

COUNTY OF CLEVELAND, NORTH CAROLINA
AGENDA FOR THE REGULAR COMMISSION MEETING

July 2, 2019

6:00 PM

County Commissioners Chamber

-
- **Call to Order and Determination of a Quorum** - Commission Chair
 - **Pledge of Allegiance and Invocation** (Please stand for the Pledge of Allegiance and remain standing for the Invocation)
 - **Recognition of Elected Officials**
 - **Recognition of Veterans**
 - **Recognition of Law Enforcement**
 - **Recognition of County Department Heads**

1. MOTION TO ADOPT THE PROPOSED AGENDA

(Only emergency items shall be added to the agenda. Upon approval of the Commission Chair and County Commission, the item will be added.)

2. CITIZEN RECOGNITION

The citizen recognition portion of the meeting is an opportunity for persons wishing to appear before the Commission to do so. Each presentation will be limited to three (3) minutes. The Board is interested in hearing citizen concerns, yet speakers should not expect comment, action, or deliberation on subject matter brought up during this segment. Topics requiring further investigation will be referred to the appropriate county agency.

3. CONSENT AGENDA

Motion to approve the following Consent Agenda items: (Consent items will be adopted with a single motion, second and vote, unless a request for removal from the Consent Agenda is heard from a Commissioner.)

- A. Minutes** Minutes from the April 16, 2019 Regular Commissioners Meeting

- B. **Social Services** Community Care (N3CN) Agreement
- C. **Emergency** Capital Equipment Lease
 Medical
 Services
- D. **Commissioners** Resolution to Cancel the August 20, 2019 Regular
 Commissioners Meeting
- E. **Finance** Set Public Hearing for Bank Installment Financing

REGULAR AGENDA

- 4. Agriculture Economic Development Partnerships
 Greg Traywick, Agriculture Extension Director

BOARD APPOINTMENTS

- 5. Cleveland County Historic Preservation Commission
 Phyllis Nowlen, Clerk to the Board
- 6. Region C Workforce Development Board
 Phyllis Nowlen, Clerk to the Board

COMMISSIONER REPORTS

ADJOURN

The next meeting of the Commission is scheduled for Tuesday, August 6, 2019 at 6:00 p.m. in the Commissioners Chambers located at 311 E. Marion St., Shelby.

COUNTY OF CLEVELAND, NORTH CAROLINA

AGENDA ITEM SUMMARY

Citizen Recognition

Department:

Agenda Title:

Agenda Summary:

Proposed Action:

ATTACHMENTS:

File Name

Description

No Attachments Available

COUNTY OF CLEVELAND, NORTH CAROLINA

AGENDA ITEM SUMMARY

Minutes

Department: Minutes

Agenda Title: Minutes from the April 16, 2019 Regular Commissioners Meeting

Agenda Summary:

Proposed Action:

ATTACHMENTS:

File Name	Description
<input type="checkbox"/> 04-16-2019_Minutes.pdf	04162019 Minutes

Cleveland County Board of Commissioners
April 16, 2019

The Cleveland County Board of Commissioners met in a regular session on this date, at the hour of 6:00 p.m. in the Commission Chamber of the Cleveland County Administrative Offices.

PRESENT: Ronnie Whetstine, Vice-Chair
Johnny Hutchins, Commissioner
Doug Bridges, Commissioner
Deb Hardin, Commissioner
Brian Epley, County Manager
Tim Moore, County Attorney
Phyllis Nowlen, Clerk to the Board
Kerri Melton, Assistant County Manager
Shane Fox, Chief Financial Officer
Chris Green, Tax Administrator
Elliot Engstrom, Senior Staff Attorney
Lorie Poston, E-911 Communications Director
Allison Mauney, Human Resources Director
Perry Davis, Emergency Management Director/Fire Marshal
Ryan Wilmoth, Emergency Medical Services Director
Jason Falls, LeGrand Center Executive Director
Jane Shooter, Interim Social Services Director
Scott Bowman, Maintenance Director
Clifton Philbeck, Elections Director
Sandra Orvig – Range Director

ABSENT: Susan Allen, Chairman

CALL TO ORDER

Vice-Chairman Whetstine called the meeting to order, provided the invocation and led the audience in the Pledge of Allegiance.

