attachment G) – **NOT REQUIRED**
 - (9) Federal Certification Regarding Debarment (Attachment H) – **NOT REQUIRED**
 - (10) HIPAA Business Associate Addendum (Attachment I)
 - (11) Certification of Transportation (Attachment J) – **NOT REQUIRED**
 - (12) Certain Reporting and Auditing Requirements (Attachment L) – **NOT REQUIRED**
 - (13) State Certification (Attachment M)
 - (14) Certification Regarding Nondiscrimination, Clean Air Act, Clean Water Act (Attachment N)
 - (15) Iran Divestment and E-Verify Certification
 - (16) Contractor's Certification for Legal Review

These documents constitute the entire agreement between the Parties and supersede all prior oral or written statements or agreements.

- 2. Precedence Among Contract Documents:** In the event of a conflict between or among the terms of the Contract Documents, the terms in the Contract Document with the highest relative precedence shall prevail. The order of precedence shall be the order of documents as listed in Paragraph 1, above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence. If there are multiple Contract Amendments, the most recent amendment shall have the highest precedence and the oldest amendment shall have the lowest precedence.
- 3. Effective Period:** This contract shall be effective on July 1, 2018 and shall terminate on June 30, 2019. This contract must be twelve months or less.
- 4. Contractor's Duties:** The Contractor shall provide the services and in accordance with the approved rate as described in Attachment B, Scope of Work.
- 5. County's Duties:** The County shall pay the Contractor in the manner and in the amounts specified in the Contract Documents. The total amount paid by the County to the Contractor under this contract shall not exceed \$6,000.00. This amount consists of \$2,280.00 in Federal funds, \$480.00 in State Funds, \$3,240.00 in County funds, \$0.00 TANF/MOE.

a. There are no matching requirements from the Contractor.

b. The Contractor's matching requirement is \$ _____, which shall consist of:

<input type="checkbox"/> In-kind	<input type="checkbox"/> Cash
<input type="checkbox"/> Cash and In-kind	<input type="checkbox"/> Cash and/or In-kind

The contributions from the Contractor shall be sourced from non-federal funds.
The total contract amount including any Contractor match shall not exceed \$6,000.00.

- 6. Reversion of Funds:** Any unexpended grant funds shall revert to the Cumberland County Department of Social Services/Human Services upon termination of this contract.

- 7. **Reporting Requirements:** Contractor shall comply with audit requirements as described in N.C.G.S. § 143C-6-22 & 23 and OMB Circular- CFR Title 2 Grants and Agreements, Part 200, and shall disclose all information required by 42 USC 455.104, or 42 USC 455.105, or 42 USC 455.106.
- 8. **Payment Provisions:** Payment shall be made in accordance with the Contract Documents as described in the Scope of Work, Attachment B.
- 9. **Contract Administrators:** All notices permitted or required to be given by one Party to the other and all questions about the contract from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the County:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Name & Title: Jasmen Lima, Accounting Technician IV County: Cumberland Mailing Address: P.O. Box 878 City, State, Zip: Fayetteville, NC 28302 Telephone: (910) 677-2021 Fax: (910) 677-2886 Email: jasmenlima@ccdssnc.com	Name & Title: County: Cumberland Street Address: 1225 Ramsey Street City, State, Zip: Fayetteville, NC 28301

For the Contractor:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Name & Title: Elizabeth Gurnee, Attorney at Law Company Name: Elizabeth Gurnee, Attorney at Law Mailing Address: 370 Confluence Ave City State Zip: Durango, CO 81301 Telephone: 910-670-2978 Fax: 970-828-1345 Email: elizabethgurnee@gmail.com	Name & Title: Company Name: Street Address: City State Zip:

- 10. **Supplementation of Expenditure of Public Funds:** The Contractor assures that funds received pursuant to this contract shall be used only to supplement, not to supplant, the total amount of federal, state and local public funds that the Contractor otherwise expends for contract services and related programs. Funds received under this contract shall be used to provide additional public funding for such services; the funds shall not be used to reduce the Contractor's total expenditure of other public funds for such services.

11. Disbursements: As a condition of this contract, the Contractor acknowledges and agrees to make disbursements in accordance with the following requirements:

- (a) Implement adequate internal controls over disbursements;
- (b) Pre-audit all vouchers presented for payment to determine:
 - Validity and accuracy of payment
 - Payment due date
 - Adequacy of documentation supporting payment
 - Legality of disbursement
- (c) Assure adequate control of signature stamps/plates;
- (d) Assure adequate control of negotiable instruments; and
- (e) Implement procedures to insure that account balance is solvent and reconcile the account monthly.

12. Outsourcing to Other Countries:

The Contractor certifies that it has identified to the County all jobs related to the contract that have been outsourced to other countries, if any. The Contractor further agrees that it will not outsource any such jobs during the term of this contract without providing notice to the County

13. Federal Certifications:

Individuals and Organizations receiving federal funds must ensure compliance with certain certifications required by federal laws and regulations. The contractor is hereby complying with Certifications regarding Nondiscrimination, Drug-Free Workplace Requirements, Environmental Tobacco Smoke, Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions, and Lobbying. These assurances and certifications are to be signed by the contractor's authorized representative.

14. Signature Warranty: The undersigned represent and warrant that they are authorized to bind their principals to the terms of this agreement.

The Contractor and the County have executed this contract in duplicate originals, with one original being retained by each party.

CONTRACTOR:

Signature Date

Elizabeth Gurnee Attorney at Law

Printed Name Title

COUNTY:

Signature Date

Brenda Reid Jackson Director

Printed Name Title

By: _____ Date
Larry L. Lancaster, Chairman
Cumberland County Board of Commissioners

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

Approved for Legal Sufficiency:

By: _____
VICKI EVANS
County Finance Director

By: _____
COUNTY ATTORNEY'S OFFICE
Expires: 30 June 2019
 RENEWABLE
 NON-RENEWABLE

**ATTACHMENT A
General Terms and Conditions**

Relationships of the Parties

Independent Contractor: The Contractor is and shall be deemed to be an independent contractor in the performance of this contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the County.

Subcontracting: The Contractor shall not subcontract any of the work contemplated under this contract without prior written approval from the County. Any approved subcontract shall be subject to all conditions of this contract. Only the subcontractors specified in the contract documents are to be considered approved upon award of the contract. The County shall not be obligated to pay for any work performed by any unapproved subcontractor. The Contractor shall be responsible for the performance of all of its subcontractors.

Assignment: No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the County may:

- (a) Forward the Contractor's payment check(s) directly to any person or entity designated by the Contractor, or
- (b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s).

In no event shall such approval and action obligate the County to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.

Beneficiaries: Except as herein specifically provided otherwise, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to the County and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the County and Contractor that any such person or entity, other than the County or the Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Indemnity and Insurance

Indemnification: The Contractor agrees to indemnify and hold harmless the County and any of their officers, agents and employees, from any claims of third parties arising out or any act or omission of the Contractor in connection with the performance of this contract.

Insurance: During the term of the contract, the Contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Contractor shall provide and maintain the following coverage and limits:

- (a) **Worker's Compensation** - The contractor shall provide and maintain Worker's Compensation Insurance as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Contractor's employees who are engaged in any work under the contract. If any work is sublet, the Contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.
- (b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
- (c) **Automobile Liability Insurance:** The Contractor shall provide automobile liability insurance with a combined single limit of \$500,000.00 for bodily injury and property damage; a limit of \$500,000.00 for uninsured/under insured motorist coverage; and a limit of \$25,000.00 for medical payment coverage. The Contractor shall provide this insurance for all automobiles that are:
 - (a) owned by the Contractor and used in the performance of this contract;
 - (b) hired by the Contractor and used in the performance of this contract; and
 - (c) Owned by Contractor's employees and used in performance of this contract ("non-owned vehicle insurance"). Non-owned vehicle insurance protects employers when employees use their personal vehicles for work purposes. Non-owned vehicle insurance supplements, but does not replace, the car-owner's liability insurance.

The Contractor is not required to provide and maintain automobile liability insurance on any vehicle – owned, hired

- or non-owned -- unless the vehicle is used in the performance of this contract.
- (d) The insurance coverage minimums specified in subparagraph (a) are exclusive of defense costs.
 - (e) The Contractor understands and agrees that the insurance coverage minimums specified in subparagraph (a) are not limits, or caps, on the Contractor's liability or obligations under this contract.
 - (f) The Contractor may obtain a waiver of any one or more of the requirements in subparagraph (a) by demonstrating that it has insurance that provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The County shall be the sole judge of whether such a waiver should be granted.
 - (g) The Contractor may obtain a waiver of any one or more of the requirements in paragraph (a) by demonstrating that it is self-insured and that its self-insurance provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The County shall be the sole judge of whether such a waiver should be granted.
 - (h) Providing and maintaining the types and amounts of insurance or self-insurance specified in this paragraph is a material obligation of the Contractor and is of the essence of this contract.
 - (i) The Contractor shall only obtain insurance from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in the State of North Carolina. All such insurance shall meet all laws of the State of North Carolina.
 - (j) The Contractor shall comply at all times with all lawful terms and conditions of its insurance policies and all lawful requirements of its insurer.
 - (k) The Contractor shall require its subcontractors to comply with the requirements of this paragraph.
 - (l) The Contractor shall demonstrate its compliance with the requirements of this paragraph by submitting certificates of insurance to the County before the Contractor begins work under this contract.

Transportation of Clients by Contractor:

The contractor will maintain Insurance requirements if required as noted under Article 7 Rule R2-36 of the North Carolina Utilities Commission.

Default and Termination

Termination Without Cause: The County may terminate this contract without cause by giving 30 days written notice to the Contractor.

Termination for Cause: If, through any cause, the Contractor shall fail to fulfill its obligations under this contract in a timely and proper manner, the County shall have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date

thereof. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of the Contractor's breach of this agreement, and the County may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the County from such breach can be determined. In case of default by the Contractor, without limiting any other remedies for breach available to it, the County may procure the contract services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The filing of a petition for bankruptcy by the Contractor shall be an act of default under this contract.

Waiver of Default: Waiver by the County of any default or breach in compliance with the terms of this contract by the Provider shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this contract unless stated to be such in writing, signed by an authorized representative of the County and the Contractor and attached to the contract.

Availability of Funds: The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the County.

Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Survival of Promises: All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

Intellectual Property Rights

Copyrights and Ownership of Deliverables: All deliverable items produced pursuant to this contract are the exclusive property of the County. The Contractor shall not assert a claim of copyright or other property interest in such deliverables.

Federal Intellectual Property Bankruptcy Protection

Act: The Parties agree that the County shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365 (n) and any amendments thereto.

Compliance with Applicable Laws

Compliance with Laws: The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

Title VI, Civil Rights Compliance: In accordance with Federal law and U.S. Department of Agriculture (USDA) and U.S. Department of Health and Human Services (HHS) policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability. Under the Food Stamp Act and USDA policy, discrimination is prohibited also on the basis of religion or political beliefs.

Equal Employment Opportunity: The Contractor shall comply with all federal and State laws relating to equal employment opportunity.

Health Insurance Portability and Accountability Act (HIPAA): The Contractor agrees that, if the County determines that some or all of the activities within the scope of this contract are subject to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the County may require to ensure compliance.

- (a) **Data Security:** The Contractor shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.
- (b) **Duty to Report:** The Contractor shall report a suspected or confirmed security breach to the local Department of Social Services/Human Services Contract Administrator within twenty-four (24) hours after the breach is first discovered, provided that the Contractor shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered.
- (c) **Cost Borne by Contractor:** If any applicable federal, state, or local law, regulation, or rule requires the Contractor to give written notice of a security breach to affected persons, the Contractor shall bear the cost of the notice.

Trafficking Victims Protection Act of 2000:

The Contractor will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104)

Executive Order # 24: It is unlawful for any vendor, contractor, subcontractor or supplier of the state to make gifts or to give favors to any state employee. For additional information regarding the specific requirements and exemptions, contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Confidentiality

Confidentiality: Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the County. The Contractor acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this contract.

Oversight

Access to Persons and Records: The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. Additionally, as the State funding authority, the Department of Health and Human Services shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.

Record Retention: Records shall not be destroyed, purged or disposed of without the express written consent of the Division. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to federal policy and regulations, record retention may be longer than five years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period described above, whichever is later. The record retention period for Temporary Assistance for Needy Families (TANF) and

MEDICAID and Medical Assistance grants and programs must be retained for a minimum of ten years.

Warranties and Certifications

Date and Time Warranty: The Contractor warrants that the product(s) and service(s) furnished pursuant to this contract ("product" includes, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) that perform any date and/or time data recognition function, calculation, or sequencing will support a four-digit year format and will provide accurate date/time data and leap year calculations. This warranty shall survive the termination or expiration of this contract.

Certification Regarding Collection of Taxes: G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors that meet one of the conditions of G.S. 105-164.8(b) and yet refuse to collect use taxes on sales of tangible personal property to purchasers in North Carolina. The conditions include: (a) maintenance of a retail establishment or office; (b) presence of representatives in the State that solicit sales or transact business on behalf of the vendor; and (c) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. The Contractor certifies that it and all of its affiliates (if any) collect all required taxes.

E-Verify

Pursuant to G.S. 143-48.5 and G.S. 147-33.95(g), the undersigned hereby certifies that the Contractor named below, and the Contractor's subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: www.uscis.gov

Miscellaneous

Choice of Law: The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, are governed by the laws of North Carolina. The Contractor, by signing this contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be the county in which the contract originated. The place of this contract and all transactions and agreements relating to it, and their situs and forum, shall be the county where the contract originated, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

Amendment: This contract may not be amended orally or by performance. Any amendment must be made in

written form and executed by duly authorized representatives of the County and the Contractor.

Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this contract shall remain in full force and effect.

Headings: The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

Time of the Essence: Time is of the essence in the performance of this contract.

Key Personnel: The Contractor shall not replace any of the key personnel assigned to the performance of this contract without the prior written approval of the County. The term "key personnel" includes any and all persons identified as such in the contract documents and any other persons subsequently identified as key personnel by the written agreement of the parties.

Care of Property: The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this contract and will reimburse the County for loss of, or damage to, such property. At the termination of this contract, the Contractor shall contact the County for instructions as to the disposition of such property and shall comply with these instructions.

Travel Expenses: Reimbursement to the Contractor for travel mileage, meals, lodging and other travel expenses incurred in the performance of this contract shall not exceed the rates established in County policy.

Sales/Use Tax Refunds: If eligible, the Contractor and all subcontractors shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

Advertising: The Contractor shall not use the award of this contract as a part of any news release or commercial advertising.

ATTACHMENT B – Scope of Work

A. CONTRACTOR INFORMATION

1. Contractor Agency Name: Elizabeth Gurnee, Attorney at Law

2. *If different* from Contract Administrator Information in General Contract:

Address: same

Telephone Number: 910-670-2978 Fax Number: _____ Email: elizabethgurnee@gmail.com

3. Name of Program (s): Children’s Services

4. Status: () Public () Private, Not for Profit (X) Private, For Profit

5. Contractor's Financial Reporting Year January 1 through December 31

B. Explanation of duties to be provided and to whom (include SIS Service Code):

- 1. Handle cases appealed to the N. C. Court of Appeals and Supreme Court;
- 2. Provide advanced research needed for the Agency attorneys;
- 3. Monitor statutory changes by the Legislature for Juvenile Court requirements;
- 4. Track Court of Appeals and Supreme Court cases that impact DSS and the Juvenile Court;
- 5. Develop training modules for Social Workers based on Child First knowledge;
- 6. Assist, when needed, with other duties within her expertise as assigned.
- 7. Contractor must maintain valid North Carolina Law License.

Insofar as practical, the CONTRACTOR shall cooperate with the operation schedule of the COUNTY and with other personnel employed, retained, or hired by the COUNTY.

C. Negotiated County Rate: N/A

D. Number of units to be provided: N/A

E. Details of Billing process and Time Frames;

The County shall pay bi-weekly for services rendered at the rate of \$35.73 per hour. The total expenditures under this agreement shall not exceed \$6,000.00.

The contractor shall bill the County by the 5th business day of the month following services. The County ensures all invoices will be processed within 30 days.

F. Area to be served/Delivery site(s): Cumberland County

(Signature of Contractor)

(Signature of County Authorized Person)

(Date Submitted)

(Date Submitted)

ATTACHMENT C

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS AND CERTIFICATION REGARDING NONDISCRIMINATION

Cumberland County Department of Social Services/Human Services

- I. By execution of this Agreement the Contractor certifies that it will provide a drug-free workplace by:
- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing a drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Contractor's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - C. Making it a requirement that each employee be engaged in the performance of the agreement be given a copy of the statement required by paragraph (A);
 - D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the agreement, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
 - E. Notifying the County within ten days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction;
 - F. Taking one of the following actions, within 30 days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

ATTACHMENT D

Conflict of Interest Policy

The Board of Directors/Trustees or other governing persons, officers, employees or agents are to avoid any conflict of interest, even the appearance of a conflict of interest. The Organization's Board of Directors/Trustees or other governing body, officers, staff and agents are obligated to always act in the best interest of the organization. This obligation requires that any Board member or other governing person, officer, employee or agent, in the performance of Organization duties, seek only the furtherance of the Organization mission. At all times, Board members or other governing persons, officers, employees or agents, are prohibited from using their job title, the Organization's name or property, for private profit or benefit.

A. The Board members or other governing persons, officers, employees, or agents of the Organization should neither solicit nor accept gratuities, favors, or anything of monetary value from current or potential contractors/vendors, persons receiving benefits from the Organization or persons who may benefit from the actions of any Board member or other governing person, officer, employee or agent. This is not intended to preclude bona-fide Organization fund raising-activities.

B. A Board or other governing body member may, with the approval of Board or other governing body, receive honoraria for lectures and other such activities while not acting in any official capacity for the Organization. Officers may, with the approval of the Board or other governing body, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. Employees may, with the prior written approval of their supervisor, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. If a Board or other governing body member, officer, employee or agent is acting in any official capacity, honoraria received in connection with activities relating to the Organization are to be paid to the Organization.

C. No Board member or other governing person, officer, employee, or agent of the Organization shall participate in the selection, award, or administration of a purchase or contract with a vendor where, to his knowledge, any of the following has a financial interest in that purchase or contract:

1. The Board member or other governing person, officer, employee, or agent;
2. Any member of their family by whole or half blood, step or personal relationship or relative-in-law;
3. An organization in which any of the above is an officer, director, or employee;
4. A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment or contracts.

D. Duty to Disclosure -- Any conflict of interest, potential conflict of interest, or the appearance of a conflict of interest is to be reported to the Board or other governing body or one's supervisor immediately.

E. Board Action -- When a conflict of interest is relevant to a matter requiring action by the Board of Directors/Trustees or other governing body, the Board member or other governing person, officer, employee, or agent (person(s)) must disclose the existence of the conflict of interest and be given the opportunity to disclose all material facts to the Board and members of committees with governing board delegated powers considering the possible conflict of interest. After disclosure of all material facts, and after any discussion with the person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists. In addition, the person(s) shall not participate in the final deliberation or decision regarding the matter under consideration and shall leave the meeting during the discussion of and vote of the Board of Directors/Trustees or other governing body.

F. Violations of the Conflicts of Interest Policy -- If the Board of Directors/Trustees or other governing body has reasonable cause to believe a member, officer, employee or agent has failed to disclose actual or possible conflicts of interest, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose. If, after hearing the person's response and after making further investigation as warranted by the circumstances, the Board of Directors/Trustees or other governing body determines the member, officer, employee or agent has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

G. Record of Conflict -- The minutes of the governing board and all committees with board delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have an actual or possible conflict of interest, the nature of the conflict of interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement that presents a possible conflict of interest, the content of the discussion, including any alternatives to the transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Approved by:

Elizabeth Gurnee, Attorney at Law
Name of Organization

Signature of Organization Official

Date

NOTARIZED CONFLICT OF INTEREST POLICY

State of North Carolina

County of Cumberland

I, _____, Notary Public for said County and State, certify that Elizabeth Gurnee personally appeared before me this day and acknowledged that he/she is an Independent Attorney of Elizabeth Gurnee, Attorney at Law and by that authority duly given and as the act of the Organization, affirmed that the foregoing Conflict of Interest Policy was read and adopted/declined (circle one) by Elizabeth Gurnee.

Sworn to and subscribed before me this _____ day of _____, _____.

(Official Seal)

Notary Public

My Commission expires _____, 20 ____

ATTACHMENT E - OVERDUE TAXES

Elizabeth Gurnee, Attorney at Law
370 Confluence Avenue
Durango, CO 81301

July 01, 2018

To: Cumberland County Department of Social Services/Human Services

Certification:

I certify that the Elizabeth Gurnee, Attorney at Law does not have any overdue tax debts, as defined by N.C.G.S. 105-243.1, at the federal, State, or local level. I further understand that any person who makes a false statement in violation of N.C.G.S. 143-6.2(b2) is guilty of a criminal offense punishable as provided by N.C.G.S. 143-34(b).

Sworn Statement:

Elizabeth Gurnee being duly sworn, says that I am an Independent Attorney respectively, of Elizabeth Gurnee, Attorney at Law of Fayetteville in the State of North Carolina; and that the foregoing certification is true, accurate and complete to the best of my knowledge and was made and subscribed by me. I also acknowledge and understand that any misuse of State funds will be reported to the appropriate authorities for further action.

Independent Attorney

Sworn to and subscribed before me on the day of the date of said certification.

(Notary Signature and Seal)

My Commission Expires: _____

¹ G.S. 105-243.1 defines: Overdue tax debt. – Any part of a tax debt that remains unpaid 90 days or more after the notice of final assessment was mailed to the taxpayer. The term does not include a tax debt, however, if the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within 90 days after the notice of final assessment was mailed and has not failed to make any payments due under the installment agreement.”

ATTACHMENT I

Cumberland County Department of Social Services/Human Services

DEPARTMENT OF HEALTH AND HUMAN SERVICES BUSINESS ASSOCIATE ADDENDUM

This Agreement is made effective the 1st day of July 2018, by and between Cumberland County Department of Social Services (“Covered Entity”) and Elizabeth Gurnee, Attorney at Law (“Business Associate”) (collectively the “Parties”).

