

CUMBERLAND COUNTY BOARD OF COMMISSIONERS
MONDAY, AUGUST 18, 2014 – 6:45 PM
117 DICK STREET, 1ST FLOOR, ROOM 118
REGULAR/REZONING MEETING
MINUTES

PRESENT: Commissioner Jeannette Council, Chairman
Commissioner Kenneth Edge, Vice Chairman
Commissioner Charles Evans
Commissioner Marshall Faircloth
Commissioner Jimmy Keefe
Commissioner Billy King
Commissioner Ed Melvin
Amy Cannon, County Manager
James Lawson, Deputy County Manager
Melissa Cardinali, Assistant County Manager
Rick Moorefield, County Attorney
Sally Shutt, Government Affairs Officer
Brenda Jackson, Department of Social Services Director
Tom Lloyd, Planning and Inspections Director
George Hatcher, Code Enforcement Officer
Joan Fenley, Code Enforcement Officer
Amy Hall, Public Utilities Division
Lisa Childers, Cumberland County Extension Director
Candice White, Clerk to the Board
Kellie Beam, Deputy Clerk to the Board
Press

Chairman Council called the meeting to order.

INVOCATION / PLEDGE OF ALLEGIANCE

Commissioner King provided the invocation followed by the Pledge of Allegiance to the American flag led by Joshua D. Morrissey, fourth grader at Lake Rim Elementary School.

Recognition of Mr. Willie S. Geddie, Longtime Volunteer Inducted into State 4-H Hall of Fame

Chairman Council called on Lisa Childers, Cumberland County Extension Director, who recognized Willie S. Geddie, Cumberland County 4-H Volunteer, for his induction into the North Carolina 4-H Hall of Fame. Ms. Childers stated Mr. Geddie was inducted June 23 during the N.C. 4-H Congress at the McKimmon Center on the campus of North Carolina State University.

Ms. Childers stated Mr. Geddie was nominated by Cumberland County Cooperative Extension and was inducted into the state 4-H Hall of Fame by the North Carolina 4-H Alumni and Friends Association. Ms. Childers stated the association established the Hall of Fame as a way to specifically recognize

individuals who have played critical roles in the development of the contemporary 4-H program in our state.

Ms. Childers stated Mr. Geddie is a lifelong resident of the Wade community and currently serves on the Cumberland County Cooperative Extension Board of Advisors. His work with the 4-H Youth Development and Cooperative Extension in Cumberland County has spanned four decades. Mr. Geddie led one of the largest 4-H clubs in Cumberland County while supporting youth by traveling all over the state in a 4-H drama troupe.

Recognition of Outgoing Board Members:

John D. Pone, Sr.- Parks and Recreation Advisory Board
Dean Smelcer, Jr.- Parks and Recreation Advisory Board

On behalf of the Board of Commissioners, Commissioner Evans recognized Dean Smelcer, Jr. for his service on the Parks and Recreation Advisory board. John D. Pone, Sr. was unable to be present.

PUBLIC COMMENT PERIOD (6:45 PM – 7:00 PM)

Amy Cannon, County Manager, read the public comment period policy. Chairman Council allotted two minutes to individuals who had signed up to address the Board so each of them could be afforded an opportunity to speak. Chairman Council recognized the clerk to the board who called the following speakers:

Grey Evans – Ms. Evans stated the chicken processing plant will be close to his home and he has concerns about how the spray fields will affect water quality. Mr. Evans stated the proposed plant is about more than jobs and he would like a public discussion so citizens can present their side.

Johnny Evans – Mr. Evans stated information received from Sanderson Farms is sugar coated and long term effects of the plant are of great concern. Mr. Evans stated there will be a devaluation of properties close to the plant and the owners of the properties on which Sanderson Farms has options for spray fields do not live in the area.

Justin Smith – Mr. Smith stated Sanderson Farms has options on seven tracts of land on which to spray their wastewater and Sanderson Farms needs 1.4 million gallons of wastewater sprayed daily in order to operate their facility. Mr. Smith stated when translating these numbers into inches of rain per acre, it comes out to be between 62 and 75 inches of wastewater per acre, depending on how many acres they spray on. Mr. Smith stated the average rainfall in Cumberland County is 46 to 48 inches annually. Mr. Smith stated the combined wastewater and rainfall equals 100 to 110 inches and the land in the area cannot handle it.

Mable Smith – Ms. Smith stated even though Sanderson Farms will provide an increase in tax revenue, citizens also pay taxes. Ms. Smith stated Sanderson

Farms will send their profits to the corporate office while the property values of citizens in the area will be reduced. Ms. Smith expressed concern for the effects Sanderson Farms will have on health, the environment and the river.

Bill Hurley – Mr. Hurley stated a lot of work has been put into improving the image of Fayetteville/Cumberland County over the past twenty-five years and what has been achieved has not been easy. Mr. Hurley stated he does not want Fayetteville to be known as the Chicken Plant of America and although there may be a need for jobs, he does not want the plant in the backyard of Fayetteville/Cumberland County.

Jerry Reinoehl – Mr. Reinoehl stated Sanderson Farms chicken processing plant will bring 1,000 jobs to the area and opponents are making negative and inaccurate claims and pushing their own agendas without a lot of research to back it up. Mr. Reinoehl stated employment opportunities are needed for those who want to be productive members of our community and any decisions that are to be made should be based on facts.

Willie Cooper – Mr. Cooper stated he is retired military and after hearing about Fayetteville's future plans while he was on active duty, he decided to stay in Fayetteville. Mr. Cooper stated the Sanderson Farms project deviates from what he thought would be happening in Fayetteville and had he known, he would not have decided to stay in Fayetteville.

Chairman Council thanked everyone for their comments and stated the Board of Commissioners understands the concerns that have been expressed. Chairman Council stated should the Board decide to entertain this project, there will have to be a public hearing on the matter so citizens will have an opportunity to speak and share their opinions. Chairman Council stated at that time, the facts will be presented and everyone will be heard before a decision is made. Chairman Council stated the Board must look at all sides of every issue and will consider all costs and benefits before making a final decision on anything of this magnitude. Chairman Council stated at present, the county is just vetting the plant and the possibility of such a project.

1. Approval of Agenda

MOTION: Commissioner Melvin moved to approve the agenda.

SECOND: Commissioner King

VOTE: UNANIMOUS (7-0)

2. Consent Agenda

A. Approval of minutes for the July 28, 2014 Special Meeting for the Consideration of Resolutions Endorsing NCDOT Installation of Road Improvements and the August 4, 2014 Regular Meeting

B. Approval of Contract with Existing Vendor to Meet New Legislative Requirements

BACKGROUND:

Previously County Tax Services, Inc. was compensated for services performed based on a percentage or contingency fee basis. A revision of N.C. 105-299 states that any person or firm employed to assist the assessor in the performance of the assessor’s duties may not be compensated, in whole or in part, on a contingent fee basis or any other similar method that may impair the assessor’s independence or the perception of the assessor’s independence by the public. This contract establishes a graduated fee scale for each audit assigned. Under G.S. 105-299, the Board of County Commissioners may employ appraisal firms, mapping firms or other persons or firms having expertise in one or more of the duties of the assessor to assist the assessor in the performance of these duties. In the employments of these firms, primary consideration must be given to the firms registered with the Department of Revenue pursuant to G. S. 105-289(i). Auditing firms are employed for the purpose of auditing business personal property returns and gross receipts subject to property tax in Cumberland County. These audits are performed in accordance with professionally accepted auditing and accounting standards.

RECOMMENDATION/PROPOSED ACTION:

Approve the following contract that establishes a set fee per audit performed by County Tax Services, Inc. to be in compliance with North Carolina Property Tax Statutes.

The County Attorney has indicated the contract is legally sufficient only if approved by the Board of Commissioners because the statute requires the Board’s authorization to enter into the contract.

NORTH CAROLINA
CUMBERLAND COUNTY

COUNTY TAX SERVICES, INC.
SERVICES AGREEMENT
Agreement Number CTSI-072014

This Service Agreement made and entered into this _____ day of _____, 2014,
between the
County of Cumberland, (Hereinafter “COUNTY”), a political subdivision of the state of North Carolina, and County Tax Services, Inc. (Hereinafter “CTSI”) a North Carolina Corporation having its registered office in Raleigh, North Carolina.

WITNESSETH

WHEREAS, COUNTY desires to obtain audit services on Business Personal Property Tax Listings (Section “A”) and Gross Receipts (Section “B”), which can include, but not limited to; Occupancy Tax Listings, Prepared Food & Beverage Listings and Vehicle Rental Listings, as authorized by the North Carolina General Statutes; and

WHEREAS, CTSI agrees to provide said audit services for COUNTY pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the promises mutually herein exchanged, the parties agree as follows:

I. SECTION A

BUSINESS PERSONAL PROPERTY

1. AUDITING SERVICES

CTSI agrees to provide to COUNTY auditing services on Business Personal Property Tax Listings.

CTSI will:

- A. Make copies of the Business Personal Property Tax Listings according to the Tax Administrator's instructions on accounts selected for audit.
- B. Prepare an introduction letter on COUNTY letterhead and provide the letter to the Tax Administrator for signature and timely mailing.
- C. Make an appointment with the selected businesses for a Business Personal Property Tax audit to be performed and perform on-site inspections when applicable.
- D. Inform the Tax Administrator of the audit findings after the audit is completed, and provide adequate work papers to support all audits, whether there is a discovery or no discovery.
- E. Upon COUNTY approval of the audit, prepare a discovery letter pursuant to G.S. §105-312, a no discovery letter, or other letters as directed by the COUNTY, on COUNTY letterhead, together with a copy of the work papers, for the Tax Administrator's signature and mailing to the taxpayer.
- F. Agree to be accompanied by COUNTY personnel on any local audits to assist in training for ongoing audit activities.
- G. Answer all questions of COUNTY regarding any audit performed by CTSI and to assist the COUNTY in preparing for any appeal as provided in section 2 below.
- H. Maintain confidentiality of all taxpayer information and other information provided to CTSI by the COUNTY to the extent required of the COUNTY under all applicable state and federal law.

2. AUDIT APPEALS

If any audit performed by CTSI enters the appeals process, CTSI will:

- A. Appear at meetings with taxpayers or their representatives concerning the information identified in the audit.
- B. Provide testimony and evidence at hearings before the County Tax Assessor, Board of County Commissioners, North Carolina Property Tax Commission or other appeal level hearing concerning the information identified in the audit.

3. RESPONSIBILITY OF COUNTY

COUNTY will:

- A. Make available to CTSI legible Business Personal Property Tax Listings for the purpose of making copies.
- B. Provide CTSI with COUNTY letterhead and envelopes.
- C. Sign and mail approved letters to the taxpayers in a timely manner.
- D. Provide postage for mailing audit correspondence from COUNTY to the taxpayer.

- E. Inform CTSI if any of the ongoing audits enter the appeals process or if any taxpayer sends COUNTY any additional information that may be vital to the audit.
 - F. Provide the North Carolina Department of Revenue with the proper statement of confidentiality as required under the provisions of NCGS 105-296 for the personnel of CTSI.
 - G. Provide to CTSI a notarized authorization letter giving authority to conduct audits on behalf of COUNTY.
 - H. Compensate CTSI for AUDITING SERVICES and CONSULTING SERVICES performed under this Agreement as stated in Section A, Item 4; COMPENSATION.
4. COMPENSATION
- A. For AUDITING SERVICES provided by CTSI under this Agreement, COUNTY agrees to compensate CTSI as follows:

1. Fee Determination

- a. For auditing services provided by CTSI, County will pay to CTSI a fee in accordance with the schedule shown below.

*The fee paid per account will be based on utilizing the 2013 Business Personal Property assessed tax value.

Size	* Assessed Tax Value	Fee Per Acct#
S-0	0 – 49,999	400.00
S-1	50,000 - 399,999	600.00
S-2	400,000 - 999,999	1,000.00
S-3	1,000,000 - 4,999,999	2,000.00
S-4	5,000,000 - 14,999,999	6,000.00
S-5	15,000,000 - 29,999,999	10,000.00
S-6	30,000,000 - 49,999,999	15,000.00
S-7	50,000,000 up	TBD

- b. For audit categories S-0 through S-7 CTSI's services will include the performance of the audit and all levels of the appeal process until the audit is resolved.

2. Invoicing Procedures

- a. CTSI will invoice the COUNTY thirty (30) days from the date of a discovery letter, no discovery letter, or other letter as directed by the COUNTY, informing the taxpayer of the audit findings.
- b. Fees paid under this agreement will be billed according to the number of audits completed, the size indicated by the Total Assessed Tax Value and the fee indicated in the schedule listed above.

- B. FOR CONSULTING SERVICES COUNTY agrees to compensate CTSI as follows:

For consulting services provided by CTSI under this Agreement, COUNTY will pay to CTSI One Hundred Dollars and No Cents (\$100.00) per hour. Consulting fees will be

invoiced at the end of each month. All consulting fees must be pre-authorized by the Tax Administrator or his authorized agent prior to services being rendered.

II. SECTION B

GROSS RECEIPTS

1. AUDITING SERVICES

CTSI agrees to provide to COUNTY auditing services on Gross Receipts, which can include, but not limited to; Occupancy Tax Listings, Prepared Food & Beverage Listings, Vehicle Rental Listings and Heavy Equipment Rental Listings.

CTSI will:

- A. Make copies of the assigned tax listings from the COUNTY for Gross Receipts audits according to the Tax Administrator's instructions on accounts selected for audit.
- B. Prepare an introduction letter on COUNTY letterhead and provide the letter to the Tax Administrator for signature and timely mailing.
- C. Make an appointment with the selected businesses for a Gross Receipt tax audit to be performed and perform on-site inspections when applicable.
- D. Will review the revenues and gross receipts on these taxpayers' financial statements and N. C. Sales Tax Returns and compare them with the monthly listing forms filed with the COUNTY to verify accuracy.
- E. Provide a report of facts & findings along with worksheets to COUNTY and prepare a Proposed Notice of Assessment Letter to the taxpayer for our auditor's signature.
- F. Agree to be accompanied by COUNTY personnel on any local audits to assist in training for ongoing audit activities.

2. AUDIT APPEALS

If any audit performed by CTSI enters the appeals process, CTSI will:

- A. Appear at meetings with taxpayers or their representatives concerning the information identified in the audit.
- B. Provide testimony and evidence at hearings before the County Tax Assessor, Board of County Commissioners, North Carolina Property Tax Commission or other appeal level hearing concerning the information identified in the audit.

3. RESPONSIBILITY OF COUNTY

COUNTY will:

- A. Make available to CTSI legible monthly Gross Receipt Tax listing forms on each applicable taxpayer to be reviewed.
- B. Provide reports to CTSI that confirms the amount of tax already listed and assessed by COUNTY on each listing under review.
- C. Upon receipt of a fact & findings letter from CTSI, COUNTY will send to the taxpayers under review a notice of discovery or no-discovery, in a timely manner.
- D. Provide postage for mailing audit correspondence from COUNTY to the taxpayer.

- E. Provide the North Carolina Department of Revenue with the proper statement of confidentiality as required under the provisions of NCGS 105-296 for the personnel of CTSI.
- F. Provide to CTSI a notarized authorization letter giving authority to conduct Gross Receipt tax audits on behalf of COUNTY.
- G. Compensate CTSI for AUDITING SERVICES performed under this Agreement as stated in Section B, Item 4; COMPENSATION.

4. COMPENSATION

For Services provided by CTSI under this agreement, COUNTY agrees to compensate CTSI as follows:

- A. For AUDITING SERVICES provided by CTSI under this Agreement, COUNTY agrees to compensate CTSI as follows:
 - 1. Fee Determination
 - a. For auditing services provided by CTSI, County will pay to CTSI a Gross Receipts audit fee in the amount of \$400.00 for each account.
 - b. Audit services will include the performance of the audit and all levels of the appeal process until the audit is resolved.
 - 2. Invoicing Procedures
 - a. CTSI will invoice the COUNTY thirty (30) days from the date of a discovery letter, no discovery letter, or other letter as directed by the COUNTY, informing the taxpayer of the audit findings.
 - b. Fees paid under this agreement will be billed according to the number of audits completed.

III. CONSULTING SERVICES

- A. For consulting services provided by CTSI under this Agreement, COUNTY will pay to CTSI One Hundred Dollars and No Cents (\$100.00) per hour. Consulting fees will be invoiced at the end of each month. All consulting fees must be pre-authorized by the Tax Administrator or his authorized agent prior to services being rendered.
- B. Consulting services include any services requested by COUNTY that are not, as AGREED BETWEEN COUNTY AND CTSI, part of the original scope of this agreement. This can include services on audits which have been finalized, but where additional information that was not covered in the original audit is requested by COUNTY.
- C. CTSI will maintain an hourly time sheet on any consulting services performed for COUNTY to be billed to COUNTY on a monthly basis if this service is required.

