

CUMBERLAND COUNTY BOARD OF COMMISSIONERS
TUESDAY, SEPTEMBER 6, 2016 – 9:00 AM
117 DICK STREET, 1ST FLOOR, ROOM 118
REGULAR MEETING MINUTES

PRESENT: Commissioner Marshall Faircloth, Chairman
Commissioner Glenn Adams, Vice Chairman
Commissioner Jeannette Council
Commissioner Kenneth Edge
Commissioner Charles Evans
Commissioner Jimmy Keefe
Commissioner Larry Lancaster
Amy Cannon, County Manager
James Lawson, Deputy County Manager
Melissa Cardinali, Assistant County Manager
Rick Moorefield, County Attorney
Vicki Evans, Finance Director
Deborah Shaw, Budget Analyst
Heather Harris, Budget Analyst
Kim Cribb, Budget Analyst
Joe Utley, Tax Administrator
Jeffrey Brown, Engineering and Infrastructure Director
Candice H. White, Clerk to the Board
Kellie Beam, Deputy Clerk to the Board
Press

Chairman Faircloth called the meeting to order.

INVOCATION AND PLEDGE OF ALLEGIANCE – Commissioner Lancaster provided the invocation followed by the Pledge of Allegiance to the American Flag led by Commissioner Council.

Recognition of Crisis Intervention Team (CIT) Award Winners

CIT Founders Award:	Gail Staley
CIT Deputy of the Year:	Deputy Duvan Sanchez, Cumberland County Sheriff's Office
CIT Officer of the Year:	Sgt. Melton Brown, Spring Lake Police Department Officer Jeffery Prevatte, Fayetteville Police Department
CIT Detention Officer of the Year:	Sgt. Anita Johnson, Cumberland County Detention Center
CIT Paramedic of the Year:	Lt. Leslie Campbell, Cumberland County Emergency Medical Services
CIT Telecommunicator of the Year:	Marisol Olivo, Fayetteville Police Department
CIT Trainer of the Year:	Detective Sgt. Melissa Jeffries, Robeson County Sheriff's Office
CIT Champion of the Year:	Hannah Carroll, NAMI of Cumberland, Harnett and Lee counties
CIT Exemplary Service Award:	Assertive Community Treatment (ACT) Team, Carolina Outreach

Commissioner Lancaster stated he had the opportunity to attend an event on June 29 when public safety and mental health professionals were honored at the fourth annual Crisis Intervention Team awards ceremony. Commissioner Lancaster stated CIT is a jail diversion program established to provide a specialized law enforcement response to individuals experiencing a crisis related to mental illness and is a program to help citizens get treatment instead of being incarcerated. Commissioner Lancaster recognized Wayne Cannon, CIT Program Coordinator, and the CIT award winners for making a difference in the lives of those with mental illness by diverting them to the right resources.

Presentation of Government Finance Officers Association Award Fiscal Year 2015 Certificate of Achievement for Excellence in Financial Reporting

Chairman Faircloth stated the 2015 Certificate of Achievement for Excellence in Financial Reporting has been awarded to Cumberland County by the Government Finance Officers Association for its Comprehensive Annual Financial Reports (CAFR). Chairman Faircloth stated this is the highest form of recognition in the area of governmental accounting and financial reports, and its attainment represents a significant accomplishment by a government and its management.

Chairman Faircloth stated Award of Financial Reporting Achievement has been awarded to Vicki Evans, Cumberland County's Finance Director, the individual designated as primarily responsible for preparing the CAFR. Ms. Evans recognized Finance Department staff members Bob Tucker, Kelly Autry and Todd Hathaway for their efforts in preparing the CAFR. Chairman Faircloth stated Cumberland County has received this award for over fifteen years.

Amy Cannon, County Manager, requested to add to the consent agenda Item 2.G. Approval of Winding Creek Chiller Replacement Project and Item 2.H. Approval of a Memorandum of Understanding for the Cumberland County Precharge Misdemeanor Diversion Program, and to remove from the agenda Item 5.B. Closed Session for Attorney/Client Matter(s) pursuant to NCGS 1430318.11(a)(3).

1. Approval of Agenda

MOTION: Commissioner Lancaster moved to approve the agenda to include the addition of Item 2.G. Approval of Winding Creek Chiller Replacement Project and Item 2.H. Approval of a Memorandum of Understanding for the Cumberland County Precharge Misdemeanor Diversion Program, and the removal of Item 5.B. Closed Session for Attorney/Client Matter(s) pursuant to NCGS 1430318.11(a)(3) as requested by the County Manager.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

2. Consent Agenda

A. Approval of minutes for the August 15, 2016 regular meeting.

B. Approval of Proposed Additions to the State Secondary Road System:

BACKGROUND:

The North Carolina Department of Transportation has received petitions requesting the following streets be placed on the State Secondary Road System for maintenance:

Arlington Plantation Subdivision: Kentucky Lane (SR 3718 Ext.),
Slew Drive, Northern Dancer Place,
Finish Line Drive, Quarter Pole Lane,
Starting Gate Drive, Rio Dosa Downs,
Trotter Court, Prospector Court

DOT has determined that the above streets are eligible for addition to the state system.

RECOMMENDATION / PROPOSED ACTION:

NCDOT recommends that the above named streets be added to the State Secondary Road System. County Management concurs. Approve the above listed streets for addition to the State Secondary Road System.

C. Approval of Submission of the FY17 Rural Operating Assistance Program (ROAP) Grant

BACKGROUND:

The ROAP Grant incorporates three parts of the Community Transportation Program; the Elderly and Disabled Transportation Assistance Program (EDTAP) allotment, the Employment Transportation Assistance Program (EMPL) allotment and the Rural General Public Program (RGP) allotment. The General Assembly has approved a state budget and the attached ROAP Allocation Table is final. The total awarded amount for the FY2017 ROAP Grant is \$307,074. The breakdown of funding is as follows: EDTAP: \$157,499, EMPL: \$73,897 and RGP \$75,678.

There is no local match required for the EDTAP or EMPL portion of the grant. However, the RGP portion does require a 10% local match. A fare will be charged in order to cover the 10% local match. There will not be any changes to the amount of fares currently being charged.

In previous years the Rural Operating Assistance Program (ROAP) grant was required to have a public hearing prior to the submission of the grant to the North Carolina Department of Transportation, this is no longer a requirement. An unsigned draft application was required by August 22nd; however, a fully executed application must be submitted on or before September 7th in order to receive the first quarter's disbursement on September 15th.

This year NCDOT-PTD will disburse the ROAP funds on a quarterly basis. They will also be implementing three important changes this year. (1) For the first time a quarterly milestone report which is an exact copy of the annual ROAP report. (2) The total amount unspent at the end of the year will be deducted from the following year's total allocation. (3) For the first time, PTD will be monitoring quarterly and year-to-date spending. Any reported unspent funds at the end of each quarter will be deducted from the following quarter's disbursement of your ROAP allocation.

RECOMMENDATION/PROPOSED ACTION:

Approve submission of the FY2017 Rural Operating Assistance Program (ROAP) Grant to the North Carolina Department of Transportation to meet the September 7, 2016 deadline.

D. Approval of Disposition of Records Request for the Crown Complex

BACKGROUND:

Pursuant to the resolution adopted by the Board of County Commissioners on February 5, 1985, authorization is requested to destroy financial records located at the Crown complex dated prior to June 30, 2012 in accordance with the records retention and disposition schedule issued by the North Carolina Division of Archives and History which was previously adopted by the Board of Commissioners.

RECOMMENDATION/PROPOSED ACTION:

Approve the disposition of records located at the Crown complex for the timeframe prior to June 30, 2012 and include same in minutes of the September 6, 2016 Commissioners' meeting.

