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**CUMBERLAND
★ COUNTY ★
NORTH CAROLINA**

BOARD OF COMMISSIONERS

CANDICE WHITE
Clerk to the Board

KELLIE BEAM
Deputy Clerk

MEMORANDUM

TO: Policy Committee Members (Commissioners Boose, Evans and Lancaster)

FROM: Kellie Beam, Deputy Clerk to the Board *KKB*

DATE: June 1, 2018

SUBJECT: Policy Committee Meeting – Thursday, June 7, 2018

There will be a regular meeting of the Board of Commissioners' committees (Finance, Policy and Facilities Committees) on Thursday, June 7, 2018 beginning at 8:30 a.m. in room 564 of the Judge E. Maurice Braswell Cumberland County Courthouse. All committee meetings will start as soon as the previous committee adjourns.

AGENDA

1. Approval of Minutes – May 3, 2018 Regular Meeting **(Pg. 2)**
2. Presentation on Local Purchasing Committee Established by Public Works Commission (PWC) **(Pg. 9)**
3. Consideration of Policy Revision and Resolution to Engage in Electronic Payments **(Pg. 10)**
4. Consideration of Amendments to County Purchasing Policy **(Pg. 33)**
 - By Incorporating Federal Uniform Guidance Procurement Standards
 - Excepting the Sheriff's Office from the Purchasing Policy
5. Consideration of Request from Residents of Mt. Vernon Estates to Proceed with a Watershed Improvement **(Pg. 71)**
6. Other Items of Business **(NO MATERIALS)**

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CUMBERLAND COUNTY POLICY COMMITTEE
JUDGE E. MAURICE BRASWELL CUMBERLAND COUNTY COURTHOUSE
117 DICK STREET, 5TH FLOOR, ROOM 564
MAY 3, 2018
MINUTES

MEMBERS PRESENT: Commissioner Michael Boose
Commissioner Charles Evans
Commissioner Larry Lancaster

OTHER COMMISSIONERS
PRESENT: Commissioner Glenn Adams
Commissioner Jeannette Council
Commissioner Jimmy Keefe

OTHERS PRESENT: Amy Cannon, County Manager
Tracy Jackson, Assistant County Manager
Sally Shutt, Assistant County Manager
Duane Holder, Assistant County Manager
Melissa Cardinali, Assistant County Manager
Rick Moorefield, County Attorney
Jeffery Brown, Engineering & Infrastructure Director
Deborah Shaw, Budget Analyst
Heather Harris, Budget Analyst
Devon Newton, County Attorney's Office
Vicki Evans, Finance Director
Geneve Mankel, Communications & Outreach Coordinator
Candice White, Clerk to the Board
Kellie Beam, Deputy Clerk to the Board
Press

Commissioner Lancaster called the meeting to order.

1. APPROVAL OF MINUTES – MARCH 1, 2018 REGULAR MEETING

MOTION: Commissioner Evans moved to approve the March 1, 2018 meeting minutes as presented.
SECOND: Commissioner Lancaster
VOTE: UNANIMOUS (3-0)

2. CONSIDERATION OF CUMBERLAND ROAD SMALL AREA PLAN

BACKGROUND:

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At the December 18, 2017 Board of County Commissioners' meeting, a rezoning request, Case P17-49, was approved from Office & Institutional Planned (O&I-P) to Commercial Planned (C-P). During the Public Hearing, a question was asked if problems would occur if commercial development is added without sewer in the vicinity. As discussion ensued, the Board indicated it would like to see this portion of Cumberland Road reviewed for zoning consistency. It was determined that a study should be performed and presented to the Policy Committee.

RECOMMENDATION/PROPOSED ACTION:

The Planning staff is requesting the Policy Committee review and recommend approval of the Cumberland Road Plan, including any recommended changes, and forward to the Joint Planning Board for a recommendation to the full Board of Commissioners.

Tom Lloyd, Planning & Inspections Director, reviewed the background information and recommendation as recorded above.

Mr. Lloyd presented the following information:

The Planning Department staff was directed by the County Commissioners to complete a study for the future land use of the area of Cumberland Road from Hope Mills Road to Owen Drive. In order to create a complete assessment of the study area, planning staff researched and compiled data describing characteristics of the area including curb cuts, current land use and zoning, and proximity and availability of utilities. The planning staff then used this data to create recommendations for future land use within the study area to be adopted as a Business Street Plan to supplement the existing Southwest Cumberland Land Use Plan, adopted in 2013.

- Most parcels would allow for conformity with the C1(P) or O&I(P) zoning districts and less than 25% would be nonconforming with the C2(P) zoning district.
- Most parcels in the study area have at least one curb cut with around 15% having more than one.
- There have been 12 rezoning requests in the study area within the last 10 years with all but one request being from residential to commercial.
- Approximately 16% of the lots in the study area are currently vacant.
- Currently it would be more costly to extend sewer to the eastern half of the study area due to lack of existing sewer lines and topography. However, extending sewer to the western half would be less costly due to the closer proximity of existing sewer lines and the topography being more favorable.
- Approximately half of the area is zoned Commercial with 32% of those being Heavy Commercial (CP). The remaining half is zoned residential at a density of R10 or greater.

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- Approximately half the study area's current land use is residential, with the majority (42%) being single family. The remaining portion of the area is a mix of commercial (25%), office and institutional and industrial uses, with around 16% of the parcels being vacant.
- 20% of properties within the study area have potential land use violations.

Mr. Lloyd presented the following:

The following recommendations for the study area were crafted by Planning Department Staff using data previously discussed:

1. Discourage straight rezoning's and recommend conditional rezoning's;
2. Promote rezoning properties to Heavy Commercial only where sewer is accessible;
3. Upon receipt of commercial rezoning request strongly promote recombination of adjoining parcels under same ownership as condition of approval;
4. Require mandatory sewer connection for rezoning requests located from Hope Mills Road east to Zareeba Drive and from the railroad east to Owen Drive per Section 2306 (A) of the Cumberland County Subdivision Ordinance;
5. Do not allow rezoning of properties where active land use violations exist (per Board policy);
6. Target area for minimum housing and junk vehicle violations;
7. Work with NCDOT to limit curb cuts, recommend joint drives and use of lateral access.

Mr. Lloyd stated the Cumberland Road study area is currently an equal mix of commercial, office and residential uses. County Planning staff has determined that future development in the area should be more commercial than residential in nature. However, the availability and cost of sewer to the area is a significant factor in how this area will develop going forward. This is reflected in the recommendations of this plan by encouraging conditional rezoning's in order to ensure that available utilities can support future development. The recommendations also acknowledge that the overall appearance of the area needs improvement and can be addressed, at least partially, by stricter enforcement of existing ordinances.

Questions and discussion followed. No action taken.

3. SUBMISSION OF BOARD OF COMMISSIONERS POLICY DOCUMENT FOR FUTURE REVIEW AND CONSIDERATION

BACKGROUND:

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The Board of Commissioners have periodically approved several different policies in various formats that impact all areas of County government. These policies have been reformatted into a standard policy format and compiled in a document by category.

The proposed format includes the policy purpose, scope, policy details, as well as the date the item was submitted to the respective Committee, if applicable, and when the policy was approved by the Board of Commissioners. The dates of any policy revisions are also incorporated in each policy.

If the Policy Committee approves the format, all future policies will follow the newly revised template. A review of these policies is timely as some policies need to be updated or revised. A notebook has been created for your convenience in making notations as we review and discuss each policy. Once the policy document has been reviewed, updated and approved, we will post the Policy document on the County's Website under the Board of Commissioner's page.

RECOMMENDED/PROPOSED ACTION:

Receive the Policy document and review the individual policies over a series of Committee meetings and consider the standardized format and any desired revisions.

Ms. Cannon reviewed the background information and recommendation as recorded above. Ms. Cannon stated they are looking for the Policy Committee to give some feedback on the format of the policies and then go over the policies over the next few Policy Committee meetings. Ms. Cannon stated there are policies that need to be updated.

No action taken.

4. CONSIDERATION OF POLICY GOVERNING SPECIAL ASSESSMENT PROJECTS

BACKGROUND:

The County Manager requested the following policy proposal in response to a request from Chairman Lancaster. The policy is intended to provide a consistent response to citizens who request the county to consider an assessment project benefiting a small group of land owners or a community.

Cumberland County Policy Governing Special Assessment Projects

1.0 PURPOSE

The purpose of this policy is to establish the conditions under which the county may make special assessments against benefited property within the county for all or part of the costs of those county projects for which assessments shall be made pursuant to NCGS 153A-185.

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2.0 SCOPE

This policy shall apply to all county projects for which special assessments are authorized and shall be made pursuant to the provisions of NCGS 153A-185. The only projects which are authorized for the imposition of special assessments are:

- (1) Constructing, reconstructing, extending, or otherwise building or improving water systems;
- (2) Constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;
- (3) Acquiring, constructing, reconstructing, extending, renovating, enlarging, maintaining, operating, or otherwise building or improving
 - a. Flood and hurricane protection works; and
 - b. Watershed improvement projects, drainage projects and water resources development projects (as those projects are defined in GS 153A-301).
- (4) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets, as the local share of the cost of improvements made under the supervision of the Department of Transportation to subdivision and residential streets that are a part of the State maintained system located in the county as provided in GS 153A-205.
- (5) Providing street lights and street lighting in a residential subdivision, as provided in GS 153A-206.

3.0 STATEMENT OF THE POLICY

No county assessment project shall be undertaken unless it meets all of the following conditions:

- (1) All assessment projects shall be designed by a N.C. licensed engineer. The engineer shall also certify that the project is a type of project that is authorized as an assessment project by NCGS 153A-185.
- (2) The construction, reconstruction, extension, or otherwise building or improvement of any assessment project or any component of such assessment project shall only be done on real property that is owned by the county in fee simple, is subject to a perpetual easement to provide the county access to maintain, repair, replace or improve the project or component of the project; or is located within the rights-of-ways of the State Highway System pursuant to a recorded encroachment agreement granted to the county by the N.C. Department of Transportation.
- (3) Any property owners desiring the county to do an assessment project shall submit a written request for the project to the county manager. The request

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shall describe the project and the affected properties which will be subject to assessment if the county accepts the project. The county shall not accept the project unless the owners of more than 50% of the affected properties have requested the project. The county may request engineering studies or further information to be provided at the cost of the requesting property owners before determining to accept the project.

- (4) The county may proceed with an authorized assessment project without any request from the affected property owners.
- (5) SL 2008-109 authorizes Cumberland County to authorize not more than 15 annual installments for the payment of an assessment; however, unless the average annual amount of all annual assessments in a project is more than 1% of the average value of all properties to be assessed, the number of annual installments for the payment of an assessment shall not be more than ten.

4.0 IMPLEMENTATION

Implementation of this policy shall be the responsibility of the County Manager through the appropriate county departments.

RECOMMENDATION/PROPOSED ACTION:

Consider the proposed policy for recommendation to the Board of Commissioners.

Rick Moorefield, County Attorney, reviewed the background information and recommendation as recorded above.

MOTION: Commissioner Boose moved to recommend to the full board approval of the proposed policy governing special assessments.

SECOND: Commissioner Evans

VOTE: UNANIMOUS (3-0)

5. CONSIDERATION OF STATE CDBG-DR WAIVER

BACKGROUND:

The NC Department of Public Safety – Division of Emergency Management recently asked local counties to quickly respond as to whether it would allow the State to serve as the lead entity for the CDBG-DR program in the four counties hit hardest by Hurricane Matthew. Since there are separate Memorandums of Agreement (MOA) between Cumberland County and the State, and Cumberland County and the City of Fayetteville, Staff is bringing this matter to the Policy Committee for further consideration. The State contends it will have increased program speed, overall standardization, and will serve as a support to the resilient recovery of disaster survivors if the County agrees to cede lead entity to the

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State. Staff believes switching the lead to the State at this critical juncture will cause further delays in processing applications since existing MOA's will have to be amended and approved. Staff believes it is in the County's best interest to continue to serve as lead entity and to encourage the State to move CDBG-DR applications along to Step 4 of the 8-step NC Rebuild process as quickly as possible. The State has also offered to allow local governments to participate in its Construction Manager-at-Risk (CMR) contract for services. Staff believes this should be weighed further and not ruled out but maintained as an option. Participation in the CMR program may save some time depending upon the amount of time and effort it would take to create an RFP and go through the bid process.

City of Fayetteville management and staff do not wish for the County to transfer lead entity status to the State.

RECOMMENDATION/PROPOSED ACTION:

Staff recommends forwarding this item to the full Board for consideration as a Consent Agenda item authorizing staff to respond to the State and requesting an exemption to cede lead entity status to the State for the CDBG-DR program.

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

MOTION: Commissioner Boose moved to recommend to the full board approval authorizing staff to respond to the State requesting an exemption to cede lead entity status to the State for the CDBG-DR program.

SECOND: Commissioner Evans

VOTE: UNANIMOUS (3-0)

6. OTHER ITEMS OF BUSINESS

No other items of business.

MEETING ADJOURNED AT 10:45 AM

AMY H. CANNON
County Manager

MELISSA C. CARDINALI
Assistant County Manager



ITEM NO. 2

DUANE T. HOLDER
Assistant County Manager

TRACY JACKSON
Assistant County Manager

SALLY S. SHUTT
Assistant County Manager



OFFICE OF THE COUNTY MANAGER

MEMO FOR THE AGENDA OF THE JUNE 7, 2018 MEETING OF THE POLICY COMMITTEE

TO: POLICY COMMITTEE
FROM: SALLY SHUTT, ASSISTANT COUNTY MANAGER
THROUGH: AMY CANNON, COUNTY MANAGER *ASh*
DATE: MAY 31, 2018
SUBJECT: PRESENTATION ON LOCAL PURCHASING COMMITTEE
ESTABLISHED BY THE PUBLIC WORKS COMMISSION
Requested by: Commissioner Jimmy Keefe
Presenter(s): Darsweil Rogers, Secretary, Public Works
Commission

Estimate of Committee Time Needed: 10 minutes

BACKGROUND: Commissioner Jimmy Keefe requested that Mr. Darsweil Rogers present an update to the Policy Committee about the Local Purchasing committee assembled by PWC in 2017 to research and establish guidelines and policies for governmental agencies to shop local and stay in compliance with state law.