AGENDA ADOPTION

ACTION: Commissioner Hutchins made the motion, seconded by Commissioner Bridges and unanimously approved by the Board to, *approve the agenda as presented.*

SPECIAL RECOGNITION

CLEVELAND COUNTY SAFETY AWARDS

The North Carolina Department of Labor Safety Awards Program recognizes private firms and public agencies throughout the state that achieve and maintain outstanding safety records. The program is designed to stimulate interest in accident prevention and to promote safety in the workplace by providing an incentive to employers and employees to maintain a safe and healthful workplace. Cleveland County was recognized in four separate safety categories. The Commissioners gave congratulations and presented the following achievement awards:

- Certificate of Safety Achievement – 2nd Consecutive Year Other Employees
- Certificate of Safety Achievement – 3rd Consecutive Year Gold Cleveland County Administration
- Certificate of Safety Achievement – 3rd Consecutive Year Gold Cleveland County Finance/Tax
- Certificate of Safety Achievement – 3rd Consecutive Year Gold Cleveland County Health Department

SPECIAL PRESENTATION

PROCLAMATION OF SUPPORT FOR SLOGAN PANEL SIGNS

Vice-Chairman Whetstine called John Barrett, Waco Town Mayor, to the podium to present a proclamation supporting the Town of Waco in asking the North Carolina Department of Transportation to research and price an optional slogan panel sign to read “Home of Floyd Patterson World Heavyweight Boxing Champion” to the Waco Town Limit’s signs at the Waco Town Limit Boundaries. Mayor Barrett spoke about Mr. Patterson’s life and the impact he had in the sport of boxing.



NATIONAL MEDICAL LABORATORY PROFESSIONALS WEEK 2019

Vice-Chairman Whetstine recognized Alisa Leonard, Nursing Director at the Health Department, to speak about National Medical Laboratory Professionals Week 2019. Ms. Leonard thanked the Board for the recognition and updated them on the recent scoring inspections for the medical laboratory.



Proclamation

Number 07-2019

National Medical Laboratory Professionals Week 2019

Whereas, National Medical Laboratory Professionals Week is an annual celebration of the medical laboratory professionals and pathologists who play a vital role in every aspect of health care; and

Whereas, more than 10 billion laboratory tests are performed in the United States each year and 12,200 new laboratory professionals will be needed annually to meet the growing need of the world's population; and

Whereas, Medical Laboratory teams are the cornerstone of accurate diagnoses for patients, with test results comprise approximately 70% of a patient's medical record; whether it is a routine blood donation, health screenings or medical diagnosis – medical laboratory professionals care for patients in small communities and metropolitan areas across the nation; and

Whereas, the Cleveland County Health Department is celebrating laboratory's professionals' contribution to patient care and recognizes the proactive, collaborative role laboratory professionals play in advancing patient care; and

Whereas, using state-of-the-art technology and instrumentation, Cleveland County laboratory professionals perform and supervise tests that lead to the detection of potential health problems; the sooner a disease is caught, the likelihood increases for a positive outcome; and

Now Therefore Be It Resolved the Cleveland County Board of Commissioners hereby proclaims the Week of April 21 – 27, 2019 as National Medical Laboratory Professionals Week in Cleveland County, and urge all citizens to participate wholeheartedly in its observance.

Adopted this the 16th day April, 2019.


Susan Allen, Chair


J. Ronnie Whetstine, Vice-Chairman


Jonny Hutchins, Commissioner


Douglas Bridges, Commissioner


Deb Hardin, Commissioner



CITIZEN RECOGNITION

Diane Jenkins, 1907 Beamon Street, Shelby – spoke in opposition of the proposed casino. She feels the casino will not benefit the county in a positive way and commented on the lack of workforce already in Cleveland County, the socio-economic impact and the possibility of increased crime in the community.