IV. TERM OF AGREEMENT

- A. The total amount of fees billed under this Services Agreement cannot exceed \$_____. All fees will be earned and paid in accordance with the terms of this Agreement.
- B. County may from time to time request additional auditing services from CTSI, which may exceed the amount stated in IV, A above. This Original Agreement allows for

additional auditing services to be obtained by the use of a Supplemental Agreement. The maximum amount of funds available for audit purposes will be stated in item #2 of each Supplemental Agreement. Each Supplemental Agreement will require approval by the Finance Department for compliance with the Local Government Budget and Fiscal Control Act, be approved for legal sufficiency by the County Attorney's Office and signed by the Tax Administrator and CTSI.

- C. This Original Agreement will become effective from the date of this Agreement and, unless cancelled by either party, will remain in effect thru June 30, 2015 (aka. Fiscal Year 2015). At the expiration of Fiscal Year 2015 the contract will automatically continue in effect thereafter on a year to year basis and can be renewed with a Supplemental Agreement as outlined in IV, B above. This will allow for the audit program to continue without interruption.
- D. This Agreement is cancelable at any time by either party upon thirty (30) days written notice.
- E. In the event of cancellation by either party, all audits assigned to CTSI as of the date of cancellation shall be completed by CTSI and all fees for completed audits shall be payable in accordance with the terms as provided by this Agreement.

V. PROPRIETARY RIGHTS

COUNTY agrees that the proprietary rights to the computer database and spreadsheet systems that CTSI has developed for auditing Business Personal Property Tax Listings will remain the property of CTSI.

VI. GENERAL

- A. This Agreement will be governed by the laws of the State of North Carolina.
- B. This Agreement is not assignable, by either party, by operation of law or otherwise.
- C. Should any provision, portion or application thereof of this Agreement be determined by a court of competent jurisdiction to be illegal, unenforceable or in conflict with any applicable law or constitutional provision, the Parties shall negotiate an equitable adjustment in the affected provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, portions or applications thereof, shall not be impaired.
- D. The subject headings of the paragraphs are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties, and no purposes of interpretation shall be made to the contrary.
- E. This Agreement including any attachments, will constitute the entire understanding between COUNTY and CTSI and will supersede all prior understandings and agreements relating to the subject matter hereof. Any modification, revision or amendment to this Agreement must

be in writing and executed by both parties. This Agreement may not be orally modified.

- F. COUNTY acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

VII. NOTICES

Notices to be given or submitted by either party to the other, pursuant to this Agreement, will be sufficiently given or made in writing and sent by certified mail, postage prepaid to:

CTSI:
County Tax Services, Inc.
3733 National Drive, Ste 125
Raleigh, NC 27612

COUNTY:
Cumberland County
117 Dick St., Courthouse 5th Floor
Fayetteville, NC 28302

- C. Approval of Bid Award to Internet Engineering for Networking Equipment for the Information Services Department

BACKGROUND:

Formal bids were received in Purchasing for Networking Equipment for the Information Services Department.

Two bids were received. They were as follows:

Internet Engineering	\$133,432.55
Howard Technology	\$252,123.00

RECOMMENDATION / PROPOSED ACTION:

Purchasing supports the recommendation of Information Services in awarding the bid to Internet Engineering in the amount of \$133,432.55 for Networking Equipment for Information Services.

- D. Approval of Cumberland County Facilities Report and Recommendations:

- 1) Approval of FTCC's Request to Utilize Space at Spring Lake Family Resource Center

BACKGROUND:

Within the last month, the County has received two separate requests from representatives at Fayetteville Technical Community College (FTCC) for the use of space within the Spring Lake Family Resource Center to conduct continuing education classes.

On Wednesday, July 30th, the Engineering and Infrastructure Director met with representatives from FTCC to review the space that could possibly be utilized to conduct the classes that FTCC is proposing. There is a small conference room along with a larger conference room located in the facility. Currently the Health Department and Social Services are located within the building and utilize the larger conference room for training and meetings. The smaller conference room is very rarely used and according to FTCC, this area could be utilized for the class that meets daily. The larger conference

room can be utilized for the class that meets just one week per month. It does not appear that the use of both of these conference rooms by FTCC would have any negative impacts to the Departments within the facility. FTCC is flexible and can utilize space occasionally at the Library next door for any potential scheduling conflicts that could arise in the future for the larger conference room.

This was presented and approved by the Facilities Committee on August 7th.

RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director, County Management and the Facilities Committee recommend that the Board of Commissioners approves the usage of available space over the next year within the Spring Lake Family Resource Center by Fayetteville Technical Community College for the purposes of providing educational opportunities for the public.

- 2) Approval of Bid Award to Classic Window and Glass, Inc. for Department of Social Services Window Project

BACKGROUND:

There have been issues with the windows on the north side of the Department of Social Services (DSS) building basically since it was constructed. At the Facilities Committee meeting in March, the Committee was informed that Walter Vick, architect of record, was going to be working with the Engineering & Infrastructure Department to determine the most feasible solution to address the long standing issue.

It has been determined that the most cost effective approach would be to remove all glass and re-work the exterior gaskets, setting blocks and water deflectors. All fogged glass will be replaced with new glass. In addition to the windows, additional measures will be taken to caulk the sills of the window frames as well. To ensure quality control for the work to be performed, the County will secure the services of a third party testing firm to complete a static pressure test after the first section of windows have been removed and reinstalled. Thereafter, a hose test will be conducted at various stages to ensure the windows are being properly installed.

Bids were received on July 9th for the work described above. The low base bid was submitted by Carolina Classic Window and Glass, Inc. in the amount of \$383,900. In addition to the base bid, all three alternate bids are being recommended for a total contract price of \$464,505. There is a total of \$700,000 budgeted for this project within the FY 2015 Budget.

This was presented and approved by the Facilities Committee on August 7th.

RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director, County Management and the Facilities Committee recommend that the Board of Commissioners votes to approve the following recommendations:

1. Award a contract to Carolina Classic Window and Glass, Inc. in the amount of \$464,505 for the DSS Window Replacement Project.
2. Establish a contingency in the amount of \$46,000 to be used for additional work recommended by the E&I Director and approved by the County Manager.
- 3) Approval of the Alliance Behavioral Healthcare Lease

BACKGROUND

On July 1, 2013, Cumberland County and Alliance Behavioral Healthcare (“Alliance”) entered into an Interlocal Merger/Consolidation agreement which included provisions for the Alliance to locate their Cumberland County site at 711 Executive Place. The Parties acknowledged and agreed that the Alliance would occupy the space rent-free from July 1, 2013 through June 30, 2014, and that the County would continue to pay utilities during this timeframe.

In accordance with the agreement, the Alliance has provided notice of its intent to remain in the building and to commence paying rent at a rate not to exceed \$12 per square foot, effective July 1, 2014. The County has established an agreement with the Alliance that they shall pay \$12 per square foot for 18,713 square feet of finished office space and \$4 per square foot for 323 square feet of unfinished spaced utilized for files storage. The annual lease amount totals \$225,848, which shall be paid in equal monthly installments of \$18,820.67. Since the Alliance is leasing a portion of the building, they are to pay a prorated share of utilities costs based on the floor space leased. In addition, since the agreement did not include janitorial services, the Alliance shall also pay those costs on a pro-rata basis, with the exception of shared conference room space.

The Facilities Committee approved County Management’s recommendation for the proposed lease at its August 7, 2014 meeting.

RECOMMENDATION/PROPOSED ACTION:

Approve the Facilities Committee recommendation to lease designated space at 711 Executive Place in accordance with the terms set forth above.

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

LEASE AGREEMENT

Notice of Intent not required

Approved by Board of Commissioners on August 18, 2014

This Lease Agreement, is made and entered into the 1st day of July, 2014, by and between the Alliance Behavioral Healthcare Managed Care Organization existing under N.C.G.S. Chapter 122C, having a principal office at 4600 Emperor Boulevard, Suite 200, Durham, North Carolina, hereinafter referred to as "LESSEE," and the County of Cumberland, a body politic and corporate of the State of North Carolina, having a principal office at 117 Dick Street, Fayetteville, North Carolina, hereinafter referred to as "LESSOR".

WITNESSETH:

IN CONSIDERATION of the mutual promises and subject to the terms and conditions contained or referred to herein, LESSOR does hereby lease and demise to LESSEE, that certain office space located in the building at 711 Executive Place, Fayetteville, North Carolina, as more fully described as follows (hereinafter referred to as the "Leased Premises"):

The entire first floor, containing of 8,159 square feet (sf);
The entire second floor, containing 8,836 sf;
Rooms 318 (390 sf) and 324 (30 sf) on the third floor, containing 420 combined sf;
Rooms 419 (154 sf), 422 (216 sf), and 426 (928 sf) on the fourth floor, containing 1,298 combined sf; and
323 sf of unfinished space on the fifth floor for the storage of medical records; for a total of 18,713 sq. ft. of finished space and 323 sq.ft. of unfinished space.

This is the space currently occupied by LESSEE pursuant to the terms of the Interlocal Agreement entered into by LESSOR, LESSEE and the former Cumberland County Area Authority in 2013 (the "Interlocal Agreement"). The Leased Premises is only a portion of the total building space available. In the event Tenant does not have a need to occupy any portion of the Leased Premises, Tenant shall provide LESSOR with 30 days prior written notice of its intent to reduce its occupancy of the Leased Premises by December 31, 2014. Rent shall be adjusted down accordingly on the effective date of the reduced occupancy.

TO HAVE AND TO HOLD said property, together with all privileges and appurtenances thereto belonging including easements of ingress and egress, to the said LESSEE, under the terms and conditions hereinafter set forth:

1. TERM: The Lease shall commence the 1st day of July, 2014, and unless sooner terminated, continue for a term of one year, expiring at midnight on June 30, 2015.
2. RENT: The rent shall be at an annual rate of \$12.00 per square foot for the finished space and \$4.00 per square foot for the unfinished space in the total amount of TWO HUNDRED THIRTY TWO THOUSAND, SEVEN HUNDRED SIXTY DOLLARS \$225,848, payable in equal monthly installments of EIGHTEEN THOUSAND EIGHT TWENTY DOLLARS (\$18,820.67) on or before the 5th day of each month beginning July 5, 2014, subject to the optional reduction described herein.
3. DEPOSIT: LESSOR shall not require a security deposit from the LESSEE.
4. CONDITION OF PREMISES: LESSEE is currently occupying the Leased Premises and has determined the space to be suitable for its intended use as general office space.
5. PARKING LOT: The parking lot adjacent to the building shall be included in the Leased Premises for the shared use of LESSEE and its visitors and invitees with any other occupants of the building or the adjacent building and their respective visitors and invitees.

6. **ASSIGNMENT OR SUB-LEASE:** The LESSEE shall not assign this lease or sublet the Leased Premises or any part thereof, without the written consent of the LESSOR. Such written consent will not be unreasonably withheld by LESSOR.
7. **USE AND POSSESSION:** The Leased Premises are to be used exclusively for LESSEE'S activities to conduct certain MCO functions in Cumberland County pursuant to the terms of the Interlocal Agreement. LESSEE shall return the Leased Premises to LESSOR at the termination or expiration hereof in as good condition and state of repair as the same was at the commencement of the term hereof, except for loss, damage, or depreciation occasioned by reasonable wear and tear or damage by fire or other casualty.
8. **DESTRUCTION OF PREMISES:** In the event that said building including the Leased Premises is damaged by fire, explosion, accident or any act of God, so as to materially affect the use of the building and Leased Premises, this Lease shall automatically terminate as of the date of such damage or destruction, provided, however, that if such building and Leased Premises are repaired so as to be available for occupancy and use within sixty (60) days after said damage, then this lease shall not terminate; provided further, that the LESSEE shall pay no rent during the period of time that the Leased Premises are unfit for occupancy and use.
9. **CONDEMNATION:** If during the term of this lease, the whole of the Leased Premises, or such portion thereof as will make the Leased Premises unusable for the purpose leased, be condemned by public authority for public use, then the term hereby granted shall cease and come to an end as of the date of the vesting of title in such public authority, or when possession is given to such public authority, whichever event occurs last. Upon such occurrence the rent shall be apportioned as of such date and any rent paid in advance at the due date for any space condemned shall be returned to LESSEE. LESSOR shall be entitled to reasonable compensation for such taking except for any statutory claim of LESSEE for injury, damage or destruction of LESSEE'S business accomplished by such taking. If a portion of the Leased Premises is taken or condemned by public authority for public use so as not to make the remaining portion of the leased premises unusable for the purpose leased, this lease will not be terminated but shall continue. In such case, the rent shall be equitably and fairly reduced or abated for the remainder of the term in proportion to the amount of leased premises taken. In no event shall LESSOR be liable to LESSEE for any interruption of business, diminution in use or for the value of any unexpired term of this lease.
10. **INTERRUPTION OF SERVICE:** LESSOR shall not be or become liable for damages to LESSEE alleged to be caused or occasioned by, or in any way connected with, or the result of any interruption in service, or defect or breakdown from any cause whatsoever in any of the electric, water, plumbing, fire suppression, heating, air conditioning, ventilation or elevator systems, or any other structural component of the building, unless such damage arises from an intentional or grossly negligent act or omission of LESSOR, its employees or officers.
11. **LESSOR'S RIGHT TO INSPECT:** LESSOR shall have the right, at reasonable times during the term of this lease, to enter the Leased Premises, for the purposes of examining

and inspecting same and of making such repairs or alterations therein as LESSOR shall deem necessary.

12. **INSURANCE:** LESSOR will be responsible for insuring its interest in the building and LESSEE will be responsible for insuring its personal property within the leased premises. LESSEE shall at all times during the term hereof, at its own expense, maintain and keep in force a policy or policies of general and premises liability insurance against claims for bodily injury, death or property damage occurring in, on, or about the demised premises in a coverage amount of no less than \$1,000,000 per occurrence and naming LESSOR as an additional named insured. LESSEE shall provide current copies of all such policies of insurance to LESSOR'S office of risk management.
13. **LESSOR'S RESPONSIBILITY FOR MAINTENANCE:** LESSOR shall be responsible for the maintenance and good condition of the roof, windows and exterior walls of the building; the parking lot; the landscaping; and the repair or replacement of electrical system, overhead lighting system, including bulbs, plumbing system, fire suppression system, heating, air conditioning and ventilation system components; and elevator systems. LESSOR shall provide all services related to the landscaping and grassed areas, including trimming, mowing, planting, mulching and fertilizing as needed.
14. **LESSEE'S RESPONSIBILITY FOR ALL OTHER MAINTENANCE:** LESSEE shall be responsible for all other maintenance of the Leased Premises not specified as the responsibility of LESSOR above. LESSEE shall be responsible for the regular maintenance in good condition of all interior surfaces including floors, doors, ceilings, walls and windows. LESSEE shall not be responsible for ordinary wear and tear or for major damage or destruction caused by casualty or disaster for which there is insurance coverage.
15. **JANITORIAL SERVICES:** LESSOR shall provide commercially reasonable janitorial service and trash removal from the leased premises. During any period when there is any other tenant, occupant or user of the building, LESSEE shall reimburse LESSOR for LESSEE'S pro rata share of the cost of these services. LESSEE'S pro rata share shall be computed as the percentage of the sf leased by LESSOR is of the total sf being leased, occupied or used by all lessees, occupiers or users. During any period that LESSEE is the sole tenant, occupant or user of the building, LESSEE shall reimburse LESSOR the full amount of the costs of this service. LESSOR shall invoice LESSEE for the reimbursement of the costs of this service not less than quarterly. LESSOR agrees to provide LESSEE with documentation of the scope of janitorial services upon written request.
16. **PERSONAL PROPERTY AND IMPROVEMENTS:** Any additions, fixtures, or improvements placed or made by the LESSEE in or upon the leased premises, which are permanently affixed to the Leased Premises and which cannot be removed without unreasonable damage to said premises, shall become the property of the LESSOR and remain upon the premises as a part thereof upon the termination of this Lease. All other additions, fixtures, or improvements, to include trade fixtures, office furniture and equipment, and similar items, which can be removed without irreparable damage to the

leased premises, shall be and remain as the property of the LESSEE and may be removed from the leased premises by the LESSEE upon the termination of this lease. LESSEE shall bear the expense of any repairs of the Leased Premises, other than reasonable wear and tear caused by such removal. LESSEE shall obtain LESSOR'S written consent before making any alterations or changes to the building or Leased Premises.