E. Approval of a Proclamation Recognizing September 2016 as "Cumberland County Emergency Preparedness Month"

COUNTY OF CUMBERLAND

NORTH CAROLINA

PROCLAMATION

WHEREAS, North Carolina weather can be unpredictable and dangerous as seen during last year's 9 tornadoes, 112 large hail events, 460 wind damage events and 196 flood and flash flood events; and

WHEREAS, every community, business, family and individual in Cumberland County must be ready for natural and man-made disasters including tornadoes, flooding, hurricanes and public disturbances that might disrupt normal daily activities; and

WHEREAS, all Cumberland County residents can take a few simple steps – making a family disaster plan, creating an emergency supply kit and staying informed – to help make preparedness and personal responsibility a priority; and

WHEREAS, Cumberland County residents should know the risks for their area and plan accordingly; and

WHEREAS, Cumberland County residents should help the elderly and those who cannot help themselves; and

WHEREAS, Cumberland County residents should include the safety of their pets and/or livestock in their emergency plans; and

WHEREAS, Cumberland County, North Carolina Emergency Management and the United States Department of Homeland Security have collaborated to recognize September as National Emergency Preparedness Month to encourage Cumberland County residents to be disaster ready.

NOW THEREFORE, the Cumberland County Board of Commissioners hereby proclaims the month of September 2016 as “EMERGENCY PREPAREDNESS MONTH” in Cumberland County and encourages all county residents to plan and prepare weather-related and man-made disasters by assembling their emergency supply kits and updating their emergency plans.

Adopted this 6th day of September, 2016.

F. Budget Revisions:

General Fund 101

- 1) Health Department - Budget Ordinance Amendment B170702 to appropriate health department fund balance and increase contracted services in the amount of \$150,000 for scanning of active health files

The Board is requested to approve Budget Ordinance Amendment B170702 in the amount of \$150,000 utilizing Medicaid settlement funds. These funds are to be used to begin Phase 2 of the document imaging project. This will be the final phase for scanning all medical records and will be completed in the current fiscal year.

Please note this amendment requires the use of health department fund balance.

- 2) Health Department - Budget Ordinance Amendment B170740 to recognize \$17,865 to increase contracted services

The Board is requested to approve Budget Ordinance Amendment B170740 in the amount of \$17,865 representing grant funds from the state of North Carolina, Department of Public Health, Aid to Counties. These funds are to be used for the Care and Prevention in the United States program for Human Immunodeficiency Virus (HIV) positive minorities.

Please note this amendment requires no additional county funds.

- 3) Health Department - Budget Ordinance Amendment B170749 to recognize grant funds of \$945 to increase miscellaneous expenses

The Board is requested to approve Budget Ordinance Amendment B170749 in the amount of \$945 representing grant funds from the American Lung Association of the Southeast, Inc. These funds are reimbursement for emergency lodging for a tuberculosis patient who did not have electricity or water at home.

Please note this amendment requires no additional county funds.

- 4) Health Department - Budget Ordinance Amendment B170760 to recognize \$11,202 to increase contracted services

The Board is requested to approve Budget Ordinance Amendment B170760 in the amount of \$11,202 representing additional grant funds from the state of North Carolina, Department of Public Health, Aid to Counties. These funds are to be used for the Vaccines for Children program.

Please note this amendment requires no additional county funds.

- 5) Health Department - Budget Ordinance Amendment B170761 to recognize \$10,000 to increase the Ebola expense line

The Board is requested to approve Budget Ordinance Amendment B170761 in the amount of \$10,000 representing grant funds from the state of North Carolina, Department of Public Health, Aid to Counties. These funds are to be used for Ebola preparedness related expenses.

Please note this amendment requires no additional county funds.

- 6) Health Department - Budget Ordinance Amendment B170764 to recognize \$3,848 to increase the breast feeding counseling expense line

The Board is requested to approve Budget Ordinance Amendment B170764 in the amount of \$3,848 representing grant funds from the state of North Carolina, Department of Public Health, Aid to Counties. These funds are to be used for breast feeding counseling services.

Please note this amendment requires no additional county funds.

- 7) Health Department - Budget Ordinance Amendment B170872 to recognize \$20,000 to increase computer software for the Foodborne Illness and Food Defense Preparedness and Response Project

The Board is requested to approve Budget Ordinance Amendment B170872 in the amount of \$20,000 representing grant funds from the Food and Drug Administration (FDA). These funds are to be used to upgrade the Custom Data Processing (CDP) software, used when conducting food/lodging inspections, to be in compliance with FDA requirements.

Please note this amendment requires no additional county funds.

- 8) Mental Health - Budget Ordinance Amendment B170002 to recognize \$750,000 to increase Mental Health Services expenses

The Board is requested to approve Budget Ordinance Amendment B170002 in the amount of \$750,000. The revision is necessary to cover contracts with Mental Health and Cape Fear Valley Medical Center. The use of fund balance for this purpose was discussed in the County Manager's Budget Message, however, the actual appropriation was not included in the budget ordinance.

Please note this amendment requires the use of fund balance.

- 9) Sobriety Court - Budget Ordinance Amendment B170845 to recognize continuation funding of \$58,845 for salaries and operational expenses

The Board is requested to approve Budget Ordinance Amendment B170845 in the amount of \$58,845 representing funds from the North Carolina Governor's Highway Safety Program. These funds are to be used for the Traffic Safety Project Contract which includes pretrial monitoring of high risk drunk drivers.

Please note this amendment requires no additional county funds.

- 10) Transportation - Budget Ordinance Amendment B170008 to recognize increased funding of \$28,302 for transportation services

The Board is requested to approve Budget Ordinance Amendment B170008 in the amount of \$28,302 representing additional grant funds from the state of North Carolina, Department of Transportation, Rural Operating Assistance Program. These funds are to be used for transportation services for the Elderly and Disabled Transportation

Assistance Program (EDTAP), Workfirst employment, and the Rural General Public Program (RGP).

Please note this amendment requires no additional county funds.

Juvenile Crime Prevention Fund 245

- 11) Juvenile Crime Prevention Alternatives to Commitment Program– Budget Ordinance Amendment B170004 to recognize grant amount of \$80,000 for the Intensive Services Network

The Board is requested to approve Budget Ordinance Amendment B170004 in the amount of \$80,000 representing grant funds from the state of North Carolina, Department of Public Safety, Juvenile Crime Prevention. These funds are to be used to provide parent/family skill building services through the Intensive Services Network.

Please note this amendment requires no additional county funds.

Solid Waste Fund 625

- 12) Solid Waste - Budget Ordinance Amendment B170010 to recognize \$401,886 to increase salary related expenses

The Board is requested to approve Budget Ordinance Amendment B170010 in the amount of \$401,886. The revision is necessary to cover salary related expenses which were inadvertently understated during the FY 17 budget process.

Please note this amendment requires the use of solid waste fund balance.

Fayetteville Cumberland Economic Development Corporation Fund 631

- 13) Fayetteville-Cumberland County Economic Development Corporation - Budget Ordinance Amendment B170480 to recognize additional grant amount of \$250,000 for the State of NC Innovation Grant

The Board is requested to approve Budget Ordinance Amendment B170480 in the amount of \$250,000 representing additional grant funds from the State of North Carolina General Assembly. These funds are to be used to boost entrepreneurship, create jobs and connect the region through a broadband network.

Please note this amendment requires no additional county funds.

REGARDING THE FOLLOWING ITEMS 14 – 21 PLEASE NOTE:

Each fiscal year County departments may have projects that are not complete by the fiscal year end (6/30/16) or items ordered that have not been received by fiscal year end. These projects or items were approved in the Fiscal Year 2016 budget however the money was not spent by June 30, 2016. The following amendments seek to bring those funds forward from FY 2016 into the current fiscal year, allowing departments to complete and pay for these items. These revisions are not using 'new' funds, but are recognizing the use of FY16 funds in FY17.