Ricky Spencer, 108 Willow Court Drive, Kings Mountain – spoke in opposition of the proposed casino. Mr. Spencer expressed his religious views regarding the casino and echoed Ms. Jenkins statements regarding the negative socio-economic impact the casino could have in the surrounding areas.

Scott Whitney, 504 Crescent Hill Road, Kings Mountain – spoke in opposition of the proposed casino. He supports the continued work of the Commissioners but does not support the casino and urged the Board to give up their support of it as well. Mr. Whitney reverberated the possible damaging affects the casino could have on the citizens of Cleveland County.

Thomas Wells, 119 Margaret Little Drive, Kings Mountain – spoke in opposition of the proposed casino. Mr. Wells stated he appreciates the what the commissioners have done in the community, but disagrees with the casino. He spoke of his personal experiences regarding casinos and their negative impacts on people and the local communities.

CONSENT AGENDA

TAX COLLECTOR’S MONTHLY REPORT

The Tax Collector provided Commissioners with the following detailed written report regarding taxes collected during *March 2019*.

TOTAL TAXES COLLECTED MARCH 2019			
YEAR	AMOUNT-REAL	AMOUNT-VEH	
DEF REV	\$0.00	\$0.00	
2018	\$1,119,375.02	\$0.00	\$1,119,375.02
2017	\$60,914.60	\$0.00	\$60,914.60
2016	\$18,859.17	\$0.00	\$18,859.17
2015	\$6,686.39	\$0.00	\$6,686.39
2014	\$14,421.77	\$0.00	\$14,421.77
2013	\$2,154.23	\$0.00	\$2,154.23
2012	\$1,636.59	\$626.45	\$2,263.04
2011	\$835.57	\$759.11	\$1,594.68
2010	\$361.14	\$686.80	\$1,047.94
2009	\$571.45	\$217.30	\$788.75
2008	\$0.00	\$243.62	\$243.62
TOTALS	\$1,225,815.93	\$2,533.28	\$1,228,349.21
DISCOUNT	\$0.00		
INTEREST	\$69,170.56	\$1,831.79	\$0.00
TOLERANCE	(\$21.78)	(\$15.01)	
ADVERTISING	\$2,738.33	\$1,337.77	
GARNISHMEN	\$11,171.17		
NSF/ATTY	\$171.45		
LEGAL FEES	\$3,071.48		
TOTALS	\$1,312,117.14	\$5,687.83	\$1,317,804.97
MISC FEE	\$0.00	\$0.00	
TAXES COLL	\$1,312,117.14	\$5,687.83	\$1,317,804.97
DEF	\$28,043.67	\$28,526.12	\$0.00
DISC	(\$116.63)	\$1,340,643.26	\$5,687.83
TOL	\$0.00		\$1,346,331.09
INT	\$599.08		
TOTAL TAXES UNCOLLECTED MARCH 2019			
	AMOUNT-REAL	AMOUNT-VEH	COMBINED AMT
2018	\$2,554,756.14	\$0.00	\$2,554,756.14
2017	\$685,038.90	\$0.00	\$685,038.90
2016	\$369,215.15	\$0.00	\$369,215.15
2015	\$274,577.12	\$0.00	\$274,577.12
2014	\$225,167.08	\$0.00	\$225,167.08
2013	\$139,454.30	\$65,280.77	\$204,735.07
2012	\$104,413.99	\$74,113.51	\$178,527.50
2011	\$77,629.36	\$56,071.91	\$133,701.27
2010	\$70,262.57	\$53,286.13	\$123,548.70
2009	\$70,443.72	\$50,393.97	\$120,837.69
2008	(\$0.00)	\$0.00	(\$0.00)
	\$4,570,958.33	\$299,146.29	\$4,870,104.62
DEF REV	\$40,771.56	\$0.00	\$40,771.56
TOTAL UNCOLLECTED	\$4,611,729.89	\$299,146.29	\$4,910,876.18

TAX ABATEMENTS AND SUPPLEMENTS

The Tax Assessor provided Commissioners with a detailed written report regarding tax abatements and supplements during *March 2019*. The monthly grand total of tax abatements was listed as (\$2,141.59) and monthly grand total for tax supplements was listed as \$34,056.04.