17. TAXES: LESSOR acknowledges that all business personal property owned by LESSEE is exempt from property taxation. Notwithstanding the foregoing, in the event any property of LESSEE becomes taxable, LESSEE will list and pay all business personal property taxes on its taxable personal property located within the Leased Premises.
18. NOTICE: Any notices to be given by either party to the other under the terms of this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by hand, with written acknowledgement of receipt, or mailed by certified mail, return receipt requested, or delivered by receipt controlled express service, to the other party at their respective business addresses.
19. Intentionally deleted.
20. ADA AND OSHA REQUIREMENTS: LESSOR shall make such repairs and perform such maintenance as is necessary to keep the premises in compliance with all ADA and OSHA requirements. LESSEE shall keep the premises in good condition and repair and in a good, clean, and safe condition at all times during the term of this Lease Agreement.
21. SUCCESSOR AND ASSIGNS: This lease shall bind and inure to the benefit of the successors and assigns of the parties hereto.
22. UTILITIES: Electrical power, water and sewer services, are metered. LESSEE shall reimburse LESSOR for LESSEE'S pro rata share of the cost of these services. LESSEE'S pro rata share shall be computed as the percentage the finished space sf leased by LESSOR is of the total building sf. LESSOR shall invoice LESSEE for the reimbursement of the costs of these services not less than quarterly. LESSOR shall not be liable for any failure of any public utility to provide utility services over such connections and such failure shall not constitute a default by LESSOR in performance of this Lease. The installation, maintenance and service charges for any other utilities or services such as telephone, cable television, internet, or wireless connectivity shall be the sole responsibility of LESSEE.
23. RISK OF LOSS: As between the LESSOR and the LESSEE, any risk of loss of personal property placed by the LESSEE in or upon the Leased Premises shall be upon and the responsibility of the LESSEE, regardless of the cause of such loss.
24. DESTRUCTION OF PREMISES: If the Leased Premises should be completely destroyed or damaged so that more than fifty percent (50%) of the Leased Premises are rendered unusable, this Lease shall immediately terminate as of the date of such destruction or damage.
25. TERMINATION: If LESSEE shall fail to pay any installment of rent when due and

payable as heretofore provided or fail to perform any of the terms and conditions heretofore set forth and shall continue in such default for a period of thirty (30) days after written notice of default, LESSOR, at its discretion, may terminate this Lease and take possession of the premises without prejudice to any other remedies allowed by law. If LESSOR shall fail to perform any of the terms and conditions heretofore set forth and shall continue such default thirty (30) days after written notice of such default, LESSEE, at its discretion, may terminate this Lease and vacate the leased premises without further obligation to pay rent as theretofore provided from date of said termination, without prejudice to any other remedies provided by law. In the event LESSEE is unable or chooses not to use the Leased Premises for the intended uses, then LESSEE may terminate this Lease upon ninety (90) days prior written notice to LESSOR, and in such event pay rent to LESSOR through the end of the month which LESSEE vacates.

26. OCCUPANCY AND QUIET ENJOYMENT: LESSOR promises that LESSEE shall have quiet and peaceable possession and occupancy of the Leased Premises in accordance with the terms of this Lease, and that LESSOR will defend and hold harmless the LESSEE against any and all claims or demands of others arising from LESSEE'S occupancy of the premises or in any manner interfering with the LESSEE'S use and enjoyment of said premises.
27. MODIFICATION: This Agreement may be modified only by an instrument duly executed by the parties or their respective successors.
28. MERGER CLAUSE: This instrument is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Lease even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings or agreements have been made or relied upon in the making of this Lease other than those specifically set forth herein.

IN WITNESS WHEREOF, LESSOR and LESSEE have caused this Lease Agreement to be executed in duplicate originals by their duly authorized officers, to be effective for the term as stated above.

- E. Approval of Cumberland County Finance Report and Recommendations (For Information Purposes Only / August 7, 2014 Finance Committee Minutes Incorporated by Reference)
- F. Approval of Demolition of County County-Owned Property Located at 4900 Panda Street, Hope Mills, North Carolina

AFFIDAVIT OF THE HOUSING INSPECTOR'S REPORT
BEFORE THE BOARD OF CUMBERLAND COUNTY COMMISSIONERS

I, Joey Lewis, Inspector for the County of Cumberland Inspection Department, acting in my official capacity, being duly sworn, depose and say:

Case Number: BI-2014-001
Property Owner: Cumberland County
Property Address: 4900 Panda Street, Hope Mills, NC (single wide manufactured home and accessory structure)
Tax Parcel Identification Number: 0413-45-4990

SYNOPSIS: This property was inspected on June 30, 2014. The structures are presently vacant and unsecure. In their present state, these structures constitute a fire, health, and safety hazard. The estimated cost to repair these structures to a minimum standard for human habitation is \$51,450. The Assessor for Cumberland County has these structures presently valued at \$500.00 each for salvageable materials.

RECOMMENDATION: IT IS THE RECOMMENDATION OF THE INSPECTION DEPARTMENT THE STRUCTURE BE DEMOLISHED AND THE DEBRIS REMOVED FROM THE LOT.

G. Approval of Ordinance Assessing Property for the Cost of Demolition:

- 1) Case Number: MH 116-2013
Property Owner: Alecia & David McLaughlin
Property Location: 1609 Halsey Loop, Hope Mills, NC
Parcel Identification Number: 0443-02-5775

ORDINANCE ASSESSING PROPERTY FOR THE COSTS
OF DEMOLITION OF A STRUCTURE PURSUANT TO
THE MINIMUM HOUSING CODE OF CUMBERLAND COUNTY
CASE NUMBER: MH 116-2013
PROPERTY OWNER: Alecia & David McLaughlin

WHEREAS, the Board of County Commissioners of Cumberland County, North Carolina, on November 18, 2013, enacted an ordinance directing the demolition by the owner of the structure Alecia & David McLaughlin, located at 1609 Halsey Loop; Hope Mills, NC, PIN: 0443-02-5775, said ordinance being recorded in Book 9335, page 0584, of the Cumberland County Registry of Deeds;

WHEREAS, the time within which said demolition was to be performed has expired and the owner(s) failed to comply with the ordinance within such period; and

WHEREAS, the said ordinance further directed the Minimum Housing Inspector to effect the demolition of the structure(s) in the event the owner(s) failed to do so;

WHEREAS, the Minimum Housing Inspector has reported to this Board that:

- (1) Said work had been accomplished.
- (2) The cost of such work was \$1,500.00.
- (3) There were no salable materials resulting from said work.

NOW THEREFORE, the above report coming on to be considered and the Board of County Commissioners find it to be a true and accurate accounting, the said Board hereby ORDAINS:

(1) That the real property on which the work was performed be, and it hereby is, assessed in the amount of \$1,500.00, said sum being the unpaid balance of the cost of the work set forth in the Inspector's Report;

(2) That as provided in the Ordinance of Cumberland County dated November 18, 2013, and in Section 153A-372 of the General Statutes of North Carolina, the amount of the foregoing assessment be, and hereby does constitute, a lien against the real property upon which such costs were incurred, such property being more particularly described as follows:

The structure and premises located at 1609 Halsey Loop, Hope Mills, NC, as described in Deed Book 5647, page 215, of the Cumberland County Registry and identified in County tax records as PIN 0443-02-5775.

(3) That as further provided in Section 160A-443(6) of the General Statutes of North Carolina, such lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of said General Statutes;

(4) That one copy of this resolution be filed in the minutes of this Board of County Commissioners and another copy certified and delivered by the Clerk as a charge to the Tax Collector, who shall thereupon enter the amount of the assessment set forth above upon the Tax Books of the County as a special assessment against the above described property.

- 2) Case Number: MH 379-2013
Property Owner: Rick Garcia
Property Location: 4909 Panda Street, Hope Mills, NC
Parcel Identification Number: 0413-45-4527

ORDINANCE ASSESSING PROPERTY FOR THE COSTS
OF DEMOLITION OF A STRUCTURE PURSUANT TO
THE MINIMUM HOUSING CODE OF CUMBERLAND COUNTY
CASE NUMBER: MH 379-2013
PROPERTY OWNER: Rick Garcia

WHEREAS, the Board of County Commissioners of Cumberland County, North Carolina, on January 21, 2014, enacted an ordinance directing the demolition by the

owner(s) of the structure(s) Rick Garcia, located at 4909 Panda Street , Hope Mills, NC, PIN: 0413-45-4527, said ordinance being recorded in Book 9372, page 386, of the Cumberland County Registry of Deeds;

WHEREAS, the time within which said demolition was to be performed has expired and the owner(s) failed to comply with the ordinance within such period; and

WHEREAS, the said ordinance further directed the Minimum Housing Inspector to effect the demolition of the structure(s) in the event the owner(s) failed to do so;

WHEREAS, the Minimum Housing Inspector has reported to this Board that:

- (1) Said work had been accomplished.
- (2) The cost of such work was \$1,750.00.
- (3) There were no salable materials resulting from said work.

NOW THEREFORE, the above report coming on to be considered and the Board of County Commissioners finding it to be a true and accurate accounting, the said Board hereby ORDAINS:

(1) That the real property on which the work was performed be, and it hereby is, assessed in the amount of \$1,750.00, said sum being the unpaid balance of the cost of the work set forth in the Inspector's Report;

(2) That as provided in the Ordinance of Cumberland County dated January 21, 2014, and in Section 160A-443(6) of the General Statutes of North Carolina, the amount of the foregoing assessment be, and hereby does constitute, a lien against the real property upon which such costs were incurred, such property being more particularly described as follows:

The structure and premises located at 4909 Panda Street, Hope Mills, NC, as described in Deed Book 6526, page 0753, of the Cumberland County Registry and identified in County tax records as PIN 0413-45-4527.

(3) That as further provided in Section 160A-443(6) of the General Statutes of North Carolina, such lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of said General Statutes;

(4) That one copy of this resolution be filed in the minutes of this Board of County Commissioners and another copy certified and delivered by the Clerk as a charge to the Tax Collector, who shall thereupon enter the amount of the assessment set forth above upon the Tax Books of the County as a special assessment against the above described property.

- 3) Case Number: MH 7025-2013
Property Owner: Mary W. Sutton

Property Location: 3563 Camden Road, Fayetteville, NC
Parcel Identification Number: 0425-36-6692

ORDINANCE ASSESSING PROPERTY FOR THE COSTS
OF DEMOLITION OF A STRUCTURE PURSUANT TO
THE MINIMUM HOUSING CODE OF CUMBERLAND COUNTY
CASE NUMBER: MH 7025-2013
PROPERTY OWNER: Mary W. Sutton

WHEREAS, the Board of County Commissioners of Cumberland County, North Carolina, on August 19, 2013, enacted an ordinance directing the demolition by the owner(s) of the structure(s) Mary W. Sutton, located at 3563 Camden Road, Fayetteville, NC, PIN: 0425-36-6692, said ordinance being recorded in Book 9278, page 382, of the Cumberland County Registry of Deeds;

WHEREAS, the time within which said demolition was to be performed has expired and the owner(s) failed to comply with the ordinance within such period; and

WHEREAS, the said ordinance further directed the Minimum Housing Inspector to effect the demolition of the structure(s) in the event the owner(s) failed to do so;

WHEREAS, the Minimum Housing Inspector has reported to this Board that:

- (1) Said work had been accomplished.
- (2) The cost of such work was \$21,000.00.
- (3) There were no salable materials resulting from said work.

NOW THEREFORE, the above report coming on to be considered and the Board of County Commissioners finding it to be a true and accurate accounting, the said Board hereby ORDAINS:

(1) That the real property on which the work was performed be, and it hereby is, assessed in the amount of \$21,000.00, said sum being the unpaid balance of the cost of the work set forth in the Inspector's Report;

(2) That as provided in the Ordinance of Cumberland County dated August 19, 2013, and in Section 160A-443(6) of the General Statutes of North Carolina, the amount of the foregoing assessment be, and hereby does constitute, a lien against the real property upon which such costs were incurred, such property being more particularly described as follows:

The structure and premises located at 3563 Camden Road Fayetteville, NC, as described in Deed Book 8994, page 0889, of the Cumberland County Registry and identified in County tax records as PIN 0425-36-6692.

(3) That as further provided in Section 160A-443(6) of the General Statutes of North Carolina, such lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of said General Statutes;

(4) That one copy of this resolution be filed in the minutes of this Board of County Commissioners and another copy certified and delivered by the Clerk as a charge to the Tax Collector, who shall thereupon enter the amount of the assessment set forth above upon the Tax Books of the County as a special assessment against the above described property.

H. Approval of Sale of Surplus County-Owned Real Property Acquired by Tax Foreclosure:

- | | |
|---------------------------------------------|--------------------|
| 1) Lots 114 & 116 Savoy Hgts Sec 1 | PIN : 0437-11-4516 |
| 2) Lots 216 Weiss Ave | PIN: 0437-11-0345 |
| 3) Lot 311 Savoy Hgts | PIN: 0437-00-6970 |
| 4) Lots 403 & 405 Savoy Hgts & Vac to Creek | PIN: 0437-00-0500 |
| 5) Lot 104 Savoy Hgts | PIN: 0437-12-4190 |
| 6) 4.05 ac Land adj Briarwood Hills Sec 3 | PIN: 0426-54-8992 |

BACKGROUND:

On or about August 16, 2011, the County acquired by tax foreclosure the properties referenced above. The amount currently owed on the foreclosure judgment including interest and cost for the properties is \$9,227.47.

Joe Fleming Jr., has offered to purchase the County's interest in the property for \$9,830.00 and have deposited \$983.00 in the Finance Office.

The tax values of the properties are as follows:

(All are Cross Creek Township)

PIN 0437-11-4516; Lots 114 & 116 Savoy Hgts Sec 1; VALUE: \$22,700.00
(Located on Weiss Ave off Martin Luther King Jr FWY Off Ramp)

PIN 0437-11-0345; Lot 216 Weiss Ave; VALUE: \$10,000.00
(Located on Weiss Ave)

PIN 0437-00-6970; Lot 311 Savoy Hgts; VALUE: \$ 5,625.00
(Located on Weiss Ave off Commerce St)

PIN 0437-00-0500; Lots 403 & 405 Savoy Hgts & Vac to Creek; VALUE: \$ 6,250.00
(Located on Weiss Ave)

PIN 0437-12-4190; Lot 104 Savoy Hgts; VALUE: \$ 3,500.00
(Located off Ashley St off Martin Luther King Jr FWY)

PIN 0426-54-8992; 4.05 ac Land adj Briarwood Hills Sec 3; VALUE: \$55,688.00
(Located on Eldorado Rd behind Colgate Dr)

These properties are surplus to the needs of the County and, according to N.C.G.S. §153A-176 and N.C.G.S. §105-376, the County has the authority to sell such property. Management has reviewed this offer and it is now being submitted for the Board to consider whether or not to accept Mr. Fleming's bid. The properties have been advertised and this office has not received any upset bids. The bid period is now closed.

RECOMMENDATION AND PROPOSED ACTION:

That the Board of Commissioners considers whether to accept the offer of Mr. Joe Fleming Jr. to purchase the above properties for the sum of \$9,830.00, plus advertising and recording costs, and authorize the Chairman to execute a deed upon receipt of the balance of the purchase price.

- I. Approval of a Proclamation proclaiming August 24-30, 2014 to be "Human Trafficking Awareness Week" in Cumberland County

COUNTY OF CUMBERLAND

NORTH CAROLINA

PROCLAMATION

WHEREAS, human trafficking is a human rights violation and public health issue as well as a global criminal enterprise totaling \$32 billion dollars a year; and

WHEREAS, the Federal Bureau of Investigation estimates that human trafficking victims consist of 80% women, with at least 200,000 American children at risk of being enslaved each year and nearly 25% of all trafficking victims are transported to the southeastern United States, and North Carolina as one of the top ten states for incidents related to human trafficking; and

WHEREAS, human trafficking is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of forced labor or sexual servitude; and

WHEREAS, traffickers force victims into lives of involuntary servitude and frequent subjection to rape, beatings, debt bondage, confinement, and psychological and emotional abuse; these victims are frequently found in domestic labor situations, construction, farm work, hotel, restaurant and tourist industries, janitorial work, and the commercial sex industry; and

WHEREAS, the United States Congress adopted the Trafficking Victims Protection Act in 2000 with current reauthorizations and North Carolina enacted the NC Trafficking Victims Protection Act in 2007, signing into law the NC Safe Harbor Act in 2013, to protect minors and to better prosecute offenders and contributors; and

WHEREAS, systematic approaches to detect trafficking, create protocols for response and provide services to trafficked victims, while holding traffickers accountable for their crimes, are crucial in order to eradicate human trafficking; and

WHEREAS, multiple governments, nonprofit, and faith-based organizations, as well as concerned individual citizens of Fayetteville currently provide leadership, philanthropy, advocacy, and dedication to end human trafficking in the County of Cumberland and North Carolina.

NOW, THEREFORE, WE, the Cumberland County Board of Commissioners, do hereby honorably proclaim August 24 – 30, 2014 to be

HUMAN TRAFFICKING AWARENESS WEEK

Adopted this 18th day of August 2014.

J. Budget Revisions:

(1) Library Grants

Revision in the amount of \$8,684 to rebudget remainder of LSTA NC Cardinal Grant from FY2014 to FY2015, not yet received. (B15-034) Funding Source - State

(2) Senior Aides

Revision in the amount of \$14,004 to reconcile county budget with state allocations for FY2015. (B15-038) Funding Source - State

MOTION: Commissioner King moved to approve consent items 2.A. – 2.J.(2)

SECOND: Commissioner Melvin

VOTE: UNANIMOUS (7-0)

3. Public Hearings

Uncontested Rezoning Case

Ms. Cannon explained the Board of Commissioners' procedures for public hearings.