1. BACKGROUND

- a. Covered Entity and Business Associate are parties to a contract entitled Elizabeth Gurnee, Attorney at Law (the “Contract”), whereby Business Associate agrees to perform certain services for or on behalf of Covered Entity.
- b. Covered Entity is an organizational unit of Cumberland County as the Cumberland County Department of Social Services (DSS) as a health care component for purposes of the HIPAA Privacy Rule.
- c. The relationship between Covered Entity and Business Associate is such that the Parties believe Business Associate is or may be a “business associate” within the meaning of the HIPAA Privacy Rule.
- d. The Parties enter into this Business Associate Addendum to the Contract with the intention of complying with the HIPAA Privacy Rule provision that a covered entity may disclose protected health information to a business associate, and may allow a business associate to create or receive protected health information on its behalf, if the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information.

2. DEFINITIONS

Unless some other meaning is clearly indicated by the context, the following terms shall have the following meaning in this Agreement:

- a. “HIPAA” means the Administrative Simplification Provisions, Sections 261 through 264, of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- b. “Individual” shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- c. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- d. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- e. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- f. “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his designee.
- g. Unless otherwise defined in this Agreement, terms used herein shall have the same meaning as those terms have in the Privacy Rule.

3. OBLIGATIONS OF BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- g. Business Associate agrees, at the request of the Covered Entity, to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526.
- h. Unless otherwise prohibited by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Cumberland County Department of Social Services, in a time and manner designated by the Secretary, for purposes of the Cumberland County Department of Social Services determining Covered Entity's compliance with the Privacy Rule.
- i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, and to provide this information to Covered Entity or an Individual to permit such a response.

4. PERMITTED USES AND DISCLOSURES

- a. Except as otherwise limited in this Agreement or by other applicable law or agreement, if the Contract permits, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract, provided that such use or disclosure:
 - 1) would not violate the Privacy Rule if done by Covered Entity; or
 - 2) would not violate the minimum necessary policies and procedures of the Covered Entity.
- b. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may use Protected Health Information as necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- c. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that:
 - 1) disclosures are Required By Law; or
 - 2) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- d. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- e. Notwithstanding the foregoing provisions, Business Associate may not use or disclose Protected Health Information if the use or disclosure would violate any term of the Contract or other applicable law or agreements.

5. TERM AND TERMINATION

- a. **Term.** This Agreement shall be effective as of the effective date stated above and shall terminate when the Contract terminates.
- b. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, at its option:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement and services provided by Business Associate, to the extent permissible by law, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 2) Immediately terminate this Agreement and services provided by Business Associate, to the extent permissible by law; or
 - 3) If neither termination nor cure is feasible, report the violation to the Secretary as provided in the Privacy Rule.

Effect of Termination.

- 4) Except as provided in paragraph (2) of this section or in the Contract or by other applicable law or agreements, upon termination of this Agreement and services provided by Business Associate, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- 5) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. GENERAL TERMS AND CONDITIONS

- a. This Agreement amends and is part of the Contract.
- b. Except as provided in this Agreement, all terms and conditions of the Contract shall remain in force and shall apply to this Agreement as if set forth fully herein.
- c. In the event of a conflict in terms between this Agreement and the Contract, the interpretation that is in accordance with the Privacy Rule shall prevail. In the event that a conflict then remains, the Contract terms shall prevail so long as they are in accordance with the Privacy Rule.
- d. A breach of this Agreement by Business Associate shall be considered sufficient basis for Covered Entity to terminate the Contract for cause.

(Signature of Contractor)

(Signature of County Authorized Person)

(Date Submitted)

(Date Submitted)

ATTACHMENT M

State Certifications

Contractor Certifications Required by North Carolina Law

Instructions: The person who signs this document should read the text of the statutes and Executive Order listed below and consult with counsel and other knowledgeable persons before signing. The text of each North Carolina General Statutes and of the Executive Order can be found online at:

- Article 2 of Chapter 64: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_64/Article_2.pdf
- G.S. 133-32: <http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=133-32>
- Executive Order No. 24 (Perdue, Gov., Oct. 1, 2009): <http://www.ethicscommission.nc.gov/library/pdfs/Laws/EO24.pdf>
- G.S. 105-164.8(b): http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-164.8.pdf
- G.S. 143-48.5: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-48.5.html
- G.S. 143-59.1: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.1.pdf
- G.S. 143-59.2: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.2.pdf
- G.S. 143-133.3: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-133.3.html
- G.S. 143B-139.6C: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143B/GS_143B-139.6C.pdf

Certifications

- (1) **Pursuant to G.S. 133-32 and Executive Order No. 24 (Perdue, Gov., Oct. 1, 2009)**, the undersigned hereby certifies that the Contractor named below is in compliance with, and has not violated, the provisions of either said statute or Executive Order.
- (2) **Pursuant to G.S. 143-48.5 and G.S. 143-133.3**, the undersigned hereby certifies that the Contractor named below, and the Contractor's subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: www.uscis.gov Local government is specifically exempt from Article 2 of Chapter 64 of the North Carolina General Statutes. However, local government is subject to and must comply with North Carolina General Statute 153A-99.1, which states in part as follows:
Counties Must Use E-Verify - Each county shall register and participate in E-Verify to verify the work authorization of new employees hired to work in the United States.
- (3) **Pursuant to G.S. 143-59.1(b)**, the undersigned hereby certifies that the Contractor named below is not an "ineligible Contractor" as set forth in G.S. 143-59.1(a) because:
 - (a) Neither the Contractor nor any of its affiliates has refused to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina when the sales met one or more of the conditions of G.S. 105-164.8(b); **and**
 - (b) [check **one** of the following boxes]
 - Neither the Contractor nor any of its affiliates has incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001; **or**
 - The Contractor or one of its affiliates **has** incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001 **but** the United States is not the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.
- (4) **Pursuant to G.S. 143-59.2(b)**, the undersigned hereby certifies that none of the Contractor's officers, directors, or owners (if the Contractor is an unincorporated business entity) has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934 within 10 years immediately prior to the date of the bid solicitation.
- (5) **Pursuant to G.S. 143B-139.6C**, the undersigned hereby certifies that the Contractor will not use a former employee, as defined by G.S. 143B-139.6C(d)(2), of the North Carolina Department of Health and Human Services in the administration of a contract with the Department in violation of G.S. 143B-139.6C and that a violation of that statute shall void the Agreement.

(6) The undersigned hereby certifies further that:

- (a) He or she is a duly authorized representative of the Contractor named below;
- (b) He or she is authorized to make, and does hereby make, the foregoing certifications on behalf of the Contractor; and
- (c) He or she understands that any person who knowingly submits a false certification in response to the requirements of G.S. 143-59.1 and -59.2 shall be guilty of a Class I felony.

Contractor's Name: **Elizabeth Gurnee, Attorney at Law** _____

Contractor's Authorized Agent: Signature _____ Date _____

Printed Name _____ Title _____

Witness: Signature _____ Date _____

Printed Name _____ Title _____

The witness should be present when the Contractor's Authorized Agent signs this certification and should sign and date this document immediately thereafter.

ATTACHMENT N

Cumberland County Department of Social Services/Human Services

CERTIFICATION REGARDING NONDISCRIMINATION, CLEAN AIR ACT, CLEAN WATER ACT

Certification Regarding Nondiscrimination

The Contractor certifies that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (h) the Food Stamp Act and USDA policy, which prohibit discrimination on the basis of religion and political beliefs; and (i) the requirements of any other nondiscrimination statutes which may apply to this Agreement.

The Contractor must comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by the Department of Labor Regulations (41 CFR Part 60): The Executive Order prohibits federal contractors and federally-assisted construction contractors and subcontractors who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. The Executive Order also requires Government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

Meaningful Access for LEP Individuals: **The Contractor** that participate in the SNAP must take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and benefits. This includes the requirement to provide bilingual program information and certification materials and interpretation services to single language minorities in certain project areas. SNAP Contractors that do not provide meaningful access for LEP individuals risk violating prohibitions against discrimination based on National Origin in the Food and Nutrition Act of 2008, as amended, Title VI of the Civil Rights Act of 1964 (Title VI) and SNAP program regulations at 7 CFR 272A(b). They also risk noncompliance with the USDA policy guidance titled, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons", published in 79 FR 70771 - 70784 (November 28, 2014).

The Contractor should develop an implementing plan to address the language assistance needs of the LEP population served. This may include contracting for oral interpretation services, hiring bilingual staff, arranging telephone interpreters and/or language lines, coordinating community volunteers, translating vital documents, and providing written notice that language services are available in appropriate languages. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient. LEP needs should be considered in developing budgets and front line staff should understand how to obtain language assistance services. For additional assistance and information regarding LEP matters, please also visit <http://www.lep.gov>.

Ensuring Equal Opportunity Access for Persons with Disabilities: **The Contractor** must also ensure equal opportunity access for persons with disabilities. This includes ensuring that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with people without disabilities. Contractors that do not provide persons with disabilities equal opportunity access to programs may risk violating prohibitions against disability discrimination in the Rehabilitation Act of 1978, the American with Disabilities Act (ADA) of 1990, as amended, and SNAP program regulations.

DOJ published revised final regulations implementing Title II and Title III of the ADA on September 15, 2010. These regulations are codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and at 28 CFR Part 36 "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities". In accordance with the implementing regulations, Contractors must provide auxiliary aids and services where necessary to ensure effective communication and equal opportunity access to program benefits for individuals with disabilities. The type of auxiliary aids and services required will vary, but a Contractor may not require an individual with a disability to bring another individual to interpret, and may rely on a person accompanying a disabled individual only in limited circumstances. When a Contractor communicates with applicants and beneficiaries by telephone, it must provide text telephone services (ITV) or have access to an equally effective electronic telecommunications system to communicate with individuals who are deaf, hard of hearing, or hearing impaired. Contractors must also ensure that

interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. For more information, please visit the ADA website: <http://www.ada.gov>.

IV. The Clean Air Act, Section 306; 42 U.S.C. §7401 et seq. (1970)

- a. No Federal agency may enter into any contract with any person who is convicted of any offense under section 113(c) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.
- b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).
- c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.
- d. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.
- e. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]

V. The Clean Water Act; 33 U.S.C. §1251 et seq. (1972)

- a. No Federal agency may enter into any contract with any person who has been convicted of any offense under Section 309(c) of this Act for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.
- b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.
- c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than 180 days after the enactment of this Act, cause to be issued an order:
 - (i) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and
 - (ii) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.
- d. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.
- e. The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.

- f. No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.
- g. In paragraph (1), the term "commercial item" has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

Signature

Title

Agency/Organization

Date

(Certification signature should be same as Contract signature.)



CONTRACT #: _____

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

E-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.”

Company Name: Elizabeth Gurnee, Attorney at Law

Authorized Signer

Date _____

CONTRACTOR'S CERTIFICATION FOR LEGAL REVIEW OF CONTRACT WITH CUMBERLAND COUNTY

The undersigned, on behalf of the contractor or vendor named below, certifies with respect to the attached contract between Cumberland County and _____ as follows:

1. The contractor is
 an individual
 a corporation
 a limited liability company
 a unit of local government
 other: _____). (If the contractor is described as "other," a certified copy of the legal documents by which it is organized must be attached.)
2. The contractor's business address is _____.
(If this is an out-of-state address, the contract must be signed by the contractor before it is reviewed.)
3. If the contractor is not an individual or a unit of local government, is it registered with the Secretary of State to do business in North Carolina?
 Yes (Attach a copy of the screen page from NC Secretary of State Website showing active status.)
 No (If it is not registered with the North Carolina Secretary of State, a certificate of good standing from the Secretary of State in the state in which it is organized must be attached.)
4. The individual or individuals making this certification and signing the contract on behalf of the contractor are duly authorized to do so by action of the contractor.

If the contract was prepared or drafted by contractor or contractor's attorney, complete the following additional certifications:

5. This contract is made subject to the laws of the State of _____.
6. This contract does does not contain a provision which may require the county to indemnify the contractor. If it does contain this indemnity provision, the maximum amount for which the county may liable under this indemnity is \$ _____. (An indemnity provision that is not capped may result in the contract not being accepted by the county.)
7. All obligations incurred by the county under the terms of this contract terminate on the following date: _____. (Any contract provision which extends the obligations of the county beyond the date the contract terminates will not be accepted by the county.)

The contractor agrees that the county does not waive its rights as to any provisions of the contract which are against the public policy of the State of North Carolina, regardless of the choice of law stated in the contract.

Certified by _____ for the contractor stated above.

Signature: _____

Date Submitted: _____

BRENDA REID JACKSON

Director

ASSISTANT DIRECTORS

Bobbie Redding
Legal ServicesCrystal Black
Adult ServicesSandy Connor
Children's ServicesJohn Nalbene
Business Operations

CUMBERLAND COUNTY

NORTH CAROLINA

DEPARTMENT OF SOCIAL SERVICES

SECTION CHIEFS

Sharon McLeod
Children's ServicesVivian Tookes
Economic ServicesKristin Bonoyer
Adult ServicesVacant
Business Operations

MEMORANDUM FOR THE COUNTY FINANCE COMMITTEE

August 2, 2018 – AGENDA

MEMORANDUM

TO: County Finance Committee Members

FROM: Brenda Reid Jackson, CCDSS Director

DATE: July 24, 2018

SUBJECT: CONSIDERATION OF ENGAGING OUTSIDE LEGAL COUNSEL FOR DSS INDEPENDENT CONTRACTOR FOR CHILDREN'S SERVICES

Background: Due to the increased number of children in foster care, the number of cases held by the DSS Attorneys exceed twice the amount of cases recommended by the American Bar Association at 100 plus cases per attorney. In the past, this has caused a delay in the drafting of Termination of Parental Rights (TPR) petitions. This delay keeps the children in foster care longer, slows the process toward permanency for these children and increases the cost to the County. Margaret Russ is responsible for drafting many of the TPR petitions. Having one person draft these petitions provides a consistency which the judges and other attorneys appreciate as well as providing the DSS attorneys with the information they need to move the cases through the court. Ms. Russ is also responsible for cases involving the RIL – Responsible Individuals List, coordinates cases between DSS and Fort Bragg and is the liaison with the District Attorney office.

Proposed Action: We respectfully request your approval to contract with Margaret Russ again in FY 18-19 in the amount of \$20,000.00 per year. This position is needed until the new attorney approved in County Fiscal Year 2019 is hired and trained.

Please let me know if you have any questions or need any additional information.

BRJ/jml

Cc: Cumberland County Board of Social Services
CCDSS Management Team
File

We stand united to strengthen individuals and families and to protect children and vulnerable adults...

Contract _____ Fiscal Year Begins July 1, 2018 Ends June 30, 2019

This contract is hereby entered into by and between the Cumberland County Department of Social Services (the "County") and Margaret R. Russ, Attorney at Law, P.A. (the "Contractor") (referred to collectively as the "Parties"). Contractor's federal tax identification number is on file with the Cumberland County Finance Department.

1. Contract Documents: This Contract consists of the following documents:

- (1) This contract
- (2) The General Terms and Conditions (Attachment A)
- (3) The Scope of Work, description of services, and rate (Attachment B)
- (4) Federal Certification Regarding Drug-Free Workplace & Certification Regarding Nondiscrimination (Attachment C)
- (5) Conflict of Interest (Attachment D)
- (6) No Overdue Taxes (Attachment E)
- (7) Federal Certification Regarding Environmental Tobacco Smoke (Attachment F)
- (8) Federal Certification Regarding Lobbying (Attachment G) - **NOT REQUIRED**
- (9) Federal Certification Regarding Debarment (Attachment H) - **NOT REQUIRED**
- (10) HIPAA Business Associate Addendum (Attachment I)
- (11) Certification of Transportation (Attachment J) - **NOT REQUIRED**
- (12) Certain Reporting and Auditing Requirements (Attachment L) - **NOT REQUIRED**
- (13) State Certification (Attachment M)
- (14) Certification Regarding Nondiscrimination, Clean Air Act, Clean Water Act (Attachment N)
- (15) Iran Divestment and E-Verify Certification
- (16) Contractor's Certification for Legal Review

These documents constitute the entire agreement between the Parties and supersede all prior oral or written statements or agreements.

2. Precedence Among Contract Documents: In the event of a conflict between or among the terms of the Contract Documents, the terms in the Contract Document with the highest relative precedence shall prevail. The order of precedence shall be the order of documents as listed in Paragraph 1, above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence. If there are multiple Contract Amendments, the most recent amendment shall have the highest precedence and the oldest amendment shall have the lowest precedence.

3. Effective Period: This contract shall be effective on July 1, 2018 and shall terminate on June 30, 2019. This contract must be twelve months or less.

4. Contractor's Duties: The Contractor shall provide the services and in accordance with the approved rate as described in Attachment B, Scope of Work.

5. County's Duties: The County shall pay the Contractor in the manner and in the amounts specified in the Contract Documents. The total amount paid by the County to the Contractor under this contract shall not exceed \$20,000.00. This amount consists of \$7,600.00 in Federal funds, \$1,600.00 in State Funds, \$10,800.00 in County funds, \$0.00 TANF/MOE.

a. There are no matching requirements from the Contractor.

b. The Contractor's matching requirement is \$ _____, which shall consist of:

- | | |
|---|--|
| <input type="checkbox"/> In-kind | <input type="checkbox"/> Cash |
| <input type="checkbox"/> Cash and In-kind | <input type="checkbox"/> Cash and/or In-kind |

The contributions from the Contractor shall be sourced from non-federal funds.

The total contract amount including any Contractor match shall not exceed \$20,000.00

6. Reversion of Funds: Any unexpended grant funds shall revert to the Cumberland County Department of Social Services/Human Services upon termination of this contract.

- 7. Reporting Requirements:** Contractor shall comply with audit requirements as described in N.C.G.S. § 143C-6-22 & 23 and OMB Circular- CFR Title 2 Grants and Agreements, Part 200, and shall disclose all information required by 42 USC 455.104, or 42 USC 455.105, or 42 USC 455.106.
- 8. Payment Provisions:** Payment shall be made in accordance with the Contract Documents as described in the Scope of Work, Attachment B.
- 9. Contract Administrators:** All notices permitted or required to be given by one Party to the other and all questions about the contract from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the County:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Name & Title: Jasmen Lima, Accounting Technician IV County: Cumberland Mailing Address: P.O. Box 878 City, State, Zip: Fayetteville, NC 28302 Telephone: (910) 677-2021 Fax: (910) 677-2886 Email: jasmenlima@ccdssnc.com	Name & Title: County: Cumberland Street Address: 1225 Ramsey Street City, State, Zip: Fayetteville, NC 28301

For the Contractor:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Name & Title: Margaret R. Russ, Attorney at Law, P.A. Company Name: Mailing Address: 230 Pinecrest Drive Apt. 12 City State Zip: Fayetteville, NC 28305-4945 Telephone: (910) 309-7171 Fax: Email: buntieruss4@aol.com	Name & Title: Company Name: Street Address: City State Zip:

10. Supplementation of Expenditure of Public Funds: The Contractor assures that funds received pursuant to this contract shall be used only to supplement, not to supplant, the total amount of federal, state and local public funds that the Contractor otherwise expends for contract services and related programs. Funds received under this contract shall be used to provide additional public funding for such services; the funds shall not be used to reduce the Contractor's total expenditure of other public funds for such services.

- 11. Disbursements:** As a condition of this contract, the Contractor acknowledges and agrees to make disbursements in accordance with the following requirements:
- (a) Implement adequate internal controls over disbursements;
 - (b) Pre-audit all vouchers presented for payment to determine:
 - Validity and accuracy of payment
 - Payment due date
 - Adequacy of documentation supporting payment
 - Legality of disbursement
 - (c) Assure adequate control of signature stamps/plates;
 - (d) Assure adequate control of negotiable instruments; and
 - (e) Implement procedures to insure that account balance is solvent and reconcile the account monthly.

12. Outsourcing to Other Countries:

The Contractor certifies that it has identified to the County all jobs related to the contract that have been outsourced to other countries, if any. The Contractor further agrees that it will not outsource any such jobs during the term of this contract without providing notice to the County

13. Federal Certifications:

Individuals and Organizations receiving federal funds must ensure compliance with certain certifications required by federal laws and regulations. The contractor is hereby complying with Certifications regarding Nondiscrimination, Drug-Free Workplace Requirements, Environmental Tobacco Smoke, Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions, and Lobbying. These assurances and certifications are to be signed by the contractor's authorized representative.

14. Signature Warranty: The undersigned represent and warrant that they are authorized to bind their principals to the terms of this agreement.

The Contractor and the County have executed this contract in duplicate originals, with one original being retained by each party.

CONTRACTOR:

Signature	Date
Margaret R. Russ	Attorney at Law, P.A.
Printed Name	Title

COUNTY:

Signature	Date
Brenda Reid Jackson	Director
Printed Name	Title

By: _____ Larry L. Lancaster, Chairman Cumberland County Board of Commissioners	Date
---	------

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

Approved for Legal Sufficiency

By: _____
VICKI EVANS
County Finance Director

By: _____
COUNTY ATTORNEY'S OFFICE
Expires: 30 June 2019
 RENEWABLE
 NON-RENEWABLE

ATTACHMENT A
General Terms and Conditions

Relationships of the Parties

Independent Contractor: The Contractor is and shall be deemed to be an independent contractor in the performance of this contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the County.

Subcontracting: The Contractor shall not subcontract any of the work contemplated under this contract without prior written approval from the County. Any approved subcontract shall be subject to all conditions of this contract. Only the subcontractors specified in the contract documents are to be considered approved upon award of the contract. The County shall not be obligated to pay for any work performed by any unapproved subcontractor. The Contractor shall be responsible for the performance of all of its subcontractors.

Assignment: No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the County may:

- (a) Forward the Contractor's payment check(s) directly to any person or entity designated by the Contractor, or
- (b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s).

In no event shall such approval and action obligate the County to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.

Beneficiaries: Except as herein specifically provided otherwise, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to the County and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the County and Contractor that any such person or entity, other than the County or the Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Indemnity and Insurance

Indemnification: The Contractor agrees to indemnify and hold harmless the County and any of their officers,

agents and employees, from any claims of third parties arising out of or any act or omission of the Contractor in connection with the performance of this contract.

