

DRAFT

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
WEDNESDAY, JUNE 27, 2018

The Henderson County Board of Commissioners met for a special called meeting at 9:00 a.m. in the Commissioners' Meeting Room of the Historic Courthouse on Main Street, Hendersonville.

Those present were: Vice-Chairman Grady Hawkins, Commissioner Charlie Messer, Commissioner William Lapsley, County Manager Steve Wyatt, Assistant County Manager Amy Brantley, Clerk to the Board Teresa L. Wilson, and Attorney Russ Burrell.

Also present were: Management Assistant Megan Powell, Finance Director Samantha Reynolds, Director of Business and Community Development John Mitchell, Engineer Marcus Jones, Planner Janna Peterson, Projects Engineer Natalie Berry, PIO Kathy Finotti – videotaping and Deputy Kyle Collins as security.

Absent was: Chairman Mike Edney for medical reasons and Commissioner Tommy Thompson for vacation.

CALL TO ORDER/WELCOME

Vice-Chairman Hawkins called the meeting to order and welcomed all in attendance.

INVOCATION

The invocation was provided by County Manager Steve Wyatt.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Commissioner Messer.

DISCUSSION/ADJUSTMENT OF CONSENT AGENDA

Vice-Chairman Hawkins made the motion to approve Consent Agenda with Modification of various inter-local agreements with City of Asheville being pulled for discussion. All voted in favor and the motion carried.

CONSENT AGENDA consisted of the following:

Set Public Hearing on economic development “Project Garden”

Public Hearing for Economic Development Project Garden

The Board is requested to set a public hearing. The requested date and time for the public hearing is July 18, 2018, at 9:00 o'clock a.m.

Motion:

I move that the Board sets a public hearing on July 18, 2018, at 9:00 o'clock a.m. regarding Public Hearing for Economic Development Project Garden.

2018-76 Budget Amendment – Fund transfer

Budget Amendment – Schools Capital Project Fund

The Board is requested to approve a Budget Amendment, transferring \$800,000 from the Debt Service Fund to the Schools Capital Project Fund. These funds will be utilized for expenditures incurred for the construction of the Edneyville Elementary School, prior to the receipt of the financing proceeds which will be issued in FY19.

DATE APPROVED:

Motion:

I move the Board approves the Budget Amendment as presented, transferring funds from the Debt Service Fund to the Schools Capital Project Fund.

2018-77 Approval of the State of North Carolina Social Services Memorandum of Understanding

Memorandum of Understanding/Resolution Regarding Required Annual Agreement – NC DHHS

The North Carolina Department of Health and Human Services (DHHS) has provided a Memorandum of Understanding between DHHS and Henderson County effective for FY2019. The MOU, throughout the attachments provided, beginning on page 10, denote the performance measures to be obtained by the Department of Social Services during the fiscal year. DHHS requires that counties adopt the MOU prior to the beginning of the fiscal year.

Attorney Russ Burrell had provided a Resolution Regarding Required Annual Agreement between the North Carolina Department of Health and Human Services and Henderson County, specifying that Henderson County agrees to sign the MOU with the inclusion of this Resolution.

Motion:

I move the Board adopt the MOU and Resolution as presented, and authorize the Vice-Chairman to sign the MOU and Resolution on behalf of the Board.

2018-78 Adoption of a Procurement Policy in accord with Federal uniform guidance

Adoption of Revised Purchasing Policy

A Revised Purchasing Policy for the County was provided. It was revised to be in accord with the new federal regulations (effective July 1) regarding purchasing with Federal funds. Nothing contained in the new policy is a substantial change in existing County policy.

Motion:

I move the Board adopts the proposed policy as revised.

2018-79 MODIFICATION OF VARIOUS INTER-LOCAL AGREEMENTS WITH CITY OF ASHEVILLE

Water Production and Distribution Agreement

A draft inter-local agreement with the City of Asheville was provided for the Board's approval. This agreement effectively gives contractual force to the situation which currently exists under the North Carolina "Sullivan Acts", whereby all customers of Asheville's water system must be treated equally in all ways related to water service. This agreement also gives the County the ability to match any third-party offer received by Asheville for the purchase of Asheville's water plant in Henderson County, and insures the economic development projects which could be served by the Asheville water system would be treated the same, no matter where located.

Attorney Russ Burrell stated an agreement was adopted with the City of Asheville in the mid 1990's. This amendment wipes out any issues with that agreement. Legislation called the Sullivan Act requires all customers to be treated the same whether they are in Buncombe County or Henderson County. This is a perpetual agreement and also includes Asheville's services to Henderson County businesses. It has a right of first refusal, so if Asheville decides to sell, Henderson County has the right to first refusal.

Commissioner Lapsley noted he, Chairman Edney, and Representative McGrady have been involved in lengthy discussions and the bottom line is that Henderson County had an agreement with Buncombe County and Asheville over 20 years ago dealing with Asheville water services being located in Henderson County which included many conditions. The owner of the system must follow these conditions to be in

Henderson County, and for most part, Asheville has done this, but there have been some lawsuits.

In 2013 Legislation passed a bill to merge the systems initiated by Senator Tom Apodaco and Representative McGrady. Asheville filed a lawsuit and the Supreme Court ruled in favor to negate law. The result did not change anything but placed a cloud over the twenty-five (25) year old agreement with Asheville and Henderson County. Representative McGrady, Russ Burrell, Chairman Edney and Commissioner Lapsley feel openings were then left in the agreement and new leaders may try to change. An updated agreement is in the best interest. This agreement has been worked on for many months and this is the fourth draft.

Key points:

- 1) Rate Structure – All customers pay the same (If the Sullivan Act goes away, it leaves us vulnerable.)
- 2) Formation of a Joint Water Authority – Henderson County will have two (2) representatives on a Regional Water Authority. In the original agreement, Asheville or Buncombe County could remove Henderson County and in 2006 they did. The new agreement recognizes this and should Asheville decide to form a Joint Water Authority, Henderson County will be represented.
- 3) Sell of System – If Asheville sells the system to any third party, Henderson County has the right to purchase the rights to the assets in Henderson County.

It is Commissioner Lapsley's understanding that Asheville agrees to the new Inter-local Agreement. It is important to protect the citizens and the water system.

Vice-Chairman Hawkins made the motion that the Board approves the proposed agreement, and authorize the Chairman and staff to execute the same. All voted in favor and the motion carried.

ADJOURN

Commissioner Lapsley made the motion to adjourn at 9:15 a.m. All voted in favor and the motion carried.

Attest:

Teresa L. Wilson, Clerk to the Board

Grady H. Hawkins, Vice-Chairman

**LINE-ITEM TRANSFER REQUEST
HENDERSON COUNTY**



Department: Debt Service/Schools Capital Project Fund

Please make the following line-item transfers:

What expense line-item is to be increased?

Account	Line-Item Description	Amount
<u>505980-598043</u>	<u>Transfer to Schools Capital Project Fund</u>	<u>\$800,000</u>
<u>435691-538106-1702</u>	<u>Architect Fees</u>	<u>\$800,000</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

What expense line-item is to be decreased? Or what additional revenue is now expected?

Account	Line-Item Description	Amount
<u>504980 - 401000</u>	<u>Fund Balance Appropriated</u>	<u>\$800,000</u>
<u>434691 - 405000</u>	<u>Transfer from Debt Service Fund</u>	<u>\$800,000</u>
_____	_____	_____
_____	_____	_____

Justification: *Please provide a brief justification for this line-item transfer request.*
 Transfers funds from the Debt Service Fund to the Schools Capital Project Fund. Approved by the BOC 6.27.18.

<u>Budget</u>	<u>6/27/18</u>
_____ Authorized by Department Head	_____ Date
_____ Authorized by Budget Office	_____ Date
_____ Authorized by County Manager	_____ Date

<i>For Budget Use Only</i>	
Batch #	_____
BA #	_____
Batch Date	_____

**MEMORANDUM OF UNDERSTANDING (FISCAL YEAR 2018-19) BETWEEN
THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
HENDERSON COUNTY**

**A Written Agreement Pursuant to N.C. Gen. Stat. § 108A-74, an Act of the North Carolina General
Assembly**

This Memorandum of Understanding ("MOU") is made by and between the North Carolina Department of Health and Human Services, (hereinafter referred to as the "Department") and Henderson County a political subdivision of the State of North Carolina (hereinafter referred to as the "County") to comply with the requirements of law, N.C. Gen. Stat. § 108A-74. The Department and the County may be referred to herein individually as a "Party" and collectively as the "Parties."

TERMS OF UNDERSTANDING

In consideration of the mutual promises and agreements contained herein, as well as other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, the Parties agree to this MOU, effective July 1, 2018, in compliance with the mandates of law enacted by the North Carolina General Assembly and in recognition of possible amendments by the General Assembly, the Parties further agree to conform to changes made to the law, notwithstanding a contractual term previously agreed upon.