General Fund 101

- 14) Crown - Budget Ordinance Amendment B170005 to appropriate FY16 fund balance in the amount of \$170,919 to increase capital outlay and maintenance and repair of buildings

The Board is requested to approve Budget Ordinance Amendment B170005 in the amount of \$170,919 to appropriate fund balance. These

funds are for completion of repairs to washouts around the Coliseum and update to the camera system.

Please note this amendment requires a re-appropriation of FY16 fund balance to the current year.

- 15) Health Department - Budget Ordinance Amendment B170858 to appropriate FY16 fund balance in the amount of \$44,512 to upgrade the Teen Wellness Clinic

The Board is requested to approve Budget Ordinance Amendment B170858 in the amount of \$44,512 to appropriate fund balance. These funds represent grant funds received in FY 15-16, for the purpose of upgrading the Teen Wellness Clinic.

Please note this amendment requires a re-appropriation of FY16 fund balance to the current year.

- 16) Health Department - Budget Ordinance Amendment B170974 to appropriate FY16 fund balance in the amount of \$29,729 increasing capital outlay equipment

The Board is requested to approve Budget Ordinance Amendment B170974 in the amount of \$29,729 to appropriate fund balance. These funds are being used for implementation of the lab records interface for Insight, which is the final component of the electronic health records project.

Please note this amendment requires a re-appropriation of FY16 fund balance to the current year.

- 17) Sheriff's Department - Budget Ordinance Amendment B170769 to appropriate FY16 fund balance in the amount of \$5,869 increasing departmental supplies and materials

The Board is requested to approve Budget Ordinance Amendment B170869 in the amount of \$5,869 to appropriate fund balance. These funds are being used to purchase accessories for vehicles that were replaced by insurance in FY 16.

Please note this amendment requires a re-appropriation of FY16 fund balance to the current year.

- 18) Information Services - Budget Ordinance Amendment B170009 to appropriate FY16 fund balance in the amount of \$7,794 increasing computer software

The Board is requested to approve Budget Ordinance Amendment B170009 in the amount \$7,794 to appropriate fund balance. These funds are to be used for an add on to the Voice Over Internet Phone (VOIP) project from FY 16. This will allow compliance with the Sheriff's Department recording policy.

Please note this amendment requires a re-appropriation of FY16 fund balance to the current year.

- 19) Sheriff - Budget Ordinance Amendment B170771 to appropriate FY16 fund balance to increase maintenance and repair of buildings in the amount of \$46,691

The Board is requested to approve Budget Ordinance Amendment B170771 in the amount of \$46,691 to appropriate fund balance. These funds are for completion of the upgrade to the closed circuit television/camera equipment in the Detention Center.

Please note this amendment requires a re-appropriation of FY16 fund balance to the current year.

- 20) Tax Administration - Budget Ordinance Amendment B170006 to appropriate FY16 fund balance to increase audit expenses in the amount of \$82,375

The Board is requested to approve Budget Ordinance Amendment B170006 in the amount of \$82,375 to appropriate fund balance. These funds are being used for ongoing audit services to verify the accuracy of taxpayer listings.

Please note this amendment requires a re-appropriation of FY16 fund balance to the current year.

Contingency Funds Report

- 21) The County Manager approved the use of contingency funds of \$14,024. The funds were used to address repairs to security equipment at the entrances of the Courthouse and to replace the identification badge machine.

2.G. Approval of Winding Creek Chiller Replacement Project

BACKGROUND:

The Facilities Management Division of Engineering & Infrastructure has identified significant issues with the 90 ton chiller that serves the Winding Creek Facility at 711 Executive Place. This chiller contains two separate circuits with each circuit containing two compressors. One of the compressors on one circuit has failed and the other circuit has a compressor that is in the process of failing. Maintenance staff has done everything possible over the last few weeks to prevent a sudden failure of the remaining compressor. This facility is equipped with a secondary 25 ton chiller however it does not have the capacity to cool the entire building. This entire facility is leased to tenants and by contract the County is responsible for adequate maintenance and operation of the HVAC system. Since 2014, the Engineering & Infrastructure Department has spent \$41,060 in repairs to this chiller. The associated cost for repairing the existing chiller is approximately \$110,000. It is important to note that this chiller operates off of R-22 refrigerant. Beginning in the year 2020, R-22 refrigerant will no longer be manufactured. This refrigerant is getting harder to find and the price continues to increase.

Engineering and Infrastructure staff has discovered that the County can move forward with replacing both chillers with a single 120 ton new chiller. This chiller will be more energy efficient than operating two individual chillers. It will also provide additional capacity allowing conditioned air to be supplied to the fifth floor in the future if the decision is made to convert this area to office space. Working with County Purchasing staff, Engineering and Infrastructure has identified the County can utilize the U.S. Communities Government Purchasing Alliance for this replacement. Our department has received a quote in the amount of \$171,208 from Brady a U.S. Communities approved vendor for this geographical area, for the replacement of the two existing chillers with a new 120 ton chiller.

RECOMMENDATION/PROPOSED ACTION:

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

1. Award a contract in the amount of \$171,208 to Brady for the replacement of the two existing chillers with a new 120 ton chiller.
2. General Fund – Facilities Maintenance Budget Ordinance Amendment B170015 to appropriate the transfer of funds from the capital investment fund and increase capital outlay equipment in the amount of \$171,208 for replacement of chiller at Winding Creek

The Board is requested to approve Budget Ordinance Amendment B170015 in the amount of \$171,208 utilizing funds from the Capital Investment Fund. These funds will be transferred from the Capital Investment Fund to Facilities Maintenance to replace the

chiller at the Winding Creek Facility (711 Executive Place) as approved by the facilities committee at their meeting on September 1, 2016.

2.H. Approval of a Memorandum of Understanding for the Cumberland County Precharge Misdemeanor Diversion Program

STATE OF NORTH CAROLINA

MEMORANDUM OF UNDERSTANDING

COUNTY OF CUMBERLAND Cumberland County Precharge Misdemeanor Diversion Program

THIS MEMORANDUM OF UNDERSTANDING entered into this 1st day of September, 2016, by and between or among the CHIEF JUDGE OF THE DISTRICT COURT, TWELFTH JUDICIAL DISTRICT, AND THE JUDGES ASSIGNED TO CRIMINAL MISDEMEANOR CASES (“Judges”), THE OFFICE OF THE DISTRICT ATTORNEY, TWELFTH JUDICIAL DISTRICT (“District Attorney”), the OFFICE OF THE PUBLIC DEFENDER FOR THE TWELFTH DISTRICT (“Public Defender”), the COUNTY OF CUMBERLAND, the SHERIFF OF CUMBERLAND COUNTY (“Sheriff”), the CITY OF FAYETTEVILLE by and through its POLICE DEPARTMENT (“Fayetteville Police”), the TOWN OF HOPE MILLS by and through its POLICE DEPARTMENT (“Hope Mills Police”), and the TOWN OF SPRING LAKE by and through its POLICE DEPARTMENT (“Spring Lake Police”), hereinafter “The Parties.”