A. Case P14-26: Rezoning of 1.92+/- acres from A1 Agricultural to R40 Residential, or to a more restrictive zoning district, located at 1105 John McMillan Road, submitted by Brian S. and Lisa M. Alger (owners).

Staff Recommendation: 1st Motion: Find the request consistent with the LUP and approve and adopt the reasonableness statement; 2nd Motion: Approve R40
Planning Board Recommendation: Approve Staff Recommendation

B. Case P14-30: Rezoning of 2.65+/- acres from R6 Residential to C2(P) Planned Service and Retail, or to a more restrictive zoning district, located at 1223 Andrews Road, submitted by Jacqueline C. Andrews (owner).

Staff Recommendation: 1st Motion: Find the request consistent with the LUP and approve and adopt the reasonableness statement; 2nd Motion: Approve C2(P)

Planning Board Recommendation: Approve Staff Recommendation

- C. Case P14-31: Rezoning of 5.62+/- acres from A1 Agricultural/CU Conditional Use Overlay and the Permit to allow a trucking business and storage of equipment to A1 Agricultural, or to a more restrictive zoning district, located at 2690 Indiana Court and 5742 Matt Hair Road, submitted by Dolman P. and Mary L. Garces (owners) and Carla Emmons.

Staff Recommendation: 1st Motion: Find the request consistent with the LUP and approve and adopt the reasonableness statement; 2nd Motion: Approve A1

Planning Board Recommendation: Approve Staff Recommendation

- D. Case P14-32: Rezoning of 4.75+/- acres from M(P) Planned Industrial to A1 Agricultural, or to a more restrictive zoning district, located at 2679 Wilmington Hwy; submitted by Charles T. Gardner on behalf of Indoor Warehouse Storage, LLC. (owner).

Staff Recommendation: 1st Motion: Find the request consistent with the LUP and approve and adopt the reasonableness statement; 2nd Motion: Approve A1 and CD (where the floodway exists)

Planning Board Recommendation: Approve staff recommendation

- E. Case P14-35: Rezoning of 2.23+/- acres from A1 Agricultural to R40A Residential, or to a more restrictive zoning district, located at 879 and 883 Remley Court, submitted by Bryan Thomas Lawrence (owner).

Staff Recommendation: 1st Motion: Find the request consistent with the LUP and approve and adopt the reasonableness statement; 2nd Motion: Approve R40A

Planning Board Recommendation: Approve Staff Recommendation

Tom Lloyd, Planning and Inspections Director, advised there were no speakers in opposition to Case P14-26, Case P14-30, Case P14-31, Case P14-32 and Case P14-35. Mr. Lloyd further stated Planning staff and the Planning Board recommended approval in all five cases.

These are the duly advertised/noticed public hearings set for this date and time for Case P14-26, Case P14-30, Case P14-31, Case P14-32 and Case P14-35.

Chairman Council opened the public hearings for Case P14-26, Case P14-30, Case P14-31, Case P14-32 and Case P14-35.

The clerk to the board advised there were no speakers for Case P14-26, Case P14-30, Case P14-31, Case P14-32 and Case P14-35.

Chairman Council closed the public hearings for Case P14-26, Case P14-30, Case P14-31, Case P14-32 and Case P14-35.

MOTION: Commissioner Edge moved to find the requests consistent with the LUP and approve and adopt the reasonableness statements in Case P14-26, Case P14-30, Case P14-31, Case P14-32 and Case P14-35.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Edge moved to approve the recommendation of Planning staff and the Planning Board in Case P14-26, Case P14-30, Case P14-31, Case P14-32 and Case P14-35.

SECOND: Chairman Council

VOTE: UNANIMOUS (7-0)

Contested Zoning Ordinance Text Amendment

F. Case P14-38: Revision and amendment to the Cumberland County Zoning Ordinance, by amending Article II Interpretations, Calculations, and Definitions, Section 203. Definitions of Specific Terms and Words, inserting in alphabetical order the term vocational school, defining the same, and updating the table of contents as appropriate.

Staff Recommendation: 1st Motion: Find the request consistent with the LUP and approve and adopt the reasonableness statement; 2nd Motion: Approve the text amendment defining the term vocational school

Planning Board Recommendation: Approve Staff Recommendation

BACKGROUND:

On February 3, 2014 the Board of Commissioners approved the county attorney's recommendation to request the Planning Board to define vocational school in the County's Zoning Ordinance to indicate the Board's intent that a vocational school be classified as a separate and distinct use from an outdoor firing range. The county attorney made this recommendation because vocational school is not defined in the ordinance and the interpretation of its meaning continues to be argued in the on-going litigation about the zoning permits for the outdoor shooting range formerly known as Tigerswan.

The county attorney advises that due to the decision of the Court of Appeals in Atkinson v. City of Charlotte last month, the motions to approve text amendments and re-zonings must "include an 'explanation' as to why the amendment is reasonable and in the public

interest under the plain meaning of that term.” For that reason, the county attorney has advised planning staff that staff recommendations should include the explanation to be incorporated in the statement of consistency and reasonableness. The Board of Commissioners is certainly not bound by the staff recommendations; however; if the Board wishes to adopt a different explanation for its statement of consistency and reasonableness, the explanation should be specifically stated in the motion. This will make the motions lengthier and more cumbersome but it is a legal necessity.

RECOMMENDATION/PROPOSED ACTION:

The county attorney recommends the adoption of the text amendment defining vocational school in the County’s Zoning Ordinance with the statement of consistency and reasonableness to include an explanation as follows:

First Motion:

That the Board finds that approval of the text amendment in Case P14-38 is consistent with the adopted comprehensive plan designated as the 2030 Growth Vision Plan because the zoning location of vocational schools is impacted by the policies contained in the Growth Vision Plan to promote a more diversified local economy, well-managed growth and development, the preservation of open space and rural character, and compatible commercial development; and that the Board further finds that the approval of this text amendment is reasonable and in the public interest because the principal impacts of vocational schools are the traffic congestion created by potentially large numbers of students attending classes, and the need for the efficient and adequate provision of transportation, water and sewerage services for the facilities providing these services to the public.

Second Motion:

To approve and adopt the text amendment as recorded below in Case P14-38 as recommended by the Planning Board and planning staff.

P14-38
County Zoning Ordinance
Text Amendment
(Vocational School)

REVISION AND AMENDMENT TO THE CUMBERLAND COUNTY ZONING ORDINANCE, BY AMENDING ARTICLE II INTERPRETATIONS, CALCULATIONS, AND DEFINITIONS, SECTION 203. DEFINITIONS OF SPECIFIC TERMS AND WORDS, INSERTING IN ALPHABETICAL ORDER THE TERM VOCATIONAL SCHOOL, DEFINING THE SAME, AND UPDATING THE TABLE OF CONTENTS AS APPROPRIATE.

AMEND Article II Interpretations, Calculations, and Definitions, Section 203. Definitions of Specific Terms and Words, by INSERTING in alphabetical order the term VOCATIONAL SCHOOL with the definition as follows:

Vocational School: A specialized instructional establishment that provides on-site training of business, commercial, and/or trade skills primarily within classrooms or work sites enclosed in buildings to prepare individuals to enter the workforce; to obtain a two-year degree and transfer to a four-year college or university after graduation; or to seek a diploma or certificate program to quickly obtain knowledge and expertise in specialized areas. Incidental instructional services in conjunction with a principal use listed in Section 403 shall not be considered a vocational school and nor shall any use that includes an outdoor shooting range be considered a vocational school.

Rick Moorefield, County Attorney, reviewed the background information as recorded above and stated the Board asked that a definition of vocational school be included in the County's Zoning Ordinance when it acted in February 2014 to address potential deficiencies in the process to issue the October 2013 permit to Tigerswan. Mr. Moorefield stated the term vocational school is not defined in the ordinance and the interpretation of its meaning continues to be argued in the on-going litigation about the zoning permits for the outdoor shooting range formerly known as Tigerswan, now known at The Range. Mr. Moorefield stated his recommendation is to approve and adopt the text amendment as recommended by the Planning Board and planning staff in Case P14-38.

Mr. Moorefield reviewed the first motion as recorded above and stated in July 2014, the Court of Appeals decided another case involving zoning matters and because the Court continues to stringently interpret statutes that address these issues, there has to be an explanation of the action taken stated in the motion. Mr. Moorefield stated his recommendation for the first motion fits the recommendation of the Planning Board and the circumstances surrounding this issue. Mr. Moorefield stated the Board of Commissioners is not bound by staff recommendations and should the Board wish to adopt a different explanation for its statement of consistency and reasonableness, the explanation should be specifically stated in the motion.

Commissioner Melvin asked whether the language in the text amendment should be changed while there is on-going litigation. Mr. Moorefield stated language is frequently changed because laws get passed to address court cases and to address instances in which there are interpretation questions about the terms in the laws that are being considered. Mr. Moorefield explained the term vocational school has not been an issue before but it has become an issue because it has not been defined in the County's Zoning Ordinance.

This is the duly advertised/noticed public hearing set for this date and time for Case P14-38.

Chairman Council opened the public hearings for Case P14-38.

The clerk to the board called the following speaker for Case P14-38.

Sue Horne – Ms. Horne appeared in opposition and stated members of the community impacted by the operation of The Range urge the Board to oppose this amendment or at least postpone a vote on it until legal rulings have been made in the existing court cases. Ms. Horne stated changing the County's Zoning Ordinance text in order to make legitimate court rulings moot is just not the right thing to do.

There being no further speakers, Chairman Council closed the public hearing for Case P14-38.

Commissioner Evans asked whether there was a rush and whether the Board had to take action at this time. Mr. Moorefield stated although there is no rush, the term vocational school is currently not defined within the County's Zoning Ordinance and the text amendment is being recommended so everyone will know what it means. Mr. Moorefield stated clarification of the term will hopefully end on-going litigation. Commissioner Evans posed additional questions.

MOTION: Commissioner Evans moved that the Board deny the text amendment to define vocational schools until the court comes to a final decision on what it should be.

SECOND: Commissioner Melvin

DISCUSSION: Commissioner Keefe spoke to the number of times this matter has revisited by the Board. Commissioner Faircloth stated he favored delaying any action.

SUBSTITUTE MOTION: Commissioner Faircloth moved to table this action until the Board has the facts.

SECOND: Commissioner Melvin

DISCUSSION: Commissioner Faircloth stated there appears to be a lot of uncertainty to the issue and asked whether the Board would have to revisit the matter again depending on how the courts rule. Mr. Moorefield stated the text amendment is being recommended regardless of how the courts rule on Tigerswan to keep the county from encountering extended litigation on issues like this moving forward.

Commissioner Faircloth asked whether the text amendment would affect Tigerswan. Mr. Moorefield stated it would not be retroactive or affect anything that happened in the past. Mr. Moorefield stated should the Board adopt the text amendment, it will only be effective moving forward. Commissioner Faircloth withdrew his substitute motion; Commissioner Melvin withdrew his second to the substitute motion.

Mr. Moorefield stated if the Board adopts the text amendment, it will be making a definition for vocational schools which does not currently exist.

Mr. Moorefield stated otherwise, the term vocational school will continue to be disputed until it such time as it is defined. Additional questions followed.

VOTE ON ORIGINAL MOTION: FAILED (1-6) (Commissioner Evans voted in favor; Commissioners Melvin, Edge, Council, Faircloth, Keefe, and King voted in opposition)

MOTION: Commissioner Keefe moved that the Board finds that approval of the text amendment in Case P14-38 is consistent with the adopted comprehensive plan designated as the 2030 Growth Vision Plan because the zoning location of vocational schools is impacted by the policies contained in the Growth Vision Plan to promote a more diversified local economy, well-managed growth and development, the preservation of open space and rural character, and compatible commercial development; and that the Board further finds that the approval of this text amendment is reasonable and in the public interest because the principal impacts of vocational schools are the traffic congestion created by potentially large numbers of students attending classes, and the need for the efficient and adequate provision of transportation, water and sewerage services for the facilities providing these services to the public.

SECOND: Commissioner King

VOTE: PASSED (6-1) (Commissioners Melvin, Edge, Council, Faircloth, Keefe and King voted in favor; Commissioner Evans voted in opposition)

MOTION: Commissioner Keefe moved to approve and adopt the text amendment in Case P14-38 as recommended by the Planning Board and planning staff.

SECOND: Commissioner King

VOTE: PASSED (6-1) (Commissioners Melvin, Edge, Council, Faircloth, Keefe and King voted in favor; Commissioner Evans voted in opposition)

Contested Conditional Zoning Case

G. Case P14-37: Rezoning of 12.20+/- acres from C(P) Planned Commercial/CUD Conditional Use District for a crematory and the Permit and A1 Agricultural to C(P) Planned Commercial/CZ Conditional Zoning for a crematorium, office, meditation room, gazebo and display of equipment and services, or to a more restrictive zoning district, located at 6761 and 6765 Sandy Creek Road, submitted by Karen L. Campbell (owner).

Staff Recommendation: 1st Motion: Find the request consistent with the LUP and approve and adopt the reasonableness statement; 2nd Motion: Approve

C(P)/CZ for a crematorium, meditation room, gazebo and display of equipment and services

Planning Board Recommendation: Approve staff recommendation

The information as recorded below is provided in an effort to further clarify the required consistency with the Land Use Plan, and reasonableness and in the public interest statements as required by the general statutes for the above referenced case.

CONSISTENCY WITH THE LAND USE PLAN STATEMENT

The Board finds that approval of the request for rezoning in Case P14-37 is not consistent with the adopted comprehensive plan designated as the 2030 Growth Vision Plan, which calls for “rural” at this location; however, the request is consistent with the pre-existing and previously approved use as a crematorium that is centered on a relatively large tract and not in close proximity to any property owned by a different owner.

REASONABLENESS AND IN THE PUBLIC INTEREST STATEMENT

The Board further finds that approval of this request for rezoning is reasonable and in the public interest because the location and character of the use requested with the site developed according to the site plan included in the application and meeting or exceeding all ordinance related conditions, protection to the public health, safety and welfare will be afforded. The crematorium structure (process) is not being expanded, only ancillary uses to include: an office, mediation room, gazebo and display of equipment/services are proposed within the current application.

BACKGROUND INFORMATION

Documentation in public records indicates the crematorium was in existence since at least 1992; however, initial zoning in this area did not occur September 20, 1996. In 2008 the property owner submitted for approval under the Conditional Use District and Permit (CUD) process for an expansion of the crematorium structure on a portion of the subject property, which the commissioners approved on April 21, 2008. On April 18, 2011 the Board of Commissioners approved a text amendment to the zoning ordinance replacing the CUD (quasi-judicial) rezoning process with the Conditional Zoning (CZ) legislative process that is still in effect today. Even though the current application does not include any expansion to the crematorium structure or process, staff encouraged the property owner to consider for submission that portion of the subject property zoned C(P)/CUD so that all operations associated with the crematorium would be consistently zoned, if approved, to C(P)/CZ.

Tom Lloyd, Planning and Inspections Director, stated there were no speakers in opposition to Case P14-37 and the Planning Board recommended approval.

This is the duly advertised/noticed public hearing set for this date and time for Case P14-37.

Chairman Council opened the public hearings for Case P14-37.

The clerk to the board advised there were no speakers for Case P14-37.

Chairman Council closed the public hearing for Case P14-37.

MOTION: Commissioner Edge moved to find the requests consistent with the LUP and approve and adopt the reasonableness statements in Case P14-37.

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Edge moved to approve C(P)/CZ Zoning for a crematorium, office, meditation room, gazebo and display of equipment and services and follow the recommendation of Planning staff and the Planning Board in Case P14-37.

SECOND: Chairman Faircloth

VOTE: UNANIMOUS (7-0)

Minimum Housing Code Enforcement

The clerk to the board administered an oath to George Hatcher, Inspector for the County of Cumberland Inspection Department.

- H. Case Number: MH 537-2014
Property Owner: Acie J. Melvin
Property Location: 1114 McLean Trail, Fayetteville NC
Parcel Identification Number: 0520-99-0322

AFFIDAVIT OF THE HOUSING INSPECTOR'S REPORT BEFORE THE BOARD OF CUMBERLAND COUNTY COMMISSIONERS

I, Joey Lewis, Inspector for the County of Cumberland Inspection Department, acting in my official capacity, being duly sworn, depose and say:

BACKGROUND: That the following is a report on Minimum Housing case number MH 537-2014.