1.0 Parties to the MOU

The only Parties to this MOU are the North Carolina Department of Health and Human Services and Henderson County, a political subdivision of the State of North Carolina.

1.1 Relationships of the Parties

Nothing contained herein shall in any way alter or change the relationship of the parties as defined under the laws of North Carolina. It is expressly understood and agreed that the enforcement of the terms and conditions of this MOU, and all rights of action relating to such enforcement, shall be strictly reserved to the Department and the County. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Department and County that any such person or entity, other than the Department or the County, receiving services or benefits under this MOU shall be deemed an incidental beneficiary only.

Subcontracting: The County shall be responsible for the performance of all of its subcontractors. The County shall disclose the names of its subcontractors to the Department within thirty (30) days of the execution thereof. The County shall also provide additional information concerning its subcontractors as may be requested by the Department within thirty (30) days of the request. The County additionally agrees not to enter into any confidentiality agreement or provision with a subcontractor or other agent to provide services related to this MOU that would prevent or frustrate the disclosure of information to the Department. Subcontractors shall be defined under this MOU to mean any party the county enters into a contractual relationship with for the complete administration of one or more social services programs covered by this MOU. Temporary employees hired by the County shall not be considered subcontractors under this MOU.

Assignment: No assignment of the County's obligations or the County's right to receive any funding made in any way concerning the matters covered by this MOU hereunder shall be permitted.

2.0 Terms of the MOU

The term of this MOU shall be for a period of one year beginning July 1, 2018 and ending June 30, 2019.

2.1 Default and Modification

Default: In the event the County fails to satisfy the mandated performance requirements as set forth in Attachments I through IX or fails to otherwise comply with the terms of this MOU, the Department may withhold State and/or federal funding. Any such withholding shall be in compliance with, and as allowed by, state and/or federal law.

Performance Improvement/Corrective Action: Prior to the Department exercising its authority to withhold State and/or federal funding for a failure to satisfy the mandated performance requirements or failure to comply with the terms of this MOU, the steps set forth in Attachment X will govern. For this MOU covering Fiscal Year 2018-2019, the Department will not initiate any actions set forth in Attachment X related to the mandated performance requirements until January 1, 2019. Nothing contained in this MOU or Attachment X shall supersede or limit the Secretary's authority to take any action otherwise set forth in N.C. Gen. Stat. § 108A-74.

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

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

Modification: The terms and conditions of this MOU may only be modified by written agreement of the Parties, signed by an authorized representative of the Parties.

3.0 MOU Documents

The Recitals and the following attachments are incorporated herein by reference and are part of this MOU:

- (1) The portions hereof preceding the Terms of Understanding, including but not limited to the introductory paragraph and the Recitals, which are contractual as well as explanatory
- (2) The Terms of Understanding
- (3) Attachment I – Mandated Performance Requirements: Child Welfare – Child Protective Services
- (4) Attachment II – Mandated Performance Requirements: Foster Care
- (5) Attachment III – Mandated Performance Requirements: Child Support
- (6) Attachment IV – Mandated Performance Requirements: Energy

- (7) Attachment V – Mandated Performance Requirements: Work First
- (8) Attachment VI – Mandated Performance Requirements: Food and Nutrition Services
- (9) Attachment VII – Mandated Performance Requirements: Adult Protective Services
- (10) Attachment VIII – Mandated Performance Requirements: Special Assistance
- (11) Attachment IX – Mandated Performance Requirements: Child Care Subsidy
- (12) Attachment X – Corrective Action

4.0 Entire MOU

This MOU and any documents incorporated specifically by reference represent the entire agreement between the Parties and supersede all prior oral or written statements or agreements between the Parties.

5.0 Definitions

While "County" is used as an abbreviation above, the following definitions, some of which are contained in N.C. Gen. Stat. § 108A-74(a), also apply to this MOU:

- (1) "County department of social services" also means the consolidated human services agency, whichever applies;
- (2) "County director of social services" also means the human services director, whichever applies; and
- (3) "County board of social services" also means the consolidated human services board, whichever applies.
- (4) "Child welfare services or program" means protective, foster care, and adoption services related to juveniles alleged to be abused, neglected, or dependent as required by Chapter 7B of the General Statutes.
- (5) "Social services programs" or "Social services programs other than medical assistance" means social services and public assistance programs established in Chapter 108A other than the medical assistance program (Part 6 of Article 2 of Chapter 108A). This includes, but is not limited to, child welfare programs, adult protective services, guardianship services for adults, and programs of public assistance established in Chapter 108A. It also includes the child support enforcement program, as established in Article 9 of Chapter 110 of the General Statutes, and the North Carolina Subsidized Child Care Program.

To the extent that any term used herein is defined by a statute or rule applicable to the subject matter of this MOU, the statutory or rule definition shall control. For all remaining terms, which are not defined by statute or rule, those terms shall have their ordinary meaning. Should any further definition be needed, the Parties agree that the meanings shall be those contained in the current version (as of the time the dispute or question arises) of Black's Law Dictionary, and if not defined therein, then of a published unabridged modern American English Language Dictionary published since the year 2000.

6.0 Audit Requirements

The County shall furnish to the State Auditor, upon his/her request, all books, records, and other information that the State Auditor needs to fully account for the use and expenditure of state funds in accordance with N.C.G.S. § 147-64.7. Additionally, as the State funding authority, the Department of Health and Human Services shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.

7.0 Record Retention

The County shall retain records at its own expense in accordance with applicable State and Federal laws, rules, and regulations. The County shall facilitate and monitor the compliance of its subcontractors with all applicable requirements of record retention and disposition.

In order to protect documents and public records that may be the subject of Department litigation, the Department shall notify the County of the need to place a litigation hold on those documents. The Department will also notify the County of the release of the litigation hold. If there is no litigation hold in place, the documents may be destroyed, disposed of, or otherwise purged through the biannual Records Retention and Disposition Memorandum from the Department's Controller's Office.

8.0 Liabilities and Legal Obligations

Each party hereto agrees to be responsible for its own liabilities and that of its officers, employees, agents or representatives arising out of this MOU. Nothing contained herein is intended to alter or change the relationship of the parties as defined under the laws of the State of North Carolina.

9.0 Confidentiality

Any medical records, personnel information or other items exempt from the NC Public Records Act or otherwise protected by law from disclosure given to the Department or to the County under this MOU shall be kept confidential and not divulged or made available to any individual or organization except as otherwise provided by law. The Parties shall comply with all applicable confidentiality laws and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the administrative simplification rules codified at 45 Parts 160, 162, and 164, alcohol and drug abuse patient records laws codified at 42 U.S.C. §290dd-2 and 42 CFR Part 2, and the Health Information Technology for Economics and Clinical Health Act (HITECH Act) adopted as part of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

10.0 Secretary's Authority Undiminished

Certain functions delegated to the County pursuant to this MOU are the duty and responsibility of the Department as the grantee of federal grant funds. The Parties understand and agree that nothing in this MOU shall be construed to diminish, lessen, limit, share, or divide the authority of the Secretary of the Department to perform any of the duties assigned to the Department or its Secretary by the North Carolina General Statutes, the terms and conditions of the federal funds and their applicable laws and regulations or other federal laws and regulations regarding any federal funding which is used by the Department to reimburse the County for any of its duties under this MOU.

11.0 MOU does not Diminish Other Legal Obligations

Notwithstanding anything to the contrary contained herein and to facilitate the mandated performance requirements of N.C. Gen. Stat. § 108A-74, the Parties acknowledge and agree that this MOU is not intended to supersede or limit, and shall not supersede or limit, the County's obligations to comply with all applicable: 1) federal and state laws; 2) federal and state rules; and 3) policies, standards, and directions of the Department, as all such currently exist and may be amended, enacted, or established hereafter.

12.0 Notice

The persons named below shall be the persons to whom notices provided for in this MOU shall be given. Either Party may change the person to whom notice shall be given upon written notice to the other Party. Any notice required under this MOU will only be effective if actually delivered to the parties named below. Delivery by hand, by first class mail, or by email are authorized methods to send notices.

For the Department of Health and Human Services, Division of Social Services

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Wayne Black, Director Division of Social Services 2401 Mail Service Center Raleigh, NC 27699-2401	Wayne Black, Director Division of Social Services NC DHHS Dorothea Dix Campus, McBryde Building Phone: 919-527-6338 Fax: 919-334-1018 Email wayne.black@dhhs.nc.gov

For Henderson County:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Jerrie McFalls, Director c/o Henderson County DSS 1200 Spartanburg Hwy, Suite 300 Hendersonville, NC 28792	Jerrie McFalls Phone: 828-697-5500 e-mail: mcfallsj@hendersoncountydss.org

13.0 Responsibilities of the Department

The Department hereby agrees that its responsibilities under this MOU are as follows:

- (1) The Department shall develop mandatory performance requirements for each social services program based upon standardized metrics utilizing reliable data. The mandated performance requirements are identified in Attachments I through IX.
- (2) The Department shall provide supervision, program monitoring and technical assistance to the counties in the administration of social services programs.
- (3) The Department shall provide leadership and coordination for developing strategies that address system-level barriers to the effective delivery of social services programs, including but not limited to: the Administrative Office of Courts, the LME/MCO, Department of Public Instruction, and the Department of Public Safety.
- (4) The Department shall have the following administrative responsibilities:
 - a. Staff Training and Workforce Development:
 - i. Develop training requirements for county personnel and provide guidance for adequate staffing patterns related to the provision of social services programs. The Department will publish annually, a list of required and recommended trainings for county personnel directly involved in the administration of social services programs covered under this MOU.