WHEREAS, the State of North Carolina is only one of two states that ordinarily prosecute all sixteen and seventeen year-olds charged with criminal offenses as adults; and

WHEREAS the record of arrest follows the youth into adulthood and may create significant impediments to and involve collateral consequences in employment, education, licensing, and rights even in the event that such charges are dismissed; and

WHEREAS, The Parties seek to implement a program designed to reduce the direct and indirect negative consequences of such an arrest; and

WHEREAS, The Parties agree a Misdemeanor Diversion Program pursuant to which sixteen and seventeen year-olds with no adult criminal record may be diverted from the criminal justice system for eligible misdemeanor charges will serve this goal;

NOW THEREFORE; the Judges, District Attorney, Public Defender, County of Cumberland, Sheriff, Fayetteville Police, Hope Mills Police, and Spring Lake Police agree as follows:

1. Creation and Establishment of Program. The Parties in this venture agree to establish the Cumberland County Precharge Diversion Program (“MDP”) subject to the terms and conditions which the Parties may establish and subject to and under the terms of this memorandum of understanding.
2. Administration. The County of Cumberland, through its Pretrial Services Department, shall fund to the extent approved by the Board of Commissioners in the annual budget, operate and administer the Cumberland County Precharge Misdemeanor Diversion Program (“MDP”).
3. Purpose and Overview of the Program. The purpose of the MDP is to divert first-time arrests or citations of sixteen and seventeen year-olds with no adult criminal record for misdemeanor charges except Class B misdemeanors, and any misdemeanor offenses involving sexual offenses, firearms violations, and traffic offenses.

Where probable cause exists, law enforcement officers may instead of effecting an arrest or issuing criminal process as contemplated under N.C. Gen. Stat. §15A-301 *et seq.* for a person who is 16 or 17 years old at the time of the offense and who is a first-time offender, may issue a referral which will initiate the misdemeanor youth diversionary process by directing the youth to contact the MDP Representative through the contemporaneous completion of an Incident Report and an MDP Referral Form. After the officer confirms that the youth is eligible for MDP, the officer will then submit the information to the MDP Representative within 48 hours. The youth must contact the MDP Representative within 48 hours.

The MDP Representative shall be an employee of Pretrial Services with the responsibility for administration of the MDP program.

The MDP Representative will meet with the youth and prepare a diversion plan and require, among other things, that the youth attend a mandatory Diversion Court session with an assigned

Judge, Assistant District Attorney, Public Defender or retained defense counsel. These diversion plans will include programming tailored for the individual youth, such as community service hours, leadership classes, and mentoring. After a period of no more than 90 days, the MDP Representative will determine if there has been successful compliance with the diversion plan terms. If the youth referred to the MDP fully complies, no criminal process will be served. In the event, however, the referred youth fails to comply, the MDP Representative will notify the Law Enforcement Officer so that prosecution may be pursued.

4. **Law Enforcement Discretion.** While the law enforcement agencies executing this agreement acknowledge their participation in the MDP, Sheriff's deputies and officers of the Fayetteville, Hope Mills and Spring Lake Police Departments shall have discretion to issue a "youth citation" to a sixteen or seventeen year-old when the deputy or police officer determines there is probable cause to arrest or issue a citation for misdemeanor offenses other than class B misdemeanors or offenses involving sexual offenses, firearms, or traffic offenses. Additionally, as stated in this agreement, if a referred youth fails to comply with the terms of the MDP program, the law enforcement officer may exercise his or her discretion to issue criminal process as that term is contemplated pursuant to N.C. Gen. Stat. §15A-301 *et seq.* Moreover, nothing in this agreement shall limit the authority or the discretion of the head of any law enforcement agency to cause or direct any criminal process to be issued or maintained; nor shall anything in this agreement limit the discretion of a law enforcement officer to cause criminal process to issue against any person, whether before or after referral to the MDP.
5. **Obligations of MDP Administrators.** Cumberland County Pretrial Services shall have the duty and responsibility to establish develop and maintain the misdemeanor precharge diversion program, to maintain all records of or related to such precharge diversion, develop individual diversion plans for MDP participants, provided, however, that consistent with the purposes of the program contemplated under this agreement, each plan must include at least one court appearance before an assigned judge and must be completed successfully within 90 days of referral to the program, and may include a community service requirement, education, training, as well as other diversionary programming based on the participant's needs. The requisites and criteria to be applied by the program include at least the following:

- a. **Eligibility**

A referred youth in order to be eligible for referral must

- (1) Be 16 or 17 years old at time of offense
- (2) Have no adult criminal record (even if the referred youth may have a juvenile record)
 - (a) Must be potentially subject to a criminal charge for a misdemeanor offense other than a class B offense, or other than sex offenses, firearms offenses, and traffic offenses

- b. **Referral Process**

Referrals may be made in the following manner when

- (1) A law enforcement officer determines there is probable cause to arrest or issue criminal process and that an arrest or citation would otherwise occur
- (2) The law enforcement officer believes the youth to be eligible for precharge referral
- (3) The officer gives youth an MDP postcard and explains MDP, particularly including the requirement that the youth contact the MDP Representative within 48 hours
 - (a) The Officer completes an MDP Referral Form and Incident Report (IR) and submits the form within 48 working hours

- c. **MDP Intake Process**

The MDP intake process shall include the following events and conditions:

- (1) MDP Representative receives Referral Forms and IR
- (2) MDP Representative sets up appointment with youth and parent or guardian within 5 days
- (3) At the appointed meeting:
 - (a) the intake interview is completed
 - (b) the Release to Opt-in is signed
 - (c) a general release is signed
 - (d) the Diversion Plan is formulated and entered and
 - (e) the mandatory court date is assigned

d. Elements of the Diversion Plan

The Diversion Plan must

- (1) include 10 hours of community service, classes or programming based on the individual needs of the youth
- (2) Include at least one MDP court session
- (3) be fully and successfully completed within 90 days of being entered
- (4) not permit any repetition of program participation for the same or a substantially similar offense

e. Mandatory MDP Court Session

Every MDP participant will be referred to one Diversion Court session, with an assigned Judge, Assistant District Attorney and Assistant Public Defender or retained defense counsel which shall

- (1) educate the MDP youth about the direct and collateral consequences of criminal activity
- (2) be held on a date and at a time which the Cumberland County Pretrial Services will coordinate and arrange with the requisite court officials
- (3) enable law enforcement officers who shall be invited to each session to talk directly with the youth participants

f. MDP Youth Programming

- (1) All MDP programs and diversion requirements are provided to MDP participants without charge to the youth participants
- (2) The MDP Representative will recruit and maintain a list of agencies and entities providing appropriate youth classes or programs for MDP participants
- (3) Programming options will include, but are not limited to
 - (a) community service
 - (b) teen court
 - (c) leadership and skills-building classes
 - (d) information on collateral consequences and community resources will be provided to every MDP participant and his or her parent or guardian.

g. MDP Compliance

- (1) MDP Diversion Plan compliance will be monitored by the MDP Representative
- (2) Plan requirements and court attendance must be completed by the youth participant within 90 days
- (3) Upon confirmation of compliance, the MDP Representative will release the youth from MDP and notify the referring MDP Law Enforcement Officer
- (4) In the case of non-compliance or new charges for the youth, the Law Enforcement Officer will be notified so that the issuance of criminal process can be considered
- (5) Records of MDP participation and of the participant's compliance or noncompliance will be maintained by the MDP
- (6) No youth previously referred to MDP will be permitted to again participate in the MDP for the same offense or for related or substantially similar offense conduct.

6. Term - Renewal of the Agreement.

This memorandum of agreement is intended to be temporary in nature, and shall initially be valid for a period of two hundred seventy (270) days from the date of its inception, during which the Parties will evaluate the program and make determination concerning its viability, propriety, and effectiveness and may during such period modify or adjust the MDP and its rules, conditions, operating procedures or the like.

- a. Term. Although subject to renewal, either expressly or as provided and contemplated under this agreement, the express term of this agreement shall be as follows:

- (1) Effective Dates. This agreement shall be effective from September 1, 2016, through May 29, 2017, but any subsequent terms is intended to and shall be for the period from June 30, 2017 until June 30, 2018 (the fiscal year of each party being defined as the period from July 1 of the current calendar year and June 30 of the next succeeding calendar year), unless renewed, extended or terminated as provided in this agreement.

In the event that this agreement is amended or modified during the term of the effective dates, unless otherwise provided, such amendment or modification of this agreement shall be deemed to relate back to the initial effective date of this agreement.