Mr. Rogers will provide an overview of the committee's origins and goals; report on the activities to date, including the Building Business Rally held on May 22 in which Cumberland County participated; and discuss the group's plans for next steps.

RECOMMENDATION/PROPOSED ACTION: For information purposes only.

VICKI EVANS
Finance Director



ITEM NO. 3

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 JUNE 7, 2018
MEETING OF THE POLICY COMMITTEE**

TO: POLICY COMMITTEE

FROM: VICKI EVANS, FINANCE DIRECTOR

THRU: AMY CANNON, COUNTY MANAGER

DATE: MAY 30, 2018

**SUBJECT: CONSIDERATION OF POLICY REVISION AND RESOLUTION
TO ENGAGE IN ELECTRONIC PAYMENTS AS DEFINED BY
G.S. 159-28**

Requested by: Amy Cannon, County Manager *AC*

Presenter(s): Vicki Evans, Finance Director

Estimate of Committee Time Needed: 10 Minutes

BACKGROUND

North Carolina General Statute 159-28 requires the finance officer to *pre-audit* financial obligations of the County. The pre-audit simply means that the finance officer has determined the County has money available to pay the obligation and affix a certification to the obligation.

Recently, NCGS 159-28 was modified to address the use of electronic transactions. Examples of electronic transactions include:

- A contract or agreement that has been approved by the Local Government Commission (LGC);
- A payroll expenditure, including one related to employee benefits
- A purchase made with a purchasing card, credit card, or fuel card transaction

In March 2018 the Local Government Commission issued guidance on implementing the updated pre-audit rules. While the rules do not exempt the finance officer from performing a preaudit on electronic payments, it does exempt affixing the pre-audit certification on electronic transactions.

In order to be in compliance with the rules, two things should occur. One (1), a modification of the County's Financial Policies is required. Two (2), consider adopting a resolution authorizing the County to engage in electronic transactions without affixing a pre-audit certificate.

RECOMMENDATION/PROPOSED ACTION

Management recommends the Policy Committee approve and forward to the Board of Commissioners:

1. The revised financial policies; and
2. The resolution authorizing the County to engage in electronic payments as defined by G.S. 159-28.

Attachment: Draft Revised Financial Policies, showing track changes
Resolution authorizing the County of Cumberland to engage in electronic payments as defined by G.S. 159-28

Cumberland County

Section I – Board Approved Policies

Subsection 3: Cumberland County Financial / Audit

Policy No. 3-1: Financial Policies

The original submission of the Cumberland County Financial Policies was approved by the Board of Commissioners on September 2, 2008. The Financial Policies were brought back for revision and approved by the Finance Committee on March 3, 2011 and approved at the March 21, 2011 Board of Commissioners Meeting.

1.0 PURPOSE

The County of Cumberland has established comprehensive financial policies supporting management of our financial resources by providing effective control, prudent decision making and compliance with legal requirements.

2.0 SCOPE

The essential goals to be accomplished through consistent application of these policies include:

- To align long-term financial planning with short-term daily operations and decision-making.
- To maintain and improve the County's financial position.
- To maintain the County's credit ratings by meeting or exceeding the requirements of rating agencies through sound, conservative financial decision making.
- To comply with the North Carolina Budget and Fiscal Control Act and the policies of the North Carolina Local Government Commission (the "LGC").
- To ensure cost effective, efficient and timely procurement of necessary goods and services to enable County departments in achieving their mission of effective service delivery to all citizens.
- To provide credibility to the citizens of the County regarding financial operations through active investment, debt and procurement management as well as financial planning and monitoring.

3.0 STATEMENT OF POLICIES

The financial policies are broken into three separate categories: Operating Budget / Fund Balance Policies, Asset Liability Management Policies and Accounting, Auditing and Financing Reporting Policies.

The Cumberland County Board of Commissioners (the "Board") is a seven-member board, with each member serving a four-year term. To enhance communication and effective decision making, four subcommittees of the Board have been in existence for many years. These three-member subcommittees have been structured to focus on the following areas; Finance, Policy, Personnel, and Facilities issues. Each committee meets monthly as needed, in a published, open meeting. The Finance Committee serves as the Audit Committee of the County and makes recommendations to the full Board upon review of issues that have a fiscal impact upon the County. Periodically, the Finance Director updates the Committee on the financial condition of the County as a part of their monthly agenda. The annual audit is presented in detail to the Board annually at a night meeting which is televised on a local channel for the citizens of Cumberland County.

4.0 OPERATING BUDGET / FUND BALANCE POLICIES

4.1 Budget Guidelines

4.1.1 The County's Annual Budget Ordinance will be balanced in accordance with the Local Government Budget and Fiscal Control Act (G.S. 159-8(a)).

4.1.2 The County's operating budget will be prepared in accordance with Generally Accepted Accounting Principles.

4.1.3 The County's Annual Budget Ordinance will be adopted by each July 1 (G.S. 159-13(a)).

4.1.4 The annual budget shall be developed as a financial plan to achieve long-term and short-term goals adopted by the Governing Board and as an operational guide for provision of programs and services to the community.

4.2 Revenue Policy

4.2.1 Ad Valorem Tax – As provided by the North Carolina Budget and Fiscal Control Act, estimated revenue from the Ad Valorem Tax levy will be budgeted as follows:

- a. Assessed valuation will be estimated based upon historical trends and growth patterns in a conservative manner.
- b. The estimated percentage of collection will not exceed the actual collection percentage of the preceding fiscal year, in accordance with State law.
- c. The property tax rate will be set each year based upon the costs of providing general governmental services, meeting debt service obligations and maintaining any reserves or fund balances the Board deems necessary.

4.2.2 Economically Sensitive Revenues – The County has certain revenues, specifically occupancy, food and beverage, and sales taxes that can be adversely affected by regional and national economic conditions and military deployments. These revenues shall be budgeted in a conservative manner.

4.2.3 User Fees – The Board will establish all user fees annually. The user fees will maximize charges for services that can be individually identified and where costs are directly related to the provision of or to the level of service provided.

Emphasis on user fees results in the following benefits:

- The burden on the Ad Valorem tax is reduced.
- User fees are paid by all users, including those exempt from property taxes.
- User fees help minimize subsidization in any instance where there are requirements in order to qualify for the use of the service and the service is not provided to the general public.
- User fees produce information on the demand level for services and help to make a connection between the amount paid and the services rendered.

4.2.4 Interest Income – Interest income is subject to variability based upon changes in prevailing interest rates, which cannot be predicted with certainty. Such revenue shall therefore be budgeted in a conservative manner within the Annual Budget Ordinance and shall comply with Section III of this policy regarding Asset – Liability Management.

4.2.5 Grant Funding – Staff will pursue opportunities for grant funding. Application for grant funding will be made after a grant has been evaluated for consistency with the Board's goals and compatibility with County programs and objectives. Staff must have prior approval from the County Manager to apply for a grant. All awarded grants can only be accepted by Board action at which time the related budget shall be established.

- a. Grants that have been awarded in prior years and are recurring in nature will be included and addressed through the annual budget process.
- b. Grants that fund operating expenditures but have a funding termination date must fully disclose that fact to the Board prior to acceptance.
- c. The grant manager for each grant shall be the related department head. The grant manager is responsible for all grant monitoring, compliance and reporting. The grant manager will provide copies of all documents to the Finance Department. The Finance Department will maintain a grant file by fiscal year for each active grant.
- d. Existing exceptions that relate to annual allocation amounts must be approved by County Finance

4.3 Expenditure Policy ~~Expenditures will be processed in accordance with the requirements of G.S. 159-28, Budgetary Accounting for Appropriations.~~

- 4.3.1 Expenditure budgets shall be monitored throughout the fiscal year by department heads, the Finance Department and the County Manager. Budget compliance is the responsibility of the department head and the Finance Director.
- 4.3.2 Budgeted funds will only be spent for categorical purposes for which they are intended. The annual operating budget ordinance defines staff authorization for operating budget adjustments. Appropriations of debt proceeds will be made only for the purpose for which such debt instrument was issued or for the payment of debt principal and interest. Donations will be spent only toward the intent for which they were given.
- 4.3.3 For continuing contracts, funds will be appropriated in the annual budget ordinance to meet current year obligations arising under the contract, in accordance with G.S. 160A-17.
- 4.3.4 Payroll will be processed in accordance with the requirements of the Fair Labor Standards Act. Overtime and benefit payments will be made in accordance with the County's Personnel Ordinance.
- 4.3.5 The County will fund current expenditures with current resources and will strive to avoid balancing budgets utilizing one-time revenues, in accordance with the Fund Balance Policy below.
- 4.3.6 The County will employ the use of the carryover method for re-appropriating outstanding purchase orders and contracts as of the end of

each fiscal year into the new fiscal year. The process shall be explained in detail in each year's budget ordinance. Cumberland County has a revenue spending policy that provides guidance for programs with multiple revenue sources. The Finance Officer will use resources in the following hierarchy: bond proceeds, federal funds, state funds, local fees, and then county funds. For purposes of fund balance classification expenditures are to be spent from restricted fund balance first, followed in-order by committed fund balance, assigned fund balance and lastly unassigned fund balance. The Finance Officer has the authority to deviate from this policy if it is in the best interest of the County.

4.4 Reserve / Fund Balance Policy

- 4.4.1 In accordance with State statute, appropriated fund balance in any fund will not exceed the sum of cash and investments less the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts.
- 4.4.2 The County will maintain a General Fund unassigned fund balance of no less than 10% which exceeds the minimum eight percent (8%) recommended by the LGC. Additionally, the target goal for total spendable fund balance will be at least 15% of total expenditures for the fiscal year. The annual appropriation for subsequent years' expenditures should not exceed 3% of budgeted recurring general fund expenditures.
 - a. Purpose of Reserve: These funds will be utilized to avoid cash flow interruptions, generate interest income, eliminate the need for short-term borrowing, and maintain the County's credit ratings.
 - b. Reserve Draw Downs: The fund balance may be purposefully drawn down below the target percentage for emergencies, nonrecurring expenditures, or major capital projects.
 - c. Reserve Replenishment: If the fund balance falls below the target percentage for two consecutive fiscal years, the County will replenish funds by direct appropriation beginning in the following fiscal year. In that instance, the County will annually appropriate 20% of the difference between the target percentage level and the actual balance until the target level is met.
- 4.4.3 Any General Fund unassigned fund balance that exceeds the 10% target goal may be reserved for onetime future projects.
- 4.4.4 The County will appropriate within the annual budget a General Fund Contingency appropriation each fiscal year of at least \$500,000.

4.4.5 The County shall maintain a School Capital Reserve account and all funds accumulated shall be used for debt service on school related debt and other school capital needs.

- a. Based on the North Carolina Association of County Commissioner's methodology for calculating statutory Article 40 and 42 set asides for school construction, the Board has committed these sales tax funds to the purposes listed immediately above.
- b. All Public School Building Capital Fund ("ADM money") and Lottery proceeds shall be budgeted within the School Capital Reserve account and shall be used for debt service for school related debt and for school construction needs as appropriate.

4.4.6 Assigned for subsequent years' expenditures is the portion of fund balance that has been approved by formal action of the Board of County Commissioners for appropriation into the next fiscal year. A modification of this amount requires action by the Board. The Board may at its discretion, make other assignments of fund balance. The Board authorizes the County Manager to amend these assigned amounts to comply with the County's fund balance percentage policies.

5.0 ASSET LIABILITY MANAGEMENT POLICIES

5.1 Capital Investment and Debt Policy

5.1.1 Capital Improvements Plan

- a. The County will update a five-year capital improvement plan (CIP) which projects capital needs and details the estimated costs, description and anticipated funding sources for capital projects.
- b. The annual update of the CIP will be presented at the Board's Budget Planning retreat and included in the annual operating budget process.
- c. The first year of the five-year CIP will be the basis of formal fiscal year appropriations during the annual budget process.
- d. The CIP will generally address those capital assets with a value of \$100,000 or more and a useful life of five years or more.
- e. The County includes equipment and furnishings as well as projected annual operating costs in the appropriate year in the CIP.

- f. The County acknowledges pay-as-you-go financing as a significant capital financing source, but will ultimately determine the most appropriate financing structure for each capital project on an individual basis after examining all relevant factors of the project.

5.1.2 Ten Year School Facilities Plan

The County requires an annual update from the Cumberland County Board of Education of its Ten Year School Facilities Plan. The County fully expects to see all new capital projects first appear in the ninth or tenth year of the school facilities plan unless dictated otherwise by State or Federal mandates of new sources of funds, such as a State bond issue for local consideration.

5.1.3 Fixed Assets

The capitalization threshold for fixed assets shall be \$5,000 and \$7,500 for capital improvements. The threshold will be applied to individual fixed assets and not to groups of fixed assets. Fixed assets will be capitalized if they have a useful life of one year or more following the date of acquisition.

5.1.4 Debt Policy

- a. Debt will only be incurred for financing capital assets that, because of their long-term nature or because of budgetary restraints, cannot be acquired from current or budgeted resources. Debt will not be used for operational needs. Debt financing can include general obligation bonds, revenue bonds, certificates of participation, lease/purchase agreements, special obligation bonds, or any other financing instrument allowed under North Carolina law.

- b. The County will seek to structure debt and to determine the best type of financing for each financing need based on the flexibility needed to meet project needs, the timing of the project, taxpayer or rate payer equity, and the structure that will provide the lowest interest cost in the circumstances. The following guidelines will be used when structuring debt:

- 1) Debt will be amortized on a level principal or level principal and interest basis, depending upon the specific nature of the financing.
- 2) Maximum term of amortization of principal will be twenty-five years, twenty years for general obligation debt. Average life of outstanding debt will not exceed fifteen years.