- ii. Develop training curricula and provide, timely, adequate access to statewide training opportunities for county personnel related to the provision of social services programs. Training opportunities may include in-person, self-guided, web-based and remotely facilitated programs.
 - iii. The Department will publish a training calendar, at least quarterly, notifying the counties of training opportunities.
 - iv. Provide timely written guidance related to new federal or state statutes or regulations. The Department will provide information in advance of the effective date of new policy to the extent possible, including interpretations and clarifications of existing policy.
 - v. Provide technical assistance and training in areas where quality control, monitoring or data indicates a lack of correct application of law, rule or policy.
- b. Compliance Monitoring:
- i. Monitor and evaluate county compliance with applicable federal and state laws, rules and policies.
 - ii. Provide feedback to counties with recommended changes when necessary.
 - iii. Monitor that all financial resources related to the provision of social services programs covered by this MOU are utilized by the county in compliance with applicable federal and state laws.
- c. Data Submission:
- i. Maintain and review data submitted by counties pursuant to the mandatory performance requirements.
 - ii. Provide counties with reliable data related to their performance measurements as well as accuracy and timeliness of programs in accordance with state and federal program guidelines. This includes but is not limited to processing applications and recertification, quality control standards, program statistics and fiscal information.
 - iii. The Department shall be responsible for the maintenance and functionality of its information systems utilized in the statewide administration of social services programs covered by this MOU.
- d. Communication:
- i. Provide counties with clarification or explanation of law, rule or policy governing social services programs when necessary or as requested.
 - ii. Disseminate policy on social services programs and provide counties with timely information on any updates to policy.
 - iii. Provide timely information to counties on any changes to federal law or policy made known to the Department.
 - iv. Provide counties with a timely response to requests for technical assistance or guidance.
 - v. Maintain all policies covering social services programs in a central, accessible location. Policies will be updated, to the extent possible, in advance of the effective date of any new policies or policy changes.
 - vi. Provide counties with an opportunity to submit questions, concerns and feedback related to the administration of social services programs to the Department and provide County a timely response to such communication.
 - vii. Communicate proactively with the County Director of Social Services on matters that effect social services programs covered under this MOU.
 - viii. Communicate directly with the County Manager, Governing Boards, and the County Director of Social Services on matters including but not limited to,

corrective action, and significant changes to law, rule and policy that impact the administration of social services programs covered by this MOU.

- e. Inter-agency Coordination:
 - i. Provide guidance to counties in the event they are unable to reach a resolution on a conflict of interest that arises related to the provision of social services programs covered by this MOU.
 - ii. Provide guidance for county DSS personnel on federal and state Emergency Management, mass shelter, Business Continuity Plan (BCP) and Continuity of Operations Plan (COOP) requirements.
 - iii. Coordinate with and communicate to county DSS agencies regarding available and required training opportunities associated with DSS Mass Shelter, BCP and COOP responsibilities.
 - iv. Assist and support counties as needed in implementation of operational functions of mass shelter operations and as needed during other emergencies as they arise.

- (5) The Department shall timely meet all of its responsibilities contained in this MOU. "Timely" shall be defined consistent with timeliness requirements set forth in relevant statute, regulation, and policy. Where timeliness is not otherwise defined, "timely" shall mean within a reasonable time under the circumstances.

14.0 Responsibilities of the County

The County hereby agrees that its responsibilities under this MOU are as follows:

- (1) The County shall adhere to the mandated performance requirements for each social services program as identified in Attachments I through IX.
- (2) The County shall comply with the following administrative responsibilities
 - a. Staff Requirements and Workforce Development:
 - i. The personnel, including new hires and existing staff, involved in the County's provision of social services programs covered by this MOU shall complete all required and necessary training, which is documented as required by federal and state law and policy.
 - b. Compliance:
 - i. Perform activities related to its social services programs in compliance with all applicable federal and State laws, rules, regulations and policies. Nothing contained herein is intended to, nor has the effect of superseding or replacing state law, rules or policy related to social services programs.
 - ii. Develop and implement internal controls over financial resources related to the County's social services programs to ensure that all financial resources are used in compliance with applicable federal and state laws.
 - iii. Provide and adhere to corrective action plans as required based on monitoring findings and the Single Audit.
 - c. Data Submission:
 - i. Maintain accurate, thorough records of all social services programs covered by this MOU, in particular, records related to the mandated performance requirements that can be accessed for the purpose of data collection, service provision, monitoring or consultation
 - ii. Ensure reliable data entry into state systems utilized for the administration of social services programs covered under this MOU.

- iii. Provide, upon request, data to the state for the purpose of, but not limited to, conducting monitoring, case file reviews, error analysis and quality control.
 - iv. Utilize data to understand the performance of their county and to conduct analysis and implement changes where needed if performance measures are not being met.
- d. Communication:
- i. Respond and provide related action in a timely manner to all communications received from the Department.
 - ii. Provide timely information on all matters that have a potential negative impact on the social services programs they administer, including but not limited to, litigation risks (not including child welfare cases governed by Chapter 7B or adult services cases governed by Chapter 35A or 108A), network and computer issues, or data breaches.
 - iii. Provide timely information regarding temporary or permanent changes to the Social Services Governing Board. or the County Social Services Director, including retirements, separations, or any leave of absences greater than two calendar weeks.
- e. Inter-agency Cooperation:
- i. Ensure that county social services personnel complete required training and are prepared to engage in Disaster Management, mass shelter, BCP and COOP operations.
 - ii. Ensure that all plans and systems are in place to meet potential disaster (natural, technical, otherwise) response requirements.
 - iii. Engage with DHHS, state Emergency Management and local leadership in associated efforts.
 - iv. Assist or operate mass shelter operations or other required disaster management responsibilities.
- (3) The County shall timely meet all its responsibilities contained in this MOU. "Timely" shall be defined consistent with timeliness requirements set forth in relevant statute, regulation, policy or as otherwise required by the Department. If timeliness is not otherwise defined, "timely" shall mean within a reasonable time under the circumstances.

15.0 Data Security and Reporting

Data Security: The County shall adopt and apply data privacy and security requirements to comply with all applicable federal, state, department and local laws, regulations, and rules. To the extent that the Department and the county have already entered into one or more data privacy agreements covering all or any portion of the work to be performed under this MOU, the Parties hereby adopt and incorporate such agreements by reference into this MOU as if fully set forth herein.

Duty to Report: The County shall report all privacy and security incidents related to the provision of social services programs covered by the MOU to the Department and the Privacy and Security Office within twenty-four (24) hours after the privacy and security incident is first discovered, provided that the County shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the incident is first discovered. During the performance of this MOU, the County is to notify the Department of any contact by the federal Office for Civil Rights (OCR) received by the County related to the provision of social services programs covered by the MOU. In case of a privacy and security

incident, the County, including any subcontractors or agents it retains, shall fully cooperate with the Department.

16.0 Miscellaneous

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

Amendment: This MOU may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Department and the County. The Parties agree to obtain any necessary approvals, if any, for any amendment prior to such amendment becoming effective. Also, the Parties agree that legislative changes to state law shall amend this MOU by operation of law to the extent affected thereby.

Effective Date: This MOU shall become effective July 1, 2018 and shall continue in effect until June 30, 2019.

Signature Warranty: Each individual signing below warrants that he or she is duly authorized by the party to sign this MOU and to bind the party to the terms and conditions of this MOU.

Henderson County

BY: Dorey Hankins
Name

TITLE: Vice-Chairman

DATE: 6.27.18

Witness: [Signature]

BY: _____
Name

TITLE: _____

DATE: _____

Witness: _____

North Carolina Department of Health and Human Services

BY: _____
Secretary, Department of Health and Human Services

DATE: _____

**ATTACHMENT I — MANDATED PERFORMANCE REQUIREMENTS:
Child Welfare - CPS Assessments**

	Performance Measure	Authority for the performance measure
1	The County will initiate 95% of all screened-in reports within required time frames	NC General statute 7B.302; 10A NCAC 70A .0105; Chapter VIII: Child Protective Services, Section 1408 - Investigative & Family Assessments
2	For all children who were victims of maltreatment during a twelve month period, no more than 9% received a subsequent finding of maltreatment	CFSR; Safety Outcome 1: Children are, first and foremost, protected from abuse and neglect.