- (2) Renewal. This agreement may be renewed by an express writing for that purpose executed on or before June 30, 2017, to be effective for the next fiscal year, unless terminated during the contemplated period of the contract as provided in this agreement. Unless and until terminated as provided under the terms of this writing, this agreement shall be deemed to be renewed automatically at the end of the effective expiration date and shall be deemed to continue for the next succeeding fiscal year.
 - b. Amendment or Modification. This Agreement may be modified or amended by mutual consent of the parties as long as the amendment is executed in the same fashion as this Agreement. Modifications to the operations, regulations or procedures substantially affecting the operation or effect of the MDP shall be presented to the representatives designated by the Parties for consideration of modification or amendment to this agreement. Failure to present such changes in substance or procedure to the Parties and the Parties' inability or unwillingness to agree to such change shall render such change ineffective unless and until this memorandum of understanding shall be formally modified or amended, and any acts taken without such formal alteration or modification shall be *ultra vires*.
 - c. Termination or Withdrawal. Notwithstanding any other provision of this agreement, any party to this agreement, either with or without cause, upon notice being served in writing to the other parties of not less than 30 days prior to the effective date of such termination, may withdraw from or the parties may agree to terminate this agreement either with or without announcing the cause for such withdrawal or termination. In the event of such withdrawal, then the obligations of the withdrawing Parties party under the terms of this agreement shall cease and become unenforceable as to the withdrawing Parties as of the effective date of the termination. In the event of an agreed termination, then the obligations of the Parties party under the terms of this agreement shall cease and become unenforceable as of the effective date of the termination. Unless otherwise expressly provided, an amendment, modification, or agreed alteration of this agreement shall not operate as or shall not be interpreted as a termination of this agreement.
7. Compliance with Law, Regulations, Policies, Standards, and Directives. The Parties acknowledge there is no intent to engage the services of any contractor during the initial term of this agreement in the current fiscal year; however; in the event that the MDP shall engage the services of any contractor not a governmental unit, then the MDP shall require such contractor to comply with all applicable laws, rules, ordinances, executive orders or other requirements of any government or subdivision of government which may govern performance of this agreement or the MDP, including , but not limited to, The Fair Labor Standards Act, and the Equal Employment Opportunity Act. The Contractor shall comply with, and insure its subcontractors comply with, all local, state, and federal laws, regulations and policies relating to safety and health and employment. Having due regard to the foregoing, parties to this agreement shall comply with all laws, regulations, and ordinances, directives, executive orders, or other requirements of any governments or agencies thereof which may govern its performance under this Agreement, including, but not limited to, the provisions of Chapters 1, 1A, 14, 15A, 122C , 153A, and 162 of the North Carolina General Statutes, equal employment laws, and other applicable law, all applicable State and Federal laws and regulations as well as applicable ordinances of local government entities who are partners or parties to this memorandum of understanding, and including, but not limited to:
- a. ADA Compliance/Non-Discrimination/Anti-Retaliation. Without limiting the generality of the foregoing, the parties shall comply with Title VI and VII of the Civil Rights Act of 1964, Section 504, of the Rehabilitation Act of 1973, and the Americans With Disabilities Act of 1990 (ADA), Chapter 168 of the North Carolina General Statutes and all requirements imposed by the requisite Federal regulations, rules and guidelines issued pursuant to these Titles with respect to such contractor.
 - b. E-verify Compliance. The contractor shall comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes and the terms of N.C. Gen. Stat. § 143-133.3. Without limiting the generality of the foregoing, the contractor as an employer shall comply with and certify that continued compliance with the provisions of N.C. Gen. Stat. § 64-26, and verify the work authorization of the contractor's employee through E-Verify. Further, such contractor-employer shall retain the record of the verification of work

authorization required by such provision of law while the employee is employed and for one year thereafter, and shall make such certification and offer such proof of compliance as may reasonably be required by the other party to this agreement.

- c. Iran Divestment Act Certification. N.C. Gen. Stat. § 143C-6A-5(a) requires that a vendor, contractor, or bidder provide a certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina establishing that the party to the contract, the vendor or bidder is not listed on the Final Divestment List created or maintained by the State Treasurer pursuant to N.C. Gen. Stat. § 143C-6A-4. The certification is required at the following times: (1) when a bid is submitted; (2) when a contract is entered (if the certification was not already made when the vendor made its bid); and (3) when a contract is renewed. Additionally, N.C. Gen. Stat. § 143C-6A-5(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List, and must so certify. Accordingly, any such contractor shall be obligated to make the required certification, and, in particular, but without limitation, hereby certifies that it is not listed on the Final Divestment List created or maintained by the State Treasurer pursuant to N.C. Gen. Stat. § 143C-6A-4, and has not, does not, will not and must not utilize any subcontractor found on the State Treasurer's Final Divestment List.
8. Agency and Authority. The parties represent that they have the authority to enter this agreement.
9. Severability. Should any term, duty, obligation or provision of this Agreement be found invalid or unenforceable, such finding shall in no way affect the validity of other terms, duties, obligations, provisions, which shall remain valid and enforceable and in full force and effect.
10. Applicable Law - Situs. This Agreement shall be governed by the internal laws of the State of North Carolina without regard to the conflicts of law provisions thereof.
11. Other and Further Assurances. In order to give effect to the purposes and terms of this agreement, the parties agree to promulgate and execute such other document or other and further assurances, certificates, agreements, memoranda or the like which may reasonably be required to give effect to this agreement, its terms, conditions, covenants, and purposes upon request and within a reasonable time following such request.

MOTION: Commissioner Edge moved to approve consent agenda Items 2.A. – 2.H.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

ITEMS OF BUSINESS

3. Nominations to Boards and Committees

A. Animal Control Board (1 Vacancy)

Commissioner Adams nominated Michelle Harris.

B. Board of Adjustment (1 Vacancy)

Commissioner Adams nominated Robert E. Davis.

C. Cumberland County Home and Community Care Block Grant Committee (8 Vacancies)

Commissioner Adams nominated Susan Hesnard, Rebecca Campbell, Diane Townsend, Edna Cogdell, Raymond Johnson, Doris Snider, Helen Godwin and Frances Collier.

D. Cumberland County Juvenile Crime Prevention Council (8 Vacancies)

Commissioner Council nominated August Newman, Jonathan Warren, Deborah Rosen, Rebecca Campbell, Densie Lucas, Crystal Bennett, Rebecca Beck and Louis Leake.

E. Mid-Carolina Aging Advisory Council (2 Vacancies)

Commissioner Adams nominated Susan Hesnard and Diane Townsend.

4. Appointments to Boards and Committees

A. Alliance Behavioral Healthcare Board of Directors (3 Vacancies)

Nominees: Christopher Bostock
Lodies Gloston
Kenneth Edge

B. Cumberland County Workforce Development Board (4 Vacancies)

Nominees:

Representative of Business: Joy Miller
Jimmy Driscoll

Representative of Workforce: David Servie

Representative – Other: Jody Risacher (Reappointment)

There being an equal number of vacancies and nominees,

MOTION: Commissioner Adams moved to appoint all nominees to their respective positions.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

Chairman Faircloth recessed the Cumberland County Board of Commissioners' meeting and convened the meeting of the Overhills Park Water and Sewer District Governing Board.

Chairman Faircloth called the meeting of the Overhills Park Water and Sewer District Governing Board to order.