Insurance: During the term of the contract, the Contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Contractor shall provide and maintain the following coverage and limits:

(a) **Worker's Compensation** - The contractor shall provide and maintain Worker's Compensation Insurance as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Contractor's employees who are engaged in any work under the contract. If any work is sublet, the Contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.

(b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)

(c) **Automobile Liability Insurance:** The Contractor shall provide automobile liability insurance with a combined single limit of \$500,000.00 for bodily injury and property damage; a limit of \$500,000.00 for uninsured/under insured motorist coverage; and a limit of \$25,000.00 for medical payment coverage. The Contractor shall provide this insurance for all automobiles that are:

(a) owned by the Contractor and used in the performance of this contract;

(b) hired by the Contractor and used in the performance of this contract; and

(c) Owned by Contractor's employees and used in performance of this contract ("non-owned vehicle insurance"). Non-owned vehicle insurance protects employers when employees use their personal vehicles for work purposes. Non-owned vehicle insurance supplements, but does not replace, the car-owner's liability insurance.

The Contractor is not required to provide and maintain automobile liability insurance on any vehicle – owned, hired

or non-owned -- unless the vehicle is used in the performance of this contract.

(d) The insurance coverage minimums specified in subparagraph (a) are exclusive of defense costs.

(e) The Contractor understands and agrees that the insurance coverage minimums specified in

- subparagraph (a) are not limits, or caps, on the Contractor's liability or obligations under this contract.
- (f) The Contractor may obtain a waiver of any one or more of the requirements in subparagraph (a) by demonstrating that it has insurance that provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The County shall be the sole judge of whether such a waiver should be granted.
 - (g) The Contractor may obtain a waiver of any one or more of the requirements in paragraph (a) by demonstrating that it is self-insured and that its self-insurance provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The County shall be the sole judge of whether such a waiver should be granted.
 - (h) Providing and maintaining the types and amounts of insurance or self-insurance specified in this paragraph is a material obligation of the Contractor and is of the essence of this contract.
 - (i) The Contractor shall only obtain insurance from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in the State of North Carolina. All such insurance shall meet all laws of the State of North Carolina.
 - (j) The Contractor shall comply at all times with all lawful terms and conditions of its insurance policies and all lawful requirements of its insurer.
 - (k) The Contractor shall require its subcontractors to comply with the requirements of this paragraph.
 - (l) The Contractor shall demonstrate its compliance with the requirements of this paragraph by submitting certificates of insurance to the County before the Contractor begins work under this contract.

Transportation of Clients by Contractor:

The contractor will maintain Insurance requirements if required as noted under Article 7 Rule R2-36 of the North Carolina Utilities Commission.

Default and Termination

Termination Without Cause: The County may terminate this contract without cause by giving 30 days written notice to the Contractor.

Termination for Cause: If, through any cause, the Contractor shall fail to fulfill its obligations under this contract in a timely and proper manner, the County shall have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Contractor shall not be relieved of liability to

the County for damages sustained by the County by virtue of the Contractor's breach of this agreement, and the County may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the County from such breach can be determined. In case of default by the Contractor, without limiting any other remedies for breach available to it, the County may procure the contract services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The filing of a petition for bankruptcy by the Contractor shall be an act of default under this contract.

Waiver of Default: Waiver by the County of any default or breach in compliance with the terms of this contract by the Provider shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this contract unless stated to be such in writing, signed by an authorized representative of the County and the Contractor and attached to the contract.

Availability of Funds: The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the County.

Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Survival of Promises: All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

Intellectual Property Rights

Copyrights and Ownership of Deliverables: All deliverable items produced pursuant to this contract are the exclusive property of the County. The Contractor shall not assert a claim of copyright or other property interest in such deliverables.

Federal Intellectual Property Bankruptcy Protection Act: The Parties agree that the County shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365 (n) and any amendments thereto.

Compliance with Applicable Laws

Compliance with Laws: The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and

licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

Title VI, Civil Rights Compliance: In accordance with Federal law and U.S. Department of Agriculture (USDA) and U.S. Department of Health and Human Services (HHS) policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability. Under the Food Stamp Act and USDA policy, discrimination is prohibited also on the basis of religion or political beliefs.

Equal Employment Opportunity: The Contractor shall comply with all federal and State laws relating to equal employment opportunity.

Health Insurance Portability and Accountability Act (HIPAA): The Contractor agrees that, if the County determines that some or all of the activities within the scope of this contract are subject to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the County may require to ensure compliance.

- (a) **Data Security:** The Contractor shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.
- (b) **Duty to Report:** The Contractor shall report a suspected or confirmed security breach to the local Department of Social Services/Human Services Contract Administrator within twenty-four (24) hours after the breach is first discovered, provided that the Contractor shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered.
- (c) **Cost Borne by Contractor:** If any applicable federal, state, or local law, regulation, or rule requires the Contractor to give written notice of a security breach to affected persons, the Contractor shall bear the cost of the notice.

Trafficking Victims Protection Act of 2000 :

The Contractor will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104)

Executive Order # 24: It is unlawful for any vendor, contractor, subcontractor or supplier of the state to make gifts or to give favors to any state employee. For additional information regarding the specific requirements and exemptions, contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Confidentiality

Confidentiality: Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the County. The Contractor acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this contract.

Oversight

Access to Persons and Records: The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. Additionally, as the State funding authority, the Department of Health and Human Services shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.

Record Retention: Records shall not be destroyed, purged or disposed of without the express written consent of the Division. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to federal policy and regulations, record retention may be longer than five years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period described above, whichever is later. The record retention period for Temporary Assistance for Needy Families (TANF) and MEDICAID and Medical Assistance grants and programs must be retained for a minimum of ten years.

Warranties and Certifications

Date and Time Warranty: The Contractor warrants that the product(s) and service(s) furnished pursuant to this contract ("product" includes, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) that perform any date and/or time data recognition function, calculation, or sequencing will support a four digit year format and will provide accurate date/time data and leap year calculations. This warranty shall survive the termination or expiration of this contract.

Certification Regarding Collection of Taxes: G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors that meet one of the conditions of G.S. 105-164.8(b) and yet refuse to collect use taxes on sales of tangible personal property to purchasers in North Carolina. The conditions include: (a) maintenance of a retail establishment or office; (b) presence of representatives in the State that solicit sales or transact business on behalf of the vendor; and (c) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. The Contractor certifies that it and all of its affiliates (if any) collect all required taxes.

E-Verify

Pursuant to G.S. 143-48.5 and G.S. 147-33.95(g), the undersigned hereby certifies that the Contractor named below, and the Contractor's subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: www.uscis.gov

Miscellaneous

Choice of Law: The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, are governed by the laws of North Carolina. The Contractor, by signing this contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be the county in which the contract originated. The place of this contract and all transactions and agreements relating to it, and their situs and forum, shall be the county where the contract originated, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

Amendment: This contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the County and the Contractor.

Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this contract shall remain in full force and effect.

Headings: The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

Time of the Essence: Time is of the essence in the performance of this contract.

Key Personnel: The Contractor shall not replace any of the key personnel assigned to the performance of this contract without the prior written approval of the County. The term "key personnel" includes any and all persons identified as such in the contract documents and any other persons subsequently identified as key personnel by the written agreement of the parties.

Care of Property: The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this contract and will reimburse the County for loss of, or damage to, such property. At the termination of this contract, the Contractor shall contact the County for instructions as to the disposition of such property and shall comply with these instructions.

Travel Expenses: Reimbursement to the Contractor for travel mileage, meals, lodging and other travel expenses incurred in the performance of this contract shall not exceed the rates established in County policy.

Sales/Use Tax Refunds: If eligible, the Contractor and all subcontractors shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

Advertising: The Contractor shall not use the award of this contract as a part of any news release or commercial advertising.

ATTACHMENT B – Scope of Work

A. CONTRACTOR INFORMATION

1. Contractor Agency Name: Margaret R. Russ, Attorney at Law, P.A.

2. *If different* from Contract Administrator Information in General Contract:

Address: same

Telephone Number: 910-309-7171 Fax Number: _____ Email: buntieruss4@aol.com

3. Name of Program (s): Children's Services

4. Status: () Public () Private, Not for Profit (X) Private, For Profit

5. Contractor's Financial Reporting Year January 1 through December 31

B. Explanation of duties to be provided and to whom (include SIS Service Code):

- 1) To draft termination of parental rights petitions;
- 2) To draft complex court orders;
- 3) To represent the agency in the Judicial Reviews of petitions filed, as a result of the Responsible Individuals List (RIL) as set out in N.C.G.S. Chapter 7B, Article 3A;
- 4) To represent the agency in other court actions as needed;
- 5) To consult in the attorney's areas of expertise;
- 6) To assist the Legal Unit to meet statutory deadlines;
- 7) To work up to forty hours per week, with a minimum of thirty hours.

Insofar as practical, the CONTRACTOR shall cooperate with the operation schedule of the COUNTY and with other personnel employed, retained, or hired by the COUNTY.

C. Negotiated County Rate: N/A

D. Number of units to be provided: N/A

E. Details of Billing process and Time Frames;

The County shall pay bi-weekly in the amount of \$4,000. The total expenditure under this agreement shall not exceed \$20,000.00.

The contractor shall bill the County by the 5th business day of the month following services. The County ensures all invoices will be processed within 30 days.

F. Area to be served/Delivery site(s): Cumberland County

(Signature of Contractor)

(Signature of County Authorized Person)

(Date Submitted)

(Date Submitted)

ATTACHMENT C

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS
AND CERTIFICATION REGARDING NONDISCRIMINATION**

Cumberland County Department of Social Services/Human Services

- I. By execution of this Agreement the Contractor certifies that it will provide a drug-free workplace by:
- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing a drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Contractor's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - C. Making it a requirement that each employee be engaged in the performance of the agreement be given a copy of the statement required by paragraph (A);
 - D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the agreement, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
 - E. Notifying the County within ten days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction;
 - F. Taking one of the following actions, within 30 days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

ATTACHMENT D

Conflict of Interest Policy

The Board of Directors/Trustees or other governing persons, officers, employees or agents are to avoid any conflict of interest, even the appearance of a conflict of interest. The Organization's Board of Directors/Trustees or other governing body, officers, staff and agents are obligated to always act in the best interest of the organization. This obligation requires that any Board member or other governing person, officer, employee or agent, in the performance of Organization duties, seek only the furtherance of the Organization mission. At all times, Board members or other governing persons, officers, employees or agents, are prohibited from using their job title, the Organization's name or property, for private profit or benefit.

A. The Board members or other governing persons, officers, employees, or agents of the Organization should neither solicit nor accept gratuities, favors, or anything of monetary value from current or potential contractors/vendors, persons receiving benefits from the Organization or persons who may benefit from the actions of any Board member or other governing person, officer, employee or agent. This is not intended to preclude bona-fide Organization fund raising-activities.

B. A Board or other governing body member may, with the approval of Board or other governing body, receive honoraria for lectures and other such activities while not acting in any official capacity for the Organization. Officers may, with the approval of the Board or other governing body, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. Employees may, with the prior written approval of their supervisor, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. If a Board or other governing body member, officer, employee or agent is acting in any official capacity, honoraria received in connection with activities relating to the Organization are to be paid to the Organization.

C. No Board member or other governing person, officer, employee, or agent of the Organization shall participate in the selection, award, or administration of a purchase or contract with a vendor where, to his knowledge, any of the following has a financial interest in that purchase or contract:

1. The Board member or other governing person, officer, employee, or agent;
2. Any member of their family by whole or half blood, step or personal relationship or relative-in-law;
3. An organization in which any of the above is an officer, director, or employee;
4. A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment or contracts.

D. **Duty to Disclosure** -- Any conflict of interest, potential conflict of interest, or the appearance of a conflict of interest is to be reported to the Board or other governing body or one's supervisor immediately.

E. **Board Action** -- When a conflict of interest is relevant to a matter requiring action by the Board of Directors/Trustees or other governing body, the Board member or other governing person, officer, employee, or agent (person(s)) must disclose the existence of the conflict of interest and be given the opportunity to disclose all material facts to the Board and members of committees with governing board delegated powers considering the possible conflict of interest. After disclosure of all material facts, and after any discussion with the person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists. In addition, the person(s) shall not participate in the final deliberation or decision regarding the matter under consideration and shall leave the meeting during the discussion of and vote of the Board of Directors/Trustees or other governing body.

F. **Violations of the Conflicts of Interest Policy** -- If the Board of Directors/Trustees or other governing body has reasonable cause to believe a member, officer, employee or agent has failed to disclose actual or possible conflicts of interest, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose. If, after hearing the person's response and after making further investigation as warranted by the circumstances, the Board of Directors/Trustees or other governing body determines the member, officer, employee or agent has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

G. **Record of Conflict** -- The minutes of the governing board and all committees with board delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have an actual or possible conflict of interest, the nature of the conflict of interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement that presents a possible conflict of interest, the content of the discussion, including any alternatives to the transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Approved by:

Margaret R. Russ, Attorney at Law, P.A.
Name of Organization

Signature of Organization Official

Date

NOTARIZED CONFLICT OF INTEREST POLICY

State of North Carolina

County of Cumberland

I, _____, Notary Public for said County and State, certify that Margaret R. Russ personally appeared before me this day and acknowledged that he/she is an Independent Attorney of Margaret R. Russ, Attorney at Law, P. A. and by that authority duly given and as the act of the Organization, affirmed that the foregoing Conflict of Interest Policy was read and adopted/declined (circle one) by Margaret R. Russ.

Sworn to and subscribed before me this _____ day of _____, _____.

(Official Seal)

Notary Public

My Commission expires _____, 20 ____

ATTACHMENT E - OVERDUE TAXES

Margaret R. Russ, Attorney at Law, P. A.
230 Pinecrest Drive Apt 12
Fayetteville, NC 28305-4945

July 01, 2018

To: Cumberland County Department of Social Services/Human Services

Certification:

I certify that the Margaret R. Russ, Attorney at Law, P.A. does not have any overdue tax debts, as defined by N.C.G.S. 105-243.1, at the federal, State, or local level. I further understand that any person who makes a false statement in violation of N.C.G.S. 143-6.2(b2) is guilty of a criminal offense punishable as provided by N.C.G.S. 143-34(b).

Sworn Statement:

Margaret R. Russ, Attorney at Law, P. A., being duly sworn, says that I am an Independent Attorney respectively, of Margaret R. Russ, Attorney at Law, P. A. of Fayetteville in the State of North Carolina; and that the foregoing certification is true, accurate and complete to the best of my knowledge and was made and subscribed by me. I also acknowledge and understand that any misuse of State funds will be reported to the appropriate authorities for further action.

Independent Attorney

Sworn to and subscribed before me on the day of the date of said certification.

(Notary Signature and Seal)

My Commission Expires: _____

¹ G.S. 105-243.1 defines: Overdue tax debt. – Any part of a tax debt that remains unpaid 90 days or more after the notice of final assessment was mailed to the taxpayer. The term does not include a tax debt, however, if the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within 90 days after the notice of final assessment was mailed and has not failed to make any payments due under the installment agreement.”

ATTACHMENT F

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Cumberland County Department of Social Services/Human Services

Certification for Contracts, Grants, Loans and Cooperative Agreements

Public Law 103-227, Part C-Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application, the Contractor certifies that it will comply with the requirements of the Act. The Contractor further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

_____	<u>Attorney at Law</u>
Signature	Title
<u>Margaret R. Russ, Attorney at Law, P. A.</u>	_____
Agency/Organization	Date

(Certification signature should be same as Contract signature.)

ATTACHMENT I

Cumberland County Department of Social Services/Human Services

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
BUSINESS ASSOCIATE ADDENDUM**

This Agreement is made effective the 1st day of July, 2018, by and between Cumberland (County Department of Social Services) (“Covered Entity”) and Margaret R. Russ, Attorney at Law, P.A. (name of contractor) (“Business Associate”) (collectively the “Parties”).

1. BACKGROUND

- a. Covered Entity and Business Associate are parties to a contract entitled (identify contract) Margaret R. Russ, Attorney at Law, P.A. (the “Contract”), whereby Business Associate agrees to perform certain services for or on behalf of Covered Entity.
- b. Covered Entity is an organizational unit of Cumberland County as the Cumberland County Department of Social Services (DSS) as a health care component for purposes of the HIPAA Privacy Rule.
- c. The relationship between Covered Entity and Business Associate is such that the Parties believe Business Associate is or may be a “business associate” within the meaning of the HIPAA Privacy Rule.
- d. The Parties enter into this Business Associate Addendum to the Contract with the intention of complying with the HIPAA Privacy Rule provision that a covered entity may disclose protected health information to a business associate, and may allow a business associate to create or receive protected health information on its behalf, if the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information.

2. DEFINITIONS

Unless some other meaning is clearly indicated by the context, the following terms shall have the following meaning in this Agreement:

- a. “HIPAA” means the Administrative Simplification Provisions, Sections 261 through 264, of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- b. “Individual” shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- c. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- d. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- e. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- f. “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his designee.
- g. Unless otherwise defined in this Agreement, terms used herein shall have the same meaning as those terms have in the Privacy Rule.

3. OBLIGATIONS OF BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- g. Business Associate agrees, at the request of the Covered Entity, to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526.
- h. Unless otherwise prohibited by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Cumberland County Department of Social Services, in a time and manner designated by the Secretary, for purposes of the Cumberland County Department of Social Services determining Covered Entity's compliance with the Privacy Rule.
- i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, and to provide this information to Covered Entity or an Individual to permit such a response.

4. PERMITTED USES AND DISCLOSURES

- a. Except as otherwise limited in this Agreement or by other applicable law or agreement, if the Contract permits, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract, provided that such use or disclosure:
 - 1) would not violate the Privacy Rule if done by Covered Entity; or
 - 2) would not violate the minimum necessary policies and procedures of the Covered Entity.
- b. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may use Protected Health Information as necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- c. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that:
 - 1) disclosures are Required By Law; or
 - 2) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- d. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- e. Notwithstanding the foregoing provisions, Business Associate may not use or disclose Protected Health Information if the use or disclosure would violate any term of the Contract or other applicable law or agreements.

5. TERM AND TERMINATION

- a. **Term.** This Agreement shall be effective as of the effective date stated above and shall terminate when the Contract terminates.
- b. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, at its option:

- 1) Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement and services provided by Business Associate, to the extent permissible by law, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
- 2) Immediately terminate this Agreement and services provided by Business Associate, to the extent permissible by law; or
- 3) If neither termination nor cure is feasible, report the violation to the Secretary as provided in the Privacy Rule.

Effect of Termination.

- 4) Except as provided in paragraph (2) of this section or in the Contract or by other applicable law or agreements, upon termination of this Agreement and services provided by Business Associate, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- 5) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. GENERAL TERMS AND CONDITIONS

- a. This Agreement amends and is part of the Contract.
- b. Except as provided in this Agreement, all terms and conditions of the Contract shall remain in force and shall apply to this Agreement as if set forth fully herein.
- c. In the event of a conflict in terms between this Agreement and the Contract, the interpretation that is in accordance with the Privacy Rule shall prevail. In the event that a conflict then remains, the Contract terms shall prevail so long as they are in accordance with the Privacy Rule.
- d. A breach of this Agreement by Business Associate shall be considered sufficient basis for Covered Entity to terminate the Contract for cause.

(Signature of Contractor)

(Signature of County Authorized Person)

(Date Submitted)

(Date Submitted)

ATTACHMENT M

State Certifications

Contractor Certifications Required by North Carolina Law

Instructions: The person who signs this document should read the text of the statutes and Executive Order listed below and consult with counsel and other knowledgeable persons before signing. The text of each North Carolina General Statutes and of the Executive Order can be found online at:

- Article 2 of Chapter 64: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_64/Article_2.pdf
- G.S. 133-32: <http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=133-32>
- Executive Order No. 24 (Perdue, Gov., Oct. 1, 2009): <http://www.ethicscommission.nc.gov/library/pdfs/Laws/EO24.pdf>
- G.S. 105-164.8(b): http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-164.8.pdf
- G.S. 143-48.5: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-48.5.html
- G.S. 143-59.1: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.1.pdf
- G.S. 143-59.2: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.2.pdf
- G.S. 143-133.3: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-133.3.html
- G.S. 143B-139.6C: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143B/GS_143B-139.6C.pdf

Certifications

- (1) Pursuant to G.S. 133-32 and Executive Order No. 24 (Perdue, Gov., Oct. 1, 2009), the undersigned hereby certifies that the Contractor named below is in compliance with, and has not violated, the provisions of either said statute or Executive Order.
- (2) Pursuant to G.S. 143-48.5 and G.S. 143-133.3, the undersigned hereby certifies that the Contractor named below, and the Contractor's subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: www.uscis.gov Local government is specifically exempt from Article 2 of Chapter 64 of the North Carolina General Statutes. However, local government is subject to and must comply with North Carolina General Statute 153A-99.1, which states in part as follows:
Counties Must Use E-Verify - Each county shall register and participate in E-Verify to verify the work authorization of new employees hired to work in the United States.
- (3) Pursuant to G.S. 143-59.1(b), the undersigned hereby certifies that the Contractor named below is not an "ineligible Contractor" as set forth in G.S. 143-59.1(a) because:
 - (a) Neither the Contractor nor any of its affiliates has refused to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina when the sales met one or more of the conditions of G.S. 105-164.8(b); **and**
 - (b) [check **one** of the following boxes]
 - Neither the Contractor nor any of its affiliates has incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001; **or**
 - The Contractor or one of its affiliates **has** incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001 **but** the United States is not the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.
- (4) Pursuant to G.S. 143-59.2(b), the undersigned hereby certifies that none of the Contractor's officers, directors, or owners (if the Contractor is an unincorporated business entity) has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934 within 10 years immediately prior to the date of the bid solicitation.
- (5) Pursuant to G.S. 143B-139.6C, the undersigned hereby certifies that the Contractor will not use a former employee, as defined by G.S. 143B-139.6C(d)(2), of the North Carolina Department of Health and Human Services in the administration of a contract with the Department in violation of G.S. 143B-139.6C and that a violation of that statute shall void the Agreement.