**ATTACHMENT II— MANDATED PERFORMANCE REQUIREMENTS:
Child Welfare - Foster Care**

	Performance Measure	Authority for the performance measure
1	The County will document permanency goals for 95% of foster youth within 60 days of a child entering custody or for whom the county has placement authority.	1201 Child Placement Services - Chapter VIII Case Reviews: B-Required Time Frames for Case Reviews
2	The County will ensure that 95% of all foster youth have face-to-face visits by the social worker each month.	1201, Chapter V., Out of Home Placement Family Services Improvement Act of 2006 (Public Law 109-288) Title IV B

The below system performance measures require county and state level system collaboration and improvements to successfully meet targets.

	System Performance Measure	Authority for the system performance measure
1	The County will provide leadership for ensuring that 41% of children who enter foster care in a 12-month period are discharged to permanency within 12 months of entering foster care. DHHS will work with each county to identify growth targets.	CFSR: Permanency Outcome 1: Children have permanency and stability in their living situations.
2	The County will provide leadership for ensuring that of children who enter foster care in a 12-month period who were discharged within 12 months to reunification, kinship care, guardianship, or adoption, no more than 8.3% re-enter foster care within 12 months of their discharge. DHHS will work with each county to identify growth targets.	CFSR: Safety Outcome 1: Children are, first and foremost protected from abuse and neglect
3	The County will provide leadership for ensuring that of all children who enter foster care in a 12-month period in the county, the rate of placement moves per 1000 days of foster care will not exceed 4.1%. DHHS will work with each county to identify growth targets.	1201 Child Placement Services - Chapter IV Placement Decision Making: C-Maintaining One Single Stable Foster Care Placement CFSR: Permanency Outcome 1: Children have permanency and stability in their living situations.

**ATTACHMENT III— MANDATED PERFORMANCE REQUIREMENTS:
Child Support**

	Performance Measure	Authority for the performance measure
1	The county will achieve its given annual percentage of paternities established for children born out of wedlock.	Section 342. "FEDERAL AND STATE REVIEWS AND AUDITS," of PRWORA, Section 454 of Title IV-D of the Social Security Act; 42 U.S.C. 658a. P.L. 105-200 NCGS 110- 129.1 Chapter B, Topic 09, Section B - Incentives Overview, Section C - Performance Factors and Incentives
2	The county will achieve its given annual percentage of child support cases that are under an order.	Section 342. "FEDERAL AND STATE REVIEWS AND AUDITS," of PRWORA, Section 454 of Title IV-D of the Social Security Act; 42 U.S.C. 658a. P.L. 105-200 NCGS 110- 129.1 Chapter B, Topic 09, Section B - Incentives Overview, Section C - Performance Factors and Incentives
3	The county will achieve its given annual percentage of current child support paid.	Section 342. "FEDERAL AND STATE REVIEWS AND AUDITS," of PRWORA, Section 454 of Title IV-D of the Social Security Act; 42 U.S.C. 658a. P.L. 105-200 NCGS 110- 129.1 Chapter B, Topic 09, Section B - Incentives Overview, Section C - Performance Factors and Incentives
4	The county will achieve its given annual percentage of cases that received a payment towards arrears.	Section 342. "FEDERAL AND STATE REVIEWS AND AUDITS," of PRWORA, Section 454 of Title IV-D of the Social Security Act; 42 U.S.C. 658a. P.L. 105-200 NCGS 110- 129.1 Chapter B, Topic 09, Section B - Incentives Overview, Section C - Performance Factors and Incentives
5	The county will meet its annual goal of total child support collections.	Section 342. "FEDERAL AND STATE REVIEWS AND AUDITS," of PRWORA, Section 454 of Title IV-D of the Social Security Act; 42 U.S.C. 658a. P.L. 105-200 NCGS 110- 129.1 Chapter B, Topic 09, Section B - Incentives Overview, Section C - Performance Factors and Incentives

**ATTACHMENT IV— MANDATED PERFORMANCE REQUIREMENTS:
Energy Programs**

	Performance Measure	Authority for the performance measure
1	The County will process 95% of Crisis Intervention Program (CIP) applications within one (1) business day for applicants with no heat or cooling source.	Energy Program Manual Section 400.03 d Federal Requirement 42 USC8621-8630 NC State Rule 10A N.C.A.C ch. 71V
2	The County will process 95% of Crisis Intervention Program (CIP) applications within two (2) business days of the application date for applicants who have a heat or cooling source.	NC Energy Programs Manual Section 400.03 A.2.d. Federal Requirement 42 USC8621 -8630 NC State Rules 10A N.C.A.C ch. 71V

**ATTACHMENT V— MANDATED PERFORMANCE REQUIREMENTS:
Work First**

	Performance Measure	Authority for the performance measure
1	The County will collect documentation from 50% of all Work-Eligible individuals that demonstrates completion of the required number of hours of federally countable work activities.	Work First Manual Section 001 Manual Section 003 TANF State Plan FFY 2016 - 2019 NC GS 108A-27.2(10) NC GS 108A-27.6(1) NC GS 108A-27.13(a) NC GS 108A-27.14(a) NC GS 108A-27.14(b)
2	The County will collect documentation from 90% of two-parent families with Work Eligible individuals that verifies that they have completed the required number of hours of federally countable work activities.	Work First Manual Section 001 Work First Manual Section 003 TANF State Plan FFY 2016 - 2019 NC GS 108A-27.2(10) NC GS 108A-27.6(1) NC GS 108A-27.13(a) NC GS 108A-27.14(a) NC GS 108A-27.14(b)
3	The County will process 100% Work First applications within 45 days of receipt.	Work First Manual Section 104 TANF State Plan FFY 2016 - 2019 NC GS 108A-31
4	The County will process 100% Work First recertifications no later than the last day of the current recertification period.	Work First Manual Section 104 TANF State Plan FFY 2016 - 2019 NC GS 108A-31

**ATTACHMENT VI— MANDATED PERFORMANCE REQUIREMENTS:
Food and Nutrition Services**

	Performance Measure	Authority for the performance measure
1	The County will process 95% of expedited FNS applications within 4 calendar days from the date of application.	FNS Manual Section 315 FNS_AL_1-2015 Federal Requirement 7 CFR 273.2
2	The County will process 95% of regular FNS applications within 25 days from the date of application.	FNS Manual Section 315 FNS_AL_1-2015 Federal Requirement 7 CFR 273.2
3	The County will ensure that 95% of FNS recertifications are processed on time, each month.	FNS Manual Section 425 Federal requirement 7 CFR 273.2
4	The County will ensure that 100% of Program Integrity claims are established within 180 days of the date of discovery.	FNS Manual Section 800 Federal Requirement 7 CFR 273.18

**ATTACHMENT VII— MANDATED PERFORMANCE REQUIREMENTS:
Adult Protective Services (APS)**

	Performance Measure	Authority for the performance measure
1	The County will complete 95% of APS evaluations involving allegations of abuse or neglect within 30 days of the report.	NCGS § 108A-103 (d) (4)
2	The County will complete 85% of APS evaluations involving allegations of exploitation within 45 days of the report.	NCGS § 108A-103 (d) (4)

**ATTACHMENT VIII— MANDATED PERFORMANCE REQUIREMENTS:
Special Assistance (SA)**

	Performance Measure	Authority for the performance measure
1	The County will process 85% of Special Assistance for the Aged (SAA) applications within 45 calendar days of the application date.	10A NCAC 71P .0604; SA Policy 3110 II. D. 2.
2	The County will process 85% of Special Assistance for the Disabled (SAD) applications within 60 calendar days of the application date.	10A NCAC 71P .0604; SA Policy 3110 II. D. 2.

**ATTACHMENT IX— MANDATED PERFORMANCE REQUIREMENTS:
Child Care Subsidy**

	Performance Measure	Authority for the performance measure
1	The County will process 95% of Child Care Subsidy applications within 30 calendar days of the application date.	North Carolina Subsidized Child Care Assistance policy

ATTACHMENT X— CORRECTIVE ACTION

The following steps for corrective action covering this MOU do not impact or change any Program Improvement Plan or Corrective Action Plan between the Department and a County or County Department of Social Services that is in effect as of July 1, 2018.

Further, the Department will not take any action towards developing a Performance Improvement Plan or Corrective Action Plan related to the performance requirements contained within this MOU for a County or County Department of Social Services until January 1, 2019.

1. Non-Compliance with performance requirements or terms of the MOU

- a. In the event a County Department of Social Services (County DSS)** fails to satisfy a performance requirement for three consecutive months or fails to comply with a term of this MOU, the Department will provide the County DSS with written notification identifying the relevant performance requirement or term and how the County DSS failed to satisfy it.
- b. Upon receipt of notification, the County DSS shall promptly provide the Department with written acknowledgment of receipt.
- c. If the County DSS does not agree that it failed to satisfy the performance requirement or comply with the terms of the MOU, it shall set forth, in writing, the basis for its disagreement. If the County DSS believes its failure to adhere to a mandated performance requirement or term of this MOU is due in whole or in part upon the failure of the Department to meet any of its responsibilities under this MOU or other external factors (i.e., limited court dates, continuances, etc.), the County DSS shall set forth in writing how the failure of the Department or external factors to meet its responsibility to the County DSS contributed to the inability of the County DSS to meet the mandated performance standard or other term of this MOU. This notice shall be received by the Department, along with all supporting documentation, within 10 business days of the County DSS' receipt of the Department's written notification of non-compliance.
- d. If written notice is received in accordance with subsection (c) of this section, the Department will provide the appropriate division director with the all documentation received. Following a review of all documentation, the division director will provide the county with a decision to proceed in developing the performance improvement plan or to rescind the notice of non-compliance.