1. Items of Business

A. Approval of minutes of August 15, 2016 meeting

MOTION: Commissioner Edge moved to approve the August 15, 2016 minutes.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

B. Consideration of Resolution Authorizing the Issuance and Sale of Water and Sewer System Revenue Bond Anticipation Notes in the Aggregate Principal Amount of \$1,379,000

BACKGROUND:

In late July 2016, the Local Government Commission (LGC) solicited proposals for the revenue bond anticipation notes (RBANs). Three banks submitted letters of commitment, with Carter Bank and Trust coming in with the lowest rate. On August 15, 2016, the Board approved the bond order and note resolution which authorized the issuance and sale of water and sewer system RBANs. The next scheduled step was to close with the bank. However, prior to the closing the bank withdrew their letter of commitment when it was brought to their attention the commitment would be with Overhills Park Water and Sewer District, not Cumberland County.

The LGC has since made contact with PNC Bank who had the second lowest rate. PNC has agreed to the commitment with the district at a rate of 1.36% per annum. The attached resolution is coming back before the Board of Commissioners because the resolutions are specific to the bank as well as their interest rates. In anticipation of the

resolution approval, the bank closing has been scheduled for September 8 which falls within the project's bid expiration timeframe and will cause no further delays.

RECOMMENDATION/PROPOSED ACTION:

The finance director and county management recommend the Board of Commissioners vote to approve the following recommendation: Adopt the resolution authorizing the issuance and sale of water and sewer system revenue bond anticipation notes of the Overhills Park Water and Sewer District in the aggregate principal amount of \$1,379,000.

Vicki Evans, Finance Director, reviewed the background information recorded above. Chairman Faircloth introduced the resolution recorded below.

BOARD OF COMMISSIONERS
OF CUMBERLAND COUNTY
ACTING AS THE GOVERNING BODY OF
THE OVERHILLS PARK WATER AND SEWER DISTRICT

Extracts from Minutes
of Meeting on
September 6, 2016

Present: Chairman _____ presiding, and Commissioners: _____

Absent: Commissioners _____

* * * * *

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

**RESOLUTION AUTHORIZING THE ISSUANCE AND
SALE OF A WATER AND SEWER SYSTEM REVENUE
BOND ANTICIPATION NOTE OF THE OVERHILLS
PARK WATER AND SEWER DISTRICT IN THE
PRINCIPAL AMOUNT OF \$1,379,000**

WHEREAS, the Board of Commissioners of Cumberland County, North Carolina (the "County"), acts as the governing body of the Overhills Park Water and Sewer District (the "District"), and the District is authorized by The State and Local Government Revenue Bond Act, as amended, to issue its revenue bonds to provide moneys for the acquisition, construction, reconstruction, extension, improvement or payment of the cost of one or more revenue bond projects, including water systems or facilities and has determined to finance the cost of improvements to its water and sewer system (the "Project"); and

WHEREAS, on August 15, 2016, the Board of Commissioners of the County, acting as governing body of the District, adopted a bond order (the "Bond Order") entitled:

**"BOND ORDER OF THE OVERHILLS PARK WATER AND SEWER
DISTRICT AUTHORIZING THE ISSUANCE OF WATER AND SEWER
SYSTEM REVENUE BONDS TO PROVIDE FUNDS TO CONSTRUCT
IMPROVEMENTS TO ITS WATER AND SEWER SYSTEM;
PROVIDING FOR THE ISSUANCE OF REVENUE BOND
ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF
REVENUE BONDS; PROVIDING FOR THE CREATION OF CERTAIN
SPECIAL FUNDS; PLEDGING TO THE PAYMENT OF THE
PRINCIPAL OF AND THE INTEREST ON THE REVENUE BONDS AND
NOTES CERTAIN REVENUES OF THE WATER AND SEWER
SYSTEM; SETTING FORTH THE RIGHTS AND REMEDIES OF
HOLDERS; AND SETTING FORTH THE DETAILS OF CERTAIN
RELATED MATTERS"; and**

WHEREAS, on August 2, 2016, the North Carolina Local Government Commission (the "Commission") approved the issuance of bonds up to an aggregate principal amount of \$1,379,000 under the Bond Order when adopted; and

WHEREAS, the Bond Order authorizes the issuance of Additional Bonds (as defined in the Bond Order) and bond anticipation notes in accordance with Section 3.02 thereof in order to finance System Improvements (as defined in the Bond Order), including notes issued prior to issuance of the Initial Bonds under the Bond Order; and

WHEREAS, the Board proposes issuing bond anticipation notes in order to finance the Project;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County, acting as the governing body of the District:

ARTICLE I DEFINITIONS

Section 1.01 Meaning of Words and Terms. Unless otherwise required by the context, capitalized words and terms used herein which are defined in the Bond Order shall have the meanings assigned to them therein, and the following capitalized words and terms shall have the following meanings:

“Bond Order” means the Bond Order adopted by the District on August 15, 2016, authorizing and securing the issuance of Bonds, including the Note, together with all orders amendatory thereof and all orders supplemental thereto as herein permitted.

“Bond Registrar” means the Finance Director of County, as designated by Section 2.01.

“Business Day” means a day that is not a Saturday or a Sunday and is a day that the Bond Registrar is open for the conducting of business.

“Closing” means the delivery of and payment for the Note.

“Closing Date” means the date of the Closing.

“Commission” means the North Carolina Local Government Commission.

“Interest Payment Date” means the date of final maturity of the Note, which is September 13, 2017.

“Note” or “Notes” means the \$1,379,000 Overhills Park Water and Sewer District Water and Sewer System Revenue Bond Anticipation Note, Series 2016 issued pursuant to the Bond Order and this Note Resolution.

“Project Fund” means the fund created and held by Depositary for the County as set forth in Section 4.01.

“Purchaser” means PNC Bank, National Association, as the original purchaser of the Note.

“Regular Record Date” means the Business Day next preceding any Interest Payment Date.

Section 1.02 Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words used herein shall include the plural as well as the singular number. References herein to particular articles or sections are references to articles or sections of this Note Resolution unless some other reference is indicated.

ARTICLE II AUTHORIZATION, FORM, ISSUANCE AND DELIVERY OF THE NOTE

Section 2.01 Authorization and Issuance of the Note. The District hereby authorizes the issuance of the Note designated “Overhills Park Water and Sewer District Water and Sewer System Revenue Bond Anticipation Note, Series 2016” in the principal amount of \$1,379,000 for the purpose of providing funds, together with any other available funds, to (a) pay the costs of the Project and (b) pay the other costs and expenses incurred in connection with the issuance of the Note. The Note shall be issued under and pursuant to the Constitution and the laws of the State, including the Act, the Bond Order and this Note Resolution, subject to the conditions set

forth herein and therein. The Note constitutes a series of Additional Bonds under the Bond Order.

The Finance Director of the County is hereby appointed as Bond Registrar for the Note pursuant to the provisions of the Bond Order and this Note Resolution.

Section 2.02 Form of Note. The definitive Note shall be initially issued as one fully registered note without coupons numbered R-1 in principal amount of \$1,379,000, and shall be initially registered in the name of the Purchaser. The definitive Note shall be substantially in the form set forth in Exhibit A attached hereto and made a part hereof, with such appropriate variations, omissions and insertions as are permitted or required by the Bond Order or this Note Resolution. Notwithstanding anything in the Bond Order to the contrary, the Note may be transferred in the manner specified in the Bond Order, but may not be exchanged for any denomination other than the outstanding principal amount thereof.

Notwithstanding any other provisions of the Bond Order or this Note Resolution to the contrary, the Bond Registrar shall not register the transfer of the Note to any person other than a bank, insurance company or similar financial institution unless such transfer has been previously approved by the Commission. The provisions of this paragraph may not be amended without the prior written consent of the Commission.

Section 2.03 Details of Note. The Note shall be dated the Closing Date, shall bear interest at a rate of 1.36% per annum (computed on the basis of a 360-day year consisting of twelve 30-day months), subject to adjustment as provided in the Note, and, except as provided below, such principal and interest shall be payable on the final maturity date of September 13, 2017, all as set forth in the form of the Note included in Exhibit A attached hereto and made a part hereof.