(6) The undersigned hereby certifies further that:

- (a) He or she is a duly authorized representative of the Contractor named below;
- (b) He or she is authorized to make, and does hereby make, the foregoing certifications on behalf of the Contractor; and
- (c) He or she understands that any person who knowingly submits a false certification in response to the requirements of G.S. 143-59.1 and -59.2 shall be guilty of a Class I felony.

Contractor's Name: **Margaret R. Russ, Attorney at Law, P. A.** _____

Contractor's Authorized Agent: Signature _____ Date _____

Printed Name _____ Title _____

Witness: Signature _____ Date _____

Printed Name _____ Title _____

The witness should be present when the Contractor's Authorized Agent signs this certification and should sign and date this document immediately thereafter.

ATTACHMENT N

Cumberland County Department of Social Services/Human Services

CERTIFICATION REGARDING NONDISCRIMINATION, CLEAN AIR ACT, CLEAN WATER ACT**Certification Regarding Nondiscrimination**

The Contractor certifies that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (h) the Food Stamp Act and USDA policy, which prohibit discrimination on the basis of religion and political beliefs; and (i) the requirements of any other nondiscrimination statutes which may apply to this Agreement.

The Contractor must comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by the Department of Labor Regulations (41 CFR Part 60): The Executive Order prohibits federal contractors and federally-assisted construction contractors and subcontractors who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. The Executive Order also requires Government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

Meaningful Access for LEP Individuals: **The Contractor** that participate in the SNAP must take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and benefits. This includes the requirement to provide bilingual program information and certification materials and interpretation services to single language minorities in certain project areas. SNAP Contractors that do not provide meaningful access for LEP individuals risk violating prohibitions against discrimination based on National Origin in the Food and Nutrition Act of 2008, as amended, Title VI of the Civil Rights Act of 1964 (Title VI) and SNAP program regulations at 7 CFR 272A(b). They also risk noncompliance with the USDA policy guidance titled, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons", published in 79 FR 70771 - 70784 (November 28, 2014).

The Contractor should develop an implementing plan to address the language assistance needs of the LEP population served. This may include contracting for oral interpretation services, hiring bilingual staff, arranging telephone interpreters and/or language lines, coordinating community volunteers, translating vital documents, and providing written notice that language services are available in appropriate languages. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient. LEP needs should be considered in developing budgets and front line staff should understand how to obtain language assistance services. For additional assistance and information regarding LEP matters, please also visit <http://www.lep.gov>.

Ensuring Equal Opportunity Access for Persons with Disabilities: **The Contractor** must also ensure equal opportunity access for persons with disabilities. This includes ensuring that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with people without disabilities. Contractors that do not provide persons with disabilities equal opportunity access to programs may risk violating prohibitions against disability discrimination in the Rehabilitation Act of 1978, the American with Disabilities Act (ADA) of 1990, as amended, and SNAP program regulations.

DOJ published revised final regulations implementing Title II and Title III of the ADA on September 15, 2010. These regulations are codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and at 28 CFR Part 36 "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities". In accordance with the implementing regulations, Contractors must provide auxiliary aids and services where necessary to ensure effective communication and equal opportunity access to program benefits for individuals with disabilities. The type of auxiliary aids and services required will vary, but a Contractor may not require an individual with a disability to bring another individual to interpret, and may rely on a person accompanying a disabled individual only in limited circumstances. When a Contractor communicates with applicants and beneficiaries by telephone, it must provide text telephone services (ITV) or have access to an equally effective electronic telecommunications system to communicate with individuals who are deaf, hard of hearing, or hearing impaired. Contractors must also ensure that

interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. For more information, please visit the ADA website: <http://www.ada.gov>.

IV. The Clean Air Act, Section 306; 42 U.S.C. §7401 et seq. (1970)

- a. No Federal agency may enter into any contract with any person who is convicted of any offense under section 113(c) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.
- b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).
- c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.
- d. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.
- e. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]

V. The Clean Water Act; 33 U.S.C. §1251 et seq. (1972)

- a. No Federal agency may enter into any contract with any person who has been convicted of any offense under Section 309(c) of this Act for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.
- b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.
- c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than 180 days after the enactment of this Act, cause to be issued an order:
 - (i) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and
 - (ii) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.
- d. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.
- e. The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.

- f. No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.
- g. In paragraph (1), the term "commercial item" has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

Signature

Title

Agency/Organization

Date

(Certification signature should be same as Contract signature.)

CONTRACTOR'S CERTIFICATION FOR LEGAL REVIEW OF CONTRACT WITH CUMBERLAND COUNTY

The undersigned, on behalf of the contractor or vendor named below, certifies with respect to the attached contract between Cumberland County and _____ as follows:

1. The contractor is
 an individual
 a corporation
 a limited liability company
 a unit of local government
 other: _____). (If the contractor is described as "other," a certified copy of the legal documents by which it is organized must be attached.)
2. The contractor's business address is _____.
(If this is an out-of-state address, the contract must be signed by the contractor before it is reviewed.)
3. If the contractor is not an individual or a unit of local government, is it registered with the Secretary of State to do business in North Carolina?
 Yes (Attach a copy of the screen page from NC Secretary of State Website showing active status.)
 No (If it is not registered with the North Carolina Secretary of State, a certificate of good standing from the Secretary of State in the state in which it is organized must be attached.)
4. The individual or individuals making this certification and signing the contract on behalf of the contractor are duly authorized to do so by action of the contractor.

If the contract was prepared or drafted by contractor or contractor's attorney, complete the following additional certifications:

5. This contract is made subject to the laws of the State of _____.
6. This contract does does not contain a provision which may require the county to indemnify the contractor. If it does contain this indemnity provision, the maximum amount for which the county may liable under this indemnity is \$ _____. (An indemnity provision that is not capped may result in the contract not being accepted by the county.)
7. All obligations incurred by the county under the terms of this contract terminate on the following date: _____. (Any contract provision which extends the obligations of the county beyond the date the contract terminates will not be accepted by the county.)

The contractor agrees that the county does not waive its rights as to any provisions of the contract which are against the public policy of the State of North Carolina, regardless of the choice of law stated in the contract.

Certified by _____ for the contractor stated above.

Signature: _____

Date Submitted: _____

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 AUGUST 2, 2018
MEETING OF THE FINANCE COMMITTEE**

TO: FINANCE COMMITTEE

FROM: ELAINE SMITH, ANIMAL CONTROL DIRECTOR

THRU: AMY CANNON, COUNTY MANAGER *AC*

DATE: JULY 25, 2018

SUBJECT: CONSIDERATION OF PARTICIPATION IN THE NATIONAL
2018 CLEAR THE SHELTER EVENT

Requested by: Amy Cannon, County Manager

Presenter(s): Tracy Jackson & Elaine Smith

Estimate of Committee Time Needed: 10 Minutes

BACKGROUND

Each August a national event occurs called "Clear the Shelter." It is a joint effort between the Humane Society of the United States, NBC media network and some corporate sponsors. This year the event will be on Saturday August 18th. Cumberland County Animal Control has not participated in the past, but other area shelters such as Wake County, Durham County, Orange County, Johnston County all have participated in the past and are doing it again this year.

In order to participate in the event, Cumberland County is required to waive adoption fees for every adoptable animal in the shelter. The goal is to get every adoptable animal a new home. Depending on the number of animals adopted, this could mean waiving revenue upwards of \$10,000.

We contacted Wake County to determine the potential impact of holding an event. Wake County has participated in the event for 2 years and plans to do so this year as well. Last year they had over 1,000 people come to their shelter for the event. They cleared out their shelter and had very few animals returned afterwards and at a lower return rate than they usually see. Participating animal shelters, and national organizations such as ASPCA and Best Friends Animal Society, see the positive publicity and decrease in animal euthanasia as far outweighing the loss in fees.

WRAL TV will be broadcasting from area shelters all day to promote the event. They will also be doing stories on responsible pet ownership throughout the week prior to the event. Last year, area shelters placed over 1,200 animals through Clear the Shelter (www.cleartheshelters.com).

RECOMMENDATION/PROPOSED ACTION:

Approve the request to participate in the “2018 Clear the Shelter Event” moving forward to the full Board of Commissioners as a consent item on the August 6, 2018 Board of Commissioners’ Meeting. This item is being requested for consideration as a consent agenda item on the 6th since the event is to be held on the 18th of August, and there won’t be adequate notice to participate if it is taken to a later meeting.



FINDING FOREVER HOMES

2018 COMMITMENT FORM

Welcome to *Clear the Shelters* 2018! Please fill out the following form and e-mail it to egeppi@humaneociety.org by **MAY 21, 2018**. If you have any questions about this form and/or *Clear the Shelters*, please send an email or call Erica Geppi at (980) 229-8804.

DESIGNATED SHELTER COORDINATORS:

- We agree to be open and fully staffed for adoptions from 10am – 6pm on August 18, 2018.
- We agree to WAIVE the adoption fee for ALL dogs, puppies, cats, kittens and other pets that are adopted on SATURDAY, August 18.

Name of Animal Shelter: Cumberland County Animal Control

Estimated Number of Animals Available for Adoption for this Campaign: 60 dogs, 30 cats

Annual Intake Number: 11,000

Shelter Contact: Elaine Smith

Title: Director

Phone Number: 910-321-6856 Cell: _____

E-Mail Address: ebsmith@co.cumberland.nc.us

For *Clear the Shelters* news coverage, all participating shelters are asked to allow WRAL-TV news crews access to their facility prior to the campaign, on campaign day (August 19) and following the close of the campaign.

INFORMATION TO BE USED IN PROMOTIONAL MATERIALS (STATION WEBSITES, PROMOS AND PRESS MATERIALS):

Shelter Street Address: 4704 Corporation Dr, Fayetteville NC 28306

Shelter Website: www.co.cumberland.nc.us/departments/animal-control-group/animal-control

Shelter's social media pages (if applicable):

Facebook: Friends of Cumberland County animals Twitter: _____ Instagram: _____

Main Phone Number: 910-321-6852

BY SUBMITTING THIS COMMITMENT FORM, THE CONTACT PERSON AGREES, ON BEHALF OF THE ORGANIZATION, TO PARTICIPATE AS OUTLINED ABOVE.

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 AUGUST 2, 2018 MEETING OF THE FINANCE COMMITTEE

TO: FINANCE COMMITTEE

FROM: TRACY JACKSON, ASST. COUNTY MANAGER

THRU: AMY CANNON, COUNTY MANAGER

DATE: APRIL 20, 2018

SUBJECT: CONSIDERATION OF WAIVING PERMITTING FEES

Requested by: Tracy Jackson, Asst. County Manager

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

Estimate of Committee Time Needed: 5 Minutes

BACKGROUND

The Garden Grove Mobile Home Park is defunct as a result of a failed septic system, and some of the remaining residents could benefit from assistance relocating their mobile homes. Staff is requesting that the following permitting fees be waived for the resident-owners of mobile homes currently sited on the premises of the Garden Grove Mobile Home Park in Spring Lake, NC:

- \$155.00 per singlewide/\$200.00 per doublewide for the manufactured home placement inspection from Planning & Inspections
- \$ 90.00 Environmental Health fee for inspection of existing septic tank in mobile home park (AIW) after the home has been set-up in new location

RECOMMENDATION/PROPOSED ACTION:

Staff requests approval of this item to move forward to the full Board of Commissioners as a Consent Agenda item at the **August 6, 2018** Board of Commissioners regular meeting.

MELISSA C. CARDINALI
Assistant County Manager
Director



ITEM NO. 7
KEITH TODD
Information Services

INFORMATION SERVICES TECHNOLOGY

5th Floor, Room No. 519, Courthouse • PO Box 1829 • Fayetteville, North Carolina 28302-1829
(910) 323-6119 • Fax (910) 323-6153

MEMO FOR THE AGENDA OF THE AUGUST 02, 2018 MEETING OF THE FINANCE COMMITTEE

TO: BOARD OF COMMISSIONERS
FROM: KEITH TODD, CHIEF INFORMATION SERVICES DIRECTOR
THRU: MELISSA C. CARDINALI, ASSISTANT COUNTY MANAGER
DATE: JULY 24, 2018
SUBJECT: CONSIDERATION OF CONTRACT TO PROVIDE TAX SOFTWARE

Requested by: Amy Cannon, County Manager

Presenter(s): Keith Todd, Chief Information Services Director

Estimate of Committee Time Needed: 5 Minutes

BACKGROUND

Cumberland County Tax Administration completed an extensive RFP process for acquiring a new software solution for the Tax software project. The new software system features flexibility of the software, ease of use, compliance with RFP requirements, mobile application, and cost.

Cumberland County Tax Administration Department is in the process of upgrading its processes and software. The organization is currently in need of a modern, comprehensive software package that encompasses a mobile companion that is compatible with the software. This will eliminate the need to use several different programs, streamline their processes, provide the ability to perform tasks while mobile, and provide enhanced automation. The upgrade of the tax software will increase the efficiency of the office by reducing the use of paper as well as the need to hand walk paperwork for one person or section to another within the same organization by creating electronic workflows. The new software will bring the organization from an outdated, green screen mainframe product to

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a modern easy to use program that can be accessed remotely. The product will also provide a central portal through which all citizens will have the ability to access status information of past and present tax actions as well as make online payments. It will offer citizens and Cumberland tax employees a unified and user-friendly approach to maneuver through the system.

As a result of the RFP process which included demos, site visits, and detailed functionality reviews, it was clear that one vendor demonstrated the ability to meet the functionality required by the Tax Department and within budget. Information Services Technology and Tax Administration Departments selected Farragut Systems Inc., as the vendor for the tax software project. Farragut has developed software and is working with the North Carolina Association of County Commissioners (NCACC) in a cooperative technology initiative to assist in streamlining and optimizing the property tax process for North Carolina through the identification and application of best business practices and standards.

RECOMMENDATION

- 1) Approve contract for Farragut Systems Inc., (contract has been reviewed and approved by the legal department for legal sufficiency) for the Tax Software as recommended by Information Services Technology and the Tax Department.
- 2) Approve Budget Ordinance Amendment B190646 in the amount of \$2,320,069 to be used towards the implementation costs for the tax software.
This amendment requires the use of fund balance, which has been previously assigned specifically for this project.

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Vendor	Ranking	Evaluation Findings	Key Risks Identified	*Costs
Farragut	1	<ul style="list-style-type: none"> • User group steering committee. • Only 1 county using mobile - Craven County 	<ul style="list-style-type: none"> • Do not currently have Food & Beverage in system, but can be done as an enhancement. 	\$1,699,869.00
Tyler - IASWorld	2	<ul style="list-style-type: none"> • Most expensive option. • The software proposed is not fully operational in NC. IAS World B&C only in Cobb County, GA. • Did not agree to maintenance fees beginning 1 year after project acceptance. • Uses RECO Cashiering as their standard program. • No lookup in RECO for outstanding tax bills. • Integrates with EZ-Scan for check scanning. This is an extra charge. Used in Cobb County, GA no one in NC uses this. • Need Soils layer built into GIS - will be extra charge not included in proposal. • Need ARCGIS viewer extension - will be extra charge not included in proposal. • CSS - need IAS World Smart File for this. No one in NC using it (Supports online entry & online extension requests). This is an extra charge. • Cannot create personal property abstract listing in the field. • 1 county using mobile -Dare County. • Queries/Reports look outdated. • Screens were too busy with a lot of stuff. • Mobile is not very advanced. • No route tracking on mobile. • Did not agree that all State, Federal, regulatory agency, Court and GASB mandated changes are to be included and maintained for the tenure of the proposed maintenance contract without additional charge. 	<ul style="list-style-type: none"> • Could not begin project until February 2019. • Oracle based. • No VTS • Does not have gap billing. • No farm listings. • No municipality populations over 300,000. • Do not currently have Food & Beverage in system. 	\$4,066,758.00
Bi-Tek	3	<ul style="list-style-type: none"> • Training materials not complete. • Did not agree that all State, Federal, regulatory agency, Court and GASB mandated changes are to be included and maintained for the tenure of the proposed maintenance contract without additional charge. • Mobile product built into system. 	<ul style="list-style-type: none"> • No municipality populations over 200,000. Small company. • No Food & Beverage, but stated they could build it into the system however the County needed it. 	\$1,067,050.00

* These Costs are reflective of the vendor's professional services and licenses, not the total project cost.

FARRAGUT™

MASTER SERVICES AGREEMENT

This Master Services Agreement (this "Agreement") is made and entered into as of _____ (the "**Effective Date**") by and between Farragut Systems, Inc., a North Carolina corporation having a place of business at 2775 Meridian Parkway, Durham, North Carolina 27713 ("**Farragut**") and Cumberland County of North Carolina ("**Customer**"), a governmental agency with a mailing address of its executive offices at PO Box 1829, Fayetteville, NC 28302, and a physical address at 117 Dick Street, Suite 519, Fayetteville, NC 28301.

In consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Services**

- 1.1. Farragut agrees to provide installation, implementation, configuration, consulting, development, training, support, and/or other services for the North Carolina Property Tax System ("NCPTS"), MapMetrics, ParcelSync, DeedSync, Apex Sketch, and Mobile Assessor, as set forth in one or more agreed Statements of Work (the "**Services**"). Statement of Work No. 1 are attached hereto and incorporated by reference. The parties may from time to time agree to additional Statements of Work, each of which, when signed by an authorized representative of each party, will be deemed a part of and incorporated into this Agreement. Each Statement of Work will identify responsibilities of each party, and the parties shall work together cooperatively to complete their respective responsibilities.
- 1.2. All changes to a Statement of Work will be made pursuant to a mutually agreed Change Order. The form of Change Order is attached hereto as Exhibit A. The Change Order will address as necessary changes to the requirements, Statement of Work or cost of the Services. No changes to a Statement of Work will be effective unless authorized in a written Change Order agreed by the parties.
- 1.3. Customer agrees to cooperate with Farragut and promptly perform Customer's responsibilities under this Agreement. Customer will provide timely access to its key personnel and will timely respond to Farragut's questions relating to this Agreement or Farragut's performance under this Agreement and the associated Statements of Work.
- 1.4. Unless otherwise agreed in writing by the parties, Customer shall have sole responsibility for acquiring and maintaining its own technology environment, including but not limited to client workstations, operating systems, database software, servers, internet access, local area networks, and wide area networks.

2. **Fees and Expenses**

- 2.1. Customer shall pay Farragut the fees set forth in the applicable Statement of Work in accordance with the terms and conditions therein. If the Services are provided on a time and materials basis, any estimates provided by Farragut are for planning purposes only. Unless otherwise set forth in the Statement of Work, Farragut shall invoice Customer on a milestone basis upon acceptance of deliverables, and payments are due within thirty (30) days of receipt of invoice. If payment is not made within thirty (30) days of receipt of invoice, then Customer agrees to pay 2/3% per month interest on unpaid amounts or the highest rate allowed by law, if lesser. In the event that

Customer, in good faith, disputes any invoiced amounts, Customer shall notify Farragut in writing prior to the payment due date identifying in detail the reason why such charges are disputed. Customer may delay payment on disputed charges (but only disputed charges) pending resolution of the dispute. If any nondisputed amounts are past due, Farragut may upon notice to Customer, and without waiving any rights or remedies, suspend performance under any or all Statements of Work until payments are current. Except to the extent set forth in a Statement of Work, all fees paid hereunder are nonrefundable; provided that the foregoing does not prevent Customer from seeking to recover all available damages for Farragut's breach of this Agreement.

- 2.2. To the extent authorized and set forth in the applicable Statement of Work, Customer agrees to reimburse Farragut for reasonable out-of-pocket expenses incurred in the performance of Services, including but not limited to travel, lodging, meals, postage, freight, printing and long distance phone expenses. All travel-related expenses must be approved in advance by Customer.
- 2.3. Customer shall be responsible for any and all applicable taxes, however designated, incurred as a result of or otherwise in connection with this Agreement, including but not limited to state and local privilege, excise, sales, and use taxes and any taxes or amounts in lieu thereof paid or payable by Farragut, but excluding taxes based upon the net income of Farragut. This provision does not apply to any taxes for which Customer is exempt and for which Customer has furnished Farragut with a valid tax exemption certificate authorized by the appropriate taxing authority.

3. Confidentiality and Proprietary Rights

- 3.1. "Confidential Information" means any information or data (including without limitation any formula, pattern, compilation, program, device, method, technique, or process) that is disclosed by one party (a disclosing party) to the other party (a receiving party) pursuant to this Agreement that is identified in writing as confidential or that would reasonably be recognized as confidential. Confidential Information does not include information that: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a receiving party from a third party without breach of any obligation of confidentiality; (c) was previously known by the receiving party as shown by its written records; or (d) was independently developed by the receiving party as shown by its written records.
- 3.2. A receiving party agrees: (a) to hold the disclosing party's Confidential Information in strict confidence; and (b) except as expressly authorized by this Agreement, not to, directly or indirectly, use, disclose, copy, transfer or allow access to the Confidential Information. Notwithstanding the foregoing, a receiving party may disclose Confidential Information of the disclosing party as required by law or court order; in such event, such party shall use its best efforts to inform the other party prior to any such required disclosure and the other party may seek to obtain a protective order or other protections against the disclosure of its Confidential Information.
- 3.3. Upon the termination or expiration of this Agreement, the receiving party will return to the disclosing party all the Confidential Information delivered or disclosed to the receiving party, together with all copies in existence thereof at any time made by the receiving party, and will delete all electronic copies of such Confidential Information.
- 3.4. In the event that Farragut develops any custom software, scripts, documentation or other materials under this Agreement ("**Work Product**"), unless otherwise set forth in the Statement of Work, Farragut will be the sole owner of all intellectual property rights in such Work Product. In addition, Farragut shall retain all intellectual property rights in all methodologies, algorithms, software, documentation, know-how, techniques and other materials which have been previously developed or acquired by Farragut and that are used in connection with the Services. Upon receipt in full of all payments due under the applicable Statement of Work, Farragut will grant Customer a non-exclusive, perpetual, royalty-free license to use, copy and modify the Work Product solely in connection with Customer's internal operations. Customer agrees not to sell, distribute or otherwise disclose the Work Product to any third party, without Farragut's prior written consent; provided that Customer may disclose and transfer its license to the Work Product to an affiliated organization or to the acquirer of all or substantially all of Customer's business. Through

its relationship with the North Carolina Association of County Commissioners ("NCACC"), Farragut intends to make the Work Product from Statement of Work #1 that is related directly to NCPTS available for licensing by NCACC to other North Carolina counties. Client shall retain ownership of all documentation, training materials, and other work product related to NCPTS that Client solely develops.