2. Performance Improvement Plan

- a. The County DSS and Department shall work together to develop a performance improvement plan to address the non-compliance. The Parties will consider and address the County DSS's written disagreement with the identified non-compliance, if any, in the development of the performance improvement plan.
- b. The performance improvement plan shall include, at a minimum:
 - i. The role and responsibility of DHHS in providing support to the County DSS to address the non-compliance.
 - ii. The specific actions the County DSS will take to address the non-compliance and ensure ongoing compliance.

- c. The performance improvement plan shall be signed by the Department and the County DSS Director. A copy of the performance improvement plan will be sent to the chair of the DSS Governing Board.

3. Continued Non-Compliance

- a. In the event a County DSS continues to fail to satisfy a performance requirement or comply with the terms of the MOU for an extended period of time and is not meeting the terms of the performance improvement plan, the County DSS and the Department will enter into a corrective action plan, not to exceed a period of twelve months. An extended period of time is defined as three consecutive months, or five months out of a twelve-month period measured beginning with the first month after which the performance improvement plan is signed.
- b. The corrective action plan shall include, at a minimum:
 - i. A strategy to ensure regular supervisory oversight of the social services program at issue;
 - ii. A detailed strategy to ensure the issue central to the non-compliance is addressed and corrected;
 - iii. A strategy to ensure program and case documentation is both sufficient and completed within time frames prescribed by law, rule or policy; and
 - iv. A plan for the continuous review of the corrective activities by both the County Director of Social Services, the County DSS Governing Board, and the Department.
- c. The corrective action plan will be signed by the Department and the County DSS Director. A copy of the corrective action plan will be sent to the Chair of the DSS Governing Board, the County Manager, and the Chair of the Board of County Commissioners.

4. Failure to Complete Corrective Action Plan/Urgent Circumstances

- a. In the event a County DSS fails to complete the corrective action plan or otherwise fails to comply with the terms of the corrective action plan, the Department may exercise its authority under the law, and this MOU, to withhold federal and/or state funding.
- b. In circumstances of continuous extended non-compliance or other urgent circumstances, the Secretary may also exercise her statutory authority to assume control of service delivery in the County pursuant to N.C.G.S. 108A-74.

** In the event the performance requirement or term of the MOU falls outside of the authority of the County DSS, the notification of non-compliance will be sent to the County, and all subsequent steps contained herein shall be followed by the County.

**Resolution Regarding Required Annual Agreement
Between the North Carolina Department of Health and Human Services
And Henderson County**

Whereas, pursuant to N.C. Gen. Stat. §108A-74(a1), the Secretary of Health and Human Services must require all counties to enter into a written agreement each year beginning in FY 2018-2019; and

Whereas, the document presented to Henderson County by the Secretary in compliance with this statute is titled a Memorandum of Understanding (MOU); and

Whereas, this MOU does not make allowances for performance standards based on the totality of circumstances and other county specific facts that exist in and outside the control of Henderson County; and

Whereas, as §108A-74(a1) (3) states the written agreement between the NCDHHS and counties “may be standardized or may be tailored to address issues in specific jurisdictions”, this MOU was not tailored specific to Henderson County, and each performance measure is the same for all 100 North Carolina counties; and

Whereas, Henderson County was not specifically involved in the drafting of this MOU; and

Whereas, Henderson County has not been provided a list of the reporting measures and formats that will be used in assessing the performance measures listed in the MOU, and has in fact been informed by NCDHHS that such measures and reports are not currently in existence; and

Whereas, the MOU does not provide for an impartial mediator to address disputes in findings as a result of audits or monitoring under the MOU even though the County could be required to enter a program improvement plan or a corrective action plan (as those terms are defined in the MOU), or have state and or federal funds withheld or have the Secretary assume control of the County’s Department of Social Services; and

Whereas, the MOU requires that instead that a Division Head of NCDHHS will mediate any disagreements between such Division Head’s employer and the County; and

Whereas, NCDHHS depends on the “NC Fast” statewide computer reporting system for case processing and data retrieval; and

Whereas, the NC Fast system is not fully in operation, and has in fact suffered numerous delays, sub-standard (or non-existent) performance, yet remains the system upon which County performance under the MOU will be assessed.

NOW, THEREFORE, BE IT HEREBY RESOLVED:

1. The Henderson County Board of County Commissioners agree to sign the MOU with the inclusion of this Resolution.

2. The following be made known to NCDHHS through this resolution:
- a. While Henderson County endeavors to provide timely and efficient services to our citizens we are concerned that data reports do not exist to document current performance as stated by NCDHHS.
 - b. That Henderson County is realistic about the functionality of NC Fast and the ability of the NC Fast system and available legacy systems to produce accurate data and data that can be duplicated by the County. Historically the NC Fast system has failed to function as intended.
 - c. That the absence of a third-party mediator should a dispute occur, and the use of a NCDHHS employee as "mediator", potentially creates an unfair disadvantage to the County when the County is providing services mandated by the General Statutes.
 - d. That Henderson County believes the continuing state "roll out" of NC Fast in Child Welfare will negatively impact the provision of services to our children and families, based on the poor (or non-) performance of the NC Fast system in Medicaid and food and nutrition services.
 - e. That although some measures are identified in the MOU as being significantly impacted by entities not under the control of the County, in fact every measure is ultimately impacted by factors out of the control of Henderson County.
 - f. The performance measures in the MOU vary greatly from those documented in the program improvement plan generated by the Children's Bureau based on the North Carolina Child and Family Services review thus creating inconsistencies in expectations.

So resolved:



Grady Hawkins, Vice Chair
Henderson County Board of Commissioners

Attest:



Teresa Wilson, Clerk to the
Henderson County Board of Commissioners

Henderson County

PURCHASING POLICY

**Revised
June 2018**

TAB 6 – ADMINISTRATIVE MANUAL

I. FORWARD

This purchasing policy is intended for use as a guide to Henderson County's purchasing methods and practice. When used properly, the policies and procedures established herein will enable the County to obtain needed goods and services efficiently and economically. The goal of this policy is to give structure to Henderson County's procurement methods and to set guidelines for County departments.

The understanding and cooperation of all employees is essential for the County to maximize the value of each taxpayer dollar spent. While this policy does not answer all procurement related questions, it provides a sound foundation for County procurement methods.

The goals of Henderson County's purchasing program are as follows:

1. To comply with legal and ethical requirements of public purchasing and procurement.
2. To assure vendors that impartial and equal treatment is afforded to all who conduct business with the County.
3. To receive maximum value for money spent by awarding purchase orders to the lowest responsible, responsive bidder, taking into consideration quality, performance, support, delivery schedule, previous performance, business location, and other relevant factors.
4. To provide County departments the required goods and services in a timely manner in the proper quantity and quality while providing necessary information to the County Finance Department.
5. To professionally administer the search for sources of supplies, the development of new sources, and the selection of suppliers.
6. To promote healthy business relationships through informed and fair purchasing practice and maintenance of ethical standards.

If the procedures and guidelines established in this policy are followed, each department will be capable of managing, controlling, and planning available resources to meet present and future needs to help the County meet set goals. Any questions or concerns about this policy or the established procedures should be directed to the County Finance Department.

II. GENERAL GUIDELINES

2.1 Incurring Obligations

No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project or a grant project authorized by a project ordinance unless that project ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction as required by N.C.G.S. § 159-28 (a).

2.2 Preaudit Requirement

If an obligation is reduced to a written contract or written agreement requiring the payment of money or is evidenced by a written purchase order for supplies and materials, the written contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited and shall be signed by the Finance Director or Assistant Finance Director to assure compliance with N.C.G.S §159-28 (a1).

2.3 Local Buying

It is the desire of Henderson County to contract with vendors within Henderson County so long as such vendors provide the County with the lowest price on equivalent items or services meeting the County's needs. The County has a responsibility to its citizens and local businesses which runs in both directions; both to spend locally when possible, but always to ensure that whenever taxpayer money is spent it is spent with prudence. The County prohibits the use of geographical or other preferences in the selection of the vendor unless such vendor is equally or better qualified as the next highest-ranking vendor without regard to their location; however, every effort will be made to encourage qualified local vendors and suppliers to compete for County business.

2.4 Planning

It is imperative that all County departments take time to properly plan purchases. Purchasing plans should be made for goods and services to be purchased in both the near and distant future; thereby minimizing small orders and last-minute purchases. Planning is of highest importance to the County because proper planning reduces unnecessary clerical and supervisory time costs associated with the procurement process.