Principal of and interest on the Note are payable, to such account in the United States as the Holder may designate, by wire transfer or other immediately available funds delivered on the payable date.

Section 2.04 Terms and Condition for Issuance of Note. The Note shall be executed substantially in the form and in the manner herein and in the Bond Order set forth and shall be deposited with the Bond Registrar for authentication, but before the Note shall be authenticated and delivered to the State Treasurer for redelivery to the Purchaser, there shall be filed with the Bond Registrar and the Purchaser, the following:

- (a) copies, certified by the Clerk to be true and correct copies, of the Bond Order and this Note Resolution;
- (b) a certificate of authorizing the award of the Note;
- (c) an opinion of bond counsel to the District to the effect that the Note has been validly issued in accordance with the provisions of the Bond Order and this Note Resolution in form and substance satisfactory to the Purchaser;
- (d) an opinion of the counsel to the District in form and substance satisfactory to the Purchaser and bond counsel to the District; and
- (e) such other documentation or opinions as may reasonably be requested by the Bond Registrar, the Purchaser or bond counsel.

When the documents mentioned in Section 3.02 of the Bond Order and subsections (a) to (d), inclusive, of this Section shall have been filed with the Bond Registrar and the Purchaser, and when the Note shall have been executed and authenticated as required by the Bond Order and this Note Resolution, the Note shall be delivered to or upon the order of the State Treasurer for redelivery to or upon the order of the Purchaser, but only upon the deposit with the Bond Registrar of the purchase price of the Note.

ARTICLE III REDEMPTION OF NOTE

Section 3.01 Redemption of Note. The Note shall not be subject to redemption prior to maturity without the consent of the Purchaser.

ARTICLE IV
ACCOUNTS, REVENUES AND FUNDS; OTHER COVENANTS

Section 4.01 Payment of Note. The District shall, subject to the provisions of Section 5.04 of the Bond Order, cause the Net Revenues deposited in the Revenue Fund to be used to pay the principal of, premium, if any, and interest on the Note on each Interest Payment Date.

Section 4.02 Establishment of Project Fund; Deposit of Note Proceeds to the Project Fund; Disbursement of Money in Project Fund. Simultaneously with the Closing the Purchaser will deposit the purchase price for the Note in the Project Fund held by a Depositary selected by the County. Such funds will be disbursed to pay costs of the Project upon request of the District; provided no such request shall be made unless:

- (a) The requested amount is not for costs which have been the subject of any previous request.
- (b) No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment.
- (c) The request is not to pay items representing payment on account of any percentage entitled to be retained at such time.
- (d) No event of default is continuing under the Bond Order or the Note Resolution, and no event or condition exists which, with notice or lapse of time or both, would become an event of default under the Bond Order.
- (e) The District has in place insurance on the Project that complies with the insurance provisions of the Bond Order or the Note Resolution.
- (f) The request has been approved by the United States Department of Agriculture.

If the moneys held in the Project Fund and any other moneys provided by the District are insufficient to pay all of the costs of the Project and costs and expenses incurred in connection with the issuance of the Note, the District shall provide any balance of the funds needed to complete the acquisition, construction and equipping of the Project. Any moneys remaining in the Project Fund after completion of the acquisition, construction and equipping of the Project, as evidenced by a written certificate of completion executed by a District Representative and delivered to the Purchaser stating that the Project has been completed and there are no mechanic's or other liens against the Project for labor or materials furnished in connection with the Project, may be applied to the repayment of interest on the maturity date of the Note.

Section 4.03 Investment of Money. Money held for the credit of the Project Fund shall be continuously invested and reinvested by the District in Qualified Investments to the extent practicable. Any such Qualified Investments shall mature not later than the dates when the money held for the credit of the Project Fund will be required for the purposes intended. The District shall sell or reduce to cash in a commercially reasonable manner a sufficient amount of such Qualified Investments whenever it is necessary to do so in order to provide money to make any payment from the Project Fund.

Section 4.04 Payment of Principal and Interest and Premium and Pledge of Net Revenues. The District covenants that it will promptly pay the principal of and the interest on the Note issued under the provisions of this Note Resolution at the place, on the dates and in the manner provided herein and in the Note and any premium required for the retirement of the Note in whole or in part by purchase or redemption of the Note, according to the true intent and meaning thereof. The District further covenants that it will faithfully perform at all times all of its covenants, undertakings and agreements contained in this Note Resolution and the Bond Order, or in any Note executed, authenticated and delivered hereunder or in any proceedings of the District pertaining thereto. Pursuant to NCGS Section 159-163, the District hereby pledges as security for the Note, and grants a charge and lien on, the proceeds of Bonds issued for the Project, and agrees to take such action as may be required to issue the Bonds in order to provide funds to pay the principal of the Note upon maturity. The District represents and covenants that it is duly authorized under the Constitution and laws of the State, particularly the Act, to issue

the Note authorized hereby and to pledge the proceeds of Bonds and Net Revenues in the manner and to the extent herein and in the Bond Order set forth; that all action on its part for the issuance of the Note has been duly and effectively taken; and that such Note in the hands of the Purchaser thereof are and will be valid and binding special revenue obligations of the District payable according to their terms. The Note shall also be secured *pari passu* as to the pledge of Net Revenues and shall be entitled to the same benefit and security under the Bond Order as all other Bonds issued or incurred thereunder and then outstanding.

The District covenants, for the benefit of the owners of the Note, to act with due diligence and commercial reasonableness in undertaking the Project, and will take such actions as may be reasonably required so that the Bonds are issued in a timely manner.

Section 4.05 Tax Covenants. The District covenants to do and perform all acts and things permitted by law in order to assure that interest paid on the Note which is excludable from the gross income of its Holders for federal income taxes on the date of its issuance shall continue to be so excludable.

The District hereby represents that it reasonably expects that the District, all entities issuing obligations on behalf of the District and all subordinate entities of the District will not issue in the aggregate more than \$10,000,000 of tax-exempt obligations (not counting private-activity bonds except for qualified 501(c)(3) bonds as defined by the Code) during the calendar year that the Note is being issued. The District hereby designates the Note as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code.

ARTICLE V THE TRUSTEE

Section 5.01 Designation of Trustee. The District may at any time, with the approval of the Commission and the Holder, appoint a Trustee to administer the provisions of the Bond Order and this Note Resolution and may adopt such supplements to the Bond Order and this Note Resolution as shall be necessary or desirable to effectuate such appointment. Such Trustee shall meet the requirements set forth in Section IX of the Bond Order.

ARTICLE VI SUPPLEMENTAL RESOLUTIONS

Section 6.01 Modification Without Consent of Holders. The District may, from time to time and at any time, without the consent of any Holders of the Note, execute and deliver such resolutions supplemental hereto (which supplemental resolutions shall thereafter form a part hereof) as shall be substantially consistent with the terms and provisions of this Note Resolution and shall not materially and adversely affect the interest of the Holders:

- (a) to cure any ambiguity or formal defect or omission, to correct or supplement any provision herein that may be inconsistent with any other provision herein, to make any other provisions with respect to matters or questions arising under this Note Resolution or to modify, alter, amend, add to or rescind, in any particular manner, any of the terms or provisions contained in this Note Resolution, as is substantially consistent with the terms and provisions of this Note Resolution and does not materially and adversely affect the interest of the Holders;
- (b) to grant or to confer upon the Holders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Holders;
- (c) to add to the covenants and agreements of the District in this Note Resolution other covenants and agreements thereafter to be observed by the District or to surrender any right or power herein reserved to or conferred upon the District; or
- (d) to permit the qualification of this Note Resolution under any federal statute now or hereafter in effect or under any state blue sky laws, and, in connection therewith, if the District so determines, to add to this Note Resolution or any supplemental Note Resolution such other terms, conditions and provisions as may be permitted or required by such federal statute or blue sky laws.