Property Owner: Acie J. Melvin

Home Owner: Acie J. Melvin

Property Address: 1114 McLean Trail, Fayetteville, NC

Tax Parcel Identification Number: 0520-99-0322

SYNOPSIS: This property was inspected on 3/17/2014. The property owners and parties of interest were legally served with Notice of Violations and were afforded a Hearing on 5/20/2014. Acie J. Melvin attended the Hearing. It was ordered that the structure be repaired to a minimum standard for human habitation, or be demolished and the debris removed from the premises by a date not later than 6/19/2014. The property owners and parties of interest were notified of the appeal procedures when they were served with the Findings of Fact and Order. No appeal was filed. Upon my visit to the property on

8/7/2014, no corrective action had been made to the structure. The structure is presently vacant and reasonably secured. In its present state, this structure constitutes a fire, health, and safety hazard.

The estimated cost to repair the structure to a minimum standard for human habitation is \$73,304.00. The Assessor for Cumberland County has the structure presently valued at \$339.00.

RECOMMENDATION: IT IS THE RECOMMENDATION OF THE PLANNING AND INSPECTION DEPARTMENT THAT THE STRUCTURE BE DEMOLISHED AND THE DEBRIS REMOVED FROM THE LOT.

Mr. Hatcher stated this is a single frame family structure; the property owner signed a consent to demolish which means he is unable or unwilling to make the necessary repairs to the structure.

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Council opened the public hearing.

The clerk to the board advised there were no speakers.

Chairman Council closed the public hearing.

MOTION: Chairman Council moved to adopt the order and report of the Minimum Housing Inspector as the true facts in this case; to order the property owner to remove or demolish the dwelling within 30 days; to order the Inspector to remove or demolish the dwelling if the owner fails to do so and impose a lien on the real property for the cost of such action; and to direct the clerk to incorporate the foregoing findings and orders in an ordinance certified by the Chairman and record the same in the Register of Deeds.

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (7-0)

- I. Case Number: MH 527-2014
Property Owner: Charles Crockett
Property Location: 1109 Shaw Road, Fayetteville, NC
Parcel Identification Number: 0419-74-4268

AFFIDAVIT OF THE HOUSING INSPECTOR'S REPORT
BEFORE THE BOARD OF CUMBERLAND COUNTY COMMISSIONERS

I, Debra Johnson, Inspector for the County of Cumberland Inspection Department, acting in my official capacity, being duly sworn, depose and say:

BACKGROUND: That the following is a report on Minimum Housing case number MH 527-2014.

Property Owner: Charles Crockett
Home Owner: Charles Crockett
Property Address: 1109 Shaw Road, Fayetteville, NC
Tax Parcel Identification Number: 0419-74-4268

SYNOPSIS: This property was inspected on 3/18/2014. The property owners and parties of interest were legally served with Notice of Violations and were afforded a Hearing on 6/4/2014. Charles Crockett attended the Hearing. It was ordered that the structure be repaired to a minimum standard for human habitation, or be demolished and the debris removed from the premises by a date not later than 6/4/2014. The property owners and parties of interest were notified of the appeal procedures when they were served with the Findings of Fact and Order. No appeal was filed. Upon my visit to the property on 8/7/2014, no corrective action had been made to the structure. The structure is presently vacant and reasonably. In its present state, this structure constitutes a fire, health, and safety hazard.

The estimated cost to repair the structure to a minimum standard for human habitation is \$41,785.00. The Assessor for Cumberland County has the structure presently valued at \$5,120.00 (for salvage).

RECOMMENDATION: IT IS THE RECOMMENDATION OF THE PLANNING AND INSPECTION DEPARTMENT THAT THE STRUCTURE BE DEMOLISHED AND THE DEBRIS REMOVED FROM THE LOT.

Mr. Hatcher stated this is a doublewide mobile home and the property owner signed a consent to demolish.

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Council opened the public hearing.

The clerk to the board advised there were no speakers.

Chairman Council closed the public hearing.

MOTION: Commissioner Edge moved to adopt the order and report of the Minimum Housing Inspector as the true facts in this case; to order the property owner to remove or demolish the dwelling within 30 days; to order the

Inspector to remove or demolish the dwelling if the owner fails to do so and impose a lien on the real property for the cost of such action; and to direct the clerk to incorporate the foregoing findings and orders in an ordinance certified by the Chairman and record the same in the Register of Deeds.

SECOND: Commissioner Melvin
VOTE: UNANIMOUS (7-0)

The clerk to the board administered an oath to Joan Fenley, Inspector for the County of Cumberland Inspection Department.

J. Case Number: MH 519-2014
Property Owner: Reginald Adams
Property Location: 6000 Abco Lane, Fayetteville, NC
Parcel Identification Number: 0462-99-2389

AFFIDAVIT OF THE HOUSING INSPECTOR'S REPORT
BEFORE THE BOARD OF CUMBERLAND COUNTY COMMISSIONERS

I, Joan Fenley, Inspector for the County of Cumberland Inspection Department, acting in my official capacity, being duly sworn, depose and say:

BACKGROUND: That the following is a report on Minimum Housing case number MH 519-2014.

Property Owner: Reginald Adams
Home Owner: Reginald Adams
Property Address: 6000 Abco Lane, Fayetteville, NC
Tax Parcel Identification Number: 0462-99-2389

SYNOPSIS: This property was inspected on 3/4/2014. The property owners and parties of interest were legally served with Notice of Violations and were afforded a Hearing on 5/19/2014. Reginald Adams attended the Hearing. It was ordered that the structure be repaired to a minimum standard for human habitation, or be demolished and the debris removed from the premises by a date not later than 6/11/2014. The property owners and parties of interest were notified of the appeal procedures when they were served with the Findings of Fact and Order. No appeal was filed. Upon my visit to the property on 8/7/2014, no corrective action had been made to the structure. The structure is presently vacant and reasonably secured. In its present state, this structure constitutes a fire, health, and safety hazard.

The estimated cost to repair the structure to a minimum standard for human habitation is \$56,635.00. The Assessor for Cumberland County has the structure presently valued at \$2,832.00.

RECOMMENDATION: IT IS THE RECOMMENDATION OF THE PLANNING AND INSPECTION DEPARTMENT THAT THE STRUCTURE BE DEMOLISHED AND THE DEBRIS REMOVED FROM THE LOT.

Ms. Fenley stated this is a doublewide mobile home that has been abandoned for quite some time; the interior has been stripped of all copper.

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Council opened the public hearing.

The clerk to the board advised there were no speakers.

Chairman Council closed the public hearing.

MOTION: Commissioner Keefe moved to adopt the order and report of the Minimum Housing Inspector as the true facts in this case; to order the property owner to remove or demolish the dwelling within 30 days; to order the Inspector to remove or demolish the dwelling if the owner fails to do so and impose a lien on the real property for the cost of such action; and to direct the clerk to incorporate the foregoing findings and orders in an ordinance certified by the Chairman and record the same in the Register of Deeds.

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (7-0)

K. Case Number: MH 508-2014
Property Owner: Renee Wagner
Property Location: 4001 Baird Court, Fayetteville, NC
Parcel Identification Number: 0462-98-4988

AFFIDAVIT OF THE HOUSING INSPECTOR'S REPORT
BEFORE THE BOARD OF CUMBERLAND COUNTY COMMISSIONERS

I, Joan Fenley, Inspector for the County of Cumberland Inspection Department, acting in my official capacity, being duly sworn, depose and say:

BACKGROUND: That the following is a report on Minimum Housing case number MH 508-2014.

Property Owner: Renee Wagner
Home Owner: Renee Wagner
Property Address: 4001 Baird Court, Fayetteville, NC

Tax Parcel Identification Number: 0462-98-4988

SYNOPSIS: This property was inspected on 3/4/2014. The property owners and parties of interest were legally served with Notice of Violations and was afforded a Hearing on 5/12/2014. Renee Wagner & Larry Wagner attended the Hearing. It was ordered that the structure be repaired to a minimum standard for human habitation, or be demolished and the debris removed from the premises by a date not later than 6/11/2014. The property owners and parties of interest were notified of the appeal procedures when they were served with the Findings of Fact and Order. No appeal was filed. Upon my visit to the property on 8/7/2014, no corrective action had been made to the structure. The structure is presently vacant and reasonably secured. In its present state, this structure constitutes a fire, health, and safety hazard.

The estimated cost to repair the structure to a minimum standard for human habitation is \$60,000.00. The Assessor for Cumberland County has the structure presently valued at \$2,500.00.

RECOMMENDATION: IT IS THE RECOMMENDATION OF THE PLANNING AND INSPECTION DEPARTMENT THAT THE STRUCTURE BE DEMOLISHED AND THE DEBRIS REMOVED FROM THE LOT.

Ms. Fenley stated this is a doublewide mobile home that has been vandalized and stripped of a lot of its interior; it has incurred a lot of weather damage.

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Council opened the public hearing.

The clerk to the board advised there were no speakers.

Chairman Council closed the public hearing.

MOTION: Commissioner Faircloth moved to adopt the order and report of the Minimum Housing Inspector as the true facts in this case; to order the property owner to remove or demolish the dwelling within 30 days; to order the Inspector to remove or demolish the dwelling if the owner fails to do so and impose a lien on the real property for the cost of such action; and to direct the clerk to incorporate the foregoing findings and orders in an ordinance certified by the Chairman and record the same in the Register of Deeds.

SECOND: Chairman Council

VOTE: UNANIMOUS (7-0)

Other Public Hearings

- L. Public Hearing for the Bullard Circle Preliminary Assessment Resolution and Adoption of the Final Assessment Resolution.

BACKGROUND:

The Board of Commissioners at their June 16, 2014 meeting adopted a Preliminary Assessment Resolution and authorized the Engineering and Infrastructure Director to move forward with an assessment project to provide public water service to the Bullard Circle area. At that time, a public hearing was scheduled for the August 18, 2014 Board of Commissioners meeting so that the Commissioners shall hear all interested persons who appear with respect to any matter covered by the preliminary assessment resolution. Notice of the public hearing was published in the Fayetteville Observer on August 6, 2014 and a copy of the Preliminary Assessment Resolution was mailed to each owner of property as shown on the County tax records.

RECOMMENDATION/PROPOSED ACTION:

Following the Public Hearing, the Engineering and Infrastructure Director and County Management recommend that the Board of Commissioners adopt the Final Assessment Resolution as recorded below to provide public water service to the Bullard Circle area.

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

FINAL
SPECIAL ASSESSMENT RESOLUTION
BULLARD CIRCLE
WATER EXTENSION PROJECT

WHEREAS, 22 of the individual groundwater wells, which are used by the property owners in the Bullard Circle, Vann Street, Stonecoal Dive, and Diamond Point Trail area, contain arsenic levels greater than 10 ppb; and

NOW THEREFORE, the Board of Commissioners, pursuant to Article 9 of Chapter 153A of North Carolina General Statutes, hereby adopts the following special assessment resolution:

- I. Need for Project: The Board of Commissioners of Cumberland County hereby undertakes a project to extend public water to the Bullard Circle area. This project is required to eliminate the use of individual groundwater wells for consumptive and hygienic purposes. The Cumberland County Health Department and the State’s Epidemiologist’s Office conducted a review of water quality reports in the above-referenced area and found arsenic in concentrations greater than 10 ppb in the well water at 22 residences within the subdivision.
- II. General Description of the Project: This project is to bring potable, public water to the area and will include installation of approximately 5,414 total linear feet of water main extending from an existing Fayetteville Public Works Commission (PWC) water main

located along Ramsey Street near Bullard Circle, including all appurtenances, to serve 76 parcels within the Bullard Circle area attached hereto as Exhibit A.

- III. Ownership: The water line extensions will become the property of the Fayetteville Public Works Commission and will be operated and maintained by PWC as part of its comprehensive public water system throughout its service area.
- IV. Proposed Basis of Assessment: The proposed basis of assessment will be at an equal rate per lot in the project area.
- V. Percentage of Cost to be Assessed: Fifty percent (50%) of the total engineering, construction and administrative costs shall be assessed against the benefited properties in this special assessment project and the County and PWC shall pay the remaining fifty (50%) per an interlocal agreement between to the two entities.
- VI. Abeyance: No assessment will be held in abeyance.
- VII. Terms of Payment: The assessment will be payable in fifteen (15) annual installments and the first installment with interest will be due sixty (60) days after the date that the assessment roll is confirmed. One installment with interest is due on the anniversary date in each successive year until the assessment is paid in full. The interest rate shall be set at six percent (6%) per annum. The assessment may be paid in full without interest anytime up to thirty (30) days after the confirmation of the assessment roll is published.
- VIII. Public Hearing: A public hearing on all matters covered by this resolution was held at 6:45 pm on Monday, August 18, 2014 in Room 118 of the Cumberland County Courthouse at the regularly scheduled meeting of the Board of Commissioners

IN WITNESS WHEREOF, this resolution adopted this the 18th day of AUGUST 2014.

Ms. Cannon reviewed the background information as recorded above, key terms of the Final Assessment Resolution and stated following the public hearing, the Engineering and Infrastructure Director and County Management recommend that the Board of Commissioners adopts the Final Assessment Resolution as recorded above to provide public water service to the Bullard Circle area.

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Council opened the public hearing.

The clerk to the board advised there were no speakers.

Chairman Council closed the public hearing.

MOTION: Chairman Council moved to adopt the Final Assessment Resolution to provide public water service to the Bullard Circle area.
SECOND: Commissioner Faircloth
VOTE: UNANIMOUS (7-0)

ITEMS OF BUSINESS

4. Presentation by Brenda Jackson, Department of Social Services Director on the NC Fast Program and Approval of Associated Budget Revision

BACKGROUND:

The Social Services Board, leaders and staff of Cumberland County Department of Social Services express their sincere appreciation for the continual support and commitment the Board of Commissioners and County Management have shown during this very difficult and costly transition of the new mandated service delivery model. Most importantly, the Board and County Management have demonstrated their commitment to the well-being of the County's most vulnerable citizens.

A brief update on the roll out of the state's NC FAST system and continual need for temporary staff to address backlogged work associated with the local implementation of NC will be presented at the Board of Commissioners' August 18, 2014 meeting.

Leaders and staff of Cumberland County Department of Social Services continue to make every attempt to keep the Social Services Board, County Management and Community Partners aware of NC FAST related issues.

RECOMMENDATION/PROPOSED ACTION:

Accept the report and update and approve the associated budget revision.

Brenda Jackson, Department of Social Services Director, provided the following presentation on NC FAST Projects, Work Support Strategies and the Affordable Care Act.

County DSS Role

- County Departments of Social Services are:
 - Federally mandated
 - State supervised
 - Locally administered
- Public Assistance:
 - FNS (food stamps) – 33,000 ongoing cases; 2,900 new applications; \$9 million federal benefits issued that is spent in the local economy monthly
 - Medicaid – 50,000 ongoing cases; 3,500 new applications

- Child Care Subsidy – 4,100 children; \$1.5 million paid to local child care providers monthly

Ms. Jackson the total amount of public assistance equates to approximately \$10 million in Federal revenue being returned to the Cumberland County economy in goods and services.

New State & Federal Mandates

Work Support Strategies (WSS)

State tenets:

- A new service delivery model for eligibility programs that maximizes customer self-sufficiency and reduces administrative churn
- A method to incorporate changes related to the federal Affordable Care Act and State NC FAST implementation
- It aligns with county and agency strategic goals
- For more information: www.ncwss.com

North Carolina Families Accessing Services through Technology (NC FAST)

NC FAST is the new way the State has mandated that counties determine eligibility for public assistance programs.

The State's implementation schedule:

- Project 1 – Food and Nutritional Services (food stamps)
 - Began in July 2012 with applications. There were major system functionality problems. January 27, 2014 Federal USDA mandated that all program applications (1,766) and recertifications be up-to-date by March 31, 2014. Federal USDA pays 50% of the cost to administer the program locally
 - Project 2/6 – Medicaid, Work 1st Cash and Refugee Assistance
 - Began October 2013 with new applications
 - October/November 2013 for current active cases. Delayed with statewide staggered launch date in July 2014. Interface with new automated reimbursement system for medical providers called NCTracks
- Project 7 – Affordable Care Act including new MAGI Program applications
 - Federal Facilitated Marketplace began accepting applications October 1, 2013 for an effective date of January 1, 2014. Local counties did not begin receiving these applications until late February 2014
- Project 3 – Child Care & Energy Assistance
 - Expected to launch early 2014. Delayed with no anticipated new launch date

Federal Mandates – Affordable Care Act

Effective October 1, 2013:

- Medicaid Expansion
 - North Carolina opted not to participate in the expansion program
 - Approximately 500,000 NC citizens may not qualify for healthcare benefits

- Federal Qualified Health Programs – www.healthcare.gov
 - Medicaid – DSS
 - Health Choice – DSS
 - Advance Payment Tax Credit – Federally Facilitated Marketplace
 - Cost Sharing Reduction (Subsidy) – Federally Facilitated Marketplace
- “No Wrong Door Concept”
 - Citizens can apply for services anywhere through the Federal Marketplace
 - Cannot force the citizen to come into the office
 - Telephonic & electronic access will be linked to North Carolina through ePASS
- Navigator or Certified Application Counselors Program
 - Local group of medical providers, county departments & community agencies working together to provide services in the community ex. Legal Aid of NC, Stedman Wade Health, and Community Health & Sickle Cell Agency
- Will be up to local communities to build the coalition
 - Ongoing Information Session for community partners provided August 2013 at DSS and Public Libraries across the county

Other Federal Mandates

Modified Adjustable Gross Income (MAGI) – October 1, 2013:

- New program re-design of the Medicaid for Family and Children’s programs including pregnant women, infant/children, family planning, foster care and health choice
- Use income tax methodology to determine eligibility for Medicaid in the Family and Children’s programs
- Citizens could be approved for eligibility for the old and new Medicaid for Family and Children’s programs during the same application process
- New applications received beginning October 1, 2013 had to be assessed under the old eligibility criteria for October through December 2013 and the new MAGI criteria beginning January 1, 2014

Sequestration – October 1, 2013:

- Overall DSS is funded 50% by federal reimbursement. The October 2013 federal shutdown created delays in hiring temporary staff and processing food stamps, child care subsidy & Work First cash assistance cases
- Federal funds pay for 100% of direct services administered by DSS to citizens and local businesses ex. day care facilities, grocery stores, rental property

North Carolina ePASS

Electronic Pre-Assessment Screening Services (ePASS) is the public portal for citizens to apply for services on-line using NC FAST.