2.5 Buying Proper Quality

Quality and service are as important as price when considering goods for purchase; it is the duty of the requesting department to secure the most cost-effective good or service that will meet but not exceed the requirements for which the goods or services are intended. In some instances, the lowest price does not necessarily mean the lowest cost. A higher price, higher quality product may save the County from excess expenses in the future. The requesting department should take this into consideration when making a purchase. However, when making a purchase of other than the lowest cost goods or services, the purchasing department should be prepared to justify such a purchase both to County administration and to the public based on standards directly related to the quality of the goods or service to be obtained, or the terms on which such goods or services are to be provided.

2.6 Authorization

Department Heads have been delegated the authority to approve purchases made under \$500, so long as proper documentation is provided to the County Finance Department, and so long as funds are available to make the purchase. The Department Head or his designee must authorize each invoice with signature and date before forwarding to the Finance Department for payment. This authorization verifies that the goods and or services have been received, the budgeted funds are available and the invoice has been coded to the proper account number. Any order \$500 and greater including shipping and handling, but exclusive of sales and use tax will require a purchase order.

Note: If Procurement Cards are used for purchases, see Henderson County's Procurement Card Policy and Procedures for more information on the authorization process for P-card purchases.

2.7 Standard of Award

Vendors will be selected on a competitive basis. Bid awards, purchase orders and/or contracts will be issued to the lowest, responsive, responsible bidder. Henderson County is prohibited from and will not use vendors who have been debarred by Federal, State, or Local governments. Vendor verification can be made through SAM (System for Award Management) and the NC Debarred Vendor List, and any County list maintained by the Finance Department and published on the County's department head intranet site.

2.8 Limitations of Procurement

A. E-Verification Requirement

No contract can be entered into unless the contractor has complied with NC E-Verify hiring requirements pursuant to N.C. G.S. 143-133.3. Under the law the entity must possess 25 or more employees E-Verify to be applicable.

The following exceptions apply:

1. Expenses related to travel, including transportation and lodging, for employees, officers, agents, elected officials, or members of State or local boards, commissions, committees, or councils.
2. Contracts *solely* for the purchase of goods, apparatus, supplies, materials, or equipment (contracts that involve a combination of purchase and construction or purchase and service would not be exempt).
3. Contracts let under [S. 143–129\(e\)\(1\), \(9\), or \(9a\)](#) (the exceptions to competitive bidding requirements for purchases made directly from another unit of government or from a vendor under contract with the State of North Carolina or a federal agency).
4. Contracts let under [S. 143–129\(g\)](#) (the piggyback exception to competitive bidding requirements).

B. Divestment from Companies that Boycott Israel

Article 6G of Chapter 147 prohibits the investment of state funds in or governmental contracting with any company that boycotts or is involved in a boycott of the State of Israel. To verify companies please visit the NC Treasurers website at www.nctreasurer.com

C. Contracts spanning more than one County Fiscal Year

In any contract or other agreement in which the other party's performance is to take place in more than one County fiscal year, the following language shall be included in the contract:

Non-Appropriation: The County shall not be obligated for performance hereunder in any of the County's future fiscal years unless and until the County's Board of Commissioners appropriates funds for this Agreement in the County's budget for each such fiscal year. In the event that funds are not appropriate for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the Company of any such non-appropriation of funds at the earliest possible date. To the extent of any conflict this provision and any other provision of this Agreement, this provision shall take priority.

III. CONFLICTS OF INTEREST AND GIFTS

All purchases of goods or services in Henderson County shall be in accord with the Henderson County Ethics Code, as adopted June 2, 2008, and amended September 16, 2009.

IV. PROCUREMENT WITH THE USE OF NON-FEDERAL FUNDS

4.1 General Procurement Standards and Procedures:

All purchases \$500 and above require a requisition and purchase order (PO).

4.2 Purchase Procedures

A. Purchases less than \$500

Purchases less than \$500 do not require a Requisition or a Purchase Order (PO) and may be made upon the approval of the department head. Every purchase should follow a cost comparison to ensure a competitive price and quality for each good and service purchased, in accord with paragraph 2.7, above.

B. Purchases between \$500 and \$4,999.99

Purchases in this price range may be obtained by the requesting department(s) through an informal quote process. No minimum number of quotes is required however, it is encouraged that every attempt is made to acquire multiple quotes. The informal quotes may be received through verbal communications, email, or fax. Verbal quotes must be noted in typed or hand-written form documenting price, date quoted, name of vendor, and name of the individual representative of the vendor. Quotes are to be scanned and submitted with the purchase requisition prior to purchase; after the purchase order is issued and approved, a purchase may be made. The Finance Department may request additional quotes if deemed necessary during review of purchase requisitions.

C. Purchases between \$5,000 and \$29,999.99

Purchases in this price range are obtained through the formal quote process. In the formal quote process, the requesting department is required to receive at least two (2) quotes via U.S. Mail, email, fax, or hand delivery. The required two written quotes are to be scanned and submitted with/ attached to the purchase requisition prior to purchase; after the purchase order is issued and approved, a purchase may be made. The Finance Department may request additional quotes if deemed necessary during review of the purchase requisitions.

D. Purchases between \$30,000 and \$89,999.99

Purchases in this range must be obtained through informal bids. Departments are responsible for sending a request for quote (RFQ) and will allow vendors sufficient time to respond to the request based on the complexity of the request. RFQs in the informal bid range may or may not be advertised to the public. A minimum of three (3) vendors, if available, will receive the RFQ. Every effort will be made to obtain at least three (3) quotes. Quotes in the informal bid range may be submitted through U.S. Mail, email, fax, or hand delivery. No verbal quotes are acceptable in the informal bid price range. The required three written informal bids are to be scanned and submitted with/ attached to the purchase requisition prior to purchase; after the purchase order is issued and approved, a purchase may be made. Purchase orders in this range require the approval of the County Manager.

E. Purchases \$90,000 and above

Purchases in this range must be obtained through a formal bid process in accordance with Chapter 143, Article 8 of the North Carolina General Statutes. Departments are responsible for working with the Purchasing Agent to develop the RFQ/RFP and act (including advertisement and bid opening) in compliance with the relevant North Carolina law. Purchases in the formal range require the approval of the Board of Commissioners. Once the Board has approved the contract, all bid documents are to be scanned and submitted with/attached to a purchase requisition; after a purchase order is issued and approved, a purchase may be made. Purchase orders in this range require the approval of the County Manager.

4.3 Special Considerations for Construction or Repair

No contract may be divided for the purpose of avoiding bidding or notice requirements with the approval of the Board of Commissioners granted pursuant to N.C. Gen. Stat. §143.133.

4.4 Construction and Non-Emergency Repair Procedures**A. Construction & Repair less than \$500**

Purchases less than \$500 do not require a Requisition or a Purchase Order (PO) and may be made upon the approval of the department head. Every purchase should follow a cost comparison to ensure a competitive price and quality for each good and service purchased. Issues that may override the price comparison process may include delivery time and material specifications.

B. Construction and Repair between \$500 and \$4,999.99

Purchases in this price range may be obtained by the requesting department(s) through an informal quote process. No minimum number of quotes is required however, it is encouraged that every attempt is made to acquire multiple quotes.

The informal quotes may be received through verbal communications, email, or fax. Verbal quotes must be noted in typed or hand-written form documenting price, date quoted, name of vendor, and name of the individual representative of the vendor. Quotes are to be scanned and submitted with the purchase requisition prior to purchase; after the purchase order is issued and approved, a purchase may be made. The Finance Department may request additional quotes if deemed necessary during review of purchase requisitions.

C. Construction and Repair \$5,000 and \$29,999.99

New construction and non-emergency repair contracts in this price range are obtained through the formal quote process. The requesting department is required to receive at least two (2) quotes via U.S. Mail, email, fax, or hand delivery. The required two written quotes are to be scanned and submitted with/ attached to a proposed contract prior to the entry of the contract. Entry of the contract The Finance Department may request additional quotes if deemed necessary during review of the purchase requisitions.

D. Construction and Repair \$30,000 and \$499,999

All construction and/or repair projects in excess of \$100,000 shall require Henderson County Legal Department review and assistance prior to procurement of the work or service. This policy is more stringent due to the possible requirements for architectural or engineering plans on projects or repairs involving life safety systems that cost less than the \$500,000 informal bid range maximum.

In order to contract for construction or non-emergency repair work in this range, informal bids must be obtained, after listing on the County's website and on appropriate project websites (including but not necessarily limited to Carolinas AGC). A minimum of three (3) bidders, if available, will receive the request for bids in addition to the listing required above. Departments are responsible for listing and sending the request for bids and will allow potential bidders sufficient time to respond to the request based on the complexity of the request. Quotes in the informal bid range may be submitted through U.S. Mail, email, fax, or hand delivery, but no verbal quotes are acceptable. Bids in this range require the approval of the County Manager, unless the Board of Commissioners have specified a different process in approving the project. The required three written informal bids are to be scanned and submitted with/ attached to the proposed contract prior to its entry; after the contract is issued and approved, it may be entered.