- 3) For general obligation debt, fifty percent of the total outstanding debt will be amortized in the first ten years of total debt outstanding.
 - 4) Fixed rate will be the predominant interest rate for County issuance. Variable rate debt will be considered on a case-by-case basis and will not exceed fifteen percent of total outstanding debt of the County. Issuance of variable rate debt will be undertaken after considering interest rate risk, ability to hedge risk in the annual budget, internal levels of fund balance, and other elements of interest rate risk management.
- c. Debt financing will be considered in conjunction with the County's CIP. Debt financing will also be considered in the Board's review of facility plans presented by the Board of Education.
 - d. Upon Board approval of a capital project and a determination that the project will be financed through issuance of debt, The Board will increase the property tax rate in an amount equivalent to the additional annual operating costs and principal and interest payments in the upcoming fiscal year, if deemed necessary.
 - e. The County will strive to maintain a high level of pay-as-you-go financing for its capital improvements.
 - f. Debt Affordability
 - 1) The net debt of the County, as defined in G.S. 159-55, is statutorily limited to eight percent of the assessed valuation of the taxable property within the County. The County will utilize a self-imposed ceiling of 4%.
 - 2) Total General Fund debt service will not exceed the limits imposed by the LGC. As a guide, formulas established by the LGC and rating agencies will be monitored and appropriately applied by the County. Debt service as a percentage of the general fund budget will be targeted not to exceed 15%.
 - g. The County will seek to structure debt in the best and most appropriate manner to be consistent with Asset – Liability Management policies.

- h. The County will seek to employ the best and most appropriate strategy to respond to a declining interest rate environment. That strategy may include, but does not have to be limited to, delaying the planned issuance of fixed rate debt, examining the potential for refunding of outstanding fixed rate debt, and the issuance of variable rate debt. The County will seek to employ the best and most appropriate strategy to respond to an increasing interest rate environment. That strategy may include, but does not have to be limited to, the issuance of variable rate debt (a historically lower interest cost), or any other methodology deemed appropriate.
- i. The County will monitor the municipal bond market for opportunities to obtain interest rate savings by refunding on a current or advance basis for outstanding debt. The estimation of net present value savings for a traditional fixed rate refunding should be, at a minimum, in the range of 2.5% to 3% of the refunded maturities before a refunding process begins.
- j. The County will strive for the highest possible bond ratings in order to minimize the County's interest costs.
- k. The County will normally obtain at least two ratings (Moody's and Standard & Poor's) for all publicly sold debt issues.
- l. While some form of outstanding debt exists, the County will strive to have a portion of that debt in the form of general obligation debt.
- m. The County will provide annual information updates to each of the debt rating agencies.
- n. The County will use the Comprehensive Annual Financial Report (the "CAFR") as the disclosure document for meeting its obligation to provide certain annual financial information to the secondary debt market via various information repositories. The annual disclosure is a condition of certain debt covenants and contracts that are required by SEC Rule 15c2-12.

5.2 Cash Management and Investment Policy

5.2.1 Receipts

- a. Cash receipts will be collected as expediently as reasonably possible to provide secure handling of incoming cash and to move these monies into interest bearing accounts and investments.

- b. All incoming funds will be deposited daily as required by State law.
- c. The Finance Director is responsible for coordinating at least two random or risk based internal audits of cash receipting locations per fiscal year.

5.2.2 Cash Disbursements – All disbursements will be made in accordance with the Expenditure Policy (Section 4.3). Electronic payment transactions are allowed.

- a. The County's objective is to retain monies for investment for the longest appropriate period of time.
- b. Disbursements will be made timely in advance of or on the agreed-upon contractual date of payment unless earlier payment provides greater economic benefit to the County.
- c. Inventories and supplies will be maintained at minimally appropriate levels for operations in order to increase cash availability for investment purposes.
- d. Dual signatures are required for County checks. Electronic signature of checks is approved.

5.2.3 Investment Policy

- a. Policy

It is the policy of the County to invest public funds in a manner which will provide the highest investment return with the maximum security while meeting the daily cash flow requirements of the County and conforming to all State statutes governing the investment of idle funds.

- b. Scope

This investment policy applies to all financial assets of the County except authorized petty cash, trust funds administered by the Social Services Director, and debt proceeds, which are accounted for and invested separately from pooled cash. The County pools the cash resources of its various funds and participating component units into a single pool in order to maximize investment opportunities and returns. Each fund's and participating component unit's portion of

total cash and investments is tracked by the financial accounting system.

c. Prudence

- 1) The standard of prudence to be used by authorized staff shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence would exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.
- 2) Authorized staff acting in accordance with procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this policy.

d. Authorized Staff

- 1) G.S. 159-25(a)6 delegates management responsibility for the investment program to the Finance Director. The Finance Director will establish and maintain procedures for the operation of the investment program that are consistent with this policy. Such procedures will include delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Finance Director. The Finance Director will be responsible for all transactions undertaken and will establish and maintain a system of controls to regulate the activities of subordinates.
- 2) In the absence of the Finance Director and those to which he or she has delegated investment authority, the County Manager or his or her designee is authorized to execute investment activities.

e. Objectives

The County's objectives in managing the investment portfolio, in order of priority, are safety, liquidity, and yield.

1) Safety

Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To best mitigate against credit risk (the risk of loss due to the failure of the security issuer) diversification is required. To best mitigate against interest rate risk (the risk that changes in interest rates will adversely affect the market value of a security and that the security will have to be liquidated and the loss realized) the second objective, adequate liquidity, must be met.

2) Liquidity

The investment portfolio shall remain sufficiently liquid to meet all operating and debt service cash requirements that may be reasonably anticipated. The portfolio will be structured so that securities mature concurrent with cash needs (static liquidity), with securities with an active secondary market (dynamic liquidity), and with deposits and investments in highly liquid money market and mutual fund accounts.

3) Yield

The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary, economic and interest rate cycles, taking into account investment risk constraints and liquidity needs.

f. Ethics and Conflicts of Interest

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose to the County Manager any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial or investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking personal investment transactions with the same individuals with whom business is conducted on behalf of the County.

g. Authorized Financial Dealers and Financial Institutions

The Finance Director will maintain a list of financial institutions that are authorized to provide investment services. Authorized financial institutions will be selected by credit worthiness. These may include "primary" dealers or regional dealers that qualify under SEC Rule 15C3-1 (uniform net capital rule).

h. Any financial institutions and broker dealers that desire to become qualified to conduct investment transactions with the County must supply the Finance Director with the following:

- 1) Audited financial statements;
- 2) Proof of National Association of Securities Dealers certification;
- 3) Proof of State registration; and
- 4) Certification of having read the County's Investment Policy.

i. Any previously qualified financial institution that fails to comply or is unable to comply with the above items upon request will be removed from the list of qualified financial institutions.

j. The Finance Director shall have discretion in determining the number of authorized financial institutions and may limit that number based upon the practicality of efficiently conducting the investment program. The Finance Director shall also have the discretion to add or remove authorized financial institutions based upon potential or past performance.

1) Internal Control

The Finance Director is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the entity are protected from loss, theft, or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that the cost of a control should not exceed the benefits likely to be derived and that the valuation of costs and benefits requires the use of estimates and judgments by management.

2) Collateralization

Collateralization is required for certificates of deposit. North Carolina General Statutes allow the State Treasurer and the Local Government Commission to prescribe rules to regulate the collateralization of public deposits in North Carolina banks. These rules are codified in the North Carolina Administrative Code – Title 20, Chapter 7 (20 NCAC 7). The Pooling Method of collateralization under 20 NCAC 7 allows depositories to use an escrow account established with the State Treasurer to secure the deposits of all units of local government. This method transfers the responsibility for monitoring each bank's collateralization and financial condition from the County to the State Treasurer. The County will only maintain deposits with institutions using the Pooling Method of collateralization.

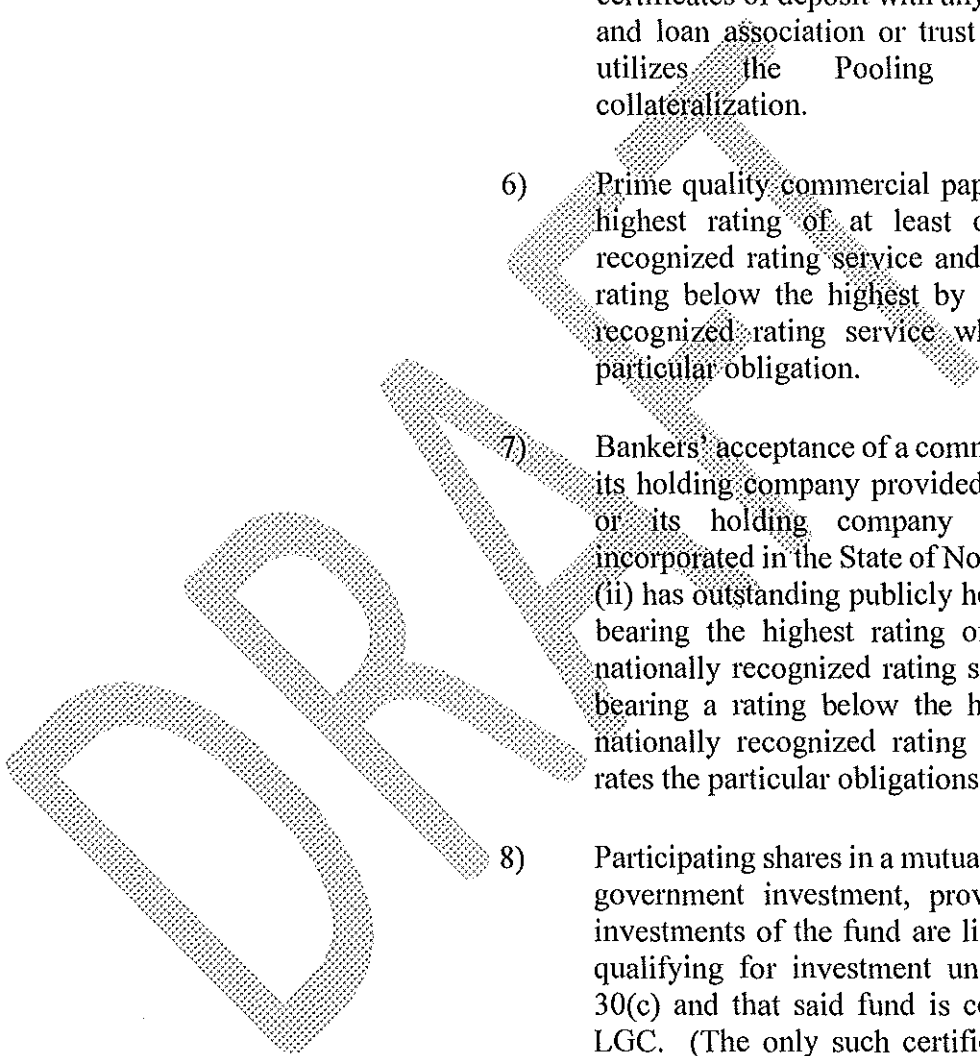
3) Delivery and Custody

All investment security transactions entered into by the County shall be conducted on a delivery versus payment basis. Securities will be held by a third party custodian designated by the Finance Director and each transaction will be evidenced by safekeeping receipts and tickets.

4) Authorized Investments

A. The County is empowered by North Carolina G.S. 159-30(c) to invest in certain types of investments. The Board of Commissioners approves the use of the following types, the list of which is more restrictive than G.S. 159-30(c):

- 1) Obligations of the United States or obligations fully guaranteed as to both principal and interest by the United States.
- 2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, and the United States Postal Service.

- 
- 3) Obligations of the State of North Carolina.
 - 4) Bonds and notes of any North Carolina local government or public authority that is rated “AA” or better by at least two of the nationally recognized ratings services or that carries any “AAA insured” rating.
 - 5) Fully collateralized deposits at interest or certificates of deposit with any bank, savings and loan association or trust company that utilizes the Pooling Method of collateralization.
 - 6) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.
 - 7) Bankers’ acceptance of a commercial bank or its holding company provided that the bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.
 - 8) Participating shares in a mutual fund for local government investment, provided that the investments of the fund are limited to those qualifying for investment under G.S. 150-30(c) and that said fund is certified by the LGC. (The only such certified fund is the North Carolina Capital Management Trust.)

B. Prohibited Forms of Investments

- 1) The use of repurchase agreements in the normal investment portfolio (not debt proceeds) is prohibited.
- 2) The use of collateralized mortgage obligations is prohibited.
- 3) The use of any type of securities lending practices is prohibited.

5) Diversification

- A. Investments will be diversified by security type and by institution.
- B. The total investment in certificates of deposit shall not exceed 25% of the County's total investment portfolio and the investment in certificates of deposit with a single financial institution shall not exceed \$3,000,000.
- C. The total investment in commercial paper shall not exceed 10% of the County's total investment portfolio and the investment in commercial paper of a single issuer shall not exceed \$4,000,000.
- D. The total investment in bankers' acceptances shall not exceed 10% of the County's total investment portfolio and the investment in bankers' acceptances of a single issuer shall not exceed \$7,000,000.
- E. The Finance Director is responsible for monitoring compliance with the above restrictions. If a violation occurs, the Finance Director shall report such to the County Manager and to the Board along with a plan to address the violation.

6) Maximum Maturities

- A. To the extent possible, the County will attempt to match its investments with anticipated cash flow requirements. Beyond identified cash flow needs, investments will be purchased so that maturities are staggered.

B. The following maturity limits are set for the County's investment portfolio:

- 1) No investment will have a maturity of more than two years without authorization from the County Manager.
- 2) No more than 10% of the total investment portfolio will be invested with a maturity longer than one year but less than two years. Because the total investment portfolio may fluctuate due to cash flow needs, investments with a maturity up to two years may exceed the calculated total. If this should occur, investments should not be liquidated to comply with this policy but future investing with maturities up to two years shall be avoided until the designated level is achieved.

7) Selection of Securities

The Finance Director or his or her designee will determine which investments shall be purchased and sold and the desired maturity date(s) that are in the best interest of the County. The selection of an investment will involve the evaluation of, but not limited to, the following factors: cash flow projections and requirements; current market conditions; and overall portfolio balance and makeup.

8) Responses to Changes in Short Term Interest Rates

A. The County will seek to employ the best and most appropriate strategy to respond to a declining short-term interest rate environment. The strategy may include, but does not have to be limited to, purchases of callable "cushion" bonds, lengthening of maturities in the portfolio, and increases in the percentage of ownership of treasury notes relative to that of treasury bills.

B. The County will seek to employ the best and most appropriate strategy to respond to an increasing short-term interest rate environment. That strategy may include, but does not have to be limited to,

purchases of “step-up” securities, shortening of maturities in the portfolio, the use of floating rate investments, and increases in the percentage of ownership of treasury bills relative to that of treasury notes.