At least thirty (30) days prior to the execution and delivery of any supplemental Note Resolution for any of the purposes of this Section, the Bond Registrar shall cause a notice of the

proposed supplemental Note Resolution to be mailed first-class, postage prepaid, to the Commission and to the Holders of the Note. Such notice shall briefly set forth the nature of the proposed supplemental Note Resolution and shall state that copies thereof are on file at the principal office of the Bond Registrar for inspection by the Holders of the Note. A failure on the part of the Bond Registrar to mail the notice required by this Section shall not affect the validity of such supplemental Note Resolution.

Notwithstanding the foregoing or anything contained in the Bond Order, so long as PNC Bank, National Association is the sole owner of the Note, the District shall not amend or supplement this Note Resolution without the consent of PNC Bank, National Association. In addition to the financial statements required under Section 7.08 of the Bond Order, so long as the Purchaser is the Holder of the Note, the District will cause the County to deliver to the Purchaser within 210 days after the end of each fiscal year of the County beginning with the fiscal year ending June 30, 2016, financial statements of the County showing revenues and expenditures, if any, of the District as a separate enterprise fund.

Section 6.02 Modification of Note Resolution With Consent of Holders. Subject to the terms and provisions contained in this Section, and not otherwise, the Holders of the Note shall have the right, from time to time, anything contained in this Note Resolution to the contrary notwithstanding, to consent to and approve the adoption by the District of such supplemental Note Resolutions as shall be deemed necessary or desirable by the District for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Note Resolution or in any supplemental Note Resolution. Nothing herein contained, however, shall be construed as making necessary the approval by the Holders of the Note of the execution and delivery of any supplemental Note Resolution as authorized in Section 601.

The Bond Registrar shall, at the expense of the District, such expense to be paid from the Revenue Fund or from any other available moneys, cause notice of the proposed supplemental Note Resolution to be mailed, postage prepaid, to the Commission and the Holders of the Note as of the date such notice is mailed. Such notice shall briefly set forth the nature of the proposed supplemental Note Resolution and shall state that copies thereof are on file at the principal office of the Bond Registrar for inspection by such Holders.

Whenever, at any time after the date of the mailing of such notice, the District receives an instrument in writing purporting to be executed by the Holders of the Note, which instrument shall refer to the proposed supplemental Note Resolution described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the District may adopt such supplemental Note Resolution in substantially such form, without liability or responsibility to such Holders.

If the Holders of the Note have consented to and approved the adoption thereof as herein provided, to the extent permitted by law, the Holders shall have no right to object to the adoption of such supplemental Note Resolutions, to object to any of the terms and provisions contained therein or the operation thereof, to question the propriety of the adoption thereof, or enjoin or restrain the District from adopting the same or from taking any action pursuant to the provisions thereof.

Upon the adoption of any supplemental Note Resolution pursuant to the provisions of this Section or Section 601, this Note Resolution shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Note Resolution of the District, the Bond Registrar and the Holders of the Note shall thereafter be determined, exercised and enforced in all respects pursuant to the provisions of this Note Resolution, as so modified and amended.

Section 6.03 Responsibilities of District Under this Article. The District shall be entitled to exercise its discretion in determining whether or not any proposed supplemental Note Resolution or any term or provision therein contained is desirable, after considering the purposes of such instrument, the needs of the District and the rights and interests of the Holders of the Note.

ARTICLE VII MISCELLANEOUS PROVISIONS

Section 7.01 Manner of Giving Notice. All notices, demands and requests to be given to or made hereunder by the District, the Commission or the Bond Registrar shall be given or made in writing and shall be deemed to be properly given if sent by United States registered or certified mail, return receipt requested, or by national overnight delivery service addressed as follows:

As to the District or Bond Registrar --
County of Cumberland, North Carolina
117 Dick Street
Fayetteville, North Carolina 28301
Attention: Finance Director

As to the Local Government Commission --
North Carolina Local Government Commission
3200 Atlantic Avenue
Raleigh, North Carolina 27604
Attention: Secretary

As to the Purchaser –
PNC Bank, National Association
301 Fayetteville Street, Suite 2100
Raleigh, North Carolina 27601
Attention: Casey L. Turner

Any such notice, demand or request shall be deemed to be properly given on the date such notice, demand or request is received, as evidenced by the receipt or other tracking information provided by the U.S. Postal Service or the overnight delivery service.

Any of such addresses may be changed at any time upon written notice of such change sent by United States registered or certified mail, postage prepaid, to the other parties by the party effecting the change.

Section 7.02 District, Bond Registrar and Holder Alone Have Rights Under Note Resolution. Except as herein otherwise expressly provided, including, without limitation, nothing in this Note Resolution, express or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the District, the Bond Registrar and the Holder of the Note, any right, remedy or claim, legal or equitable, under or by reason of this Note Resolution or any provision being intended to be and being for the sole and exclusive benefit of the District, the Bond Registrar and the Holder of the Note.

Section 7.03 Application to the Commission. The Commission was requested to sell the Note at private sale and without advertisement pursuant to G.S. 159-123 to the Purchaser.

Section 7.04 Effect of Partial Invalidity. In case any one or more of the provisions of this Note Resolution or the Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Note Resolution or the Note, but this Note Resolution and the Note shall be construed and enforced as if such illegal or invalid provisions had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in this Note Resolution or the Note shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the District to the full extent permitted by law.

Section 7.05 Effect of Covenants; Governing Law. All covenants, stipulations, obligations and agreements of the District contained in this Note Resolution shall be deemed to be covenants, stipulations, obligations and agreements of the District to the full extent permitted by the Constitution and laws of the State. This Note Resolution is executed and delivered with the intent that the laws of the State shall govern this construction.

Section 7.06 Headings. Any heading preceding the text of the several articles hereof, any table of contents or marginal notes appended to copies hereof, shall be solely for

convenience of reference and shall not constitute a part of this Note Resolution, nor shall they affect its meaning, construction or effect.

Section 7.07 Further Authority. The officers, attorneys, employees and other agents of the District are hereby authorized to do all acts and things required of them by this Note Resolution for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Note and this Note Resolution.

The Chairman of the County Commissioners, the County Manager, the Finance Director and the Clerk, or any of them or their deputies, are further authorized and directed (without limitation except as expressly provided herein) to take such action and to execute and deliver such documents, certificates, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by the Bond Order and this Note Resolution.

Section 7.08 Payment Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right as provided in this Note Resolution is not a Business Day, such payment may be made or act performed or right exercised on the next Business Day with the same force and effect as if done on the date provided in this Note Resolution.

Section 7.09 Note Resolution Effective. This Note Resolution shall take effect upon its adoption.

MOTION: Commissioner Lancaster moved to approve the Resolution Authorizing the Issuance and Sale of Water and Sewer System Revenue Bond Anticipation Notes in the Aggregate Principal Amount of \$1,379,000.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

There being no further matters of business,

Chairman Faircloth adjourned the meeting of the Overhills Park Water and Sewer District Governing Board and reconvened the meeting of the Cumberland County Board of Commissioners.

Chairman Faircloth called the meeting of the Board of Commissioners to order.

- | | | | |
|----|----------------|----|---|
| 5. | Closed Session | A. | Economic Development Matter(s)
Pursuant to NCGS 143-318.11(a)(4) |
| | | B. | REMOVED FROM AGENDA |

MOTION: Commissioner Evans moved to go into closed session for Economic Development Matters pursuant to NCGS 143-318.11(a)(4).

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Edge moved to reconvene in open session.

SECOND: Commissioner Lancaster

VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Evans moved to adjourn.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

There being no further business, the meeting adjourned at 10:00 a.m.

Approved with/without revision:

Respectfully submitted,

Candice H. White
Clerk to the Board