E. Construction and Repair \$500,000 and above

Contracting in this range must follow the requirement of N.C. Gen. Stat. §143-129 *et seq.*

4.5 Architectural, Engineering and Surveying Services

Procurement of architectural, engineering and surveying services shall be accomplished pursuant to Article 3D of Chapter 143 of the North Carolina General Statutes.

4.7 Services

All non-emergency service contracts, for which the contractor will perform work while on County property, must be accompanied by a written contract. The contract must follow all signature procedures and contain all necessary insurance and payment options. The completed and signed contract must be reviewed for form by the County Attorney, signed by the County Manager or Department Head, as appropriate, pre-audited by the Finance Director, and be filed in the respective department. The executed contract should be scanned and attached to the department requisition that is forwarded to the Finance Department. The County will attempt to structure contracts to coincide with the fiscal year unless another arrangement is in the best interest of the County.

Contracts directly authorized by the Board of Commissioners through direct award or budget authorization may be executed by the County Manager. Subsequent orders changing the original contract, which do not exceed the approved cost of the contract, will be executed by the County Manager.

4.8 Exceptions to Competitive Bidding Requirements

North Carolina General Statutes provide Exceptions to State Competitive Bidding Requirements for NC Local Governments. Henderson County departments are encouraged to utilize these alternative procurement methods when the appropriate exception allows the County to procure the items or services desired more conveniently and efficiently than normal competitive bidding procedures. The intent to use an exception should be submitted to the Finance or Legal department for review prior to submitting a purchase requisition as some of the exceptions may require approval by the Henderson County Board of Commissioners.

In cases of emergencies (a purchase of goods or repair or other services in which the department is unable to wait one business day for the goods or services), the Department Head or his/ her designee may purchase directly from any vendor such supplies or services whose immediate procurement is essential to prevent delays in work which may affect the life, health, safety, or convenience of Henderson County employees or citizens. In the case of an award based on an emergency, a written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

The user department shall exercise good judgment and use established vendors if possible when making emergency purchases. Always obtain the best possible price and limit purchases to those items emergency related. Not anticipating needs does

not constitute an emergency situation. First, determine if a true emergency does exist. Second, anticipate needs and avoid emergency situations whenever possible. Emergency orders may be costly. Vendors typically charge top prices if supplies or services must be obtained on an emergency basis.

The Purchasing Agent should be notified immediately via email of any emergency purchase made \$500 or greater.

4.9 Special Procurement Procedures

A. Technology Goods and Services

All technology purchases require the approval of the Information Technology Director. This includes, but is not limited to; hardware, software, licensing, maintenance, and all technology related service contracts.

B. Items Not Requiring a Requisition or Purchase Order

1. The purchase of routine services such as utilities, maintenance agreements, fuel and other items that do not require the department to request this service each time it is purchased.
2. Professional services such as maintenance and repair (i.e. equipment, buildings and vehicles) medical, legal, engineering, architectural and other services do not require a purchase order.
3. An emergency purchase in which the department is unable to wait one business day for the item. (See Section 4.8 Exceptions to State Competitive Bidding Requirements, Emergencies).

V. PROCUREMENT WITH THE USE OF FEDERAL FUNDS

Contracts funded with federal grant or loan proceeds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200), to the extent the standards do not violate state law.

VI. SURPLUS PROPERTY

4.8 Surplus Personal Property.

Most Henderson County employees are allowed to purchase surplus County personal property of any monetary value, whether purchased by the County or donated to any representative or department of the County. However, certain employees and their "relatives", as defined in Chapter 3.2 of the Henderson County Employee Handbook, are prohibited from purchasing surplus property. Henderson County employees or their relatives who are involved in the disposal of surplus property (including, but not limited to recommending and/or approving personal property for surplus) are prohibited from buying surplus property. This includes the employee and supervisor and their relatives who recommended or approved the surplus, who wrote up the condition of the item, or who was directly involved in working with, servicing or repairing the item. In addition, the following individuals and their relatives are also precluded from purchasing surplus property: County Management, the Department Head of the department from which the surplus property is being disposed, and the Purchasing Agent. Purchases made by any aforementioned individuals or their relatives is a conflict of interest and is in violation of NC G.S. 14-234.

Employees not involved in the disposal of the property or mentioned above are allowed in their personal time to bid on the items in the online auction. Any questions as to whether an individual is allowed to bid on a surplus item should be directed to the Purchasing Agent.

Further information on dollar thresholds can be found here:

<http://www.sog.unc.edu/sites/www.sog.unc.edu/files/Dollar%20Thresholds%20Chart%202013.pdf>

The State of North Carolina Interactive Purchasing System can be found on the web at www.ips.state.nc.us/ips/Default.aspx.

The North Carolina E-Procurement System can be found on the web at <http://eprocurement.nc.gov/>

CFR-Code of Federal Regulations

http://www.ecfr.gov/cgi-bin/text-idx?SID=889c09dd91de78500ad88b2f32662996&mc=true&node=sg2.1.200_1316.sg3&rgn=div7

Exceptions to State Competitive Bidding Requirements

https://www.sog.unc.edu/sites/www.sog.unc.edu/files/additional_files/Competitive%20bidding%20exceptions%20chart.pdf

Federal System for Award Management (SAM)

https://www.sam.gov/portal/SAM/?portal:componentId=24f38525-a064-4a77-b09f-3fa5986c2b48&interactionstate=JBPNS_r00ABXc0ABBfanNmQnJpZGdIVmld0lkAAAAAQATL2pzZi9uYXZpZ2F0aW9uLmpzcAAHX19FT0ZfXw**&portal:type=action##11

NC Debarred Vendor List

<https://ncadmin.nc.gov/government-agencies/procurement/contracts/debarred-vendors>

STATE OF NORTH CAROLINA
COUNTY OF _____

**WATER PRODUCTION AND
DISTRIBUTION AGREEMENT**

THIS WATER PRODUCTION AND DISTRIBUTION AGREEMENT (hereinafter "Agreement") is made and entered into this 27th day of JUNE, 2018, by and between the City of Asheville, a North Carolina municipal corporation ("Asheville") and the County of Henderson, a North Carolina body politic and corporate ("Henderson County"), (hereinafter collectively referred to as the "Parties").

WHEREAS, Asheville and Henderson County are both party (along with the Cane Creek Water and Sewer District, the Asheville/Buncombe Water Authority (herein "the Authority"), and the County of Buncombe) to the "First Amended and Restated Water Supply and Water Service Agreement", dated November 11, 1995 (hereinafter "Amended/Restated Agreement"); and

WHEREAS, the purpose of the Amended/Restated Agreement was to amend, restate and replace the Regional Water Supply and Water Service Agreement, dated June 28, 1994 (hereinafter "Regional Agreement"); and

WHEREAS, pursuant to the Amended/Restated Agreement, Henderson County gave its consent to the Authority and/or Asheville to, *inter alia*, purchase land within Henderson County for the construction of a water treatment plant and easements and rights-of-way as necessary to process and distribute water from such water treatment plant; and

WHEREAS, the Authority was dissolved on July 1, 2005 and the Parties agree that the Amended/Restated Agreement is no longer legally effective or binding and desire to enter into a new agreement; and

WHEREAS, the Parties agree that water production and distribution within Asheville's Service Area, which includes the Cane Creek Service Area, should be provided, designed, constructed and operated in an efficient, lawful, and cost-effective manner for the benefit of all residents; and

WHEREAS, the Parties recognize that potable water production and distribution lines are located in and pass through different political jurisdictions, creating the need for cooperative action between the Parties; and

WHEREAS, Asheville's Water System is subject to North Carolina's Sullivan Acts (defined herein), and this Agreement is in part to memorialize the applicability of the Sullivan Acts as they currently exist to that portion of Asheville's Water System located within Henderson County.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following terms and conditions:

SECTION 1. TERMINATION OF PRIOR AGREEMENTS

1.0 All executed and unexecuted provisions of any prior agreements between the Parties with regard to the subject matters of this Agreement, including but not limited to the Regional Agreement and the Amended/Restated Agreement are hereby terminated, and replaced by the provisions hereof.

SECTION 2. DEFINITIONS

The terms set forth in this section and referenced throughout the Agreement shall have the meaning as set out below. All other terms used in the Agreement not defined below shall be governed by the definitions in the Asheville City Code and/or the Asheville Water Policy.

2.1 Asheville Service Area shall mean the areas where the Water System is located within the City, Buncombe County, Henderson County, the Cane Creek Service Area, and where the Water System is proposed as shown on the most recent Master Plan approved by Asheville.

2.2 Asheville Water Policy shall mean the City of Asheville Department of Water Resources Water Policies, re-adopted by City Council July 26, 2016, and any amendments thereto.