4. Term and Termination

- 4.1. As a master agreement, this Agreement shall remain in place until terminated as set forth herein.
- 4.2. The term of a Statement of Work will begin when it is executed by both parties and will terminate when performance under the Statement of Work is accepted and paid for, unless the Statement of Work is otherwise terminated as provided herein or in the Statement of Work. Either party may terminate this Agreement or any Statement of Work if the other party materially breaches this Agreement and such breach is not cured, or an acceptable plan for resolving the breach is not put in place, within thirty (30) days after written notice identifying specifically the basis for such notice. If a breach relates solely to Services provided or fees to be paid under a specific Statement of Work and not to other Statements of Work, then a party will have the right to terminate only the affected Statement of Work and not the entire Agreement or other Statements of Work.
- 4.3. Customer may terminate a Statement of Work by providing at least thirty (30) days prior written notice to Farragut, in the event that applicable county, state, or federal funds associated with such project are withdrawn.
- 4.4. The terms provided in Sections 3, 5, 6.1, 7 and 8 of this Agreement shall survive any termination of this Agreement. In the event of termination, unless such termination is due to a material breach by Farragut, Customer agrees to pay Farragut for all Services rendered and expenses incurred up to the date of termination (on a pro-rated basis for fixed-fee or milestone-based Statements of Work).
- 4.5. Except as otherwise set forth in this Agreement, termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party. Termination of this Agreement will not relieve Customer of its obligation to pay all fees and expenses that accrued before such termination.

5. Representations and Warranties

- 5.1. Farragut represents and warrants that it has the requisite knowledge, expertise and experience necessary to perform Services under this Agreement, and that the results of the Services will meet the tax purposes of Customer, to the extent such purposes are reflected in the requirements and specifications set forth in a Statement of Work between the parties. Customer agrees to notify Farragut of any breach of this representation within thirty (30) days after completion of the Services, including all substantiating documentation. Customer's sole remedy for breach of this representation shall be for Farragut to reperform the Services at issue at no charge to County; provided that if Farragut breaches this representation for the same Services more than three (3) times, then County will have the right to terminate this Agreement for breach without further opportunity to cure.
- 5.2. Customer represents and warrants that it has obtained or will obtain prior to Farragut's commencement of the Services all licenses and consents from third party vendors authorizing access to and/or modifications of software and/or technical information owned by such vendors and licensed to Customer, as required in order for Farragut to perform the Services.
- 5.3. Each party represents and warrants that it has received all necessary authority and approvals to enter into this Agreement, and that the negotiation and performance of this Agreement is not in conflict with any other agreement entered into by such party.
- 5.4. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1, FARRAGUT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED

WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING AS A RESULT OF USAGE IN THE TRADE OR BY COURSE OF DEALING.

6. Liability and Insurance

- 6.1. All liability arising under or relating to the subject matter of this Agreement, whether under theory of contract, tort (including negligence), or otherwise, shall be limited to direct damages. Neither party, including its officers, directors, employees, agents, representatives, and subcontractors, shall have any liability to the other party or to any third party for any incidental, punitive, indirect, special or consequential damages, including but not limited to lost profits, loss of data, cost of recreating lost data, interruption of business, or costs of procurement of substitute goods or services, even if advised of the possibility of such damages, whether under theory of warranty, contract, tort (including negligence), strict liability or otherwise. The aggregate liability of Farragut under any Statement of Work shall not exceed the total fees paid by Customer to Farragut with respect to the Statement of Work.
- 6.2. Farragut will carry and maintain throughout the period of this Agreement, at Farragut's sole expense, the following insurance:

1. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY:

This insurance shall protect Farragut against all claims under applicable provisions of the Labor Code of North Carolina. Farragut shall also be protected against claims for injury, disease, or death of employees which for any reason may not fall within the provisions of a worker's compensation law. The liability limits shall not be less than the "Worker's Compensation - Statutory Employer's liability." In no event shall Farragut self-insure for the purposes of Worker's Compensation insurance.

2. COMPREHENSIVE AUTOMOBILE LIABILITY:

This insurance shall be written in comprehensive form and shall protect Farragut and the County against all claims for injuries to members of the public and damage to property of others arising from Farragut's use of motor vehicles and shall cover operation of all motor vehicles utilized in conjunction with Farragut's performance hereunder licensed for highway use whether they are owned, non-owned, or hired. The liability limits shall not be less than the following:

Bodily injury/Property damage per occurrences \$500,000

3. GENERAL LIABILITY:

This insurance shall be written on a commercial general liability form which shall protect Farragut and the County for those sums Farragut becomes legally obligated to pay as damages because of bodily injury, personal injury or property damage in association with Farragut's performance hereunder. The limits applicable to the commercial general liability policy shall not be less than the following:

Bodily Injury/Property Damage Each Occurrence \$1,000,000

Aggregate \$1,000,000

Personal Injury Per Person/ Aggregate \$1,000,000

The insurance may also be written on the comprehensive general liability form. Comprehensive general liability limits shall not be less than the following:

Bodily Injury Occurrence \$1,000,000

Property Damage Occurrence \$1,000,000

Personal Injury Aggregate \$1,000,000

4. UMBRELLA

This insurance shall be written to protect the successful Proposer and the County against all claims in excess of the underlying general liability, automobile and workers' compensation coverages. The umbrella limits shall not be less than the following:

Limit of Liability Aggregate \$5,000,000

The County must be an additional insured under the umbrella. Farragut and all sub-vendors shall furnish the County, prior to any award of an agreement, certificates of insurance evidencing the required coverages. Separate insurance certificates need not be furnished if Farragut and all sub-vendors have previously filed with the County certificates which are currently in effect. No work shall be performed under this Contract by Farragut or its sub-vendors after expiration or cancellation of the insurance set forth above

5. ERRORS AND OMISSIONS

Errors and omissions insurance not less than \$1 million for professional liability for this project.

6. CYBER LIABILITY

Must show proof that Farragut has cyber liability coverage.

Certificates of such insurance shall be furnished by Farragut to Customer within ten (10) business days after execution of this Agreement. Such certificates shall require the insurer issuing the underlying policy to provide Customer with a minimum of thirty (30) days notice prior to modification or cancellation of said policy. Farragut agrees that such insurance shall be primary, regardless of any other insurance coverage, which Customer may procure for its own benefit.

6.3. Customer is responsible for assuring and maintaining the backup of all Customer data, software and network systems. UNDER NO CIRCUMSTANCES WILL FARRAGUT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR THE LOSS OF, CORRUPTION OF, OR DAMAGE TO CUSTOMER DATA, SOFTWARE OR NETWORK SYSTEMS.

6.4. The allocations of liability in this Section represent the agreed and bargained-for understanding of the parties and Farragut's compensation for the Services reflects such allocations.

7. Dispute Resolution

7.1. The parties agree to attempt to resolve any controversy, claim or dispute ("**Dispute**") arising out of or relating to this Agreement by means of good faith discussion and negotiation. In the event that a Dispute cannot be resolved at the project level, then designated senior executives of the parties shall meet and enter into further good faith settlement negotiations. If such senior executives cannot resolve the Dispute within sixty (60) days, then If such senior executives cannot resolve the Dispute within thirty (30) days, the parties agree to try in good faith to settle the dispute by mediation administered by a mutually agreed third-party mediator before resorting to a law suit. If the parties do not reach such solution within a period of sixty (60) days after engagement of a mediator, then either party may initiate a law suit exclusively in a state or federal court located in Cumberland County.

7.2. This Agreement shall be interpreted, construed, and governed by the laws of the State of North Carolina, without regard to conflict of law provisions.

8. Miscellaneous

8.1. During the term of this Agreement and for a period of one (1) year following the termination or expiration of this Agreement for any reason, neither party shall employ nor offer or seek to employ, either directly or indirectly, any person who, at that time or within the last six (6) months, was

either employed by or engaged as an independent contractor by the other party and was involved in the delivery or receipt of services under this Agreement.

- 8.2. The parties are and intend to be independent contractors with respect to the services contemplated hereunder. Farragut agrees that neither it nor its employees or contractors shall be considered as having an employee status with Customer or having any claim to employee benefits of any kind offered by Customer. All persons employed by Farragut to perform Services shall be subject to the exclusive direction and control of Farragut. No form of joint employer, joint venture, partnership, or similar relationship between the parties is intended or hereby created.
- 8.3. Neither party shall be liable for any failure or delay in the performance of its obligations due to causes beyond the reasonable control of the party affected, including but not limited to war, sabotage, insurrection, riot or other act of civil disobedience, terrorism, strikes or other labor shortages, act of any government affecting the terms hereof, accident, fire, explosion, flood, hurricane, severe weather or other act of God. Each party shall promptly notify the other party in the case of an event arising under this Section.
- 8.4. This Agreement, including all Statements of Work, constitutes the entire understanding of the parties with respect to its subject matter, and supersedes all prior or contemporaneous written and oral agreements with respect to its subject matter. Except as provided expressly herein, this Agreement shall not be modified, amended, or in any way altered except in a written amendment executed by both of the parties. No waiver of any provision of this Agreement, or of any rights or obligations of any party hereunder, will be effective unless in writing and signed by the party waiving compliance.
- 8.5. Headings used in this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement.
- 8.6. Neither party may assign this Agreement or any right hereunder without the prior written consent of the other party; provided however that Farragut may assign this Agreement to the acquirer of all or substantially all of its business, so long as such acquirer agrees in writing to be bound by the terms of this Agreement and notice is provided to Customer within ten (10) days of such transfer of any new entity, address and/or contact(s). Any attempted assignment not authorized herein shall be null and void. For the avoidance of doubt, Farragut may not assign its accounts receivable under this Agreement to another company without the consent of Customer.
- 8.7. Farragut may use Customer's name and logo in a list of Farragut customers.
- 8.8. All notices required or permitted hereunder shall be in writing, delivered personally; by certified or registered mail, or by overnight delivery by an established national delivery service at the respective addresses first set forth above. Notices to Farragut shall be sent to the attention of Vice President, Local Government Solutions, or to such other person designated by Farragut in a written notice to Customer. Notices to Customer shall be sent to the attention of _____ or to such other person designated by Customer in a written notice to Farragut. All notices shall be deemed effective upon personal delivery or when received if sent by certified or registered mail or by overnight delivery.

Farragut Systems, Inc.

Customer: Cumberland County

By: _____

By: _____

Name: _____

Name: _____

Title: Vice President of Local Gov Solutions

Title: _____

Date: _____

Date: _____

AMY H. CANNON
County Manager

MELISSA C. CARDINALI
Assistant County Manager



CUMBERLAND
★ **COUNTY** ★
NORTH CAROLINA

ITEM NO. 8.

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 AUGUST 2, 2018
MEETING OF THE FINANCE COMMITTEE**

TO: FINANCE COMMITTEE

FROM: TRACY JACKSON, ASST. COUNTY MANAGER 

THRU: AMY CANNON, COUNTY MANAGER

DATE: JULY 27, 2018

SUBJECT: CONSIDERATION OF A HAZARD MITIGATION GRANT AGREEMENT (HMGP) FOR TWO FEMA APPROVED PROJECTS

Requested by: Tracy Jackson, Asst. County Manager

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

Estimate of Committee Time Needed: 5 Minutes

BACKGROUND

FEMA and the North Carolina Department of Public Safety – Division of Emergency Management have approved two (2) Hurricane Matthew-related acquisition projects totaling \$266,761 (Federal Share \$200,071/State Share \$66,690). Funding will allow Cumberland County to acquire and demolish two (2) residential structures that were severely damaged as a result of Hurricane Matthew. Both structures are located in a floodplain. After the properties have been acquired and the structures demolished, the associated land will be maintained as open space in perpetuity.

Staff first provided information about the FEMA HMGP program to the Policy Committee on April 6, 2017 and to the full Board of Commissioners on April 18, 2017. Staff has been diligent about providing information to the State and FEMA and has consistently met all deadlines in this regard. Staff has also provided program updates over time to Committee and the Board (attached is an update regarding the status of current aid programs).

RECOMMENDATION/PROPOSED ACTION:

Staff recommends approval to forward the grant agreement to the full Board for consideration as a Consent Agenda Item at its **August 6, 2018** regular meeting in order to avoid any delays on the part of the County in moving these projects forward.

Hurricane Matthew Assistance Programs

Cumberland County, NC Progress Summary

July 27, 2018

Program	Status
CDBG-DR*	<ul style="list-style-type: none">Working with State to assure applicants continuously move through the eight-step housing recovery process; State is in the process of revising a prior draft of an amendment to the existing MOA with the County; County and City have received proposals for project management and consulting services – award pending; Total funding for County and City projects not to exceed \$24,880,000; current MOA effective 12/1/17 and expires 12/1/23 for \$23,260,000
DRA-17	<ul style="list-style-type: none">Ten (10) residential structures approved for acquisition, elevation, or mitigation reconstruction; waiting on State to send revised MOA to County for BOC approval; project budget not to exceed \$1,782,500
HMGP under FEMA	<ul style="list-style-type: none">Two (2) residential structures approved for acquisition; State has sent MOA to County that needs to be approved by the BOC and executed; project costs for both project estimated at a total of \$266,761

*Program has income eligibility requirements

PROJECT: HMGP 4285-011-R
COST CENTER: 2A770076
CFDA: 97.039

**NORTH CAROLINA
HAZARD MITIGATION GRANT PROGRAM
GRANT AGREEMENT**

THIS HAZARD MITIGATION GRANT PROGRAM (HMGP) AGREEMENT (the Agreement) is entered into by and between the **State of North Carolina, Department of Public Safety, Division of Emergency Management, Raleigh, North Carolina** (hereinafter referred to as the "AGENCY/ GRANTEE"), and **Cumberland County, North Carolina** (hereinafter referred to as the "RECIPIENT/ SUBGRANTEE").

WHEREAS, Hurricane Matthew produced disastrous weather conditions which had a devastating impact upon parts of North Carolina; and

WHEREAS, the severity of the damage loss resulted in the declaration of a disaster and/or emergency by the Governor; and

WHEREAS, The President of the United States has concurred and has declared an emergency or a major disaster designated DR-4285; and

WHEREAS, the Federal Emergency Management Agency (FEMA), as a result of the Presidential Declaration, has made available federal funds for hazard mitigation grants; and

WHEREAS, the North Carolina Emergency Management Act, N.C.G.S. §166A-1 et. seq. and N.C.G.S. §143B-476 authorize the relationship as described herein; and

WHEREAS, the RECIPIENT/SUBGRANTEE represents that it is fully qualified, possesses the requisite skills, knowledge, qualifications and experience to provide the services identified herein, and does agree to perform as described herein;

NOW, THEREFORE, the AGENCY/GRANTEE and the RECIPIENT/ SUBGRANTEE do mutually agree as follows:

(1) SCOPE OF WORK

The RECIPIENT/SUBGRANTEE shall fully perform the approved Hazard Mitigation Grant Program (HMGP) project, as described in the approved FEMA application as described in Attachment A, in accordance with the approved scope of work in the approved FEMA application, the estimate of costs indicated in the approved FEMA application, and the terms and conditions of this Agreement. RECIPIENT/ SUBGRANTEE shall not deviate from the approved project and the

terms and conditions of this Agreement. RECIPIENT/SUBGRANTEE shall comply with any and all applicable codes and standards in performing work funded under this Agreement, and shall provide any appropriate maintenance and security for the project. The project costs are an estimate only. The final project costs will be determined according to the policies and procedures in the applicable North Carolina Division of Emergency Management Standard Operating Procedure.

(2) FUNDING AND INSURANCE

The AGENCY/GRANTEE shall provide Hazard Mitigation Grant Program funds for costs incurred in performing the project identified in the approved FEMA application as identified in Attachment A as follows:

A. Acquisition of Two (2) Residential Structures

<u>Total Number of Structure(s)</u>	<u>Total Hard Costs</u>
2	\$249,261
<u>Soft Costs/unit</u>	<u>Total Units</u>
\$8,750.00	2
	<u>Total Soft Costs</u>
	\$17,500
 Total Estimated Project Costs	 <u>\$266,761</u>

The total estimated project costs are an estimate only. The final project costs will be determined according to the policies and procedures in the applicable North Carolina Division of Emergency Management Standard Operating Procedure.

B. Funding Sources

1. Estimated Federal Share for: 4285-011-R	\$200,071
2. Estimated Local Share for: 4285-011-R	\$ 0.00
3. Estimated State Share for: 4285-011-R	\$ 66,690

TOTAL FOR: 4285-011-R **\$266,761**

The RECIPIENT/SUBGRANTEE shall utilize the forms entitled “Request for Advance” and “Cost Report” to obtain funds under this agreement. RECIPIENT/SUBGRANTEE shall not receive funds under this agreement if it does not submit Cost Report or Request For Advance forms. To receive funds under this agreement, RECIPIENT/ SUBGRANTEE shall complete the Designated Agent Form and forward it to the appropriate Division of Emergency Management Hazard Mitigation Grant Program Project Manager or Hazard Mitigation Specialist. As per Paragraph 12(c) of this Agreement, if RECIPIENT/ SUBGRANTEE designates different representatives or designated agents,

RECIPIENT/ SUBGRANTEE shall notify AGENCY/GRANTEE.

To receive funds under this agreement, the Designated Agent shall sign the Cost Report or Request for Advance Form. These forms are hereby incorporated into this Agreement by reference. Following full execution of this Agreement, the Fiscal Section of the Department of Public Safety will forward the Cost Report to the RECIPIENT/ SUBGRANTEE. RECIPIENT/ SUBGRANTEE shall complete the Cost Report and attach appropriate invoices or other appropriate documentation and forward it to the appropriate Division of Emergency Management Hazard Mitigation Grant Program Project Manager or Hazard Mitigation Specialist. AGENCY/ GRANTEE will reimburse RECIPIENT/ SUBGRANTEE for eligible costs in increments of Five Hundred Dollars (\$500.00) or greater.

The final payment of funds will be made only after project completion, submission of all required documentation, final inspection, and a request for final reimbursement.

RECIPIENT/SUBGRANTEE agrees, as a condition of receipt of funding pursuant to this Agreement, to obtain reasonably available, adequate, and necessary insurance for the type or types of hazard for which the major disaster was declared, in accordance with the requirements of 44 C.F.R. 206 subpart I and 2 C.F.R. Part 200.

(3) DUPLICATION OF BENEFITS PROHIBITION

In accordance with the provisions of 42 U.S.C. §5155 (Section 312 of the Stafford Act) duplication of benefits is prohibited. The RECIPIENT/ SUBGRANTEE shall notify the AGENCY/GRANTEE, as soon as practicable, of the existence of any insurance coverage for the costs identified in the application, and of any entitlement to or recovery of funds from any other source for the project costs, including Small Business Administration funding, Minimum Home Repair funds, and other Federal, State and private funding. Allowable costs shall be reduced by the amount of duplicate sources available. The RECIPIENT/ SUBGRANTEE shall be liable to the AGENCY/GRANTEE to the extent that the RECIPIENT/ SUBGRANTEE receives duplicate benefits from any other source for the same purposes for which the RECIPIENT/ SUBGRANTEE has received payment from the AGENCY/GRANTEE.

The RECIPIENT/SUBGRANTEE shall immediately remit to the AGENCY/ GRANTEE any duplication of benefits payment received by the RECIPIENT/ SUBGRANTEE. In the event the AGENCY/ GRANTEE determines a duplication of benefits has occurred RECIPIENT/SUBGRANTEE hereby authorizes the Controller of the Department of Public Safety to offset action against any other available funding due the RECIPIENT/SUBGRANTEE. In addition,

RECIPIENT/SUBGRANTEE shall ensure, as a condition of funding under this Agreement, that all required Privacy Act releases and Duplication of Benefit paperwork is completed.

(4) INCORPORATION OF LAWS, RULES, REGULATIONS AND POLICIES

Both the RECIPIENT/SUBGRANTEE and the AGENCY/GRANTEE shall be governed by applicable State and Federal laws, rules and regulations, including but not limited to, those identified in Attachments B, C, and D.

(5) PERIOD OF AGREEMENT

This Agreement becomes effective upon execution of the signatures of all parties. The date of execution shall be the date of the last signature. The termination date is **July 12, 2020** unless terminated earlier in accordance with the provisions of paragraphs (6), (8), (11), (13) or (17).

(6) MODIFICATION OF CONTRACT

Either party may request modification of the provisions of this Agreement. Changes, which are mutually agreed upon, shall be valid only when reduced in writing, duly signed by each of the parties hereto, and attached in the original of this Agreement.

(7) RECORD KEEPING, PROCUREMENT AND PROPERTY MANAGEMENT

- (a) If applicable, RECIPIENT/SUBGRANTEE's performance under this Agreement shall be subject to 44 C.F.R. Part 13, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" and/or OMB Circular No. A-110, "Grants and Agreements with Institutions of High Education, Hospitals, and Other Nonprofit Organizations," and/or OMB Circular No. A-87, "Cost Principles for State and Local Governments," OMB Circular No. A-21, "Cost Principles for Educational Institutions," OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations," or 2 C.F.R. Part 200.
- (b) If applicable, all financial and programmatic records, supporting documents statistical records and other records of RECIPIENT/SUBGRANTEE shall be retained pursuant to 44 C.F.R. Part 13, 2 C.F.R. Part 200 and NCAC Part 3M. All original records pertinent to this Agreement shall be retained by the RECIPIENT/SUBGRANTEE for five years following the date of termination of this Agreement or of submission of the final closeout report, whichever is later, with the following exceptions:

- If any litigation, claim or audit is started before the expiration of the five year period and extends beyond the five year period, the records will be maintained until all litigation, claims or audit findings involving the records have been resolved.
- (c) All records, including supporting documentation of all program costs, shall be sufficient to determine compliance with the requirements and other applicable laws and regulations.
- (d) The RECIPIENT/SUBGRANTEE, its employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to the AGENCY/GRANTEE, its employees, and agents. "Reasonable" shall be construed according to the circumstances but ordinarily shall mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the AGENCY/GRANTEE.