State’s ePASS implementation schedule:

- April 2013 launched Food & Nutrition Services (food stamps)
- June 2013 expanded to include Medicaid applications
- October 1, 2013 expanded to Affordable Care Act

- Allows for duplicate applications for all programs

Ms. Jackson stated ePASS allows for the electronic duplication of applications and a lot of staff time is spent resolving issues associated with duplicate applications.

The Perfect Storm

“UNKNOWN”:

- Federal Shutdown
- USDA Food Stamp Crisis
 - Agency Closings due to inclement weather
 - Potential Statewide Legal Action
 - CMS Monitoring

NC FAST Projects 2/6/7 – Storm Damages

- Citizens applied for the New MAGI program beginning October 2013; counties did not start receiving those applications locally until February 2014 (received over 2,000 cases)
 - June 1, 2014 we received 5,048 applications of which 3,977 were untimely
 - August 4, 2014 we had 3,056 applications with 2,004 untimely
- Traditional Medicaid applications in the old system
 - June 1, 2014 we received 2,165 applications of which 1,026 were untimely
 - August 4, 2014 we had 1,531 applications with 783 untimely
- Traditional Medicaid applications in the new NC FAST system
 - June 1, 2014 we received 2,049 applications of which 1,352 were untimely
 - August 4, 2014 we had 983 applications with 605 untimely

NC FAST Projects 2/6/7 – Storm Recovery

Untimely MAGI & Family/Children Medicaid applications in the backlog subject to the State’s August 31, 2014 deadline.

Total Untimely Applications as of June 1, 2014: 6,355
Applications Processed since June 1, 2014: 4,532
Applications Due by August 31, 2014: 1,823

* * Excludes Adult Medicaid cases including those pending disability determinations, Work First, and Health Choice (500 plus), timely applications (1,900 plus) and recertifications (6,400)

Challenges

- No edits in the ePASS system to prevent multiple applications; therefore, duplicate cases are in the system
- Cases are complex and require many types of assessments based on the various Medicaid programs
- Takes higher level of Medicaid expertise to do this work

- Medicaid cases are housed in both EIS and NC FAST which makes data reliability and workload management difficult
- Anticipate major errors and quality assurance issues
- Training is difficult as the operational function has been problematic and NC FAST roll-out is incomplete
- Preventing staff burn-out, low morale, and increased staff turnover

Budget Revision

- Our intent is not to cause panic but to promote awareness and preparedness for what might be forthcoming as we continue to transition to the new service delivery model
- Federal administrative reimbursement for Medicaid has increased from 50% to 75% which reduces the county share
- Over 60,000 Medicaid cases will need some type of action within the next six months
- The continual need for temporary employees to address the workload demand is critical to our success moving forward
- Finally, we ask for your continued patience, understanding and support as we strive to improve access to benefits for our customers

Ms. Jackson responded to questions and asked the Board to support the budget revision as presented. The Board collectively expressed its appreciation for the magnitude of work put forth by Social Service employees. Commissioner Edge thanked DSS for working with Alliance Behavioral Healthcare.

MOTION: Chairman Council moved to approve budget revision B15-037.

SECOND: Commissioner King

VOTE: UNANIMOUS (7-0)

5. Consideration of Resolution Authorizing the Filing of an Application for Approval of an Installment Financing Agreement Authorized by NCGS 160A-20

BACKGROUND:

In order to proceed with the installment purchase financing of the building recently purchased by Fayetteville Technical Community College, a resolution authorizing the installment purchase application as well as making certain findings is required.

The purpose of the resolution is to make the findings of fact which include: the installment purchase is preferable to issuing bonds, the amount proposed is not excessive for the stated purpose, the County's debt management procedures and policies are good and in strict compliance with the law, a tax increase is not necessary, and the County is not in default on any existing debt.

Finally, this resolution authorizes the County Manager and Assistant County Manager for Finance to proceed with preparing and filing an application with the Local Government

Commission (LGC). At this time it is anticipated the application will be submitted to the October 7, 2014 LGC meeting.

BOARD OF COMMISSIONERS
OF THE
CUMBERLAND COUNTY, NORTH CAROLINA

Excerpt of Minutes
of Meeting of
August 18, 2014

Present: Chairman _____ presiding, and

Commissioners: _____

Absent: _____

* * * * *

Commissioner _____ introduced the following resolutions, the title of which was read:

* * * * *

RESOLUTION AUTHORIZING THE FILING OF AN
APPLICATION FOR APPROVAL OF AN INSTALLMENT
FINANCING AGREEMENT AUTHORIZED BY NORTH
CAROLINA GENERAL STATUTE §160A-20 AND MAKING
CERTAIN FINDINGS REQUIRED BY NORTH CAROLINA
GENERAL STATUTE §159-151, AND NOTIFICATION TO
THE JOINT LEGISLATIVE COMMITTEE ON LOCAL
GOVERNMENT OF ITS INTENT TO FINANCE THE PROJECT

WHEREAS, the Board of Trustees of Fayetteville Technical Community College (“FTCC”) has requested Cumberland County, North Carolina (the “County”) to assist it in financing (i) the acquisition, construction and equipping of a new building to be located on its campus and used for educational instruction and (ii) improvements to the Horticultural Center located on the FTCC campus (the “Project”) pursuant to an installment financing agreement, as permitted under N.C.G.S. § 160A-20; and

WHEREAS, it is anticipated that the cost of the Project to be financed will be approximately \$3,000,000, which may include issuance expenses in connection with the financing; and

WHEREAS, financing of the Project pursuant to § 160A-20 must be approved by the North Carolina Local Government Commission (the “LGC”) and will only be approved if the findings of N.C.G.S. § 159-151(b) have been made;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners (the “Board”) of the County, as follows:

1. After consideration, the Board has determined that the most advantageous manner of financing the Project is by an installment financing contract pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended. In support of thereof, the Board hereby makes the following findings of fact:

- a) The proposed financing is necessary or expedient because of the pressing need to acquire, construct and equip the renovations and improvements to FTCC.
- b) The proposed financing is preferable to general obligation bond financing for the same purposes because of the urgency of particular needs to be financed.
- c) The cost of the proposed undertaking exceeds the amount of funds that can be prudently raised from currently available appropriations, unappropriated fund balances, and non-voted general obligation bonds that could be issued by the County in the fiscal year pursuant to Article V, Section 4, of the North Carolina Constitution. The Project is non-revenue producing so revenue bonds are not an option.
- d) The cost of financing under the proposed financing will be less than the cost of issuing general obligation bonds.
- e) The sums proposed to be provided under the financing are adequate and not excessive for the stated purposes of acquiring, constructing and improving the Project.
- f) The County’s debt management procedures and policies are good and have been carried out in strict compliance with law and will henceforth be so carried out.
- g) There will be no increase in taxes necessary to meet the sums to fall due under the proposed financing.
- h) The County is not in default in any of its debt service obligations.

2. Pursuant to Section 160A-20 of the North Carolina General Statutes , the County is hereby authorized to finance the Project by entering into an installment financing contract and a deed of trust or other security instrument that creates a security interest in some or all of the property financed to secure repayment of the financing.

3. Pursuant to Section 120-157.2(a) of the North Carolina General Statutes, the County is directed to notify the Joint Legislative Committee on Local Government of its intent to utilize an installment financing contract under North Carolina General Statutes Chapter 160A, Article 3, Section 20.

4. The attorney for the County will render an opinion that the proposed Project is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina.

5. The County Manager, the Assistant County Manager for Finance and other appropriate officers of the County are hereby authorized and directed to file an application with the LGC for its approval of the financing of the Project in the amount of approximately \$3,000,000, to work with the Board of Trustees and the staff of FTCC as to the implementation of the Project (including the transfer of the property that is to be collateral for the installment financing contract to the County), to send out an request for proposals to financial institutions seeking terms and interest rates for such financing, and the actions of the County Manager, the Assistant County Manager for Finance and other officers of the County in connection therewith are hereby approved and confirmed.

6. All other acts of the Board and the officers of the County which are in conformity with the purposes and intent of this Resolution and in furtherance of the financing of the Project are hereby ratified, approved and confirmed.

7. This resolution shall take effect immediately.

Melissa Cardinali, Deputy County Manager, reviewed the background information as recorded above.

MOTION: Commissioner Faircloth move to approve the resolution authorizing the filing of an application for approval of an installment financing agreement.

SECOND: Commissioner Edge

VOTE: UNANIMOUS (7-0)

6. Nomination and Appointment of Cumberland County Workforce Development Board (1 Vacancy)

Nominee: Dr. Curtis Charles

MOTION: Chairman Council moved to nominate and appoint Dr. Curtis Charles to the Cumberland County Workforce Development Board.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS (7-0)

7. Nominations to Boards and Committees

A) Adult Care Home Community Advisory Committee (5 Vacancies)

Chairman Council nominated Mary Ann Ayars, George W. Mitchell, Latara Ray, Rasheedah Reid and Carla Fagan.

B) Animal Control Board (1 Vacancy)

Commissioner Faircloth nominated Melissa Katzenberger.

C) Southeastern Economic Development Commission (1 Vacancy)

Commissioner Faircloth nominated Commissioner Jeannette Council.

8. Appointments to Boards and Committees

A. Board of Health (1 Vacancy)

Nominee: David Greyshock

B. Mid-Carolina Aging Advisory Committee (1 Vacancy)

Nominee: Willie McKoy Jr.

C. Nursing Home Advisory Board (3 Vacancies)

Nominees: Sonja Council (Reappointment)
Michael Blake (Reappointment)
Ron Rooks

There being an equal number of vacancies and nominees,

MOTION: Commissioner Edge moved to appoint by acclamation all nominees to their respective positions.

SECOND: Commissioner Evans

VOTE: UNANIMOUS (7-0)

MOTION: Chairman Council moved to recess the Cumberland County Board of Commissioners' meeting and convene the meeting of the Kelly Hills/Slocumb Road Water & Sewer District Governing Board.

SECOND: Commissioner Edge

VOTE: UNANIMOUS (7-0)

Chairman Council called to order the meeting of the Kelly Hills/Slocumb Road Water & Sewer District Governing Board.

1. Items of Business

A. Approval of minutes for the June 6, 2011 special meeting

MOTION: Chairman Council moved to approve the June 6, 2011 special meeting minutes.
SECOND: Commissioner Faircloth
VOTE: UNANIMOUS (7-0)

B. Approval of the Kelly Hills/Slocumb Road Wholesale Sewer and Operation and Maintenance Agreement

BACKGROUND:

The Public Utilities Division is in the process of taking over the billing for the Kelly Hills/Slocumb Road Water and Sewer District from PWC. The first step in moving forward is to execute a new interlocal agreement between PWC and Kelly Hills for the sewer treatment and operation and maintenance of the system. The execution of the new agreement will replace the existing agreement. Cumberland County currently has \$800,975 in available Facility Investment Fee (FIF) credits with \$633,745 of those credits expiring in October 2015. As part of this agreement, the County will purchase additional capacity with a portion of the FIF credits. An additional 67,570 gallons will be purchased at a price of \$2.98/gpd for a total price of \$201,358.60. This will bring the total purchased capacity of the system to 100,000 gpd. The entire system has a capacity of 150,000 gpd.

RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director, Finance Committee and County Management recommend that the Governing Board:

1. Approve the wholesale sewer and operation and maintenance agreement between PWC and Kelly Hills.
2. Approve the use of available PWC FIF credits to purchase additional capacity.

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND
SANITARY SEWER WHOLESAL AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____ 2014 by and between the City of Fayetteville acting by and through its Public Works Commission of the City of Fayetteville (hereinafter referred to as "Commission" or "PWC") and the County of Cumberland, a North Carolina body politic acting by and through its Kelly Hills/Slocumb Road Water & Sewer District, (hereinafter referred to as "Kelly Hills").

WITNESSETH

THAT, WHEREAS, Kelly Hills owns and operates a wastewater collection system, as described in Exhibit B, that currently serves approximately 115 customers in the Kelly Hills/Slocumb Road area; and,

WHEREAS, Commission owns and operates wastewater treatment facilities (the “Municipal Wastewater System”) and provides wholesale wastewater treatment services; and,

WHEREAS, Kelly Hills wishes to contract with Commission for PWC to furnish wholesale wastewater treatment service to Kelly Hills for the treatment of Kelly Hills wastewater; and ,

WHEREAS, Commission agrees to furnish wastewater treatment service pursuant to the terms of this agreement; and,

WHEREAS, Kelly Hills wishes to contract with Commission for PWC to provide operation and maintenance services to Kelly Hills for the Kelly Hills Sanitary Sewer system; and,

WHEREAS, Commission agrees to furnish operation and maintenance services to Kelly Hills for the Kelly Hills Sanitary Sewer system pursuant to the terms of this agreement; and,

WHEREAS, both parties recognize the Commission must implement and enforce a pretreatment program to control wastewater discharges from Significant Industrial Users (“SIUs”) under 40 CFR Part 403 or other dischargers who require issuance of SIU or local permits.

NOW THEREFORE, Commission and Kelly Hills agree to the following terms and conditions:

1. Discharge Points:

As of the Effective Date, wastewater from Kelly Hills existing sanitary sewer collection system will be discharged into the Commission’s Municipal Wastewater System at the existing entry point listed in this Section 1 and thence treated at Commission’s plants as deemed appropriate. Existing entry point is PWC Lift station at 355 Bethune Drive. Kelly Hills shall not discharge into Commission’s Municipal Wastewater System at any other entry point without prior written approval from the Commission. Exhibit A shows the approved discharge points.

2. Flow Measurement:

Within one hundred and twenty (120) business days from the Effective Date of this agreement, Commission shall install at Kelly Hills’ expense a flow measurement device at the Kelly Hills approach main where Kelly Hills discharges wastewater into the Commission’s Municipal Wastewater System. Commission at its expense, shall be responsible for maintenance and calibration of the flow measurement device and calibration shall be done annually and shall operate within the accuracy tolerances as specified by the manufacturer. Commission shall provide Kelly Hills a copy of the calibration records of the flow measurement device.

3. Basic Operations and Maintenance

- A. The cost of basic operation and maintenance of the sanitary sewer collection system is built into the sanitary sewer rate being charged to Kelly Hills. Basic operation and maintenance includes:
1. Rights-of-way and/or easement maintenance to allow for accessibility to the sanitary sewer collection system.
 2. Cleaning of at least 10% of the sanitary sewer collection system each year.
 3. A general observation of the entire sanitary sewer collection system throughout the course of every year.
 4. Semiannual inspections of all high priority lines (i.e. aerial, sub-waterway crossing, line contacting surface waters, siphon, line positioned parallel to stream banks subject to eroding, or line designated as high priority in a permit if applicable).
 5. Point repair to a damaged or broken sanitary sewer main pipe, not to include replacement of multiple pipe joints.
 6. Point repair to a damaged or broken sanitary sewer lateral or cleanout, not to include outright renewal of entire lateral.
 7. Cleaning and rodding of clogged sanitary sewer mains and laterals.
 8. Repair of manholes to include resetting of manhole ring and cover, not to include adjustments to or replacement of manhole or ring and cover; not to include repairs warranted to address I&I or corrosion issues.
- B. Other extraordinary work required or requested by Kelly Hills will be NU billed at the appropriate rate to include applicable overtime and overhead for labor, equipment and materials (to include an amount for all direct and indirect charges) plus 10%. Examples of extraordinary work are: SSO remediation and post cleaning and inspection, work consider as a capital improvement under Financial Accounting Standards Board (FASB) standards, replacement of multiple joints of sanitary sewer pipe, renewal of a sanitary sewer lateral, installation of a new sanitary sewer lateral, elder valve installation, smokedye testing and CCTV inspection. Kelly Hills shall have the right to install themselves or to hire a contractor(s) to perform this work to PWC standards.
- C. The Commission shall at its discretion exercise the right to decline or subcontract any work required or requested by Kelly Hills that would conflict with the Commission's responsibilities and requirements for the operation and maintenance of the Commissions' sanitary sewer collection system.