9) Performance Standards

- A. The investment portfolio will be managed in accordance with the parameters specified within this policy. The investment portfolio will strive to obtain a market average rate of return within the constraints of the county's investment risk profile and cash flow needs.
- B. The performance benchmarks for the performance of the portfolio will be rates of return on 90-day commercial paper and on three-year treasury notes.

10) Active Trading of Securities

It is the County's intent, at the time of purchase, to hold all investments until maturity to ensure the return of all invested principal. However, if economic or market conditions change making it in the County's best interest to sell or to trade a security before maturity, that action may be taken.

11) Pooled Cash and Allocation of Interest Income

All monies earned and collected from investments other than bond proceeds will be allocated monthly to the various participating funds and component units based upon the average cash balance of each fund and component unit as a percentage of the total pooled portfolio. Earnings on bond proceeds will be directly credited to the same proceeds.

12) Market to Market

A report of the market value of the portfolio will be generated annually by the Finance Director. The Finance Director will use the reports to review the investment portfolio in terms of value and price volatility, as well as for compliance with GASB Statement #31.

6.0 ACCOUNTING, AUDITING AND FINANCIAL REPORTING POLICIES

6.1 General Policy

- 6.1.1 The County will maintain accounting systems in compliance with the North Carolina Local Government Budget and Fiscal Control Act. The County will maintain accounting systems that enable the preparation of financial statements in conformity with generally accepted accounting principals (GAAP).
- a. The basis of accounting within governmental funds will be modified accrual.
 - b. The basis for accounting within all Enterprise and Internal Service Funds will be the accrual basis.
- 6.1.2 Financial systems will be maintained to enable the continuous monitoring of revenues and expenditures or expenses with monthly reports provided to the County Manager and the Finance Director. Financial summaries will be provided to the Finance Committee at their regularly scheduled meetings. Monthly expenditure/expense reports will be provided to each director and department head for their functional area and online, real time, view only, access to the financial system will be made available to department heads and other staff as much as practical and its use encouraged. On a periodic basis an interim financial update will be provided to the Board of County Commissioners.
- 6.1.3 The County will place emphasis on maintenance of an accounting system which provides strong internal budgetary and financial controls designed to provide reasonable, but not absolute, assurance regarding both the safeguarding of assets against loss from unauthorized use or disposition and the reliability of financial records for preparing financial statements and reports, as well as the accountability of assets.
- 6.1.4 An annual audit will be performed by an independent certified public accounting firm that will issue an opinion on the annual financial statements as required by the Local Government Budget and Fiscal Control Act.
- 6.1.5 The County will solicit proposals from qualified independent certified public accounting firms for audit services. The principal factor in the audit procurement process will be the auditor's ability to perform a quality audit. The County will enter into a multiyear agreement with the selected firm. Firms are not barred from consecutive contract awards.

- 6.1.6 The Finance Committee of the Board will serve as the standing audit committee. The committee will oversee the independent audit of the county's financial statements, from the selection of the auditor to the resolution of any audit findings. A staff report concerning the annual audit will be presented to the Committee and the Board of County Commissioners.
- 6.1.7 The Finance Department/Internal Auditor will conduct some form of internal audit procedures at least one time per year, specifically focusing upon cash receipts procedures.
- 6.1.8 The County will prepare a CAFR. The CAFR will be prepared in compliance with established criteria to obtain the Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting and will be submitted to that award program each year.
- 6.1.9 Full and complete disclosure will be provided in all regulatory reports, financial statements and debt offering statements.
- 6.1.10 The County will use the CAFR as the disclosure document for meeting its obligation to provide certain annual financial information to the secondary debt market via various information repositories. The annual disclosure is a condition of certain debt covenants and contracts that are required by SEC Rule 15c2-12.
- 6.1.11 The Finance Department will maintain a Financial Procedures Manual as a central reference point and handbook for all financial, accounting and recording procedures.
- 6.1.12 The Information Technology Department will establish, document and maintain a Computer Disaster Recovery Plan and will provide for the daily backup of data and the offsite storage of the same.

7.0 SWAP POLICY

Use of synthetic debt transactions by use of swaps is permitted by Local Government Commission policy for selected counties and cities. Currently the County does not view synthetic debt transactions as consistent with its overall financial policies. The County will continue to review the potential for synthetic debt transactions using swaps and will adopt a formal swap policy to the extent needed in the future.

<END>

County of Cumberland
Resolution authorizing County of Cumberland
to engage in electronic payments as defined by G.S. 159-28

WHEREAS, it is the desire of the Board of County Commissioners that the County of Cumberland is authorized to engage in electronic payments as defined by G.S. 159-28;

WHEREAS, the Board of County Commissioners has adopted a written policy for pre-auditing obligations that will be incurred by electronic payments as required by NC Administrative Code 20 NCAC 03.0409;

WHEREAS, the Board of County Commissioners has adopted a written policy for disbursing public funds by electronic transaction as required by NC Administrative Code 20 NCAC 03.0410;

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of the County of Cumberland

Section 1. Authorizes the County of Cumberland to engage in electronic payments as defined by G.S. 159-28;

Section 2. Authorizes the County of Cumberland to disburse public funds by electronic transaction as required by NC Administrative Code 20 NCAC 03.0410; and

Section 3. This resolution shall take effect immediately upon its passage.

Upon motion of _____, and seconded by _____, the foregoing

Resolution was passed by the following vote:

Ayes: _____

Nays: None

Abstentions: None*****

I, _____, Clerk of the Board of County Commissioners of the County of Cumberland, do hereby certify that the foregoing resolution is a true and exact copy of the "**Resolution authorizing the County of Cumberland to engage in electronic payments as defined by G.S. 159-28**" duly adopted by the Board of County Commissioners of the County of Cumberland at the regular meeting thereof duly called and held on _____, a quorum being present.

WITNESS my hand at _____, N.C., this _____ day of _____, 20 .

_____, Clerk

VICKI EVANS
Finance Director



ITEM NO. 4

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 JUNE 7, 2018
MEETING OF THE POLICY COMMITTEE**

TO: FINANCE COMMITTEE

FROM: VICKI EVANS, FINANCE DIRECTOR

THRU: AMY CANNON, COUNTY MANAGER *AC*

DATE: MAY 31, 2018

SUBJECT: CONSIDERATION OF AMENDMENT TO COUNTY PURCHASING POLICY (1) BY INCORPORATING FEDERAL UNIFORM GUIDANCE PROCUREMENT STANDARDS (2) EXCEPTING THE SHERIFF'S OFFICE FROM THE PURCHASING POLICY

Requested by: Amy Cannon, County Manager

Presenter(s): Vicki Evans, Finance Director

Estimate of Committee Time Needed: 10 Minutes

BACKGROUND

The Federal Office of Budget and Management (OMB) has updated its Uniform Guidance Procurement Standards. The County must comply with these standards beginning July 1, 2018. The standards apply to the County when expending federal financial assistance funds including United States Department of Agriculture (USDA) loans and grants, Community Development Block Grant (CDBG) funds, Federal Emergency Management Agency (FEMA) Public Assistance disaster relief grants, and other programs, either directly funded or reimbursement driven.

The Local Government Commission (LGC) and the University of North Carolina School of Government (UNC-SOG) have provided guidance to local governments throughout the state in regard to the implementation of the Uniform Guidance. Locally, the County has taken the following steps toward timely implementation:

- Identified impact by determining applicable departments within the County
- Key staff of the applicable departments (and those who are responsible for sub-recipient

funding) attended the April 24, 2018 training webinar hosted by legal and financial professionals from the LGC and UNC-SOG

- Reviewed current policies to ensure compliance with the standards of conduct, conflicts of interest, and gift bans in accordance Uniform Guidance
 - The Code of Ethics (Section 501) of the Personnel Ordinance adopted by the Board on June 20, 2016 covers these items per Legal
- Revised (currently in draft form) the County's Purchasing Policy to incorporate Uniform Guidance policy language as provided by the UNC-SOG

Additionally, the Sheriff's Office has elected not to participate in the County's Purchasing Policy and wishes to implement his own procedures. For that reason, the Sheriff has been excepted from this draft policy and the Sheriff will be responsible for his own purchasing procedures. See sections 2.0 and 4.0 of the attached draft policy.

RECOMMENDATION/PROPOSED ACTION

Consider approval of the attached Purchasing Policy revisions which now incorporate

- (1) the Federal Uniform Guidance Procurement Standards; and
- (2) the Sheriff's exception from the Policy

Attachments: DRAFT – Revised Purchasing Policy
LGC Memorandum #2018-06 – Uniform Guidance Procurement Standards
UNC-SOG Sample Uniform Guidance Procurement Policy

Cumberland County

Section I – Board Approved Policies

Subsection 3: Cumberland County Financial / Audit

Policy No. 3-3: Purchasing Policy (3.1 Local Preference Policy)

The following policy was originally adopted on June 21, 1999 by the Board of Commissioners. This policy was amended on February 25, 2002, November 1, 2010, and June 5, 2017 by the Board of Commissioners.

1.0 PURPOSE

This manual has been developed as a resource for Cumberland County employees to follow when procuring goods and services on behalf of the County. The policy and procedures provided in this manual were established to ensure the fair and equitable treatment of all persons involved in public purchasing, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity, in accordance with North Carolina General Statutes (N.C.G.S).

2.0 SCOPE

This policy applies to all County employees conducting purchases on behalf of Cumberland County, ~~with the exception of the Office of the Sheriff and its employees, which shall conduct its own program and procedures for purchasing.~~

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3.0 POLICY

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3.1 Local Preference Policy

Contracts for the provision of services in any amount and all contracts for the purchase of apparatus, materials, supplies and equipment in which the aggregate purchase price in any single contract is less than \$30,000 shall be awarded to local vendors or suppliers, to the greatest extent possible, in accordance with the further conditions set out herein.

Local vendors or suppliers shall be those who demonstrate that they pay business personal or real property taxes and are either self-employed residents of Cumberland County or employ at least one resident of Cumberland County as an employee or officer of the contracting business entity.

3.2 Purchase Orders

All services and purchases in amounts of \$1,000 and more must have a purchase order prior to the purchase being made or the services being rendered. All purchases of goods in an amount greater than \$500 requires a document (invoice, quote, proposal, etc.) with sale details.

3.3 Purchases & Services

Less than 1,000

Department heads shall authorize services or purchases of apparatus, supplies, materials or equipment up to \$999.99 without a purchase order if sufficient funds are budgeted and available within the department budget. Prior to the purchase departments must ensure there is an appropriation authorizing the obligation and that sufficient funds will remain in the appropriation to pay the amounts that are expected to come due in the fiscal year in which the obligation is incurred.

\$1,000 – \$29,999.99

Department heads shall solicit proposals for services or purchases of apparatus, supplies, materials or equipment when the estimated cost is between \$1,000 - \$29,999.99. County Purchasing will review the purchase upon receipt of requisition to ensure compliance with County policies. County Purchasing may elect to solicit additional proposals on a random basis or if experience has revealed that a more favorable price is available.

3.4 Purchases of apparatus, supplies, materials, or equipment

\$30,000 – \$89,999.99

Informal bids are required for any purchase of apparatus, supplies, materials, or equipment that requires an expenditure of \$30,000 - \$89,999.99, except for purchases that qualify under the Competitive Bidding Exceptions as per N.C.G.S 143-129(e). Departments shall submit specifications to County Purchasing for purchases in this category.

\$90,000 and Above

Formal bids are required for any purchase of apparatus, supplies, materials, or equipment in amounts of \$90,000 or more, with exception of purchases that qualify under the Competitive Bidding Exceptions as per N.C.G.S 143-129(e). Departments shall submit specifications to County Purchasing for purchases in this category. The County Manager will must approve bid awards in amounts between \$90,000 - \$99,999.99. The Board of County Commissioners must approve bid awards in amounts of \$100,000 or greater.

3.5 Purchase of Services

\$30,000 and Above

An **Informal RFP** process is required for services estimated to cost \$30,000 or more. County Purchasing will review the proposal upon receipt of requisition to ensure compliance with county policies. County Purchasing may elect to solicit additional proposals on a random basis or if experience has revealed that a more favorable price is available.

3.6 Procurement Cards

The procurement card program was established to provide a more rapid turnaround of requisitions for low dollar value goods, and to reduce paperwork and handling costs. Procurement cardholders may initiate transactions in person, or by telephone, within the established limits of these procedures. Department heads may designate individuals to receive procurement cards. Procurement cardholders must attend a class in County Purchasing addressing the guidelines involved in the responsibility associated with the card. To ensure pre-audit requirement compliance, funds for each department's estimated procurement card charges shall be encumbered at the beginning of each fiscal year.

3.7 Contracts

All contracts for expenditures, in amounts of \$50,000 or more require County Manager signature. Contracts resulting from a formal bid process for expenditures in amounts of \$100,000 or more require Chairman to the Board of Commissioners signature, after Board approval. Contracts with a total amount less than \$50,000 may be signed by the Department head.

These signature requirements pertain to all contracts in which the county is obligated to expend funds, even if the funds have been approved by the Board of Commissioners in the original budget.

Contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200). See the Addendum following section 4.0 of this policy for the Uniform Guidance Procurement Policy.

3.8 Federal and State Law Compliance

Federal law and North Carolina general statutes allow local policy to be more restrictive. When comparing federal, state, and local procurement requirements to implement federal programs or grants, the most restrictive requirement shall be applied. This policy is more restrictive regarding bid requirements of services and dollar thresholds for contractual signatures in comparison to state statute requirements. Periodically, legislation results in changes to law and/or general statutes. This policy shall be automatically updated upon

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changes in general statutes referenced within this policy, except for bid requirements of services and dollar thresholds for contractual signatures.

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4.0 IMPLEMENTATION

The Finance Director is responsible for implementing and enforcing this Policy and to interpret it consistent with its spirit and intent, fiscal prudence and accountability. The Finance Director is authorized to prescribe additional administrative instructions for implementing the above policy. The Finance Officer shall not be responsible for implementing any programs or procedures for purchasing implemented by the Sheriff's Office.

ADDENDUM

Uniform Guidance Procurement Policy for North Carolina Local Governments

I. Purpose

The purpose of this Policy is to establish guidelines that meet or exceed the procurement requirements for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract.