(8) REPORTS

- (a) The RECIPIENT/SUBGRANTEE shall provide monthly progress reports to the AGENCY/GRANTEE, using the Progress Report Form. Reports are due by the tenth of the following month. Reports shall indicate the status and completion date for each project funded, any problems or circumstances affecting completion dates, or the scope of work, or the project costs, and any other factors reasonably anticipated to result in noncompliance with the terms of the grant award. Interim inspections shall be scheduled by the RECIPIENT/SUBGRANTEE prior to the final inspection and may be requested by the AGENCY/GRANTEE based on information supplied in the progress reports.

The AGENCY/GRANTEE may require additional reports as needed. The RECIPIENT/ SUBGRANTEE shall, as soon as possible, provide any additional reports requested by the AGENCY/GRANTEE. The AGENCY/GRANTEE contact will be the Division of Emergency Management Hazard Mitigation Grant Program Project Manager or Hazard Mitigation Specialist for all reports and requests for reimbursement.

- (b) RECIPIENT/SUBGRANTEE shall provide the AGENCY/ GRANTEE with a close-out report on forms provided by the AGENCY/GRANTEE. The close-out report is due no later than forty-five (45) days after termination of this Agreement or upon completion of the activities contained in this Agreement.

- (c) If all required reports and copies are not sent to the AGENCY/ GRANTEE or are not completed in a manner acceptable to the AGENCY/GRANTEE, the AGENCY/ GRANTEE may withhold further payments until they are completed or may take such other action as set forth in paragraph (11). The AGENCY/GRANTEE may terminate the Agreement with a RECIPIENT/ SUBGRANTEE if reports are not received within thirty (30) days after written notice by the AGENCY/ GRANTEE. "Acceptable to the AGENCY/GRANTEE" means that the work product was completed in accordance with generally accepted principles and is consistent with the Budget and Scope of Work, Attachment A.
- (d) Upon request by the AGENCY/GRANTEE, the RECIPIENT/ SUBGRANTEE shall provide such additional program updates or information as may be required by the AGENCY/GRANTEE.

(9) **MONITORING**

The RECIPIENT/SUBGRANTEE shall constantly monitor its performance under this Agreement to ensure that time schedules are being met, the Budget and Scope of Work is being accomplished within specified time periods, and other performance goals are being achieved. Such review shall be made for each function, or activity set forth in Attachment A to this Agreement and incorporated by reference herein.

(10) **LIABILITY**

- (a) Nothing in this Agreement, express or implied, is intended to confer on any other person any rights or remedies in or by reason of this Agreement. This Agreement does not give any person or entity other than the parties hereto any legal or equitable claim, right or remedy. This Agreement is intended for the sole and exclusive benefit of the parties hereto. This Agreement is not made for the benefit of any third person or persons. No third party may enforce any part of this Agreement or shall have any rights hereunder. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.
- (b) Except as otherwise provided in subparagraph (c) below, the RECIPIENT/ SUBGRANTEE shall be solely responsible to parties with whom it shall deal in carrying out the terms of this agreement, and shall save the AGENCY/GRANTEE harmless against all claims of whatever nature by third parties arising out of the performance of work under this agreement. For purposes of this agreement, RECIPIENT/SUBGRANTEE agrees that it is not an employee or agent of the AGENCY/GRANTEE, but is an independent contractor.

- (c) RECIPIENT/SUBGRANTEE who is a state agency or subdivision, agrees to be fully responsible for its own negligent acts or omissions or tortious acts. Nothing herein is intended to serve as a waiver of sovereign immunity by any RECIPIENT/ SUBGRANTEE to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of North Carolina to be sued by third parties in any matter arising out of any contract.

(11) DEFAULT: REMEDIES: TERMINATION

- (a) If any of the following events occur ("Events of Default"), all obligations on the part of the AGENCY/GRANTEE to make any further payment of funds hereunder shall, if the AGENCY/ GRANTEE so elects, terminate, and the AGENCY/GRANTEE may at its option exercise any of its remedies set forth herein, but the AGENCY/GRANTEE may make any payments or parts of payments after the happening of any Events of Default without thereby waiving the right to exercise such remedies, and without becoming liable to make any further payment:
 - 1. If any warranty or representation made by the RECIPIENT/ SUBGRANTEE in this Agreement or any previous Agreement with the AGENCY/GRANTEE shall at any time be false or misleading in any respect, or if the RECIPIENT/SUBGRANTEE shall fail to keep, observe or perform any of the terms or covenants contained in this Agreement or any previous agreement with the AGENCY/ GRANTEE and has not cured such in timely fashion, or is unable or unwilling to meet its obligations thereunder;
 - 2. If any material adverse change shall occur in the financial condition of the RECIPIENT/SUBGRANTEE at any time during the term of this Agreement from the financial condition revealed in any reports filed or to be filed with the AGENCY/GRANTEE, and the RECIPIENT/ SUBGRANTEE fails to cure said material adverse change within thirty (30) days from the time the date written notice is sent by the AGENCY/GRANTEE;
 - 3. If any reports required by this Agreement have not been submitted to the AGENCY/GRANTEE or have been submitted with incorrect, incomplete or insufficient information;
 - 4. If the RECIPIENT/SUBGRANTEE has failed to perform and complete in timely fashion any of the services required under the Budget and Scope of Work attached hereto as "Attachment A".
 - 5. If the necessary funds are not available to fund this agreement as a

result of action by Congress, the N.C. Legislature, or the Office of State Budget and Management.

- (b) Upon the happening of an Event of Default, then the AGENCY/GRANTEE may, at its option, upon written notice to the RECIPIENT/SUBGRANTEE and upon the RECIPIENT/SUBGRANTEE's failure to timely cure, exercise any one or more of the following remedies, either concurrently or consecutively, and the pursuit of any one of the following remedies shall not preclude the AGENCY/GRANTEE from pursuing any other remedies contained herein or otherwise provided at law or in equity:
1. Terminate this Agreement, provided that the RECIPIENT/SUBGRANTEE is given at least fifteen (15) days prior written notice of such termination. The notice shall be effective when placed in the United States mail, first class mail, postage prepaid, by registered or certified mail return receipt requested, to the address set forth in paragraph (12) herein;
 2. Commence an appropriate legal or equitable action to enforce performance of this Agreement;
 3. Withhold or suspend payment of all or any part of a request for payment;
 4. Exercise any other rights or remedies which may otherwise be available under law.
- (c) The AGENCY/GRANTEE may terminate this Agreement for cause upon such written notice to RECIPIENT/SUBGRANTEE of such termination and specifying the effective date thereof, at least one (1) day before the effective date of termination. Cause shall include, but not be limited to, misrepresentation in the grant application, misuse of funds; fraud; lack of compliance with applicable rules, laws and regulations; failure to perform in a timely manner, and refusal by the RECIPIENT/SUBGRANTEE to permit public access to any document, paper, letter, or other material subject to disclosure under N.C. General Statutes.
- (d) Suspension or termination constitutes final AGENCY/GRANTEE action. Notification of suspension or termination shall include notice of administrative hearing rights and time frames.
- (e) The RECIPIENT/SUBGRANTEE shall return funds to the AGENCY/GRANTEE if found in non-compliance with laws, rules, regulations governing the use of the funds or this Agreement.
- (f) Notwithstanding the above, the RECIPIENT/SUBGRANTEE shall not be

relieved of liability to the AGENCY/GRANTEE by virtue of any breach of Agreement by the RECIPIENT/SUBGRANTEE. The AGENCY/GRANTEE may, to the extent authorized by law, withhold any payments to the RECIPIENT/SUBGRANTEE for purpose of set-off until such time as the exact amount of damages due the AGENCY/GRANTEE from the RECIPIENT/ SUBGRANTEE is determined.

(12) **NOTICE AND CONTACT**

- (a) All notices provided under or pursuant to this Agreement shall be in writing, first class, certified mail, return receipt requested, to the representative identified below and said notification attached to the original of this Agreement.
- (b) The name and address of the AGENCY/GRANTEE contract manager for this Agreement is:

Nicholas M. Burk
Assistant Director - Resiliency
NCEM Resiliency Section/Hazard Mitigation Branch
Department of Public Safety
Division of Emergency Management
4105 Reedy Creek Road
Raleigh, NC 27607

- (c) The name and address of the Representative of the RECIPIENT/ SUBGRANTEE (Designated Agent) responsible for the administration of this Agreement is:

Mailing Address:
Tracy Jackson
Assistant County Manager
Cumberland County
131 Dick St.
Fayetteville, NC 28301

Overnight Address:
Tracy Jackson
Assistant County Manager
Cumberland County
131 Dick St.
Fayetteville, NC 28301

In the event that different representatives (designated agents) are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative (new designated agent) will be rendered as provided in (12)(a) above. To receive funds under this agreement, RECIPIENT/ SUBGRANTEE shall complete the Designated Agent Form and forward it to the appropriate Division of Emergency Management Hazard Mitigation Grant Program Project Manager or Hazard Mitigation Specialist. To receive funds under this agreement, the Designated Agent shall sign the Cost Report or Request for Advance Form.

(13) OTHER PROVISIONS

- (a) The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the RECIPIENT/SUBGRANTEE, in the Application, in any subsequent submission or response to the AGENCY/ GRANTEE request, or any submission or response to fulfill the requirements of this Agreement, and such information, representations, and materials are incorporated by reference. The lack of accuracy thereof or any material changes shall, at the option of the AGENCY/GRANTEE and with thirty (30) days written notice to the RECIPIENT/SUBGRANTEE, cause the termination of this Agreement and the release of the AGENCY/ GRANTEE from all its obligations to the RECIPIENT/ SUBGRANTEE.
- (b) This Agreement shall be construed under the laws of the State of North Carolina and venue for any actions arising out of this Agreement shall be filed in State Court in Wake County, North Carolina. If any provision hereof is in conflict with any applicable statute or rule, or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict, and shall be deemed severable, but shall not invalidate any other provision of this Agreement.
- (c) No waiver by the AGENCY/GRANTEE of any right or remedy granted hereunder or failure to insist on strict performance by the RECIPIENT/ SUBGRANTEE shall affect or extend or act as a waiver of any other right or remedy of the AGENCY/GRANTEE hereunder, or affect the subsequent exercise of the same right or remedy by the AGENCY/ GRANTEE for any further or subsequent default by the RECIPIENT/ SUBGRANTEE. Any power of approval or disapproval granted to the AGENCY/ GRANTEE under the terms of this Agreement shall survive the terms and life of this agreement as a whole.

(14) AUDIT REQUIREMENTS

- (a) If applicable, RECIPIENT/SUBGRANTEE shall provide the following completed documentation to the AGENCY/GRANTEE:
- Designation of Applicant's Agent;
 - State-Applicant Disaster Assistance Agreement;
 - Private Non-Profit Organization Certification (if required);
 - Summary of Documentation Form itemizing actual costs expended for large project payment requests;
 - Monthly Progress Reports;
 - Hard copies of Single Audit Reports within 60 days of close of fiscal year.

If the RECIPIENT/SUBGRANTEE fails to provide any of the documentation discussed or requested in this Agreement, the AGENCY/GRANTEE will be under no obligation to reimburse the RECIPIENT/SUBGRANTEE for eligible expenses.

- (b) The RECIPIENT /SUBGRANTEE agrees to maintain financial procedures and support documents and to establish and maintain a proper accounting system to record expenditures of disaster assistance funds in accordance with generally accepted accounting principles or as directed by the Governor's Authorized Representative, to account for the receipt and expenditure of funds under this Agreement. If applicable, RECIPIENT/SUBGRANTEE shall conduct audit(s) pursuant to the Single Audit Act of 1984, 31 U.S.C. §7501 et.seq., 44 C.F.R. Part 14, 2 C.F.R. Part 200, OMB Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations," and applicable North Carolina laws, rules and regulations. Further, RECIPIENT/SUGRANTEE must provide a hard copy of the Single Audit Report within sixty (60) days of the close of its fiscal year. Otherwise, pursuant to 44 C.F.R. §13.43, the AGENCY/GRANTEE may withhold or suspend payments under any grant award.
- (c) These records shall be available at all reasonable times for inspection, review, or audit by the N.C. State Auditor and other personnel duly authorized by the AGENCY/GRANTEE. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., Eastern Standard Time, Monday through Friday.
- (d) The RECIPIENT/SUBGRANTEE shall also provide the AGENCY/GRANTEE with the records, reports or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement.

- (e) The RECIPIENT/SUBGRANTEE shall provide the AGENCY/GRANTEE and the Office of the State Auditor with an annual financial audit report. The annual financial audit report shall include all management letters and the RECIPIENT/SUBGRANTEE's response to all findings, including corrective actions to be taken.
- (f) In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not spent in accordance with the conditions of this Agreement, the RECIPIENT/SUBGRANTEE shall be held liable for reimbursement to the AGENCY/GRANTEE of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the AGENCY/GRANTEE has notified the RECIPIENT/SUBGRANTEE of such non-compliance.
- (g) The RECIPIENT/SUBGRANTEE shall retain all financial records, supporting documents, statistical records, and any other documents pertinent to this contract for a period of five years after the date of submission of the final expenditures report. However, if litigation or an audit has been initiated prior to the expiration of the five-year period, the records shall be retained until the litigation or audit findings have been resolved.

(15) SUBCONTRACTS

- (a) If the RECIPIENT/SUBGRANTEE subcontracts any or all of the work required under this Agreement, the RECIPIENT/SUBGRANTEE agrees to include in the subcontract that the subcontractor is bound by the terms and conditions of this Agreement with the AGENCY/GRANTEE.
- (b) The RECIPIENT/SUBGRANTEE agrees to include in the subcontract that the subcontractor shall hold the AGENCY/GRANTEE and RECIPIENT/SUBGRANTEE harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.
- (c) If the RECIPIENT/SUBGRANTEE subcontracts, a copy of the executed subcontract must be forwarded to the AGENCY/GRANTEE within ten (10) days of execution of said subcontract.
- (d) Contractual arrangement shall in no way relieve the RECIPIENT/SUBGRANTEE of its responsibilities to ensure that all funds issued pursuant to this grant be administered in accordance with all state and federal requirements.

(16) TERMS AND CONDITIONS

This Agreement and any exhibits and amendments annexed hereto and any documents incorporated specifically by reference represents the entire Agreement between the parties and supersedes all prior oral and written statements or agreements.

(17) STANDARD CONDITIONS

The RECIPIENT/SUBGRANTEE agrees to be bound by the following standard conditions:

- (a) The State of North Carolina's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature and is contingent upon Congress providing Hazard Mitigation Grant Program funds for projects.
- (b) If otherwise allowed under this Agreement, extension of an agreement for contractual services shall be in writing and shall be subject to the same terms and conditions set forth in the initial agreement.

Upon FEMA approval, there will be only one extension of the agreement unless the failure to meet the criteria set forth in the agreement for completion of the agreement is due to events beyond the control of the RECIPIENT/SUBGRANTEE.

- (c) The AGENCY/GRANTEE reserves the right to unilaterally cancel this Agreement for refusal by the RECIPIENT/SUBGRANTEE to allow public access to all documents, papers, letters or other material subject to the provisions of the N.C. General Statutes and made or received by the Contractor/RECIPIENT/SUBGRANTEE in conjunction with the Agreement.

(18) ATTACHMENTS

- (a) All attachments to this Agreement are incorporated as if set out fully herein.
- (b) In the event of any inconsistency or conflict between the language of this Agreement and the attachments hereto, the language of such attachments shall be controlling, but only to the extent of such conflict or inconsistency.
- (c) This Agreement includes the following attachments or documents incorporated by reference as if fully set out herein:

- | | | |
|----|--------------|---|
| 1. | Attachment A | Approved Project Budget & Scope of Work |
| 2. | Attachment B | Program Statutes and Regulations |
| 3. | Attachment C | Lobbying Prohibition/Certification |
| 4. | Attachment D | Statement of Assurances |
| 5. | Attachment E | Special Conditions |

(19) FUNDING/CONSIDERATION

- (a) Any advance payment under this Agreement is subject to the approval of the AGENCY/GRANTEE. The amount which may be advanced may not exceed the expected cash needs of the RECIPIENT/SUBGRANTEE for a three-day period for the specific project. For a federally funded contract, any advance payment is also subject to 44 C.F.R. Part 13, 2 C.F.R. Part 200, Federal OMB Circulars, A-110, A-122 and the Cash Management Improvement Act of 1990. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be submitted to the Division of Emergency Management Contract Manager using the Cost Report and Request for Advance Form. RECIPIENT/SUBGRANTEE shall specify the amount of advance payment needed, project number and provide an explanation of the necessity for and proposed use of these funds.
- (b) All funds shall be requested using the appropriate forms that are provided by the AGENCY/GRANTEE.

(20) STATE LOBBYING PROHIBITION

No funds or other resources received from the AGENCY/GRANTEE in connection with this Agreement may be used directly or indirectly to influence legislation or any other official action by the N.C. General Assembly or any state department.
Refer to Attachment C for additional terms and provisions relating to lobbying.

(21) LEGAL AUTHORIZATION

The RECIPIENT/SUBGRANTEE certifies with respect to this Agreement that it possesses the legal authority to receive the funds to be provided under this Agreement and that, if applicable, its governing body has authorized, by resolution or otherwise, the execution and acceptance of this Agreement with all covenants and assurances contained herein. The RECIPIENT/SUBGRANTEE also certifies that the undersigned possesses the authority to legally execute and bind RECIPIENT/SUBGRANTEE to the terms of this Agreement.

(22) **ASSURANCES**

The RECIPIENT/SUBGRANTEE shall execute and comply with the Statement of Assurances incorporated as Attachment D.

(23) **SPECIAL CONDITIONS**

- (a) The RECIPIENT/SUBGRANTEE shall comply with the special conditions set forth in Attachment E, attached hereto and incorporated by this reference.
- (b) Failure of the RECIPIENT/SUBGRANTEE to comply with the special conditions listed in Attachment E or the program statutes and regulations in Attachments B and D of this Agreement shall be cause for the immediate suspension of payments or the immediate termination of this Agreement.

(24) **HAZARD MITIGATION PLAN**

If RECIPIENT/SUBGRANTEE is a local governmental entity, RECIPIENT/SUBGRANTEE shall complete and adopt an all-hazards mitigation plan in a manner satisfactory to the State Hazard Mitigation Officer within three hundred and sixty-five (365) calendar days following execution of this Agreement. The all-hazards mitigation plan shall be developed in accordance with the minimum criteria for local hazard mitigation plans as determined by the AGENCY/GRANTEE. The minimum criteria are incorporated by reference into this Agreement as if fully set out herein.

IN WITNESS WHEREOF, the AGENCY/GRANTEE and the RECIPIENT/SUBGRANTEE have each executed this Agreement, this the _____ day of _____, 2018.

CONTRACTING AGENCY
DIVISION OF EMERGENCY MANAGEMENT
DEPARTMENT OF PUBLIC SAFETY

WITNESS:

BY: _____
MICHAEL A. SPRAYBERRY, DIRECTOR
DIVISION OF EMERGENCY MANAGEMENT
DATE _____

WITNESS:

BY: _____
CASANDRA S. HOEKSTRA
CHIEF DEPUTY SECRETARY ADMINISTRATION
DEPARTMENT OF PUBLIC SAFETY
DATE _____

In Process

WITNESS:

BY: _____
TRACY JACKSON
ASSISTANT COUNTY MANAGER
FEDERAL EMPLOYER I.D. # 56-6000291
DATE _____

APPROVED AS TO PROCEDURES:

BY: ^{DocuSigned by:} James Cherokee
JAMES M. CHEROKE, CONTROLLER
DEPARTMENT OF PUBLIC SAFETY
DATE 6/22/2018 | 09:27:34 AM EDT

APPROVED AS TO FORM SUBJECT TO EXECUTION BY CASANDRA S. HOEKSTRA, CHIEF DEPUTY SECRETARY, ADMINISTRATION OF DEPARTMENT OF PUBLIC SAFETY.

JOSH STEIN
ATTORNEY GENERAL OF NORTH CAROLINA

BY: ^{DocuSigned by:} Cheryl A. Perry
ASSISTANT ATTORNEY GENERAL

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ATTACHMENT A

BUDGET AND SCOPE OF WORK

RECIPIENT/SUBGRANTEE shall implement the Hazard Mitigation project summarized below and as described in the approved project application (Project HMGP-4285-011). That Application is hereby incorporated by reference into this Agreement. The AGENCY/GRANTEE shall reimburse eligible costs according to the following expenditures:

I. Hazard Mitigation Grant Program Funds:

A. Acquisition of Two (2) Residential Structures

<u>Total Number of Structure(s)</u>	<u>Total Hard Costs</u>
2	\$249,261
<u>Soft Costs/unit</u>	<u>Total Units</u>
\$8,750.00	2
	<u>Total Soft Costs</u>
	\$17,500
Total Estimated Project Costs	<u>\$266,761</u>

The total estimated project costs are an estimate only. The final project costs will be determined according to the policies and procedures in the applicable North Carolina Division of Emergency Management Standard Operating Procedure.

B. Funding Sources

1. Estimated Federal Share for: 4285-011-R	\$200,071
2. Estimated Local Share for: 4285-011-R	\$ 0.00
3. Estimated State Share for: 4285-011-R	\$ 66,690
TOTAL FOR: 4285-011-R	<u>\$266,761</u>

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II. Scope of Work Summary

HMGP 4285-011 provides Hazard Mitigation Grant Program (HMGP) funding that will allow Cumberland County to acquire and demolish two (2) residential structures. After the properties have been acquired and the structures demolished, the associated land will be maintained as open space in perpetuity.