2.3 Cane Creek Service Area shall mean the Cane Creek Sewer boundary area as identified in Exhibit A, attached hereto and incorporated herein by reference,

2.4 Customer shall mean any and all persons who contract for water services from Asheville located in the Service Area; which includes commercial, manufacturer, wholesale, multi-family residential, and single family residential customers as defined by the Asheville Water Policy.

2.5 Extension shall mean the construction, alteration or expansion of water lines and other appurtenances, which become or may become a part of the Water System.

2.6 Mills River Plant shall mean the water purification plant operated by Asheville within the Cane Creek Service Area.

2.7 Sullivan Acts shall mean N.C. Session Laws 2005-140 ("Sullivan II") and 2005-139 ("Sullivan III"), as the same exist on the date of execution hereof by the parties, that provide, *inter alia*, that the City will not charge differential rates to Customers based on political jurisdiction; that if water is available, connection and extension of the Water System cannot be denied; and that all funds earned by the water fund must be spent on encumbrances related to the operation, maintenance, and improvement of the Water System and water fund. In addition, the Sullivan Acts provide that all Water System customers, including those located in Henderson County, and specifically including Henderson County as a customer, will be treated equally with all other customers of the Water System in all ways related to water services.

2.8 Water Supply shall mean the potable water furnished by Asheville through the Water System to Customers.

2.9 Water System shall mean the Water Supply and all property constituting water sources, facilities, equipment and appurtenances between and including the water source and a connection for each premises including, without limitation, valves, pumps, pipes, mains, service lines, meters, conduits, tanks, receptacles, fixtures to produce, treat, transport, store or account for water intended for public consumption which is owned by Asheville.

SECTION 3. MILLS RIVER PLANT AND EXISTING ASHEVILLE WATER LINES IN THE CANE CREEK SERVICE AREA

3.1 The Mills River Plant and all existing water lines owned and operated by Asheville in the Cane Creek Service Area are and shall remain the property of Asheville, which shall be responsible for all maintenance and repair for the plant and such lines, and shall maintain such lines in good working order.

3.2 Should Asheville receive a third-party non-statutory non-compelled offer to buy some or all of the Mills River Plant and/or the portions of the Water System located within Henderson County which terms are acceptable to Asheville, Asheville must offer the property which is the subject of such offer to Henderson County, in writing, at the identical price as contained in such offer. Henderson County may purchase the property which is the subject of

such offer at that price, so long it notifies Asheville of its decision within thirty (30) days. If Henderson County does not notify Asheville of its decision to purchase such property at the price specified in the offer within thirty (30) days of receiving notice of said offer, Asheville may sell such property to the third party on those terms or on terms better for Asheville. If Henderson County notifies Asheville of its decision to purchase such property, it shall have a reasonable time to complete such transaction, but not more than one hundred eighty (180) days from said notice of intent to purchase. This Subsection 3.2 applies and is effective only if the Sullivan Acts are repealed and the provisions herein are not otherwise prohibited by law.

SECTION 4. WATER SERVICE TO CUSTOMERS IN THE CANE CREEK SERVICE AREA

4.1. Service to customers in the Cane Creek Service Area shall be governed by and subject to the Asheville Water Policy and the Sullivan Acts. This includes, but is not limited to, the hearing and appeals procedures set forth in the Asheville Water Policy.

4.2 The Asheville Water Policy applies equally to all of Asheville's Customers in the Asheville Service Area which includes customers in the Cane Creek Service Area, in accordance with the Sullivan Acts.

4.3 Customers in the Cane Creek Service Area shall be charged at the same rate as any of Asheville's Customers in the Asheville Service Area, in accordance with the Sullivan Acts.

4.4 The water services and access provided to customers in the Cane Creek Service Area shall be same as those provided to any of Asheville's Customers in the Asheville Service Area in accordance with the Sullivan Acts.

SECTION 5. EXTENSION OF WATER LINES IN THE CANE CREEK SERVICE AREA

5.1 All extension of water lines that will be owned and operated by Asheville in the Cane Creek Service Area, shall be in accordance with the requirements set forth in the Asheville Water Policy and the Sullivan Acts.

5.2 Asheville shall not extend any water lines into the unincorporated areas of the County without approval of the Henderson County Board of Commissioners, obtained in the following manner:

5.2.1 Asheville shall notify, by certified mail or other receipted physical delivery method, of its intent to so extend such lines. Such notification shall show the location of the proposed lines.

5.2.2 Such notification as required in 5.2.1 shall be received by Henderson County at least sixty (60) days in advance of the beginning of construction.

5.2.3 Henderson County shall have thirty (30) days from the receipt of such notice to object to such extension. Such objection shall be in writing, delivered to Asheville by certified mail or other receipted physical delivery method.

5.2.4 In the absence of such objection by Henderson County, then Henderson County's approval of such extension shall be presumed.

5.2.5 This Subsection 5.2 and its subparts apply and are effective only if the Sullivan Acts are repealed and the provisions herein are not otherwise prohibited by law.

SECTION 6. ECONOMIC DEVELOPMENT INCENTIVES FOR POTENTIAL LARGE INDUSTRIAL USERS IN THE CANE CREEK SERVICE AREA

6.1 In accordance with the terms of this Agreement and the requirements of the Sullivan Acts, Asheville agrees that it will provide the opportunity for large industrial water users who plan to locate in the Asheville Service Area, which includes the Cane Creek Service Area, to request funds from the Asheville City Council ("City Council") to assist with the payment of water infrastructure to connect to the Water System. The decision as to whether to grant economic incentive funds, and the amount of such funds to be granted, will be within the City Council's sole discretion, based upon factors to be determined by the City Council, which could, but would not be required to include the following: the amount of water required; the number of jobs created; and the cost of the infrastructure improvements. In furtherance thereof, the City agrees that it will amend the Asheville Water Policy with the following provision within ninety (90) days of the date of this agreement:

"Economic Development Incentives for Potential Large Industrial Users: Developers of new large industrial users who plan to locate in the City of Asheville's Service Area may request that the City Council grant funds to defray the costs of infrastructure necessary to connect to the City's Water System. The City Council has discretion as to whether to allow such an incentive, and the

amount of the incentive, based upon factors to be determined by the City Council, which could, but would not be required to include the following: the amount of water required, the number of jobs created, and the cost of the infrastructure improvements. In order to request economic incentive funds under this Policy, the following minimum requirements must be met:

- 1. The industry must be located in Asheville's Service Area;*
- 2. The industry must have a minimum daily usage of at least 80,000 gallons;*
- 3. If the industrial user's location is outside of Asheville's corporate limits, the governing jurisdiction must agree to be a party to any economic incentive agreement, and to partner with Asheville in the event such incentives are allowed."*

SECTION 7. ADDITIONAL PROVISIONS.

7.1 The Parties shall each take all reasonable measures to protect and improve associated watersheds for the Mills River and French Broad Rivers in accordance with its classification, including, but not limited to, enforcement of all applicable watershed regulations, and related state environmental regulations.

7.2 If the Water System becomes governed by a board, entity, body or the like other than Asheville by voluntary agreement to which Asheville is a party, then Henderson County shall be a voting member of such board, entity, body or the like, with voting representation proportional to the number of water customers in Henderson County. This Subsection 7.2 applies and is effective only if the Sullivan Acts are repealed or the provisions herein are not otherwise prohibited by law.

SECTION 8. MISCELLANEOUS PROVISIONS

8.1 No oral statements or prior written material not specifically incorporated herein shall be of any force and effect, and no changes in or additions to this Agreement shall be recognized unless incorporated herein by amendment as provided above.

8.2 Other political subdivisions or units of local government may become parties to all or parts of this Agreement upon the consent of the Parties hereto.

8.3 If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, then only that portion of the Agreement that is invalid or unenforceable shall be void, and the remainder of this Agreement shall remain in full force and effect and the intent of this Agreement shall be enforced to the greatest extent permitted by law.

8.4 This Agreement shall be construed and interpreted under the laws of the State of North Carolina.

8.5 Except as otherwise stated herein, the benefits and burdens of each party under this Agreement may not be assigned without the prior written consent of all parties to this Agreement.

8.6 The parties acknowledge that no one particular party shall be deemed the drafter of this Agreement in the event of a breach of contract dispute and consequently, the provisions herein shall not be construed more strictly against any party.

8.7 This Agreement may be amended at any time by mutual agreement of the Parties; however, such amendment must be in writing and must be signed by the duly authorized representatives of the Parties to be effective.

EXECUTED BY THE PARTIES, the date and year indicated below.

CITY OF ASHEVILLE

By: _____
Mayor

Date: _____

Attest: _____
City Clerk

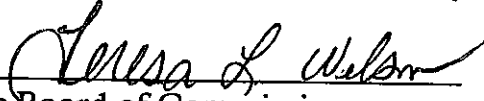
HENDERSON COUNTY

By: Dorey Watkins

Date: 6/22/18

Chairman, Board of Commissioners

Attest:



Clerk to the Board of Commissioners