

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

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

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

Commissioner Faircloth called the meeting to order.

1. ELECTION OF 2018 FINANCE COMMITTEE CHAIR

Commissioner Faircloth nominated Commissioner Keefe.

MOTION: Commissioner Adams moved that nominations be closed, and that Commissioner Keefe be appointed by acclamation.
SECOND: Commissioner Faircloth
VOTE: UNANIMOUS (3-0)

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

MOTION: Commissioner Faircloth moved to approve the December 14, 2017 special meeting minutes.
SECOND: Commissioner Adams
VOTE: UNANIMOUS (3-0)

3. PROJECT “NANO2”/CAMPBELL SOUP SUPPLY COMPANY

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

B. CONSIDERATION OF SUBDIVISION OF THE CEDAR CREEK INDUSTRIAL PARK

BACKGROUND:

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

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

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

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

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

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

RECOMMENDATION/PROPOSED ACTION:

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

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

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

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

MOTION: Commissioner Adams moved to approve the provisions of the economic development incentives agreement with Campbell Soup Supply Company, LLC.

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (3-0)

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

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

MOTION: Commissioner Faircloth moved to approve the new subdivision in Cedar Creek Industrial Park so the plat can be recorded incident to the sale of the property.
SECOND: Commissioner Adams
VOTE: UNANIMOUS (3-0)

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

BACKGROUND:

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

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

RECOMMENDATION/PROPOSED ACTION:

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

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

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

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

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

SECOND: Commissioner Adams

VOTE: UNANIMOUS (3-0)

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

BACKGROUND:

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

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

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

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

RECOMMENDATION/PROPOSED ACTION:

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

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

- MOTION: Commissioner Adams moved to approve moving forward with the RFP process for youth, adult, and dislocated worker workforce services in Cumberland County.
- SECOND: Commissioner Faircloth
- VOTE: UNANIMOUS (3-0)

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

BACKGROUND:

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

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

RECOMMENDATION/PROPOSED ACTION:

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

**AGREEMENT BETWEEN
COUNTY OF CUMBERLAND
AND
CITY OF FAYETTEVILLE**

COMMUNITY DEVELOPMENT BLOCK GRANT–DISASTER RECOVERY PROGRAM

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

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

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

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

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

NOW, THEREFORE, the parties agree that:

I. SCOPE OF SERVICES

A. ACTIVITIES/PRINCIPAL TASKS

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

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

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

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

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

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

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

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

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

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

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

B. NATIONAL OBJECTIVES

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

II. TIME OF PERFORMANCE

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

III. FUNDING SOURCE - CDBG-DR

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

IV. METHOD OF COMPENSATION/PAYMENT SCHEDULE

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

V. NOTICES

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

CUMBERLAND COUNTY

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

CITY OF FAYETTEVILLE

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

VII. GENERAL CONDITIONS

A. GENERAL COMPLIANCE

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

B. INDEPENDENT CONTRACTOR

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

C. HOLD HARMLESS

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

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

D. WORKERS' COMPENSATION

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

E. INSURANCE AND BONDING

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

F. DEBARRED / SUPENDED

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

G. COUNTY RECOGNITION

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

H. AMENDMENTS

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

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

I. SUSPENSION OR TERMINATION

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

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

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

VIII. ADMINISTRATIVE REQUIREMENTS

A. FINANCIAL AND PROGRAM MANAGEMENT

1. Administrative Requirements

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

2. Cost Principles

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

B. DOCUMENTATION AND RECORD-KEEPING

1. Records to be Maintained

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

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

2. Retention

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

3. Employee Data

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

4. Disclosure

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

5. Close-Outs

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

6. **Audits and Inspections**

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

C. **REPORTING AND PAYMENT PROCEDURES**

1. **Indirect Costs**

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

2. **Payment Procedures**

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

3. **Progress Reports**

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

D. **PROCUREMENT**

1. **OMB Standards**

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

2. Compliance

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

IX. PERSONNEL AND PARTICIPANT CONDITIONS

A. CIVIL RIGHTS

1. Compliance

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

2. Nondiscrimination

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

3. Section 504

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

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

4. EEO Statement

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

5. Subcontract Provisions

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

B. EMPLOYMENT RESTRICTIONS

1. Prohibited Activity

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

2. Labor Standards

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

C. CONDUCT

1. No Assignment or Transfer

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

2. Subcontracts

a. Approvals

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

b. Monitoring

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

c. Content

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

d. Selection Process

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

3. Hatch Act

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

4. Conflict of Interest

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

5. Lobbying

The CITY hereby certifies that:

- a.** No Federal appropriated funds have been paid or shall be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal

grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreements;

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

6. **Lobbying Certification**

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

7. **Copyright**

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

8. **Religious Organization**

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

X. **ENVIRONMENTAL CONDITIONS**

A. **AIR AND WATER**

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

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

B. FLOOD DISASTER PROTECTION

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

XI. SEVERABILITY

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

XII. NON-APPROPRIATION CLAUSE

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

XIII. Environmental Review Clearance

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

XIV. UNDERLYING GRANT CONDITIONS AND REGULATIONS

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

XV. IRAN DIVESTMENT ACT CERTIFICATION

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

XVI. E-VERIFY

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

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

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

What is CDBG-DR?

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

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

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

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

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

Milestones

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

Basis for Addressing Needs

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

Funding Priorities

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

CDBG-DR Aid

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

Program Administration

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

ReBUILD NC Recovery Center Established in Cumberland County

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

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

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

MOTION: Commissioner Adams moved to approve the CDBG-DR subrecipient agreement with the City to include the caveats as discussed.

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (3-0)

7. UPDATE ON THE STATEWIDE OPIOID LITIGATION PROCESS

BACKGROUND:

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

RECOMMENDATION/PROPOSED ACTION:

This item is for information and discussion only.

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

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

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

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

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

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

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

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

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

8. OTHER ITEMS OF BUSINESS

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

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

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

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

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