Property Locations:

Address	Town	State	Zip	Latitude	Longitude
3194 Orangeburg Dr.	Eastover	NC	28312	35.086400	-78.787903
290 W. Manchester Rd.	Spring Lake	NC	28390	35.191920	-78.992420

In Process

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ATTACHMENT B

PROGRAM STATUTES AND REGULATIONS

This Agreement, the North Carolina Legislature and the Hazard Mitigation Grant Program grants are governed by the following statutes, regulations, procedures and policies:

- (1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 et. seq.;
- (2) 44 C.F.R. parts 7, 9, 10, 13, 14, 17, 18, 25, 206, 220, 221, 44 C.F.R. Part 209, 2 C.F.R. Part 200 and any other applicable FEMA policy memoranda and guidance documents;
- (3) Chapter 166A of the N.C. General Statutes, N.C.G.S. § 166A-1 et. seq., “The N.C. Emergency Management Act”;
- (4) State of North Carolina Administrative Plan for the Hazard Mitigation Grant Program and policies and procedures of the N.C. Division of Emergency Management;
- (5) All applicable laws and regulations delineated in Attachments D&E of this Agreement;
- (6) All applicable laws, ordinances, codes, rules, regulations, licensing requirements and other regulatory matters that are applicable to the work performance under this Agreement, including those of federal, state and local agencies having appropriate jurisdiction.

ATTACHMENT C

LOBBYING PROHIBITION

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence either directly or indirectly an officer or employee of any state or federal agency, a member of the N.C. Legislature, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-L. "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all SUB-RECIPIENT/SUBGRANTEES shall certify and disclose accordingly.

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

RECIPIENT/SUBGRANTEE

BY: _____
Tracy Jackson
Assistant County Manager
Cumberland County

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ATTACHMENT D

STATEMENT OF ASSURANCES

The RECIPIENT/SUBGRANTEE hereby assures and certifies that:

- (a) It possesses legal authority to enter into this agreement, and to execute the proposed program.
- (b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the filing of the HMGP application to FEMA, including all understandings and assurances contained therein, and directing and authorizing the RECIPIENT/SUBGRANTEE's chief executive officer to act in connection with the application and to provide such additional information as may be required.
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit to arise from the same. No member, officer, or employee of the RECIPIENT/SUBGRANTEE, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to program during his tenure or for one year thereafter, shall have any interest direct or indirect, in any contract or program assisted under this agreement. The RECIPIENT/SUBGRANTEE shall incorporate or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes stated above.
- (d) It will comply with and conduct audit(s) pursuant to the Single Audit Act of 1984, 31 U.S.C. §7501 et. seq., 44 C.F.R. Part 14, 2 C.F.R. Part 200, OMB Circular A-133 "Audits of States, Local Governments and Non-profit Organizations", and applicable North Carolina laws, rules and regulations. Additionally, the RECIPIENT/SUBGRANTEE shall comply with the requirements related to audits and financial management pursuant to the Single Audit Act of 1984, 31 U.S.C. §7501 et. seq. and shall provide the documentation discussed below and requested under this Agreement. RECIPIENT SUBGRANTEE must provide a hard copy of the Single Audit Act Report within sixty (60) days of the close of its fiscal year. Otherwise, pursuant to 44 C.F.R. §13.43, the AGENCY/SUBGRANTEE may withhold or suspend payments under any grant award. Failure to provide such documentation or to comply with said requirements shall terminate any obligation on behalf of the AGENCY/GRANTEE to reimburse the RECIPIENT/SUBGRANTEE for eligible expenses.

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1. The AGENCY/GRANTEE shall review the RECIPIENT/SUBGRANTEE's performance periodically to determine whether the RECIPIENT/SUBGRANTEE has substantially completed its program as described in the approved Application and this Agreement. Training and technical assistance shall be provided by the AGENCY/GRANTEE, within limits of staff time and budget, upon written request by the RECIPIENT/SUBGRANTEE and/or upon a determination by the AGENCY/GRANTEE of RECIPIENT/SUBGRANTEE need.
2. The RECIPIENT/SUBGRANTEE shall allow the AGENCY/GRANTEE to carry out monitoring, evaluation, and technical assistance and shall assure the cooperation of its employees, sub-RECIPIENT/SUBGRANTEES and subcontractors during such activities.
3. In the event that the AGENCY/GRANTEE suspends funding pursuant to the provision of this Agreement, said suspension shall take effect as of the receipt of the notice of said suspension by the RECIPIENT/SUBGRANTEE. Any requests for payment for which the AGENCY/GRANTEE has not yet disbursed payment shall be subject to said suspension.
4. Should the RECIPIENT/SUBGRANTEE fail to enforce the provisions of any promissory note, mortgage, security agreement, or other obligation specified in any Participating Party Agreement or in written contract with a beneficiary, contractor, agent, or sub-RECIPIENT/SUBGRANTEE who received payment or benefit from funds disbursed under this Agreement, the AGENCY/GRANTEE may, with thirty days (30) written notice to the RECIPIENT/SUBGRANTEE, automatically substitute itself for the RECIPIENT/SUBGRANTEE in said Participating Party Agreement or written contract for the purpose of enforcing said Participating Party Agreement or written contract and may, at its discretion, continue to administer said Participating Party Agreement or written contract.

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5. The RECIPIENT/SUBGRANTEE's application for funds to the State for funding consideration under the FEMA Hazard Mitigation Grant Program is made a part of this Agreement by reference.
6. RECIPIENT/SUBGRANTEE shall establish and maintain a proper accounting system to record expenditures of disaster assistance funds in accordance with generally accepted accounting principles or as directed by the Governor's Authorized Representative. The RECIPIENT/SUBGRANTEE, its employees, and agents, shall maintain records and supporting documents as prescribed in 44 CFR Part 13, 2 C.F.R. Part 200, Subpart C "Reports, Records Retention and Enforcement" and 9 NCAC Part 3M. These records shall be maintained at a readily accessible site within the jurisdiction and under the jurisdiction's control.
7. Program Income is defined in 44 CFR Section 13.25 and 2 C.F.R. Part 200. Program Income must be returned to the AGENCY/GRANTEE within five (5) days of receipt, to the following address:

**Controller
N.C. Department Public Safety
4220 Mail Service Center
Raleigh, NC 27699-4220**

8. All RECIPIENT/SUBGRANTEE or sub-RECIPIENT/SUBGRANTEE contracts for which the N.C. Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the RECIPIENT/SUBGRANTEE for eligible contract work completed prior to the date the notice of suspension or termination is received by the RECIPIENT/SUBGRANTEE may not be funded with funds provided under this Agreement unless previously approved in writing by the AGENCY/GRANTEE. All sub-RECIPIENT/SUBGRANTEE contracts shall contain provision for termination for cause or convenience and shall provide for the method of payment in such event.

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9. All amendments requiring prior AGENCY/GRANTEE approval must be approved in writing by the AGENCY/GRANTEE prior to the RECIPIENT/ SUBGRANTEE's submission of a closeout package. Any closeout package received prior to the written approval of said amendment is considered void ab initio, and is not considered a closeout package for the purposes of eligibility or potential penalty issues related to closeout.

10. Submission of inaccurate information by the RECIPIENT/ SUBGRANTEE in monitoring report responses; audit or audit finding responses; quarterly, closeout, program income, or other reports; or Requests for Funds that result in subsequent official AGENCY/GRANTEE action based on that inaccurate information (such as the granting of administrative or final closeout status, releasing funds, or clearing findings) may at the option of the AGENCY/ GRANTEE, subject the RECIPIENT/SUBGRANTEE to revocation of the official AGENCY/GRANTEE action(s) predicated on that report or submission, (e.g., revocation of closeout status, audit clearance, monitoring report clearance, etc.).

(e) Where applicable, it will comply with:

- (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C.327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
- (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
- (3) Davis-Bacon Act, 40 U.S.C. §276a et. seq.
- (4) National Environmental Policy Act of 1969, 42U.S.C. §4321; et. seq.; EO115154; EO11988; Coastal Zone Management Act of 1972, 16U.S.C. §1451 et. seq.; Section 176(c) of the Clean Air Act of 1955, 42U.S.C. §7401 et. seq.; Safe Drinking Water Act of 1974,

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42U.S.C. §300f et. seq.; Endangered Species Act of 1973, 16U.S.C. §1532 et. seq.;
Wild and Scenic Rivers Act of 1968, 16U.S.C. §1271 et. seq.

- (5) Section 106 of the National Historic Preservation Act of 1966, 16U.S.C. §470 et. seq.; EO11593; Archaeological and Historic Preservation Act of 1974, 16U.S.C. §469a-1 et. seq.

(f) It will comply with:

- (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the RECIPIENT/SUBGRANTEE receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance.
- (2) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the RECIPIENT/SUBGRANTEE, this assurance shall obligate the RECIPIENT/SUBGRANTEE, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;
- (3) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C.; 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualified handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
- (4) Executive Order 11246 as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and election for training and apprenticeship.

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- (g) The RECIPIENT/SUBGRANTEE agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq) if applicable, which discrimination by public and private entities on the basis of disability in the areas of employment, public accommodations, transportation, State and local government services, and in telecommunications.
- (h) It will comply with the Anti-kickback (Copeland) Act of 1934, 18 U.S.C. Section 874 and 40 U.S.C. Section 276a, which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities. It will comply with the provision of the Hatch Act, which limits the political activity of employees.
- (i) It will comply with the provision of the Hatch Act, which limits the political activity of employees.
- (j) It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 as amended. Pub. L. 93-156, 87 Section 975, approved December 31, 1973. Section 103(a) required, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area, that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Part to comply with the "uniform Federal Accessibility Standards," (UFAS) which is Appendix A to 41 CFR Part 40 for residential structures. The RECIPIENT/SUBGRANTEE will be responsible for conducting inspections to ensure compliance with these specifications by the contractor.
- (l) The RECIPIENT/SUBGRANTEE will comply with applicable N.C. General Statutes when negotiating contracts for services.
- (m) It has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations, and has adopted and is enforcing a policy of enforcing applicable State and federal laws against physically barring entrance or exit from a facility or location which is the subject of such nonviolent civil rights

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demonstration within its jurisdiction in accordance with section 519 of Public Law 101-140 of the 1990 HUD Appropriations Act.

- (n) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C.: 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (o) It will comply with the Drug Abuse Office and Treatment Act of 1972 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of drug abuse;
- (p) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, relating to nondiscrimination on the basis of alcohol abuse or alcoholism.
- (q) It will comply with 523 and 527 of the Public Health Service Act of 1912 “(42 U.S.C. 290 dd-3 and 290 ee-3)”, as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (r) It will comply with Lead-Based Paint Poisoning Act “(42 U.S.C. 4801 et seq.)” which prohibits the use of lead based paint in construction of rehabilitation or residential structures;
- (s) It will comply with the Energy Policy and Conservation Act, 42 U.S.C. §6291 et. Seq.
- (t) RECIPIENT/SUBGRANTEE certifies that it:
 - (1) Is not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from participating in Federal or State grants or awards by any Federal or State department or agency; and
 - (2) Has not within a three-year period preceding this contract been convicted of or had a civilian judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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- (3) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) above; and,
 - (4) Has not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (u) RECIPIENT/SUBGRANTEE further agrees that it will include the above certifications, without modification, in all lower tier contracts and in all solicitations for lower tier contracts.

In Process

ATTACHMENT E

SPECIAL CONDITIONS

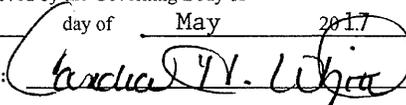
This agreement shall be executed by the RECIPIENT/SUBGRANTEE, and returned to the AGENCY/GRANTEE at the following address:

**Nicholas M. Burk
Assistant Director - Resiliency
NCEM Resiliency Section/Hazard Mitigation Branch
Department of Public Safety
Division of Emergency Management
4105 Reedy Creek Road
Raleigh, NC 27607**

This agreement will be executed within thirty (30) days after receipt. All time periods in this Agreement refer to calendar days. After receipt by the AGENCY/GRANTEE of the signed Agreement, the AGENCY/GRANTEE will execute this Agreement and return an original to the RECIPIENT/SUBGRANTEE.

In Process

**Tracy Jackson
Assistant County Manager
Cumberland County
131 Dick St.
Fayetteville, NC 28301**

RESOLUTION DESIGNATION OF APPLICANT'S AGENT North Carolina Division of Emergency Management	
Organization Name (hereafter named Organization):	Disaster Number:
County of Cumberland	DR-4285
Applicant's State Cognizant Agency for Single Audit purposes (If Cognizant Agency is not assigned, please indicate):	
Not Assigned	
Applicant's Fiscal Year (FY) Start	Month: Day:
	July 1
Applicant's Federal Employer's Identification Number:	
56-6000291	
Applicant's Federal Information Processing Standards (FIPS) Number:	
051-99051-00	
PRIMARY AGENT	SECONDARY AGENT
Agent's Name	Agent's Name
Tracy Jackson	Gene Booth
Organization	Organization
Cumberland County	Cumberland County
Official Position	Official Position
Assistant County Manager	Emergency Management Coordinator
Mailing Address	Mailing Address
	131 Dick St.
City, State, Zip	City, State, Zip
	Fayetteville, NC 28301
Daytime Telephone	Daytime Telephone
	910-678-7641
Facsimile Number	Facsimile Number
	910-678-7642
Pager or Cellular Number	Pager or Cellular Number
	910-850-8166
<p>BE IT RESOLVED BY the governing body of the Organization (a public entity duly organized under the laws of the State of North Carolina) that the above-named Primary and Secondary Agents are hereby authorized to execute and file applications for federal and/or state assistance on behalf of the Organization for the purpose of obtaining certain state and federal financial assistance under the Robert T. Stafford Disaster Relief & Emergency Assistance Act, (Public Law 93-288 as amended) or as otherwise available. BE IT FURTHER RESOLVED that the above-named agents are authorized to represent and act for the Organization in all dealings with the State of North Carolina and the Federal Emergency Management Agency for all matters pertaining to such disaster assistance required by the grant agreements and the assurances printed on the reverse side hereof. BE IT FINALLY RESOLVED THAT the above-named agents are authorized to act severally.</p>	
<p>PASSED AND APPROVED this <u>15th</u> day of <u>May</u>, 2017</p>	
GOVERNING BODY	CERTIFYING OFFICIAL
Name and Title	Name
Glenn B. Adams	Candice H. White
Chairman of the Cumberland County Board of Commissioners	Official Position
Name and Title	Clerk to the Board of Commissioners
Name and Title	Daytime Telephone
CERTIFICATION	
<p>I, <u>Candice H. White</u> (Name) duly appointed and <u>Clerk</u> (Title) of the Governing Body, do hereby certify that the above is a true and correct copy of a resolution passed and approved by the Governing Body of <u>Cumberland County</u> (Organization) on the <u>15th</u> day of <u>May</u>, <u>2017</u></p>	
Date: <u>May 16, 2017</u>	Signature: 

U.S. Department of Homeland Security
FEMA Region IV
3003 Chamblee Tucker Road
Atlanta, GA 30341



FEMA

June 13, 2018

Michael A. Sprayberry, Director
NC Department of Public Safety
Division of Emergency Management
4236 Mail Service Center
Raleigh, NC 27699-4236

Attention: Nicholas Burk, Assistant Director of Resiliency

Reference: Hazard Mitigation Grant Program (HMGP) Project 4285-0011-R Cumberland County: Acquisition of Two (2) Residential Structures

Dear Mr. Sprayberry:

I am pleased to inform you that the project referenced above has been approved for \$266,761 with a Federal share of \$200,071 and a non-federal share of \$66,690. Financial approval documents for the award are enclosed for your records.

The following is the approved Statement of Work (SOW) for the above referenced project:

Cumberland County proposes to acquire and demolish two (2) residential structures located within the boundaries of the special flood hazard area. Most of the properties experienced damage from flooding of during Hurricane Matthew. The structures will be demolished, including complete removal of the existing foundations. If complete removal is not possible then the existing foundations will be taken down to a depth of approximately 2 to 3 feet below the soil surface and adequately drilled to allow for drainage. The demolition of the structures will require fine grading only. Ground disturbance will be limited to the immediate area of the demolished properties, and the staging areas will be located within the footprint of the existing property boundaries. Debris will be removed and the properties will initially be stabilized with clean soils, graded, and seeded to prevent erosion. The deed to the property will be transferred to the Cumberland County with restrictions imposed for the site to remain as open space in perpetuity as defined in 44 CFR § 206.434 (d). The county will perform all maintenance on the parcels acquired.

Property Locations:

	Address	City	State	Zip Code	Latitude	Longitude
1	3194 Orangeburg Dr.	Eastover	NC	28312	35.086400	-78.787903
2	290 W. Manchester Rd.	Spring Lake	NC	28390	35.191920	-78.992420

The following project conditions must be met:

- Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.
- If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.
- NHPA: If human remains or intact archaeological deposits are uncovered, work in the vicinity of the discovery will stop immediately and all reasonable measures to avoid or minimize harm to the finds will be taken. The applicant will ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries. The applicant's contractor will provide immediate notice of such discoveries to the applicant. The applicant shall contact the North Carolina State Archaeologist and FEMA within 24 hours of the discovery. Work in the vicinity of the discovery may not resume until FEMA has completed consultation with SHPO, Tribes, and other consulting parties as necessary. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with North Carolina Statutes, Section 70-29.
- NHPA: Any changes to the approved scope of work will require submission to, and evaluation and approval by, the State and FEMA, prior to initiation of any work, for compliance with Section 106.
- NHPA: The following Lower Impact Demolition Stipulations must be followed:
 - Major demolition activities, including placement of equipment, shall be confined to areas where soils have been previously disturbed by activities, such as site development, construction, surface grading, utility trenching, etc. The Subrecipient shall identify areas of obvious soil disturbance and direct their contractor to work within these areas.
 - When heavy equipment is not in use, it shall be staged on hard or firm surfaces where equipment is not susceptible to sinking. Paved surfaces, if available within the designated disturbed limits of the project site, shall be used to the fullest extent possible.
 - Tracked vehicles and/or large-tired equipment shall be used to reduce the depth of soil disturbance and minimize soil compaction.
 - The Subrecipient shall ensure that its contractors shall not operate heavy equipment on wet soils without submitting a plan to minimize the impacts to soil disturbance associated with sinking equipment below the current ground surface. Heavy equipment may be operated in the rain, but the Subrecipient shall ensure that its contractors shall operate in accordance with the above specified mitigation plan.
 - There shall be no salvage of architectural materials from below-grade.
 - Excavation of on-site materials that are unrelated to demolition activities and on-site burial debris are not permitted.

Treatment of Utilities:

- Utility lines shall be disconnected and capped per applicable regulatory requirements. Extraction of utility lines is not an eligible FEMA cost. In cases where there are no shutoff valves, limited excavation within the utility right-of-way shall be required to cap these

service lines. To limit unnecessary ground disturbance, excavation shall be limited to the existing ROW to the greatest extent feasible.

Void and/or Feature Filling:

- Any voids that require filling because they are a threat to public health and safety shall be filled with clean fill from off-site or within the project boundaries. Whenever possible this shall be a sand matrix, however, sand is not required. These voids may include, but are not limited to, those created as the result of exposing cisterns, privies, wells, and/or basement-like depressions.

Surface Grading and Site Clean-Up:

- The Subrecipient shall require that its contractors shall limit site grading to the first six (6) inches of the existing surface elevation (e.g. sidewalk level, driveway level, slab level, etc.) if applicable for positive on-site drainage. The Subrecipient shall require that its contractors use the appropriate or applicable light equipment to complete final site clean-up.

- RCRA: Unusable equipment, debris and material shall be disposed of in an approved manner and location. In the event significant items (or evidence thereof) are discovered during implementation of the project, applicant shall handle, manage, and dispose of petroleum products, hazardous materials and toxic waste in accordance to the requirements and to the satisfaction of the governing local, state and federal agencies.
- RCRA: If any asbestos containing material, lead based paint, and/or other toxic materials are found during construction activities, the applicant must comply with all federal, state and local abatement and disposal requirements. Upon closeout, the applicant must provide Notice of Demolition or Asbestos Renovation forms and confirmation that any ACM were taken to an authorized landfill for such materials.
- EO 11988: Applicant must obtain floodplain permit or concurrence, as required by the applicable local floodplain ordinance, from the local floodplain administrator before work begins.

FEMA will not establish activity completion timeframes for individual subgrants. The period of performance of the grant award will be 36 months from the close of the application period for DR-4285.

This project must adhere to all program guidelines established for the Hazard Mitigation Grant Program.

Please refer the sub-recipient to the State HMGP Administrative Plan for project cost overrun regulations. If project costs exceed the amount originally funded and additional federal funds are needed, the sub-recipient must contact the Governor's Authorized Representative (GAR). The GAR will evaluate requests for cost overruns and submit to the Regional Administrator written documentation of cost overrun eligibility. Cost overruns shall meet Federal regulations set forth in 44 CFR 206.438(b).

The State HMGP Administrative Plan defines the procedure whereby the GAR may advance portions of the approved Federal share to the sub-recipient. Upon completion of the HMGP project, the sub-recipient's closeout reimbursement for the final Federal share of eligible project costs must be submitted to the Regional Administrator for review and determination.

Quarterly progress reports for HMGP projects are required. Please include this HMGP project in your future quarterly reports.

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP sub-recipient SOW may have to be reviewed by all State and Federal agencies participating in the NEPA process.

The State (Recipient) must obtain prior approval from the FEMA before implementing changes to the approved project SOW. Per 2 CFR Part 200 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

- A change in the scope of work must be approved by FEMA in advance regardless of the budget implications.
- The Recipient must notify FEMA as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion.

The obligation report is included for your records. The obligated funds are available for withdrawal from **Division of Payment Management (DPM)** on sub-account number **4285NCP00000115**.

If you have any questions, please contact Shemeeka Hopkins, HMA Specialist at (770) 220-8788.