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II. Policy

A. Application of Policy. This policy applies to contracts for purchases, services, and construction or repair work funded with federal financial assistance (direct or reimbursed). The requirements of this Policy also apply to any subrecipient of the funds.

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All federally funded projects, loans, grants, and sub-grants, whether funded in part or wholly, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards (Uniform Guidance) codified at 2 C.F.R. Part 200 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds.

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B. Compliance with Federal Law. All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200-326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. Cumberland County will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the County have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.

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C. **Contract Award.** All contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract.

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D. **No Evasion.** No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this Policy or state and federal law.

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E. **Contract Requirements.** All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R. § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.

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F. **Contractors' Conflict of Interest.** Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be excluded from competing for such requirements.

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G. **Approval and Modification.** The administrative procedures contained in this Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

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III. **General Procurement Standards and Procedures:**

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Either the Purchasing Department or the Requesting Department shall procure all contracts in accordance with the requirements of this Section of the Policy.

A. **Necessity.** Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. The Purchasing Department and/or the Requesting Department should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.

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B. **Clear Specifications.** All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.

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C. **Notice of Federal Funding.** All bid solicitations must acknowledge the use of federal funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.

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D. **Compliance by Contractors.** All solicitations shall inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.

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E. Fixed Price. Solicitations must state that bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts are prohibited. Time and materials contracts are prohibited in most circumstances. Time and materials contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A time and materials contract shall not be awarded without express written permission of the federal agency or state pass-through agency that awarded the funds.

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F. Use of Brand Names. When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how the reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and "or equal" must be included in the description.

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G. Lease versus Purchase. Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach.

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H. Dividing Contract for Minority/Women Business Enterprises (M/WBE) Participation. If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.

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I. Documentation. Documentation must be maintained by the Purchasing Department and/or the Requesting Department detailing the history of all procurements. The documentation should include the procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor's responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request.

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J. Cost Estimate. For all procurements costing \$150,000 or more, the Purchasing Department and/or Requesting Department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.

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K. Contract Requirements. The Requesting Department must prepare a written contract incorporating the provisions referenced in Section II.C of this Policy.

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L. Debarment. No contract shall be awarded to a contractor included on the federally debarred bidder's list.

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M. Contractor Oversight. The Requesting Department receiving the federal funding must maintain oversight of the contract to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.

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N. Open Competition. Solicitations shall be prepared in a way to be fair and provide open competition. The procurement process shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding, specifying a brand name without allowing for "or equal" products, or other unnecessary requirements that have the effect of restricting competition.

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O. Geographic Preference. No contract shall be awarded on the basis of a geographic preference.

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IV. Specific Procurement Procedures

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Either the Purchasing Department or the Requesting Department shall solicit bids in accordance with the requirements under this Section of the Policy based on the type and cost of the contract.

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A. Service Contracts except for Architectural/Engineering (A/E) professional services and **Purchase Contracts** costing less than \$3,500 shall be procured using the Uniform Guidance "micro-purchase" procedure (2 C.F.R. § 200.320(a)) as follows:

1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
2. To the extent practicable, purchases must be distributed among qualified suppliers.

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B. Service Contracts (except for A/E professional services) and **Purchase Contracts** costing \$3,500 up to \$90,000 shall be procured using the Uniform Guidance "small purchase" procedure (2 C.F.R. § 200.320(b)) as follows:

1. Obtain price or rate quotes from an "adequate number" of qualified sources (a federal grantor agency might issue guidance interpreting "adequate number," so the Requesting Department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Cost or price analysis is not required prior to soliciting bids.
4. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).
5. Award the contract to the lowest responsive, responsible bidder.

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C. Service Contracts (except for A/E professional services) and **Purchase Contracts** costing \$90,000 and above shall be procured using a combination of the most restrictive requirements of the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids.
2. Complete specifications or purchase description must be made available to all bidders.

3. The bid must be formally advertised in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for "sound documented reasons."
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
5. Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
6. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis. Governing board approval is required for purchase contracts unless the governing board has delegated award authority to an individual official or employee. Any and all bids may be rejected only for "sound documented reasons."

D. Service Contracts (except for A/E professional services) costing \$150,000 and above may be procured using the Uniform Guidance "competitive proposal" procedure (2 C.F.R. § 200.320(d)) when the "sealed bid" procedure is not appropriate for the particular type of service being sought. The procedures are as follows:

1. A Request for Proposals (RFP) must be publicly advertised. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an "adequate number" of qualified firms.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
3. Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
4. Consider all responses to the publicized RFP to the maximum extent practical.
5. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
6. Award the contract to the responsible firm with most advantageous proposal taking into account price and other factors identified in the RFP. Governing board approval is not required.
7. Award the contract on a fixed-price or cost-reimbursement basis.

E. Construction and repair contracts costing less than \$3,500 shall be procured using the Uniform Guidance "micro-purchase" procedure (2 C.F.R. § 200.320(a)) as follows:

1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
2. To the extent practicable, contracts must be distributed among qualified suppliers.

F. Construction and repair contracts costing \$3,500 up to \$150,000 shall be procured using the Uniform Guidance "small purchase" procedure (2 C.F.R. § 200.320(b)) as follows:

1. Obtain price or rate quotes from an "adequate number" of qualified sources (a federal grantor agency might issue guidance interpreting "adequate number," so

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- the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
 3. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
 4. Award the contract on a fixed-price or not-to-exceed basis.
 5. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required.

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G. Construction and repair contracts costing \$150,000 up to \$500,000 shall be procured using the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) as follows:

1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. Publicly advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids (formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders. Performance and payment bonds of 100% of the contract price is required of the winning bidder.
7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required. Any and all bids may be rejected only for "sound documented reasons."

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H. Construction and repair contracts costing \$500,000 and above shall be procured using a combination of the most restrictive requirements of the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids (this cost estimate should be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. Formally advertise the bid in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for "sound documented reasons."
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.

5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of 3 bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders (a bid that does not include a bid bond cannot be counted toward the 3-bid minimum requirement). Performance and payment bonds of 100% of the contract price is required of the winning bidder.
7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is required and cannot be delegated. The governing board may reject and all bids only for "sound documented reasons."

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I. Construction or repair contracts involving a building costing \$300,000 and above must comply with the following additional requirements under state law:

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

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J. Contracts for Architectural and Engineering Services costing under \$150,000 shall be procured using the state "Mini-Brooks Act" requirements (G.S. 143-64.31) as follows:

1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. § 200.321.
3. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
4. Rank respondents based on qualifications and select the best qualified firm. Price cannot be a factor in the evaluation. Preference may be given to in-state (but not local) firms.
5. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
6. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

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K. Contracts for Architectural and Engineering Services costing \$150,000 or more shall be procured using the Uniform Guidance "competitive proposal" procedure (2 C.F.R. § 200.320(d)(5)) as follows:

1. Publicly advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.

2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
3. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
4. Proposals must be solicited from an "adequate number of qualified sources" (an individual federal grantor agency may issue guidance interpreting "adequate number").
5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
6. Consider all responses to the publicized RFQ to the maximum extent practical.
7. Evaluate qualifications of respondents to rank respondents and select the most qualified firm. Preference may be given to in-state (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
8. Price cannot be a factor in the initial selection of the most qualified firm.
9. Once the most qualified firm is selected, negotiate fair and reasonable compensation. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
10. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

V. Exceptions

Non-competitive contracts are allowed *only* under the following conditions and with the written approval of the federal agency or state pass-through agency that awarded the federal funds:

A. Sole Source. A contract may be awarded without competitive bidding when the item is available from only one source. The Purchasing Department and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the governing board.

B. Public Exigency. A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding.

C. Inadequate Competition. A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.

D. Federal Contract. A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.

E. Awarding Agency Approval. A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-

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through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law.

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NORTH CAROLINA
DEPARTMENT OF STATE TREASURER

STATE TREASURER OF NORTH CAROLINA
DALE R. FOLWELL, CPA

Dale R. Folwell, CPA

**STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION**

GREGORY C. GASKINS
DEPUTY TREASURER

Memorandum #2018-06

TO: Independent Auditors, North Carolina Local Governments and Public Authorities, interested parties

FROM: Sharon Edmundson, Director, Fiscal Management Section

SUBJECT: Uniform Guidance Procurement Standards

DATE: March 20, 2018

As most of you are aware, the Office of Budget and Management (OMB) officially implemented its Uniform Administrative Requirements, Cost Principles, and Audit Requirements, commonly referred to as Uniform Guidance (UG), in December of 2014¹. However, due to significant changes to the procurement requirements that were part of that new guidance, OMB delayed the implementation of those procurement requirements twice, to a full three years from the original UG effective date². With the extensions of time coming to a close, implementation of the procurement requirements is imminent. Local governments and public authorities that expend federal financial assistance (including USDA loans and grants, CDBG funds, FEMA Public Assistance disaster relief grants, and other programs, either directly funded or reimbursement driven) must comply with these new requirements for all fiscal years beginning on or after December 26, 2017; for most of you this means the fiscal year that begins on July 1, 2018, but it also applies to entities with a fiscal year that began on January 1, and those beginning on April 1 or October 1, 2018.

Critical Points

The UG procurement requirements are complex but there are some critical points that units need to be aware of immediately. These points are reviewed in more detail throughout this document.

1. **Applicability** – The requirements are applicable to the purchase of both goods and services, as well as construction and repair projects, which differs significantly from our State laws that apply primarily to the purchase of goods or construction contracts.
2. **Includes Loans and Grants** - The requirements apply to federal financial assistance. We are not aware of any exclusions in place on funds received from USDA loans and grants, FEMA Public

¹ Uniform Administrative Requirement, Cost Principles, and Audit Requirements, Title 2 U.S. Code of Federal Regulations, Part 200

² Federal Register Vol. 80, No. 175 - Effective date: September 10, 2015, two year grace period for implementation of procurement standards in 2CFR 200.317 through 200.326. Federal Register Vol. 82, No. 94 - Effective date: May 17, 2017, additional one year grace period. Effective date will start for fiscal years beginning on or after December 26, 2017.

Assistance disaster relief grants, CDBG programs, and the Highway Planning, Research and Construction Program. We believe that SRF programs funded by the EPA are exempt. However, we strongly encourage you to contact the applicable grantor agency for specific questions about applicability to specific sources of funds.

3. **Lower Dollar Thresholds** – The UG procurement requirements start at purchases of \$3,500, \$2,000 if Wage Rate requirements apply. This is a significantly lower threshold than is set by current State law.
4. **Written Policies and Procedures Required** – As you read through all of the rules of the procurement requirements you will note a recurring theme – the unit of government must have written policies and procedures that address the purchase of goods and services in accordance with the UG regulations as well as some peripheral requirements on topics such as a code of ethics and gift bans from vendors. These written policies and procedures must be in place by July 1, 2018 if you are already a participant in a federal assistance program or by your first draw if you are not yet actively participating in a covered program.
5. **Standards of Conduct, Conflicts of Interest, and Gift Ban** – Each participating unit must have written standards of conduct that cover conflicts of interest and the gift ban, which is in place for not only its elected board but all employees and agents of the unit. The rules cover all current or future vendors and service providers. The requirements under the UG procurement rules are more restrictive than what is currently required by the State in this area.
6. **Entities Subject to the Rules** – These rules apply not only to direct recipients of federal financial assistance but also to all sub-recipients including the organization(s) in final receipt of the funds. For example, if a unit of government passes through CDBG funds to a Community Development Corporation (CDC), the rules apply not only to the unit but to the CDC as well.

The UG procurement requirements are part of the administrative requirements found in Subpart D of the Uniform Guidance, §200.318 to §200.326, and apply to the procurement of **goods and services (as well as construction and repair contracts)** directly charged to federal awards. They do not apply to indirect costs or payroll. The UG describes most of these requirements as a “must” or as unconditional, in lieu of a “should” or recommended or best practice. Please note these requirements apply to the procurement of both **goods (purchase contracts) and services** – currently our State statutes do not place many restrictions or documentation requirements on the procurement of services.

The UG procurement requirements apply to purchases that are paid or reimbursed from federal financial assistance. This includes (but is not limited to) purchases that are reimbursed from USDA grants **and loans**, Community Development Block Grant (CDBG) programs, public disaster grants and reimbursement from FEMA, and the Highway Planning, Research, and Construction program. Many units of government participate in one or more of these programs; **it is important to note that it applies to Federal loan funds in addition to grants.**

Some units of government may not receive or expend federal financial assistance on a routine basis; however, the requirements still apply any time they do expend federal financial assistance. Units must have written procedures in place to ensure compliance with the UG procurement standards.

UG procurement standards require that each unit of government maintain its own documented procedures that reflect the requirements of the standards as well as the requirements of all applicable State and local laws and regulations.

The UNC-School of Government has prepared a document, "Comparison of Federal and State Procurement Requirements for North Carolina Local Governments,"³ that breaks down key parts of the UG procurement requirements and compares them to State purchasing law; this document also can be found on our website [here](#). This document is an excellent resource for units to use in educating staff about the new requirements and to assist in determining if the federal or State law is more restrictive.

Please note that if the requirements conflict, the unit is to comply with the more restrictive requirement.

Key Elements of Uniform Guidance Procurement Standards

The various procurement requirements have been put in place to help ensure that all eligible procurements are made in such a way that certain goals are achieved. As a result, there are key elements of the UG procurement standards that must be followed regardless of the method of procurement.

- The unit of government must use *its own documented procedures* which reflect applicable state and local laws and regulations, provided that the procurement conforms to applicable federal law and the UG procurement standards.
- The unit of government *must maintain oversight* to ensure that the *contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders*.
- The unit of government *must maintain written policies and procedures of conduct covering conflicts of interest* and governing the action of its employees, officers, or agents engaged in the selection, award, and administration of contracts. The policy must cover organizational and personal conflict of interest. *Please note that the federal requirements are more expansive in coverage than the State's requirements in this area.* Units need to pay attention to this area and ensure that documented policies adhere to the federal requirements.
- The unit of government must *avoid acquisition of unnecessary or duplicative items*. The unit should take advantage of the best procurement practices to ensure the most efficient and effective approach to purchases. The unit of government is encouraged to enter into state and local

³ Comparison of the UG with the NC General Statutes. Also included is a comparison of the UG procurement standards to the FEMA Supplement to Public Assistance Procurement Disaster Team field manual.

government intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. The unit of government is encouraged to use value engineering clauses in contracts for construction projects of sufficient sizes to offer reasonable opportunities for cost reduction. The unit of government also is encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property.