- D. Commission will provide other services, upon request, but which will be billed separately and not included in the Wholesale Sewer Rate. A partial list of the other services that may be available to Kelly Hills include the following:
 - 1. Promote participation agreements with other benefitted parties;
 - 2. Participation and administration of utility extension contracts;
 - 3. Right-of-way acquisition for land and easement requirements to be secured in the name of Kelly Hills within the limits permitted by law but not to include actions in eminent domain;
 - 4. Inspection services during construction;
 - 5. Miscellaneous services such as GIS mapping as requested.
- E. Other services requested by Kelly Hills will be NU billed at the appropriate rate to include applicable overtime and overhead for labor, equipment and materials (to include an amount for all direct and indirect charges) plus 10%.

4. Upsizing Mains

Commission will be responsible for the cost associated with upsizing mains within the delineated Kelly Hills service as may be deemed necessary in order to meet Commission's existing and future sanitary sewer needs which would not be otherwise required for the sanitary sewer collection system being installed by Kelly Hills pursuant to this Agreement.

5. Ownership of Sewer Lines

- A. All sanitary sewer lines installed within the boundaries of the Kelly Hills Sanitary Sewer District shall be owned and operated by Kelly Hills subject to Commission's right to upsize such mains at its expense and to transmit sanitary sewer through such mains to areas beyond the Kelly Hills area.
- B. Commission shall own and operate the lift station located at 355 Bethune Drive, Fayetteville, NC and the associated force main.

6. Rights-of-way and encroachments

Kelly Hills will acquire all rights-of-way and/or encroachments as may be needed for construction and maintenance of the sanitary sewer collection system as referenced herein.

7. Extension of Mains Outside Kelly Hills Service Area

Commission reserves the right to extend or continue sanitary sewer mains from such mains as initially constructed by Kelly Hills to points outside of the delineated Kelly Hills service area. Future connections or main extensions that occur outside of the delineated Kelly Hills area are not subject to this Agreement and shall be the property of Commission unless the Kelly Hills boundary is expanded by law to serve development of contiguous properties. If such extensions occur, then the Commission shall install a flow measurement device at its expense to measure all flow being generated by customers outside of the Kelly Hills Service Area. A map of showing the boundaries of the Kelly Hills service is show as Exhibit B.

8. Extension of Mains Within Kelly Hills Service Area

The further extension of or connection to mains within the delineated Kelly Hills service area will be pursuant to applicable extension and connection policies and procedures of Kelly Hills in effect at the time a request for service is made.

9. Compliance with Commission Policies and Procedures

Kelly Hills may by resolution adopt a policy whereby future customers and/or extenders of sanitary sewer infrastructure in the Kelly Hills service area will be subject to the then current applicable Commission Policies and Procedures to simplify the application process for customers with the understanding that such customers remain responsible to Kelly Hills for compliance with such policies and procedures.

10. Notification of Excessive Inflow/Infiltration

Upon notification by Commission that volumes of Kelly Hills wastewater entering Commission's lines, based on flow measuring data, exceed one hundred twenty-five percent (125%) of the average volume of sewer measured at the Discharge Point during any consecutive three-month billing period, Kelly Hills shall initiate an infiltration/inflow study to be conducted or supervised by a professional consulting engineer. Such study will provide Kelly Hills with recommendations designed to reduce infiltration/inflow to acceptable levels as delineated by the United States Environmental Protection Agency. Said study shall be made during the fiscal year immediately following notification. Corrective measures shall be taken by Kelly Hills upon receipt of and based on said infiltration/inflow study. Kelly Hills shall be responsible for all costs associated with any required infiltration/inflow study and corrective measures. Results of any infiltration/inflow study and proposed corrective measures shall be sent to Commission for review and approval.

11. New Laterals

A. At Kelly Hills request, Commission will install new laterals in the Kelly Hills Sanitary Sewer District at Kelly Hills expense. Commission will NU bill Kelly

Hills for such laterals at the appropriate rate to include applicable overtime and overhead for labor, equipment and materials (to include an amount for all direct and indirect charges) plus 10%.

- B. Kelly Hills, at its sole discretion, may install or contract for the installation of new laterals in the Kelly Hills Sanitary Sewer District.
- C. All new laterals will be designed and built to the PWC standards in effect at the time of the design and construction.

12. Monthly Billing:

- A. As of the Effective Date, the flow measuring device at the Kelly Hills connective main will be read, as nearly as practical, at regular monthly intervals. The period of time between device readings shall not be less than twenty-seven (27) days and not more than thirty-three (33) days. If Commission is unable to read the flow measuring device, for any reason, the wastewater flow shall be estimated by Commission on the basis of Kelly Hills wastewater flow for the preceding three billing periods for which readings were obtained. Bills rendered on the basis of such estimates shall be as valid as if made from actual device readings and appropriate adjustment of Kelly Hills bill shall be made at first actual reading of the flow measuring device subsequent to such estimate.
- B. The term “month” or “monthly” refers to the interval(s) transpiring between the previous meter reading date and the current meter reading date, and bills shall be rendered accordingly.
- C. The Commission will submit bills to Kelly Hills on a monthly basis for the prior month’s sewer treatment service.
- D. If at the time of this Agreement’s Effective Date, the flow measurement device at Kelly Hills approach main is not installed, the parties agree that billing shall continue under the existing arrangement, as specified in the Kelly Hills/Slocomb Road Water & Sewer District Sanitary Sewer Service Agreement as amended October 24, 2005 until such time that the flow measurement device is installed and calibrated.
- E. The Commission will, annually, or such time as shall be determined by Commission, perform a rate analysis to determine the rates which are applicable to serving Commission’s various classes of water and sanitary sewer service. Among those classes of service will be wholesale sanitary sewer service classes, a class which includes Kelly Hills.
- F. Commission will use audited balance sheets, income statements, comparable wholesale market rate data, and return on investment financial information as the basis for determining the rates applicable to this Agreement. Commission may at its option, adjust audited financial data for changes to such financial data known

or reasonably expected to occur during the period in which the billing rate will be in effect.

- G. Commission will provide at least 30 days' notice to Kelly Hills of any rate changes.
- H. The initial Wholesale Sewer Rate to be charged to Kelly Hills, including the cost of O&M, is \$ 4.1267 per 1,000 gallons, or \$.0041267 per gallon, the rate effective January 1, 2014. This cost includes the cost of basic operation and maintenance of the sanitary sewer collection system as described in paragraph 3.

13. Capacity Charges

- A. Commission shall receive and treat up to 100,000 gallons per day of Kelly Hills wastewater, representing the projected average daily usage generated from sources within the Kelly Hills Sanitary Sewer District. Kelly Hills has purchased 32,430 gallons per day sanitary sewer treatment capacity using \$ 92,640 of FIF credits. Upon execution of this agreement Kelly Hills will purchase an additional 67,570 gallons per day of sanitary sewer treatment capacity using \$ 201,358.60 of their existing FIF credits that expire in October 2015.

Kelly Hills has the option, in the future, to purchase any or all of the remaining 50,000 gallons per day force main capacity at the then current FIF charge. Such purchases will be made in increments of at least 5% of the then current contract capacity.

- B. Kelly Hills shall, advise Commission of any anticipated growth in number of connections to its sanitary sewer system, population served and anticipated volume of wastewater as Kelly Hills becomes aware of such growth.. Commission does not anticipate any restriction on annual increase in flow from Kelly Hills, if within limits of the contract demand of 100,000 gallons per day. However, flow limits may be imposed if a regulatory agency having jurisdiction over Commission's treatment facilities requires restriction on flow increases on Commission's system.
- C. Commission shall notify Kelly Hills if the measured average daily usage in gallons per day of wastewater reaches 80% of the contract demand.
- D. If the measured average daily usage in gallons per day of wastewater from Kelly Hills exceeds 90% of the contract demand, Kelly Hills shall purchase additional contract demand at the current Commission capacity rate in increments of at least 5% of the existing contract demand.

14. Surcharges for Carbonaceous Biochemical Oxygen Demand (CBOD) and Suspended Solids (SS) and Total Kjeldhal Nitrogen (TKN):

- A. A surcharge for CBOD, Suspended Solids or NH₃ will be applied to those customers of Kelly Hills who are issued SIU or local permits (“Industrial Users”). These surcharges will be determined in accordance with the Commission Rate Schedule “Sanitary Sewer Surcharges” currently indexed as 620.05. Such surcharge billing will be determined by testing samples of wastewater from each Industrial Users’ discharge at Commission’s laboratories pursuant to standard test requirements and procedures of the State and Federal governments. Commission shall bill surcharges directly to the Industrial Users. The additional costs to treat wastewater in excess of limits stated above are determined by the Commission and published annually. The Commission will, from time-to-time, review and revise the surcharge applicable to Industrial Users based on testing.
 - B. Kelly Hills shall terminate sewer service to any Industrial User upon notice from the Commission that said Industrial User has failed to pay surcharges pursuant to Sections 5 or 7 or any additional fees or penalties under the City of Fayetteville’s Sewer Use Ordinance.
15. Sewer Use Ordinance Requirement:
- A. The Sanitary Sewer Ordinance of the City of Fayetteville, as amended from time-to-time, shall be applicable to all Kelly Hills customers whose wastewater is discharged to Commission’s Municipal Wastewater System.
 - B. Kelly Hills shall be responsible for regulation of all customers who discharge wastewater through Kelly Hills system to the Commission’s Municipal Wastewater System. Kelly Hills shall be responsible for enforcement of the requirements of the City of Fayetteville’s Sanitary Sewer Ordinance.
16. Sewer Use Ordinance, and Pretreatment Requirements and Costs:
- A. The Sanitary Sewer Use Ordinance of the City of Fayetteville and subsequent revisions of such Ordinance to include pretreatment requirements and cost, both incorporated herein by reference, shall be applicable to the effluent of Kelly Hills’ sanitary sewer being discharged into the Commission’s sanitary sewer system.
 - B. Kelly Hills hereby designates Commission as the agent of Kelly Hills for the purposes of implementation and enforcement of the pretreatment requirements of Kelly Hills for industrial users located in Kelly Hills’ jurisdiction. Commission hereby accepts the designation of agent of Kelly Hills’ jurisdiction for purposes of implementation and enforcement of the pretreatment requirements. If Commission determines the pretreatment requirements are not enforceable by Commission, then Kelly Hills shall provide timely enforcement. Kelly Hills shall continue to enforce all other provisions of the City’s Sanitary Sewer Use Ordinance.

- C. Commission, on behalf of and as an agent for Kelly Hills', agrees to perform technical and administrative duties necessary to implement and enforce the pretreatment requirements, including but not limited to the following:
1. Updating industrial waste survey no less than once every five (5) years;
 2. Providing technical services such as sampling and analysis;
 3. Permitting of Significant Industrial Users (SIU's);
 4. Conducting inspection and compliance monitoring at permitted SIU's and certain commercial users; and
 5. Performing enforcement activities.

In addition, Kelly Hills authorizes the Commission, as its agent, to take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, reasonably appears to threaten the environment, threatens to interfere with the operation of Commission's sanitary sewer treatment system (including the collection system and its workers' safety), or which could pass through the treatment plant and threaten the integrity of the publicly owned treatment works receiving stream.

- D. Kelly Hills, as with other Commission customers, shall be responsible for additional cost associated with treatment of sanitary sewer in excess of published limits as determined by Commission. Such pretreatment surcharge billing will be determined by testing of samples of sanitary sewer from the Kelly Hills sanitary sewer collection system at Commission's laboratories pursuant to standard test requirements and procedures of the State and Federal governments. The pretreatment surcharge procedure as it applies to commercial industrial customers is described in Commission's Rates and Policies Manual and is incorporated herein by reference.
- E. Kelly Hills shall pay Commission for actual costs incurred by Commission, including all reasonably allocated overhead costs, implementing and enforcing pretreatment requirements on behalf of Kelly Hills'. Commission shall bill Kelly Hills monthly for pretreatment costs incurred by Commission in implementing and enforcing Kelly Hills' pretreatment requirements, which shall be payable within 30 days of date of invoice.

17. Corrosion Control:

Kelly Hills shall be responsible for ensuring compliance with hydrogen sulfide discharge limits at the point(s) of discharge to the Commission's Municipal Wastewater System. The discharge of dissolved sulfide by Kelly Hills to Commission's Municipal Wastewater System at the discharge point(s) identified in Section 1 of this Agreement,

are limited to the following: a daily average of 5mg/l in solution and/or 10 ppm in atmosphere and a maximum of 10 mg/l in solution and/or 30 ppm in atmosphere per day. PWC, at its own expense, shall perform all testing and as needed shall coordinate with Kelly Hills. Kelly Hills, at its own expense, shall be responsible for the addition of any chemicals or additional treatment necessary to comply with the hydrogen sulfide limit. Any addition of chemicals to control hydrogen sulfide shall be coordinated with Commission prior to introduction into the system.

18. Indemnity and Responsibilities:

Kelly Hills assumes responsibility for and shall indemnify (or defend at Commission's sole option) Commission, its successors and assigns, and hold it harmless against all injuries, liabilities, claims, damages, losses, costs and expenses, including reasonable attorney's fees and costs, personal injury or property damage, arising out of or related to 1) the construction, maintenance and operation of Kelly Hills sanitary sewer system, 2) Kelly Hill's discharge into the Commission's Municipal Wastewater System, 3) this Agreement, or 4) fines or penalties by any Federal, State or local agency or body.. Kelly Hills will not indemnify PWC for intentional or negligent acts solely attributable to PWC, its employees, agents, or contractors.

19. Suspension or Termination of Sanitary Wastewater Treatment Service:

Commission, in addition to all other legal remedies, may either terminate this Agreement or suspend sanitary sewer treatment service to Kelly Hills for:

- a) Any material default or breach of this Agreement by Kelly Hills; Fraudulent or unauthorized use of the sanitary sewer treatment service or discharge of sanitary sewer in such manner as to circumvent Commission's meter(s) serving Kelly Hills; or,
- b) Failure to pay monthly sanitary sewer bills when due and payable.
- c) No such termination or suspension, however, will be made by Commission without thirty (30) days written notice delivered to Kelly Hills personally or by mail, within which time Kelly Hills may cure any such alleged default or breach or commence in good faith to cure any such default or breach which cannot reasonably be cured within thirty (30) days, except that only seven (7) days' notice need be given under subsection (b) above.
- d) Commission's suspension of sanitary sewer service or termination of this Agreement upon any authorized grounds shall not relieve Kelly Hills of:
 - 1) Liability for the payment of sanitary sewer treatment service to the date of suspension or termination of this Agreement; nor
 - 2) Liability for any actual damages sustained by Commission.

20. Payment:

Monthly bills are payable within thirty (30) days from date thereof at P.O. Box 1089, Fayetteville, North Carolina, 28302, or its successors. A late payment charge in accordance with PWC's Schedule of Deposits, Fees, and Charges shall be applicable to all bills rendered pursuant to this Agreement except when notified within fifteen (15) days by Kelly Hills in writing of an invoice dispute, but Kelly Hills shall pay the undisputed amount pursuant to this contract.

21. Term of Agreement:

The term of this Agreement is for twenty (20) years from _____, 2014 until _____, 2034 (the "Initial Term"). This Agreement shall automatically renew at the end of the Initial Term for a period of one (1) year, and shall automatically renew each year thereafter for a period of one year, unless terminated pursuant to the terms of Paragraph 10, or by either party by giving not less than one (1) year written notice to the other party, or upon mutual consent of both parties. Either party may terminate this Agreement during the Initial Term by giving the other party one (1) year written notice.

22. Prior Agreements: This Sanitary Sewer Wholesale Agreement shall replace the Sanitary Sewer Service Agreement by and between the City of Fayetteville acting by and through its Public Works Commission of the City of Fayetteville and the Kelly Hills /Slocomb Road Sanitary Sewer District dated April 19, 2004 and amended October 24, 2005.

23. Continuity of Service:

Commission does not guarantee continuous utility service, but shall use reasonable diligence in providing uninterrupted services. Having used such reasonable diligence, Commission shall not be liable to Kelly Hills or its customers for failure to provide continuous services. The performance of Commission's obligations under this Agreement shall be excused during such times and to the extent such performance is prevented by reason of any event beyond the control of Commission, including without limitation, flood, earthquake, storm, lightning, fire, explosion, war, riot, civil disturbances, terrorist act, strikes, sabotage, or act of God.

24. Dispute Resolution:

Commission and Kelly Hills will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Agreement through direct negotiations between Commission and Kelly Hills' staff. If the dispute is not settled through such negotiations, then Commission and Kelly Hills agree to attend voluntary mediation prior to initiating formal legal proceedings. Said voluntary mediation shall be initiated by either party giving notice of the same, and shall be concluded within 30 days of such notice. Said voluntary mediation shall be conducted pursuant to the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil

Actions in effect at the time said notice is given. The requirements of this Section 25 shall not apply to emergency situations where the dispute involves potential harm to the Commission's Municipal Wastewater System.