Sincerely,

ROGER R
INGRAM

Digitally signed by ROGER R
INGRAM
Date: 2018.06.14 15:57:42 -04'00'

Libby Turner
Federal Coordinating Officer
FEMA-DR-4285-NC

In Process

Enclosure

6/14/2018

FEDERAL EMERGENCY MANAGEMENT AGENCY

HMGP-OB-01

2:45 PM

HAZARD MITIGATION GRANT PROGRAM

Obligation

Disaster No	FEMA Project No	Amendment No	State Application ID	Action No	Supplemental No	State	Recipient
4285	11-R	0	36	1	27	NC	Statewide

Sub-Recipient: Cumberland (County)

Project Title : Cumberland County: Acquisition of 2 Residential Structures

Sub-Recipient FIPS Code: 051-99051

Total Amount Previously Allocated	Total Amount Previously Obligated	Total Amount Pending Obligation	Total Amount Available for New Obligation	Project Amount	Recipient Admin Est	Sub-Recipient Admin Est	Total Obligation	IFMIS Date	IFMIS Status	FY
\$200,072	\$200,072	\$0	\$0	\$200,072	\$0	\$0	\$200,072	06/14/2018	Accept	2018

Comments

Date: 06/14/2018 User Id: SHOPKIN4

Comment: DR 4285-0011-R, Application 36, Cumberland County: Acquisition of 2 Residential Structures approved with total costs of \$266,762, federal share of \$200,072, and non-federal share of \$66,690. Request to obligate \$200,072 federal funds; projected on June Spend F

In Process

Date: 06/14/2018 User Id: DBURKETT

Comment: 4285-0011-R-DR-NC-HMGP Cumberland (County) Application 36 Amendment 0 Action 1 Cumberland County: Acquisition of 2 Resic Structures Allocation 9 Federal share \$200,072 approved, HMO

Authorization

Preparer Name: SHEMEEKA HOPKINS

Preparation Date: 06/14/2018

HMO Authorization Name: DEBORAH BURKETT

HMO Authorization Date: 06/14/2018

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 AUGUST 2, 2018
MEETING OF THE FINANCE COMMITTEE**

TO: FINANCE COMMITTEE

FROM: MELISSA C. CARDINALI, ASSISTANT COUNTY MANAGER

THRU: AMY H. CANNON, COUNTY MANAGER

DATE: JULY 24, 2018

SUBJECT: MONTHLY HEALTH INSURANCE REPORT

Requested by: Finance Committee

Presenter: N/A

Estimate of Committee Time Needed: For Information Only

BACKGROUND:

Total health insurance claims for FY18 are up 9% from FY17 resulting in total claims of \$19,845,090. There are significant charges in June 2018. While we are aware of some significant cases occurring in the past few months, we are working to determine the specific cause of the spike.

To provide some perspective on the claims, below is the 12-month average for the past 5 fiscal years. This average represents the average claims for July – June of each fiscal year.

Average claims per fiscal year for July – April:

FY13 \$1,301,243
FY14 \$1,297,284
FY15 \$1,548,990
FY16 \$1,813,478

FY17 \$1,506,354

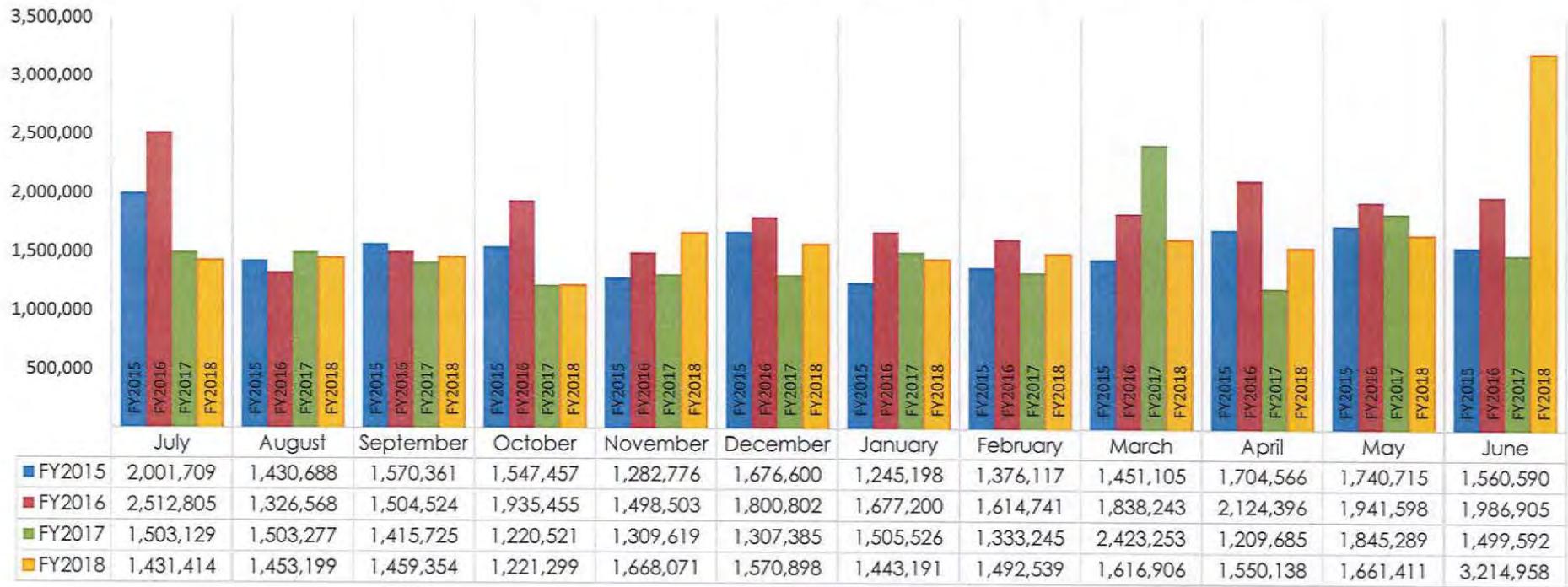
FY18 \$1,648,615

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

RECOMMENDATION/PROPOSED ACTION:

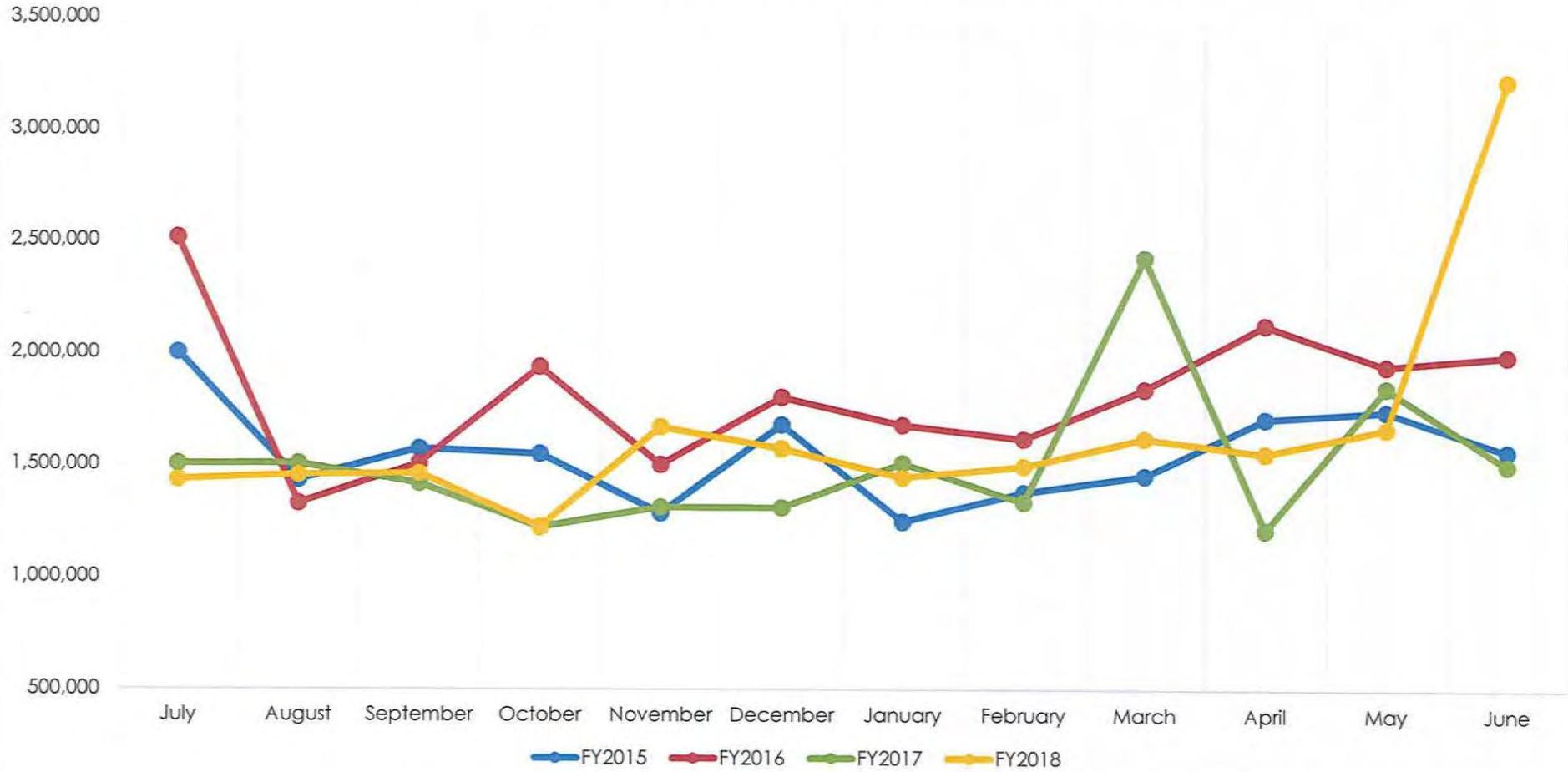
No action needed – for information only.

Monthly Insurance Claims FY15-FY18



■ FY2015 ■ FY2016 ■ FY2017 ■ FY2018

Monthly Insurance Claims FY15 - FY18



**CUMBERLAND COUNTY CDBG-DR PROGRAM UPDATE
FOR THE AUGUST 2, 2018
FINANCE COMMITTEE MEETING**

Status as of July 19, 2018:

Total Applications	Application Intake (Step 1)	State Eligibility Check (Step 2)	State Duplication of Benefits Check (Step 3)	Under Further Review
249	84 (17county/67 city)	64 (8 county/56 city)	79 (15 county/64 city)	22
Inspection & Environmental Review (Step 4)	Grant Determination (Step 5)	Contractor Selection (Step 6)	Construction (Step 7)	Completion (Step 8)
11	0	0	0	0

**Steps 2-3 performed by State; Steps 1, 4-8 performed by County/City*

Milestones/Activities:

- Request for Project Management Proposal – Review completed – Discussion with potential proposer currently ongoing;
- Ongoing– County will process applications, incomplete applications and submit for review; State will determine eligibility; State will handle environmental review processes;
- County CD Rehab staff have conducted site inspections on properties that are in the Step 3 DOB stage – 8 completed;
- City CD staff have conducted site inspections on properties that are in the Step 3 DOB stage – 2 completed;
- State recently deployed damage assessment teams to assist with site inspections;
- State recently implemented and opened Regional Intake Centers – this will also allow applicants to apply at any center (non-Cumberland residents – 2 *Tier II Counties*)
- State anticipate Step 3 environmental reviews release possible August;
- RFP & Project form for State environmental review process – Robins Meadow Phase II; Day Resource Center in Homeless Initiative Committee for discussion on site determination –County & City Staff tour Transitions Homeless Center site in Columbia, SC 7/16/18 to explore the potential options for proposed project.

Current Staffing:

- State: – David Cauthorn, CD Specialist II, Dept. of Public Safety – (Community Outreach for CDBG-DR); temporary office at Cumberland County Planning Department
- Cumberland County:
 - Sylvia McLean, P.T. Community Development (CD) Consultant; Terrinique Washington, Admin Support Specialist; Tye Vaught, Admin Program Officer II; Chavaugh McLamb, Admin Housing Coordinator II
 - *Housing Project Manager – re-advertised 5/30/18*
- City of Fayetteville: Jay Reinstein and Cindy Blot, CD Director; Anedra Walls, Admin Assistant

Hours of Operation: Monday – Friday, 9 a.m. to 4 p.m.

VICKI EVANS
Finance Director



ITEM NO. 9.C.

ROBERT TUCKER
Accounting Supervisor

IVONNE MENDEZ
Accounting Supervisor

FINANCE OFFICE

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

**MEMO FOR THE AGENDA OF THE AUGUST 2, 2018
MEETING OF THE FINANCE COMMITTEE**

TO: FINANCE COMMITTEE

FROM: VICKI EVANS, FINANCE DIRECTOR

THRU: AMY CANNON, COUNTY MANAGER

DATE: JULY 24, 2018

**SUBJECT: MONTHLY FINANCIAL REPORT – FISCAL YEAR 2018,
JUNE YEAR-TO-DATE**

Requested by: Finance Committee

Presenter(s): Vicki Evans, Finance Director

Estimate of Committee Time Needed: For information only

BACKGROUND

The financial report is included which shows the fiscal year 2018 June 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.

This should not be considered a final report for fiscal year 2018. Over the next several months, Finance will be working toward closing out the fiscal year and audit completion. You can expect updated monthly financial reports pertaining to fiscal year 2018 through October 2018 and a presentation of audit results in December. In November, we will begin reporting on fiscal year 2019 with a summary of results of the first quarter.

RECOMMENDATION/PROPOSED ACTION

No action needed – for discussion and information purposes only.

Celebrating Our Past...Embracing Our Future

**County of Cumberland
General Fund Revenues**

REVENUES	FY16-17 AUDITED	FY17-18 ADOPTED BUDGET	FY17-18 REVISED BUDGET	YTD ACTUAL AS OF June 30, 2018	PERCENT OF BUDGET TO DATE	*
Ad Valorem Taxes						
Current Year	\$ 156,131,527	\$ 160,312,162	\$ 160,962,162	\$ 163,194,266	101.4%	(1)
Prior Years	1,046,732	1,121,000	1,121,000	1,105,826	98.6%	
Motor Vehicles	17,683,864	18,070,242	18,070,242	18,786,897	104.0%	(2)
Penalties and Interest	650,368	667,602	667,602	740,525	110.9%	
Other	1,018,563	930,279	930,279	955,996	102.8%	
Total Ad Valorem Taxes	<u>176,531,054</u>	<u>181,101,285</u>	<u>181,751,285</u>	<u>184,783,510</u>	<u>101.7%</u>	
Other Taxes						
Sales	41,517,943	41,760,036	41,849,536	31,024,721	74.1%	(3)
Real Estate Transfer	1,091,362	700,000	700,000	1,098,615	156.9%	
Other	1,114,408	1,111,500	1,111,500	1,040,401	93.6%	
Total Other Taxes	<u>43,723,713</u>	<u>43,571,536</u>	<u>43,661,036</u>	<u>33,163,737</u>	<u>76.0%</u>	
Unrestricted & Restricted Intergovernmental Revenues	75,613,483	67,300,253	70,987,921	54,480,924	76.7%	(4)
Charges for Services	13,832,010	12,056,608	12,083,527	12,635,622	104.6%	
Other Sources (includes Transfers In)	8,945,521	6,988,890	7,045,838	7,728,888	109.7%	
Proceeds Refunding Bonds		-	23,005,000	23,005,000	100.0%	
Premium on COPS Sold		-	4,285,558	4,285,557	100.0%	
County Closing Contribution		-	254,736	254,735	100.0%	
Lease Land CFVMC	3,714,637	3,714,637	3,714,637	3,813,452	102.7%	
Total Other	<u>12,660,158</u>	<u>10,703,527</u>	<u>38,305,769</u>	<u>39,087,632</u>	<u>102.0%</u>	
Total Revenue	\$ 322,360,418	\$ 314,733,209	\$ 346,789,538	\$ 324,151,425	93.5%	
Fund Balance Appropriation		8,889,652	16,834,681	-	0.0%	(5)
Total Funding Sources	\$ 322,360,418	\$ 323,622,861	\$ 363,624,219	\$ 324,151,425	89.1%	

**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 June 30, 2018	BUDGET TO DATE	
Governing Body	\$ 591,731	\$ 617,587	\$ 617,587	\$ 566,798	91.8%	
Administration	2,515,558	1,501,201	1,501,201	1,361,434	90.7%	
Public Affairs/Education	76,879	497,199	497,199	458,420	92.2%	
Human Resources	30,245	828,896	828,896	787,778	95.0%	
Print, Mail, and Design	754,908	875,345	861,871	679,981	78.9%	
Court Facilities	55,786	129,370	173,610	149,298	86.0%	
Facilities Maintenance	1,936,136	2,009,030	2,787,855	1,744,852	62.6%	(1)
Landscaping & Grounds	606,364	607,577	612,237	571,828	93.4%	
Carpentry	231,715	234,884	234,884	173,249	73.8%	
Facilities Management	1,238,266	1,267,781	1,273,221	1,204,330	94.6%	
Public Buildings Janitorial	721,041	710,946	710,946	697,471	98.1%	
Central Maintenance	798,075	672,386	672,386	594,314	88.4%	
Information Services	3,388,444	3,958,479	4,197,368	3,341,546	79.6%	
Board of Elections	1,180,015	2,237,762	2,237,762	1,138,428	50.9%	(2)
Finance	1,205,572	1,201,225	1,201,225	1,133,430	94.4%	
Legal	668,776	813,554	813,554	692,144	85.1%	
Register of Deeds	2,092,298	2,321,099	2,762,365	1,881,266	68.1%	
Tax	5,567,709	5,589,154	5,620,154	5,023,727	89.4%	
Debt Service	23,400,669	21,464,283	21,466,328	21,449,808	99.9%	
General Government Other	3,828,293	4,237,882	4,688,400	2,817,799	60.1%	
Sheriff	47,212,707	50,250,550	50,548,888	45,108,646	89.2%	
Emergency Services	3,064,405	3,320,934	3,405,291	2,836,586	83.3%	
Criminal Justice Pretrial	434,987	426,673	456,673	441,205	96.6%	
Youth Diversion	325	25,000	25,000	8,932	35.7%	(3)
Animal Control	2,932,986	2,922,717	2,947,717	2,847,494	96.6%	
Public Safety Other (Medical Examiners, NC Detention Subsidy, etc.)	1,007,220	1,075,666	1,396,928	1,143,040	81.8%	
Heath	22,269,462	22,506,054	23,558,013	20,496,188	87.0%	
Mental Health	3,148,761	5,452,507	3,281,366	3,093,493	94.3%	
Social Services	71,524,059	66,425,182	67,301,671	56,971,264	84.7%	
Veteran Services	371,189	385,725	387,901	375,254	96.7%	

**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 June 30, 2018	BUDGET TO DATE **
Child Support	4,893,727	5,044,200	5,065,530	4,540,260	89.6%
Spring Lake Resource Administration	31,524	34,332	34,332	30,979	90.2%
Library	11,105,397	10,530,428	10,779,572	9,929,806	92.1%
Stadium Maintenance	110,288	117,296	117,296	92,194	78.6%
Culture Recreation Other (Some of the Community Funding)	312,816	268,069	268,069	258,627	96.5%
Planning	3,077,126	3,446,758	3,455,653	2,804,401	81.2%
Engineering	439,678	510,090	2,467,254	1,160,469	47.0% (4)
Cooperative Extension	570,083	705,596	705,596	540,670	76.6%
Location Services	357,095	447,221	423,300	289,104	68.3%
Soil Conservation	141,234	136,400	357,543	136,407	38.2% (5)
Public Utilities	87,442	110,270	95,092	87,485	92.0%
Economic Physical Development Other	20,000	20,000	20,000	20,000	100.0%
Industrial Park	3,296	23,148	23,148	1,117	4.8% (6)
Economic Incentive	420,423	548,418	710,918	462,345	65.0% (7)
Water and Sewer	-	250,000	379,330	-	0.0% (8)
Education	91,394,940	93,341,404	94,080,904	92,013,115	97.8%
Other Uses:					
Transfers Out	2,264,613	3,522,583	10,028,936	7,084,638	70.6% (9)
Refunding of 2009A and 2011B LOBS		-	27,543,249	27,531,480	100.0%
TOTAL	\$ 318,084,263	\$ 323,622,861	\$ 363,624,219	\$ 326,773,099	89.9%

Expenditures by Category	FY16-17	FY17-18	FY17-18	EXPENDITURES AS OF	PERCENT OF
	UNAUDITED	ADOPTED BUDGET	REVISED BUDGET	June 30, 2018	BUDGET TO DATE
Personnel Expenditures	\$ 131,620,131	\$ 136,744,346	\$ 134,194,076	\$ 119,840,902	89.3%
Operating Expenditures	158,133,695	157,914,300	165,411,909	147,834,963	89.4%
Capital Outlay	2,118,869	3,460,456	4,158,601	2,450,691	58.9% (10)
Debt Service	23,946,955	21,981,176	21,983,221	21,966,702	99.9%
Refunding of 2009A and 2011B LOBS	-	-	27,543,249	27,531,480	100.0%
Transfers To Other Funds	2,264,613	3,522,583	10,333,163	7,148,361	69.2%
TOTAL	\$ 318,084,263	\$ 323,622,861	\$ 363,624,219	\$ 326,773,099	89.9%

COUNTY OF CUMBERLAND

Fiscal Year 2018 - June Year-to-Date Actuals (Report Run Date: July 23, 2018)

Additional Detail

General Fund Revenues

*

- (1) **Current Year Ad Valorem** (FINAL) 101.4% of budget, 99.17% collection rate.
- (2) **Motor Vehicles** (FINAL) 104.0% of budget.
- (3) **Sales Tax** 74.1% - YTD Actual reflects 9 months of collections.
- (4) **Unrestricted/Restricted Intergovernmental** Revenues 76.7% - revenue accruals have not yet posted.
- (5) **Fund Balance Appropriation** 0% - Direct entries are not made to fund balance.

General Fund Expenditures

**

- (1) **Facilities Maintenance** 62.6% - Conference Room renovation to be completed in July. Funds will be requested for re-appropriation during FY19.
- (2) **Board of Elections** 50.9% - Capital purchase budgeted for \$809,045 will not be purchased until FY19 budget.
- (3) **Youth Diversion** 35.7% - Not staffed the entire fiscal year.
- (4) **Engineering** 47.0% - Incomplete project (stream debris removal) funded by a grant in FY18 will be requested for re-appropriation during FY19.
- (5) **Soil Conservation** 38.2% - Incomplete projects (stream debris removal) funded by a grant in FY18 will be requested for re-appropriation during FY19.
- (6) **Industrial Park** 4.8% - Maintenance at Cedar Creek Industrial Park will not be needed for FY18.
- (7) **Economic Incentive** 65.0% - 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 were not utilized.
- (9) **Transfers Out** 70.6% - Transfers out typically occur during the 13th period.
- (10) **Capital Outlay** 58.9% - Board of Elections capital equipment and FTCC capital outlay budgeted but not incurred or encumbered makes up the majority of unutilized budget.