- The unit of government must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences, unless the federal statutes specifically mandate or encourage geographical preferences.
- The unit of government must maintain records sufficient to detail the history of a procurement. These records will include, but are not necessarily limited to, why or why not a particular method of procurement, contract type, contractor, or price was used.
- All procurement transactions must be conducted in a manner that provides full and open competition consistent with the UG procurement standards and avoids measures that include, but are not limited to:
 - imposing unreasonable requirements on contractors in order for them to qualify to do business;
 - requiring unnecessary experience and excessive bonding; or
 - specifying only a brand name product instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement.
- The unit's contracts must include a number of provisions required under the UG including remedies, termination for cause and convenience, EEO requirements, worker safety and wage and hour requirements, Clean Air Act and Federal Water Pollution Control Act requirements, debarment and suspension, procurement of recovered materials, contract modifications, access to records, Byrd Anti-lobbying provisions, and other provisions that may be required by the federal granting agency. Examples of these UG-required contract provisions are available at: <https://www.fema.gov/media-library-data/1483976790556-96bfcf3bf2c64e94d6f63dd4169a7d2c/RequiredContractClauses2C.F.R.200.326and2C.F.R.Part200AappendixII10917.pdf>

Five Allowable Methods of Procurement

OMB has defined five allowable methods of procurement that non-federal entities must follow for all eligible purchases of both goods and services made with federal financial assistance.

1. **Micro-purchases** – This method refers to the acquisition of goods or services, including construction, when the aggregate dollar amount does not exceed the micro-purchase threshold. The micro-purchase threshold as of the date of this memo is \$3,500 (\$2,000 for construction subject to

the Wage Rate requirements).⁴ Soliciting competitive prices is not required if the unit of government believes the price is fair. Units are encouraged to distribute micro-purchases equitably among suppliers, if practical. This method applies to purchases in the aggregate and not to the cost of an individual item. For example, the total purchase price of office supplies that includes a variety of items (pens, pencils, tape, computer paper, notebooks, etc.), could not exceed the threshold for the unit to be allowed to use the micro-purchase method, even though the cost of the individual items in the purchase are well below the maximum. Both the micro-purchase threshold and the Simplified Acquisition Threshold (SAT), which is \$150,000² and discussed in the next paragraph, are periodically adjusted for inflation.

2. **Small purchases** – This method is for procurement of goods (purchase contracts), services, and construction or repair projects between the micro-purchase threshold and the SAT (purchases between \$3,500 and \$150,000). Relatively simple and informal methods of securing services, supplies, or other property are allowed. There must be price or rate quotes from an adequate number of qualified sources. Pricing from the internet, vendor price sheets, or logging of verbal quotes are all allowed. While the UG does not define “adequate number of qualified sources,” some federal agencies have issued guidance assigning specific numbers to this requirement. For example, FEMA has interpreted “adequate number” to mean receiving at least 3 quotes. Units should consult with their federal granting agency to determine if that agency has issued guidance defining “adequate number.”
3. **Sealed bids (formal advertising)** – These apply to procurement of goods (purchase contracts), services, and construction or repair projects that exceed the SAT. Bids are publicly solicited and a firm-fixed-price contract, whether a lump sum or a unit price, is awarded to the responsible bidder whose bid conforms to all the material items and is the lowest price. This method is the preferred method for procuring construction if sealed bids are feasible, if a complete and realistic specification or purchase description is available, if an adequate number of bidders (two or more) participate, and if the procurement lends itself to a firm-fixed-price contract and the selection of the successful bidder can be made principally on the basis of price. The unit of government must make independent estimates before receiving bids and proposals.
4. **Competitive proposals** – This method is generally used for procurement of goods (purchase contracts), services, and construction or repair projects greater than the SAT when it is not appropriate to use sealed bids. The technique is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. Request for proposals must be publicized and must identify all evaluation factors and their relative importance. An adequate number of proposals must be solicited. There needs to be a written method for evaluating proposals and selecting recipients. The responsible firm is awarded the contract that is most advantageous to the program considering price and other factors.

⁴ The thresholds for micro-purchases and the SAT are set by the General Service Administration as part of the Federal Acquisition Regulation at Title 48 of the Code of Federal Regulations, Subpart 2.1 (definitions). Other agencies and organizations set thresholds for other types of acquisitions. The notice of proposed changes and amounts are announced in the *Federal Register*.

5. **Noncompetitive proposals** – These proposals are for soliciting from one source and may be used if an item is only available from one source, if a public emergency will not permit a delay, if a federal or pass-through agency authorizes the sole source in response to a written request, or if after solicitation from a number of sources, competition is determined inadequate.

The unit of government must perform a cost or price analysis for all procurement actions that utilize sealed bids, competitive, or noncompetitive proposals, if the contract price is in excess of the SAT. The method and degree of the cost or price analysis is dependent on the facts of the procurement. Micro-purchases and small purchases do not require cost or price analysis.

The UG procurement standards require that units of government and public authorities place emphasis on contracting with small and minority businesses, women business enterprises, and surplus area firms. This includes placing qualifying businesses on vendor lists, soliciting them whenever they are a potential source for goods and services, and dividing the projects into smaller tasks or quantities to permit participation. Contractors also are required to follow these procedures when hiring subcontractors.

Awarding Contracts

Units must make several determinations when awarding contracts, including making a determination if the contractor is responsible and if the contractor has the ability to perform successfully under the contract considering such factors as integrity, compliance with public policy, past performance, and availability of financial and technical resources (this standard of award mirrors the lowest responsive, responsible bidder standard of award under North Carolina state law). The unit also must document and maintain records of procurement that include the rationale for selecting the methodology used to make the purchase, selection of the type of contract, selection or rejection of the contractor, and basis for the contract price. Units cannot award contracts or sub-contracts to companies that have been debarred or suspended (see <https://www.sam.gov> for current list).

Federal versus State Laws over Procurement?

The UG procurement standards apply only to federal financial assistance, but North Carolina state law also applies to purchases of goods and construction or repair contracts made with federal financial assistance.⁵ This memo has focused primarily on procurement requirements under the federal uniform rules. Local governments and public authorities should read the grant agreements or contact your granting agencies for agency-specific guidelines. When comparing federal and state procurement requirements, local governments and public authorities should apply the requirements that are more restrictive, including requirements imposed by local policies. If there is overlap among local, state, and federal rules, and none of the rules are more restrictive than the other, the federal rules will apply.

⁵ Most State of North Carolina procurement requirements applicable to local governments are found in Article 8 of G.S. Chapter 143. Federal law is identified in Title 45 Code of Federal Regulations §92.36.

North Carolina purchasing law has formal and informal bidding requirements. Informal bidding procedures apply to the purchase of goods only between \$30,000 and \$90,000 and construction/repair contracts costing \$30,000 and \$500,000. Formal bidding procedures apply to the purchase of goods only costing \$90,000 or more and construction/repair contracts costing \$500,000 or more. Compared to the small purchase, sealed bid, or competitive proposal requirements under the UG procurement rules, you can see that State requirements generally are much less restrictive, and therefore the Federal requirements must be followed except to the extent that a particular requirement under state law is more restrictive. For example, the UG sealed bid method requires a minimum of 2 bids in order to open bids and award the contract while state formal bidding requirements for construction and repair contracts require a minimum of 3 bids. Units must carefully compare local, state, and federal procurements requirements to ensure that the most restrictive requirement is always followed.

Steps to Implementing the Uniform Guidance Procurement Standards

In updating its purchasing policies, OMB has stated that “nonfederal entities have the flexibility to incorporate the UG’s procurement requirement verbatim or simply reference it in their procedures and policies. A general statement about how the ‘procurements must conform to applicable Federal law and standards’ should suffice.”⁶ An example of this compliance statement is: “Contracts funded with federal grant funds shall be procured in a manner that is in compliance with all applicable Federal laws, policies, and standards as well as state law and local policies.”

Units of governments must be able to provide documentation to support why a bidder was accepted or rejected for a sealed bid or competitive proposal. Also, as mentioned earlier, sufficient records detailing the history of procurement must be maintained, regardless of what purchase method is used or what decision is reached. Documentation can include printouts of internet searches for price quotes or a written memo detailing the reasons for accepting or rejecting the bidders in a sealed bid or competitive proposal purchase.

Local government auditors will review procurement policies and procedures based on the documented standards when testing major programs such as USDA grants and loans, CDBG programs, and other federal financial assistance for compliance as part of the annual compliance audit.

If your government has not yet adopted the UG procurement requirements, then you are strongly encouraged to do so as soon as possible. Consider these steps:

- **If the unit’s procurement procedures are not currently documented, the government should make this a top priority.** Some units have not made documentation and/or updating of written policies and procedures a part of normal operations and will have significant amounts of work to do to comply with these new requirements. The unit’s procurement policy should include a compliance statement confirming that the unit will follow all applicable local, state, and federal procurement requirements when expending federal funds.

⁶ E-mail dated May 25, 2017, from Maribel L. Miller, Executive Office of the President, Office of Budget and Management

- *If the unit does not have a local policy governing conflicts of interests and prohibitions on gifts and favors from vendors and contractors that is compliant with the UG, it should take steps to develop and implement this policy.*
- Read the requirements found in the UG §200.318 to §200.326 and review the SOG document referenced previously.
- Determine how these requirements will impact the procedures for procuring goods, services and construction or repair contracts that your government currently has in effect.
- Incorporate the UG procurement requirements that are specific to your unit of government into your current policies and procedures. For example, each government should determine an adequate number of bids or proposals (UG §200.318) to obtain.
- In your policies or procedures, be sure to remove guidance from other regulations, circulars, or agency information that is outdated. For example, references to Circulars A-102 or A-133 should be removed.
- Have your legal counsel review the revised procedures. An accounting firm also may provide guidance; however, using a firm that may perform the annual audit of your government may affect the firm's independence.
- Incorporate these revised procedures on any contracts or grant agreements with sub-recipients of federal financial assistance.
- Have your legal counsel develop template (boilerplate) contract language that incorporates all the provisions mandated under the UG. Examples of UG required contract provisions are available at <https://www.fema.gov/media-library-data/1483976790556-96bfcf3bf2c64e94d6f63dd4169a7d2c/RequiredContractClauses2C.F.R.200.326and2C.F.R.Part200AppendixII10917.pdf>
- Discuss the UG procurement requirements with any potential contractor prior to entering into any agreement.

If you have questions about the UG procurement requirements, please contact Jim Burke at (919) 814-4301 or via email at james.burke@nctreasurer.com.

Sample Uniform Guidance Procurement Policy For North Carolina Local Governments

Comment: When spending federal grant and loan award funds, local governments are required to adopt written procurement policies that confirm to applicable federal law and the Uniform Guidance. (2 C.F.R. § 200.318(a)) This sample policy contains language found in the relevant sections of the Uniform Guidance, 2 C.F.R. Part 200, relating to procurement requirements. Local governments should review their own local policies and consult with their attorneys to make modifications as needed to conform to local purchasing practices (such as approval processes and use of purchasing cards and purchase orders) when adopting this policy. For individual contracts, local governments also should consult their grant award documents and with their federal grantor agency to determine whether additional procurement requirements apply.

I. Purpose

The purpose of this Policy is to establish guidelines that meet or exceed the procurement requirements for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract.

II. Policy

- A. Application of Policy.** This policy applies to contracts for purchases, services, and construction or repair work funded with federal financial assistance (direct or reimbursed). The requirements of this Policy also apply to any subrecipient of the funds.

All federally funded projects, loans, grants, and sub-grants, whether funded in part or wholly, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards (Uniform Guidance) codified at 2 C.F.R. Part 200 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds.

- B. Compliance with Federal Law.** All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200.326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. _____ [unit of government] will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the _____ [unit of government] have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.
- C. Contract Award.** All contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract.

- D. **No Evasion.** No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this Policy or state and federal law.
- E. **Contract Requirements.** All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.
- F. **Contractors' Conflict of Interest.** Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be excluded from competing for such requirements.
- G. **Approval and Modification.** The administrative procedures contained in this Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

III. General Procurement Standards and Procedures:

Either the Purchasing Department or the Requesting Department shall procure all contracts in accordance with the requirements of this Section of the Policy.

- A. **Necessity.** Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. The Purchasing Department and/or the Requesting Department should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.
- B. **Clear Specifications.** All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.
- C. **Notice of Federal Funding.** All bid solicitations must acknowledge the use of federal funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.
- D. **Compliance by Contractors.** All solicitations shall inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.

- E. **Fixed Price.** Solicitations must state that bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts are prohibited. Time and materials contracts are prohibited in most circumstances. Time and materials contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A time and materials contract shall not be awarded without express written permission of the federal agency or state pass-through agency that awarded the funds.
- F. **Use of Brand Names.** When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how to reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and "or equal" must be included in the description.
- G. **Lease versus Purchase.** Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach.
- H. **Dividing Contract for M/WBE Participation.** If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.
- I. **Documentation.** Documentation must be maintained by the Purchasing Department and/or the Requesting Department detailing the history of all procurements. The documentation should include the procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor's responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request.
- J. **Cost Estimate.** For all procurements costing \$150,000 or more, the Purchasing Department and/or Requesting Department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.
- K. **Contract Requirements.** The Requesting Department must prepare a written contract incorporating the provisions referenced in Section II.C of this Policy.

- L. **Debarment.** No contract shall be awarded to a contractor included on the federally debarred bidder's list.
- M. **Contractor Oversight.** The Requesting Department receiving the federal funding must maintain oversight of the contract to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.
- N. **Open Competition.** Solicitations shall be prepared in a way to be fair and provide open competition. The procurement process shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding, specifying a brand name without allowing for "or equal" products, or other unnecessary requirements that have the effect of restricting competition.
- O. **Geographic Preference.** No contract shall be awarded on the basis of a geographic preference.

IV. Specific Procurement Procedures

Either the Purchasing Department or the Requesting Department shall solicit bids in accordance with the requirements under this Section of the Policy based on the type and cost of the contract.