25. Amendment Proceedings:

This Agreement may be amended, changed, modified, altered, or assigned only by written consent of Commission and Kelly Hills.

26. Notices:

All notices hereunder, other than monthly invoices and payment of the same, shall be sent to the following addresses using regular mail unless otherwise specified in writing:

Commission: General Manager
 Public Works Commission
 P.O. Box 1089
 Fayetteville, NC 28302

Kelly Hills: Chairman, Governing Board
 Kelly Hills/Slocomb Road Water and Sewer District
 P. O. Box 1829
 Fayetteville, NC 28302-1829

27. Binding Effect:

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns.

28. Entire Agreement:

This Agreement contains the entire Agreement of the parties and there are no representations, inducements, or other provisions other than those expressed in writing.

29. Kelly Hills acknowledges that, in carrying out the terms of this agreement, PWC will disclose certain confidential customer information to Kelly Hills (the "Confidential Information"). Kelly Hills agrees not to disclose the Confidential Information to third parties, except as may be reasonably necessary to carry out the terms of this Agreement. Kelly Hills will advise PWC of any such disclosure prior to disclosure and obtain PWC's consent. In the event Kelly Hills inadvertently discloses Confidential Information, Kelly Hills will immediately notify PWC of such inadvertent disclosure and will take all appropriate actions to prevent further dissemination or disclosure of the Confidential Information.

29. Governing Law:

This Agreement shall be governed by the laws of the State of North Carolina.

30. Severability:

It is hereby declared to be the intention of Commission and Kelly Hills that the paragraphs, sentences, clauses, and phrases of this Agreement are severable. If one or more paragraphs, sections, sentences, clauses, or phrases shall be declared void, invalid, or otherwise unenforceable for any reason by valid and final judgment or decree of any court of competent jurisdiction, such judgment or decree shall not affect the remaining provisions of this Agreement and the same shall continue to be fully effective and enforceable on the basis that said remaining provisions would have been agreed to by Commission and Kelly Hills without the incorporation of such void, invalid, or otherwise unenforceable paragraph, section, sentence, clause, or phrase.

31. Effective Date:

The Effective Date, as that term is used in this Agreement, shall be the date that the Agreement is fully executed by both parties.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized officers, have executed this contract as to the date and year first above written.

MOTION: Chairman Council moved to approve the Kelly Hills/Slocumb Road Wholesale Sewer and Operation and Maintenance Agreement.

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (7-0)

C. Ratification of Adoption of Changes to the Kelly Hills/Slocumb Road Water & Sewer District Rate Schedule and Administration Policy Previously Approved at the March 19, 2012 Regular Board of Commissioners Meeting

KELLY Sanitary Sewer
Rates and Administration Policy
Revised 2-24-12

Definitions:

Availability: Sanitary Sewer is considered to be available when a gravity main line has been extended to a location adjacent to a property and when a dwelling on the property can be serviced by a gravity service line less than or equal to 400 feet that meets State building code requirements.

Lateral: Shall be defined as the installation which joins a KELLY main located in a public street or KELLY right-of-way and the point of delivery for service (usually at or near the property line of the applicant).

Mobile Home Park: Shall be defined as any site or tract of land upon which is (are) located three (3) or more mobile home dwellings capable of being occupied for dwelling or sleeping purposes.

Public Projects: For use in this document, Public Projects are considered as those projects undertaken by KELLY to provide sewer services to currently unsewered areas and are typically funded by a combination of government loans and grants and local funds. Loans for these projects are typically repaid through the collection of "Debt Service" charges to customers after construction.

Public Utility: Shall be defined as electric, water, sewer, gas, or telephone company.

I. AVAILABILITY OF SERVICE

Sanitary Sewer (SS) Service is provided from the KELLY District in accordance with the rules established in the KELLY Sewer Use Ordinance (SUO) and herein.

Within the KELLY District boundaries, hook up to the Sanitary Sewer System is mandatory when it is made available (See definitions). Within KELLY boundaries, failure to pay required fees and make the mandatory connection will result in a monthly charge to the property owner and possibly higher connection charges if the owner connects in the future.

Currently all rates are the same for customers within the District Boundaries and those outside. The KELLY Board reserves the right to adopt different rates for customers outside the District.

Currently, the District does not provide water service. All existing water customers that will receive Sanitary Sewer Service from KELLY will continue to receive water from their local provider. New water customers will also receive water from the local provider.

Fees for sanitary sewer service will be collected by the Sewer Service Provider.

II. APPLICABILITY OF RATE SCHEDULES

A. General:

The KELLY District has established a Sanitary Sewer rate schedule as shown in Appendix A. The District reserves the right to change a customer's rate classification according to those circumstances described under "Availability of Service". The customer, in certain instances upon establishing a billing history of no less than twelve months, may apply in writing for a review of his current rate classification. The customer will be promptly reclassified if such reclassification is justified.

The District endeavors to classify all of its customers accurately. However, the District does not guarantee that each customer will be served under the most favorable rate schedule at all times. The District shall not be held responsible for a customer's financial damages in the event that service is billed under a rate schedule, which does not most accurately represent the customer's circumstances. Therefore, no refunds or credits shall be issued representing the difference between previously billed rate schedule charges and charges which would have been billed had the customer been served under the most appropriate rate schedule.

B. SANITARY SEWER SCHEDULES:

The District has three categories of retail sanitary sewer service rate schedules. They are:

1. Sanitary Sewer Service-Residential (SSR) .

- a. Schedule SSR-3 is applicable to residential sanitary sewer service where the customer receives all water from sources other than the Sewer Service Provider. A flat monthly rate for service is assessed under this schedule which includes a fee for the Sewer Service Provider to provide Billing Services as well as a capital reserve fund fee to help cover the costs of future work and major repairs.

2. Sanitary Sewer-Commercial (SSC). Commercial Sanitary Sewer Service is a category of schedules consisting of two rate schedules. Commercial “sewer only” customers will be required to install a sewer flow meter and will be charged based on their usage and the schedules described below (basic rate for sewer only commercial customers will be the same as a two inch water meter customer).
 - a. Schedule SSC is applicable to commercial customers who use a ¾ inch or larger water meter and the customer is billed monthly for metered water service by the sewer service provider. Sanitary sewer discharge is billed under this schedule using the customer's measured water consumption during the corresponding billing period or their sewage flow for sewer only customers.
 - b. Schedule SSS (Sanitary Sewer Surcharge) is applied in conjunction with Schedule SSC in situations where the customer's discharge of Biochemical Oxygen Demand, Suspended Solids or Ammonia Nitrogen exceeds, on a parts per million gallons basis, the limits established by the Sewer Use Ordinance of the District.
3. Sanitary Sewer Available But Not Connected (SS-0). This category applies to residential and commercial building owners within the KELLY District boundary for whom sanitary sewer has been made available, but have not connected. They will be billed monthly, from the date of availability, at a rate equal to the sum of the applicable Flat Rate, Sewer Service Provider Billing Services Fee and the Capital Reserve Fund Fee as described in Section V and Appendix A.

III. CHARACTER OF SERVICE

Wastewater shall be collected and treated in accordance with the Sewer Use Ordinance of the KELLY District.

IV. BILLING

- A. Billing is made on a monthly basis by the Sewer Service Provider.
- B. Billing adjustments resulting from meter reading, billing, customer classification, or any other errors shall be resolved by the Sewer Service Provider.

V. MONTHLY RATES AND CHARGES

- A. FLAT MONTHLY RATES: Flat Monthly Rates are used in billing residential sanitary sewer service, where the customer receives all water requirements from other than a metered service provider.
- B. BASIC FACILITIES CHARGES: Basic Facilities Charges are assessed independent of and in addition to all consumption or discharge rates. Basic Facilities Charges are graduated according to meter size to reflect the various levels of KELLY investment costs.
- C. Debt Reduction Charges

Debt Reduction Charges are used to collect funds for the repayment of debts associated with the construction of the KELLY Sanitary Sewer System. Note that debt charges will begin when customers are notified that the main is available for connection.

 - ◆ All SSR and SSR-3 Schedule customers will pay the same rate.
 - ◆ All SSC Schedule customers will pay a consumptive rate.

- ◆ For the initial KELLY Project there are no Debt Reduction Charges.

D. CONSUMPTION (DISCHARGE) RATES.

Consumption or Discharge Rates apply to SSR and SSC customers. They are based upon the customer usage and expressed in a cost per 1,000 gallons used.

E. SANITARY SEWER SURCHARGES

Sanitary Sewer Surcharges are limited to Schedule SSS. Sanitary Sewer Surcharges will be billed directly by KELLY’s pretreatment agent—the Fayetteville Public Works Commission (PWC). PWC will surcharge the customers when their discharges exceed allowances established by the PWC.

VI. CONNECTION FEES AND CHARGES

A. CONNECTING TO SEWER MAINS OF COMPLETED PUBLIC PROJECTS

1. Main Charge, Lateral Charges, and Standard Tap Fees: There will usually be no Sewer Main Charge, Lateral Charge, or Standard Tap Fees if customers pay the reduced tap fee by the specified date and connect within the first ninety days that the main is available for connection.

2. Reduced Tap Fees: There will usually be a Reduced Tap Fee for public projects based on the specifics of the project funding. This Tap Fee will usually be less than the Standard Tap Fee described below if paid within a specified time. For the initial KELLY Sanitary Sewer System project there are no Tap Fee’s.

3. Connections After 90 Days. Customers who wish to connect to an existing main after the first 90 days that the main is available for connection will have to pay the following fees:

- a. A Lateral Charge as described in paragraph “VI, B, 2,” if no lateral was installed during the public project. Note that customers will be required to pay the Reduced Tap Fee for Public Projects prior to a specified date in order for a lateral to be installed at their property. If they do not pay the reduced tap fee by the specified date then no lateral will be installed and they will have to pay the full lateral charge in order to connect.
- b. The Standard Tap Fee as described below.
- c. A Debt Charge equaling the sum of Debt Charges that would have been paid had the customer connected when main was first available (This applies only to customers outside the KELLY Boundary—Customers inside the boundary will automatically pay the monthly debt charge from the date that the main is available).

B. CONNECTING TO EXTENDED MAINS. KELLY may extend mains to serve additional customers with non-public funding such as using its own capital account, a bank loan, private funding, or a combination of these. If the extension is within the KELLY boundary, then the mandatory connection policy will apply. If outside the KELLY boundary, connection will be voluntary. Connection fees to such extensions will be as follows:

1. Main Charges*

Residential 4-inch Sewer	\$1,188.00
Commercial 4 inch Sewer & Mobile Home Park	\$13.20 per front foot

Minimum Main Charge: \$1,188.00

2. Lateral Charges. A sanitary sewer service lateral is the installation which joins a KELLY main located in a public street or right-of-way and the point of delivery for service (usually at or near the property line of the applicant). The appropriate charge in the table below shall be paid by the applicant prior to an initial connection to the KELLY system of mains. All charges include labor, equipment and materials required for the installation of the specified pipe size or sizes at a depth not to exceed ten feet. Common exceptions to the standard charges are also noted.

Standard Charges*	Per Installation (Cost)
4-inch	\$ 505.00
6-inch	\$ 625.00

*Charges shown are "Standard." Some common exceptions are: Charges for other depths of bury, pipe sizes and pipe size combinations, unusually difficult construction conditions, etc., and will be computed using time and material basis.

3. Standard Tap Fee. The Standard Tap Fee will provide KELLY with funds for long-term system replacement and upgrade. They are in addition to the Main Charge and Service Lateral Charge. Standard Tap Fees per equivalent customer (per water meter size) are:

<u>Size of Water Meter</u>	<u>Standard Tap Fee</u>
5/8"	\$670.00
1"	\$1,670.00
1-1/2"	\$3,350.00
2"	\$5,360.00
3"	\$11,720.00
4"	\$20,100.00
6"	\$41,880.00
8"	\$60,310.00

- a. Standard Tap Fee Credit. KELLY will provide a Standard Tap Fee Credit to developers on a dollar for dollar basis for extension of approach mains and collectors. (See: Standard Tap Fee Procedure). A main extension is considered an approach main if it passes through or abuts other parcels and allows service to those parcels. Developers must notify KELLY of their intent to construct sanitary sewer that will qualify for a credit as part of their request for acceptance of the waste from the proposed project. Credits must be used within five years from the date issued by KELLY.
- b. Existing customers connected to sanitary sewer and needing additional connections (taps) to the system will pay the appropriate Standard Tap Fee.
- c. Existing customers needing to up-size their water meter will pay the difference between the Standard Tap Fee for the existing meter and the larger meter.
- d. If a parcel is redeveloped and existing sewer laterals are utilized, no Standard Tap Fee is due. If a parcel is being redeveloped and new sewer laterals are needed, the appropriate Standard Tap Fee for sewer is required.

RESIDENTIAL SANITARY SEWER ONLY (Schedule SSR-3) SERVICE

AVAILABILITY - Available throughout the territory served by KELLY in accordance with KELLY's established service regulations.

APPLICABILITY - To residential sanitary sewer service where the customer receives all water requirements from sources other than from the water mains of the PWC and where all wastewater is discharged into the sanitary sewer system at a single discharge point. Note commercial sewer only customers will be required to install a meter and will be billed according to Schedule SSC.

CHARACTER OF SERVICE - Wastewater shall be collected and treated in accordance with the KELLY Sanitary Sewer Use Ordinance.

MONTHLY RATE: The monthly rate billed by KELLY shall be the sum of the Basic, Flat Monthly Charge, and the Debt Charge.

Flat Monthly Charge	Prevailing Flat rate charged by the Sewer Service Provider
Sewer Service Provider Billing Services Charge	\$2.00
KELLY Capital Reserve Fund Fee	\$2.10
Debt Charge	Will be determined if Kelly incurs debt.

CONTRACT PERIOD - The contract period shall be continuous from the date of connection through the date of disconnection.

PAYMENTS – Bills are due in accordance with the established policies of the Sewer Service Provider.

Appendix A-2. Rate Schedule SSC

COMMERCIAL SANITARY SEWER (Schedule SSC) SERVICE

AVAILABILITY - Available throughout the territory served by KELLY in accordance with KELLY's established service regulations.

APPLICABILITY - To commercial service customers using a ¾ inch, or larger, water meter and where the customer is billed monthly for metered water service by PWC and where all wastewater is discharged into the sanitary sewer system at a single discharge point.

CHARACTER OF SERVICE - Wastewater shall be collected and treated in accordance with KELLY's Sewer Use Ordinance.

MONTHLY RATE - The monthly rate billed by Sewer Service Provider shall be the sum of the Usage Charges, Debt Charge, and the Basic Facilities Charge.

Usage Charge	\$4.03 per MGAL
Capital Reserve Fund Fee	\$2.10
Debt Charge	To be determined if debt is incurred by Kelly

Basic Facilities Charges:

<u>Meter Size:</u>	<u>KELLY</u>
3/4"	2.58

1”	3.26
1 1/2”	4.20
2”	6.78
3”	11.37
4”	17.92
6”	34.15
8”	53.70

CONTRACT PERIOD - The contract period shall be continuous from the date of connection through the date of disconnection.

PAYMENTS – Bills are due in accordance with the established policies of the Sewer Service Provider.

Appendix A-4. Rate Schedule SS-0

AVAILABILITY CHARGE (Schedule SS-0)

APPLICABILITY – The Availability Charge is assessed to residential and commercial properties at the same rate under three sets of conditions:

1. Developed Property Within the KELLY District Boundary: To Owners of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the property--where sewer service is available but not connected. Under these conditions, the charge applies from the date the owner is notified that sewer is available regardless of whether or not a service lateral has been placed and regardless of whether or not the property is connected to the local water system. This charge will only apply to newly created areas of the KELLY District outside of the original project area due to the mandatory hookup requirement in the original project area.

2. Undeveloped Property Within the KELLY District Boundary: The Availability Charge is assessed to Owners of undeveloped properties only if the owner has requested and received a service lateral but has not yet connected. Under these conditions, the charge applies from the date the Owner is notified that the lateral is in place and service is available.

3. Properties Outside the KELLY District Boundary: The Availability Charge is assessed to Owners outside the District Boundary only if the owner has requested and received a service lateral but has not yet connected. Under these conditions, the charge applies from the date the Owner is notified that the lateral is in place and service is available.

MONTHLY RATE: The monthly rate billed by KELLY shall be the sum of the Basic and the Debt Charge.

Capital Reserve Fund Fee: \$2.10

Debt Charge To Be Determined if the District incurs debt.

CONTRACT PERIOD - The contract period shall be continuous from the date of availability through the date of connection--at which time another rate schedule will apply.

PAYMENTS – Bills are due in accordance with the established policies of the Sewer Service Provider.