- A. **Service Contracts (except for A/E professional services) and Purchase Contracts costing less than \$3,500** shall be procured using the Uniform Guidance "micro-purchase" procedure (2 C.F.R. § 200.320(a)) as follows:
 - 1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
 - 2. To the extent practicable, purchases must be distributed among qualified suppliers.
- B. **Service Contracts (except for A/E professional services) and Purchase Contracts costing \$3,500 up to \$90,000** shall be procured using the Uniform Guidance "small purchase" procedure (2 C.F.R. § 200.320(b)) as follows:
 - 1. Obtain price or rate quotes from an "adequate number" of qualified sources (a federal grantor agency might issue guidance interpreting "adequate number," so the Requesting Department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
 - 2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
 - 3. Cost or price analysis is not required prior to soliciting bids.
 - 4. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).
 - 5. Award the contract to the lowest responsive, responsible bidder.

C. Service Contracts (except for A/E professional services) and Purchase Contracts costing \$90,000 and above shall be procured using a combination of the most restrictive requirements of the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids.
2. Complete specifications or purchase description must be made available to all bidders.
3. The bid must be formally advertised in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for "sound documented reasons."
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
5. Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
6. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis. Governing board approval is required for purchase contracts unless the governing board has delegated award authority to an individual official or employee. Any and all bids may be rejected only for "sound documented reasons."

D. Service Contracts (except for A/E professional services) costing \$150,000 and above may be procured using the Uniform Guidance "competitive proposal" procedure (2 C.F.R. § 200.320(d)) when the "sealed bid" procedure is not appropriate for the particular type of service being sought. The procedures are as follows:

1. A Request for Proposals (RFP) must be publicly advertised. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an "adequate number" of qualified firms.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
3. Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
4. Consider all responses to the publicized RFP to the maximum extent practical.
5. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
6. Award the contract to the responsible firm with most advantageous proposal taking into account price and other factors identified in the RFP. Governing board approval is not required.
7. Award the contract on a fixed-price or cost-reimbursement basis.

- E. Construction and repair contracts costing less than \$3,500 shall be procured using the Uniform Guidance "micro-purchase" procedure (2 C.F.R. § 200.320(a)) as follows:
1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
 2. To the extent practicable, contracts must be distributed among qualified suppliers.
- F. Construction and repair contracts costing \$3,500 up to \$150,000 shall be procured using the Uniform Guidance "small purchase" procedure (2 C.F.R. § 200.320(b)) as follows:
1. Obtain price or rate quotes from an "adequate number" of qualified sources (a federal grantor agency might issue guidance interpreting "adequate number," so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
 2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
 3. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
 4. Award the contract on a fixed-price or not-to-exceed basis.
 5. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required.
- G. Construction and repair contracts costing \$150,000 up to \$500,000 shall be procured using the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) as follows:
1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
 2. Complete specifications must be made available to all bidders.
 3. Publically advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids (formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
 4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
 5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
 6. A 5% bid bond is required of all bidders. Performance and payment bonds of 100% of the contract price is required of the winning bidder.
 7. Award the contract on a firm fixed-price basis.
 8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required. Any and all bids may be rejected only for "sound documented reasons."

H. Construction and repair contracts costing \$500,000 and above shall be procured using a combination of the most restrictive requirements of the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids (this cost estimate should be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. Formally advertise the bid in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for "sound documented reasons."
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of 3 bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders (a bid that does not include a bid bond cannot be counted toward the 3-bid minimum requirement). Performance and payment bonds of 100% of the contract price is required of the winning bidder.
7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is required and cannot be delegated. The governing board may reject and all bids only for "sound documented reasons."

I. Construction or repair contracts involving a building costing \$300,000 and above must comply with the following additional requirements under state law:

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

J. Contracts for Architectural and Engineering Services costing under \$150,000 shall be procured using the state "Mini-Brooks Act" requirements (G.S. 143-64.31) as follows:

1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.

2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. § 200.321.
 3. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
 4. Rank respondents based on qualifications and select the best qualified firm. Price cannot be a factor in the evaluation. Preference may be given to in-state (but not local) firms.
 5. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
 6. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.
- K. **Contracts for Architectural and Engineering Services costing \$150,000 or more shall be procured using the Uniform Guidance "competitive proposal" procedure (2 C.F.R. § 200.320(d)(5)) as follows:**
1. Publically advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
 2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
 3. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
 4. Proposals must be solicited from an "adequate number of qualified sources" (an individual federal grantor agency may issue guidance interpreting "adequate number").
 5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
 6. Consider all responses to the publicized RFQ to the maximum extent practical.
 7. Evaluate qualifications of respondents to rank respondents and select the most qualified firm. Preference may be given to in-state (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
 8. Price cannot be a factor in the initial selection of the most qualified firm.
 9. Once the most qualified firm is selected, negotiate fair and reasonable compensation. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
 10. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

V. Exceptions

Non-competitive contracts are allowed *only* under the following conditions and with the written approval of the federal agency or state pass-through agency that awarded the federal funds:

- A. **Sole Source.** A contract may be awarded without competitive bidding when the item is available from only one source. The Purchasing Department and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the governing board.
- B. **Public Exigency.** A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding.
- C. **Inadequate Competition.** A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.
- D. **Federal Contract.** A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.
- E. **Awarding Agency Approval.** A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law.

Sample Uniform Guidance Conflict of Interest Policy For North Carolina Local Governments

Comment: When spending federal award funds, local governments are required to adopt written policies governing conflicts of interest and gifts. 2 C.F.R. § 200.318(c)(1). This sample policy contains language found in the relevant sections of the Uniform Guidance, 2 C.F.R. Part 200, relating to conflicts of interest and gifts. Local governments should review their own local policies and consult with their attorneys when adopting this policy.

I. Purpose

The purpose of this policy is to establish conflicts of interest guidelines that meet or exceed the requirements under state law and local policy when procuring goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects paid for in part or whole by federal funds and required under 2 C.F.R. § 200.318(c)(1).

II. Policy

This policy applies when procuring goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects funded in part or whole with federal financial assistance (direct or reimbursed). This policy also applies to any subrecipient of the funds.

The employee responsible for managing the federal financial assistance award shall review the notice of award to identify any additional conflicts of interest prohibitions or requirements associated with the award, and shall notify all employees, officers, and agents, including subrecipients, of the requirements of this policy and any additional prohibitions or requirements.

A. Conflicts of Interest. In addition to the prohibition against self-benefiting from a public contract under G.S. 14-234, no officer, employee, or agent of the _____ [unit of government] may participate directly or indirectly in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. A real or apparent conflict exists when any of the following parties has a financial or other interest in or receives a tangible personal benefit from a firm considered for award of a contract:

1. the employee, officer, or agent involved in the selection, award, or administration of a contract;
2. any member of his or her immediate family;
3. his or her partner; or
4. an organization which employs or is about to employ any of these parties.

Any officer, employee, or agent with an actual, apparent, or potential conflict of interest as defined in this policy shall report the conflict to his or her immediate

supervisor. Any such conflict shall be disclosed in writing to the federal award agency or pass-through entity in accordance with applicable Federal awarding agency policy.

- B. Gifts. In addition to the prohibition against accepting gifts and favors from vendors and contractors under G.S. 133-32, officers, employees, and agents of the _____ [unit of government] are prohibited from accepting or soliciting gifts, gratuities, favors, or anything of monetary value from contractors, suppliers, or parties to subcontracts. Items of nominal value valued at less than \$_____ which fall into one of the following categories may be accepted:

1. promotional items;
2. honorariums for participation in meetings; or
3. meals furnished at banquets.

Any officer, employee or agent who knowingly accepts an item of nominal value allowed under this policy shall report the item to his or her immediate supervisor.

III. Violation

Employees violating this policy will be subject to discipline up to and including termination. Contractors violating this policy will result in termination of the contract and may not be eligible for future contract awards.

**HARRIS COUNTY DEPARTMENT OF EDUCATION
PROPOSER/VENDOR CERTIFICATION FORMS**

**REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS
UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200**

The following provisions are required and apply when federal funds are expended by HCDE for any contract resulting from this procurement process.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when federal funds are expended by HCDE, HCDE reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (B) above, when federal funds are expended by HCDE, HCDE reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. HCDE also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if HCDE believes, in its sole discretion that it is in the best interest of HCDE to do so. The vendor will be compensated for work performed and accepted and goods accepted by HCDE as of the termination date if the contract is terminated for convenience of HCDE. Any award under this procurement process is not exclusive and HCDE reserves the right to purchase goods and services from other vendors when it is in the best interest of HCDE.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when federal funds are expended by HCDE on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does vendor agree to abide by the above?

YES _____ Initials of Authorized Representative of vendor

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when federal funds are expended by HCDE, during the term of an award for all contracts and subgrants for construction or repair, the vendor will be in compliance with all applicable Davis-Bacon Act provisions.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when federal funds are expended by HCDE, the vendor certifies that during the term of an award for all contracts by HCDE resulting from this procurement process, the vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by HCDE, the vendor certifies that during the term of an award for all contracts by HCDE resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (G) above, when federal funds are expended by HCDE, the vendor certifies that during the term of an award for all contracts by HCDE resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by HCDE, the vendor certifies that during the term of an award for all contracts by HCDE resulting from this procurement process, the vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress,

officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by HCDE, the vendor certifies that during the term and after the awarded term of an award for all contracts by HCDE resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

- (1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

**RECORD RETENTION REQUIREMENTS FOR CONTRACTS PAID FOR WITH FEDERAL FUNDS –
2 CFR § 200.333**

When federal funds are expended by HCDE for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

CERTIFICATION OF COMPLIANCE WITH EPA REGULATIONS

**APPLICABLE TO GRANTS, SUBGRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS
IN EXCESS OF \$100,000 OF FEDERAL FUNDS**

When federal funds are expended by HCDE for any contract resulting from this procurement process in excess of \$100,000, the vendor certifies that the vendor is in compliance with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor _____

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When federal funds are expended by HCDE for any contract resulting from this procurement process, the vendor certifies that the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Does vendor agree? YES _____ Initials of Authorized Representative of vendor _____

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

Vendor certifies that vendor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor _____

CERTIFICATION OF NON-COLLUSION STATEMENT

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor _____

Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Vendor's Name/Company Name: _____
Address, City, State, and Zip Code: _____
Phone Number: _____ Fax Number: _____
Printed Name and Title of Authorized Representative: _____
Email Address: _____
Signature of Authorized Representative: _____
Date: _____

RICKEY L. MOOREFIELD
County Attorney



ITEM NO. 5

PHYLLIS P. JONES
Assistant County Attorney

ROBERT A. HASTY, JR.
Assistant County Attorney

OFFICE OF THE COUNTY ATTORNEY

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

**MEMO FOR THE AGENDA OF THE JUNE 7, 2018,
MEETING OF THE FINANCE COMMITTEE**

TO: Asst. Co. Manager Sally Shutt
FROM: Co. Atty. *R. Moorefield*
DATE: May 31, 2018
SUBJECT: Consideration of Request from Residents of Mt. Vernon Estates for County
to Undertake a Watershed Improvement Project by Special Assessment

Requested by Policy Committee Members
Estimated Time Needed: 15 minutes

Attachments: Petition
2 GIS Maps of Mt. Vernon Estates
Jewell Engineering Memo Dated October 25, 2017
Jewell Engineering Letter to Co. Atty. Dated March 20, 2018

BACKGROUND:

The owners of 16 properties fronting on the lake at Mt. Vernon Estates have submitted the attached petition requesting the county to repair the lake's dam through the special assessment process as a watershed improvement project. The dam was breached by Hurricane Matthew. Based on the county attorney's review of the GIS maps, there appear to be 25 properties fronting on the lake. The petitioners obtained a project cost estimate of the dam repair prepared by C. Douglas Jewell, P.E. His estimate of the cost is \$558,630. The petitioner also obtained an engineering report from Mr. Jewell in which he certifies that the restoration of the lake will be a significant benefit to the community and an enhancement to the surrounding watershed and its environment.

The statutes in Chapter 139 define what constitutes a watershed improvement project and a watershed improvement work. A dam is an impoundment structure that can be used for the statutorily authorized watershed purposes. Although the types of watershed improvement projects authorized by the special assessment statutes are not limited to those authorized by Chapter 139, the county attorney advises to follow the requirements of Chapter 139 because this is the only guidance that is available as to how these projects should be undertaken. One of those requirements is that the work plan be submitted to the Soil and Water Conservation Commission for review and approval or disapproval.

The engineering report provided by the petitioners does not fully address the area of the watershed being improved and the parcels of land that are benefiting from this improvement. Additional engineering will be required to obtain that information. Under the newly adopted special assessments policy, the county may contract for that engineering or require the petitioners to obtain it. It is unlikely that the lakefront properties are the only parcels in this watershed that will be benefited. It will also be necessary for the county to acquire permanent rights in the land on which the dam is located to construct the project and maintain it.

RECOMMENDATION/PROPOSED ACTION:

The county attorney advises that before the county undertakes this project, the engineering be done to establish all the properties that will benefit in this watershed and whether the benefits will accrue uniformly to differing classes of property. Also, it must be determined that the county can obtain sufficient rights in the land on which the dam is located to construct the project and maintain it in the future.

**PETITION REQUESTING SPECIAL ASSESSMENT
FOR RECONSTRUCTION OF MT. VERNON DAM**

To the Cumberland County Board of Commissioners:

We, the undersigned property owners in the immediate vicinity of Mt. Vernon Lake (Kirks Mill Creek Lake) in Gray's Creek, request the County Board of Commissioners to initiate a special assessment project to make certain improvements and repairs to the Mt. Vernon Lake Dam (Kirks Mill Creek Dam) and related properties, pursuant to Article 9A of Chapter 153A of the North Carolina General Statutes, along the lines of the McFadyen Lake and Lake Upchurch Dam Reconstruction Projects. We understand that the total project cost will be assessed to the property owners of the land surrounding Mt. Vernon Lake (Kirks Mill Creek Lake) determined by the Board to be in the benefit zone, i.e., those property owners abutting or near the lake. We understand that the total project cost will involve such things as payment or reimbursement for initial studies, engineering costs, construction costs, financing costs and other related items of expenditure as determined by the Cumberland County Board of Commissioners. We would request that the basis of assessment be "The valuation of land benefitted by the project, being the value of land without the improvements as shown on the tax records of the County, at an equal rate per dollar of valuation..." or such other method as the Board of Commissioners determines to be fair.

Property Owner(s)	Lot Number	Mailing Address	Signature
Kenneth & Lorraine Brandt	1 MVE	8500 Independence Drive	<i>Kenneth & Lorraine Brandt</i>
Marta Forbes	2 MVE	8502 Independence Drive	<i>Marta Forbes</i>
William & Michele Mullins	3 MVE	8509 Governor's Lane	<i>William & Michele Mullins</i>
Ian & Karen Morrison	4 MVE	8513 Independence Drive	<i>Ian & Karen Morrison</i>
David & Yvonne Nolan	5 MVE	8521 Independence Drive	
David & Yvonne Nolan	6 MVE	8521 Independence Drive	
Terry & Sharon Bennett	7 MVE	8525 Independence Drive	<i>Sharon Bennett / Terry Bennett</i>
Michael Collins RAVINGS	8 MVE	8529 Independence Drive	<i>Michael J. Ravings</i>
Betty Biggs	9 MVE	8537 Independence Drive	<i>Betty Biggs</i>
Hector & Zaida Mendoza	10 MVE	8539 Independence Drive	<i>Hector & Zaida Mendoza</i>
Phillip & Kathie Byrd	11 MVE	8541 Independence Drive	<i>Phillip & Kathie Byrd</i>
Joel & Darlene Owensby	12 MVE	8545 Independence Drive	
Mary Ann Nunns	13 MVE	128 W Twelve Oak Road Raeford, NC 28376	
Ronald & Kittie Elrod	18 MVE	8500 Governor's Lane	<i>Ronald & Kittie Elrod</i>
Rocky & April Barnes	19 MVE	8504 Governor's Lane	<i>Rocky & April Barnes</i>
Winifred Sult	20 MVE	8508 Governor's Lane	<i>Winifred R. Sult</i>
Robert & Sharon Stanley	21 MVE	8512 Governor's Lane	
James & Nancy Mellet	22 MVE	8516 Governor's Lane	<i>James & Nancy Mellet</i>
Mark & Robin Jones	23 MVE	8524 Governor's Lane	

Mark & Robin Jones	24 MVE	8524 Governor's Lane	
Sonya Gonzalez	25 MVE	8528 Governor's Lane	
Sonya Gonzalez	26 MVE	8528 Governor's Lane	
John Jarvies	27 MVE	8536 Governor's Lane	
Jefferson Landing Owners Ass. - James Autry	Common Area/ JL Recomb	231 Fairway Drive Fayetteville, NC 28305	✓ See p2-A for Signature
R. Autry Family LLC	1 Riddle, KBR2 INV LLC	3370 County Line Road Fayetteville, NC 28306	James Autry for R. Autry Family LLC
Christopher Williams	7W B Riddle Heirs	7198 Henry Smith Road St. Pauls, NC 28384	Chris Williams

Sonya Gonzalez	25 MVE	8528 Governor's Lane
Sonya Gonzalez	26 MVE	8528 Governor's Lane
John Jarvis	27 MVE	8536 Governor's Lane
Jefferson Landing Owners Ass. - James Autry	Common Area/ J1 Recomb	231 Fairway Drive Fayetteville, NC 28305
R. Autry Family LLC	1 Riddle, KSR2 INV LLC	3370 County Line Road Fayetteville, NC 28306
Christopher Williams	7W B Riddle Hairs	7198 Henry Smith Road St Pauls, NC 28384







MEMORANDUM

TO: Lakefront Owners of Mount Vernon Estates, C/O Ron and Kittle Elrod
FROM: Doug Jewell, Amy Black
SUBJECT: Mount Vernon Estates Lake Dam -- Recommendations & Cost Estimate
DATE: October 25, 2017

JEWELL has completed a preliminary hydraulic analysis for Mount Vernon Estates Lake Dam using LIDAR data downloaded from NCFMP and field data collected during a site visit by Doug Jewell and Amy Black. Based on site visits, geotechnical evaluation, preliminary hydraulic analysis, and consultation with NC Dam Safety Engineer, the following recommendations and cost estimate are provided.

SUMMARY OF DAM FEATURES

The pre-breach dam and outlet system and our recommendations are summarized below:

- Dam Crest Elevation: 131.5 (propose to maintain existing dam crest)
- Water Surface Elevation: 129.0 (propose to maintain current normal pool elevation)
- Concrete Riser/Barrel (propose larger riser/barrel size to increase outlet capacity)
- Grassed Emergency Spillway (propose larger armored emergency spillway)

RECOMMENDATIONS

Mount Vernon Estates Dam is classified as a high hazard dam and will be required to meet current regulations in order to repair the breach and return the lake to an active impoundment. The geometry of the pre-breach dam embankment is satisfactory, with greater than 2.5 to 1 slopes, both upstream and downstream. The evaluation of the existing embankment outside of the breach area indicates satisfactory stability and does not require any significant repairs at this time. The breached area will need to be reconstructed using a clay/sand core at the center of the dam and suitable backfill material for the upstream and downstream slopes. Top soil will need to be installed on all disturbed portions of the dam, and all exposed areas will need to be seeded to produce a vegetative cover to protect against erosion.

As a high hazard dam, Mount Vernon Estates Dam will be required to pass the 1/3 Probable Maximum Precipitation (1/3 PMP) event, without damage or overtopping. The existing riser/barrel outlet system is markedly undersized to pass the design storm. Based on preliminary hydrologic and hydraulic analysis, JEWELL recommends that the existing riser/barrel be replaced with a three-chamber rectangular concrete riser that discharges through three 60" concrete barrels. A lake drain is required, and the proposed riser can be designed to include a gate system that can meet that need.

Designing a single riser/barrel system to pass the design storm for this lake would be cost prohibitive. JEWELL recommends the dam repairs include the addition of an emergency

MEMORANDUM

Lakefront Owners of Mount Vernon Estates

October 25, 2017

Page 2 of 2

spillway. Based on preliminary hydrologic and hydraulic analysis, a 70 linear foot emergency spillway with an elevation approximately 1 foot above normal pool elevation will be adequate. In most precipitation events, the proposed riser/barrel will pass all of the discharge, but in large storm events, such as Hurricane Matthew, the emergency spillway will be activated and provide the needed outlet capacity. The recommended spillway will be armored to protect against erosion during use. JEWELL recommends constructing the emergency spillway at the northern end of the dam, towards Independence Drive, and providing erosion protection from the spillway to the stream.

High hazard dams are also required to have a way to monitor internal hydrostatic pressure and depth of saturation within the embankment. To address this requirement, piezometers are proposed to be installed in the embankment.

Please note this information is still in conceptual form and subject to revision as final design calculations, analyses and drawings are prepared.

COST ESTIMATE

The following cost estimate is based on preliminary analysis and conceptual design and includes the following recommended items:

- Repair the breached portion of the embankment
- Install a toe drain along the length of the repaired dam to control seepage through the embankment and prevent piping at the downstream toe of the dam.
- Install piezometers in the embankment
- Install a new, larger riser/barrel system with a lake drain system and trash guards
- Construct an armored emergency spillway
- Provide erosion protection and energy dissipation at the discharge outlet

We estimate the construction cost to be \$ 462,310 with design, permitting, and administration costs of about \$ 96,320. Note this is over and above the cost of services thus far. The cost estimate does not include any cost associated with obtaining easements for this project, if required. A spreadsheet showing a breakdown of estimated costs is attached.

As a reminder, these cost estimates are for general guidance only and are based on industry estimates and JEWELL's experience with similar projects. Actual project costs will only be known when bids are obtained from qualified and knowledgeable contractors. The unusual nature of work to repair dams and work in the water environment, often results in a broad range of bids. It is critically important to research and hire a contractor who has experience in this type of demanding work, who has a workforce that can execute the project correctly without mistakes, who has the proper equipment and access to materials, and who has a reputation for quality and timely service.

Repairs for Mt. Vernon Dam due to Hurricane Matthew
Repair Damaged Dam & Improve Capacity to Meet Current Regulations
(High Hazard Classification Design Standards)

Cumberland County, NC
Preliminary Cost Estimate
10/25/2017

Item	Description of Work	Quantity	Unit	Unit Price	Amount
1	Mobilization & Demobilization	1	LS	\$20,000.00	\$20,000
2	Construction Staking	1	LS	\$5,000.00	\$5,000
3	Erosion & Sediment Control	1	LS	\$7,500.00	\$7,500
4	Control of Water	1	LS	\$30,000.00	\$30,000
5	Demolition - remove riser/barrel	1	LS	\$10,000.00	\$10,000
6	Clearing & Grubbing - wooded area of embankment	0.5	AC	\$5,000.00	\$2,500
7	Excavation - 70' Emergency Spillway	125	CY	\$18.00	\$2,250
8	Stone - toe drain	24	TON	\$50.00	\$1,200
9	Geofabric - toe drain, plunge pool	125	SY	\$4.00	\$500
10	Seepage Filter Sand	220	CY	\$55.00	\$12,100
11	Riser - 3 Chambers, 12' height	36	CY	\$2,000.00	\$72,000
12	Barrel - (3) 60" pipes, 60 LF	180	LF	\$230.00	\$41,400
13	Concrete Pad	53	CY	\$600.00	\$31,800
14	Backfill - Core	675	CY	\$40.00	\$27,000
15	Backfill - Shell	140	CY	\$25.00	\$3,500
16	Top Soil	125	CY	\$35.00	\$4,380
17	Articulated Block at Emergency Spillway	450	SY	\$160.00	\$67,500
18	Riprap Outlet Protection - Plunge Pool	75	TON	\$65.00	\$4,880
19	Seeding	1.5	AC	\$2,600.00	\$3,750
20	Trash Guard	1	EA	\$25,000.00	\$25,000
21	Lake Drain - gate at riser	1	EA	\$10,000.00	\$10,000
22	Piezometer	1	LS	\$3,000.00	\$3,000
				Subtotal	\$385,260
23	Contingency	20%			\$77,050
24	Engineering - Surveying, Geotechnical, Design, Permitting, Construction Administration and Observation	25%			\$96,320
Total					\$558,630

The ENGINEER maintains no control of labor costs, materials, equipment or services furnished by others, the Contractor(s)' methods for determining prices, or competitive or market conditions. The estimates herein for project and construction costs represent the ENGINEER'S best judgement, and are based on his experience and qualifications as a Professional Engineer who possesses familiarity with the construction industry. The ENGINEER does not guarantee the accuracy of the cost estimates, which may vary from bids or actual project and construction costs. These estimates do not include legal fees or application fees that will be required to complete the project.



March 20, 2018

Rick Moorefield
County Attorney
County of Cumberland
P.O. Box 1829
Fayetteville, NC 28302-1829

RE: Mt. Vernon Estates Lake
Watershed Improvement Project

Mr. Moorefield:

We have reviewed the conditions surrounding the referenced lake/project and provide the following information.

1. Mt. Vernon Estates Lake is located on Kirk's Mill Creek which is a tributary to Willis Creek, which in turn discharges to the Cape Fear River at a point just before the river leaves Cumberland County.
2. Kirk's Mill Creek, Willis Creek, and the Cape Fear River at the point of discharge are all classified by the State of North Carolina as Water Supply IV (WS-IV) waters. The State describes the applicable classifications as follows:
 - a. Class WS-IV -- Waters used as sources of water supply for drinking, culinary, or food processing purposes where a WS-I, II or III classification is not feasible. These waters are also protected for Class C uses.
 - b. Class C -- Waters protected for uses such as secondary recreation, fishing, wildlife, fish consumption, aquatic life including propagation, survival and maintenance of biological integrity, and agriculture. Secondary recreation includes wading, boating, and other uses involving human body contact with water where such activities take place in an infrequent, unorganized, or incidental manner.

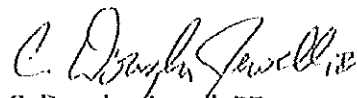
The quality of waters in Kirk's Mill Creek and downstream is very important to the environment and to protection and preservation of this water supply source.

3. The watershed discharging to Mt. Vernon Estates Lake covers an area of approximately 1,984 acres. Land use is mostly agricultural with pockets of residential and silviculture. Both agricultural and residential land uses are sources of water pollution in the form of nutrients, fecal coliform, and sediment. Each of these pollutants are significant contributors to existing environmental degradation within the Cape Fear River Basin.
4. The Mt. Vernon Estates Lake can be restored to accomplish the following:
 - a. Downstream surface water quality can be improved by detaining water in the lake to allow natural biological action to assimilate nutrients and fecal

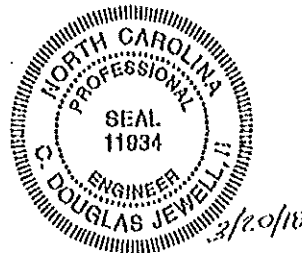
- coliform bacteria. This action can be made more effective by adding littoral shelves or other in-lake water treatments.
- b. Downstream flooding can be reduced as flood peak discharges are attenuated by detention storage within the lake.
 - c. Groundwater in the area will be replenished by exfiltration from the lake.
 - d. Sediment discharge from upstream will be intercepted and removed from the stream system by the lake.
 - e. The restored lake can be configured to be a water supply for fire protection and irrigation. Gray's Creek Fire Department Station 18 has expressed interest in evaluating the lake as a potential water point.
 - f. The aquatic and riparian environment will be enhanced by restoration of a biologically diverse lake with deep water areas, littoral zones, and headwater wetlands. This ecologic diversity will foster the proliferation of wetland and aquatic plants, a broad spectrum of forage and game fishes, a diverse assortment of amphibians and reptiles, and furbearing mammals.
5. It will be necessary to restore the breached Mt. Vernon Lake Dam to achieve the benefits described.

In summary, the restoration of Mt. Vernon Estates Lake will be a significant benefit to the community and an enhancement to the surrounding watershed and its environment.

Sincerely yours,
JEWELL Engineering Consultants, PC



C. Douglas Jewell, PE
President



C: Kittle Elrod, Mt Vernon Estates Lake Owners Association
William E. Clark, Atty.