BOARD OF ELECTIONS: BUDGET AMENDMENT (BNA #034)

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, *approve the following budget amendment:*

<u>Account Number</u>	<u>Project Code</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
010.418.4.340.00		Board of Elections/State-Other Revenues	\$1,795.00	
010.418.5.910.00		Board of Elections/Capital Equipment	\$1,795.00	

Explanation of Revisions: Budget allocation for \$1,795 from State BOE that will be reimbursed for the purchase of the ID Card Printer.

HEALTH DEPARTMENT: BUDGET AMENDMENT (BNA #035)

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<i>Account Number</i>	<i>Project Code</i>	<i>Department/Account Name</i>	<i>Increase</i>	<i>Decrease</i>
012.536.4.350.36		APP/State Govt Grants	\$6,920.00	
012.536.5.210.00		APP/Supplies	\$3,170.00	
012.536.5.490.00		APP/Professional Services	\$3,750.00	

Explanation of Revisions: Budget allocation for \$6,920 in additional funds from State Grants for the Adolescent Pregnancy Program which will be used for professional services and supplies.

HEALTH DEPARTMENT: BUDGET AMENDMENT (BNA #036)

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<i>Account Number</i>	<i>Project Code</i>	<i>Department/Account Name</i>	<i>Increase</i>	<i>Decrease</i>
012.541.4.350.00		Env Health/State Govt Grants	\$27,160.00	
012.541.5.121.00		Env Health/Salaries	\$15,160.00	
012.541.5.210.00		Env Health/Supplies	\$1,250.00	
012.541.5.910.00		Env Health/Equipment	\$10,750.00	

Explanation of Revisions: Budget request for \$27,160 for DHHS Summer Food Service Program funds. The NC Department of Health & Human Services Environmental Health Section has allocated these funds to Cleveland County for food and lodging activities. These funds are distributed based on the percentage of required inspections completed in three quarters of the previous fiscal year. Cleveland County had a 100% inspection rate. Environmental Health is requesting to budget these funds for operating and personnel expenses incurred in the Food and Lodging Program.

HEALTH DEPARTMENT: BUDGET AMENDMENT (BNA #037)

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<i>Account Number</i>	<i>Project Code</i>	<i>Department/Account Name</i>	<i>Increase</i>	<i>Decrease</i>
012.530.4.810.00		Adm/Donations	\$1,647.00	
012.530.5.790.00		Adm/Donations	\$1,647.00	

Explanation of Revisions: Budget allocation for \$1,647 in additional funds donated from Alliance for Health for the purchase of a laptop.

EMERGENCY MANAGEMENT: BUDGET AMENDMENT (BNA #038)

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<i>Account Number</i>	<i>Project Code</i>	<i>Department/Account Name</i>	<i>Increase</i>	<i>Decrease</i>
010.445.5.310.00		Emergency Mgmt/Federal Govt Grants	\$17,899.00	
010.445.5.210.00		Emergency Mgmt/Departmental Supplies	\$17,899.00	

Explanation of Revisions: Budget allocation for \$17,899 in additional funds for Emergency Management Performance Grant (EMPG) received from NC Department of Public Safety for the enhancement of Emergency Management Programs. Cleveland County received the maximum amount for completion of all objectives. Funds received will cover the purchase of classroom furniture.

EMERGENCY MEDICAL SERVICES: BUDGET AMENDMENT (BNA #039)

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<i>Account Number</i>	<i>Project Code</i>	<i>Department/Account Name</i>	<i>Increase</i>	<i>Decrease</i>
010.437.4.310.00		Public Safety Grants/Federal Govt Grants	\$6,550.00	
010.437.5.211.00		Public Safety Grants/Controlled Property Exp	\$1,550.00	
012.536.5.490.00		Public Safety Grants/Capital Equipment	\$5,000.00	

Explanation of Revisions: Budget allocation for \$6,550 in additional grant funds awarded from Metrolina Healthcare Preparedness Coalition for the purchase of pallet jack, 20-gallon transfer fuel tank, 50-gallon transfer fuel tank and (2) meter VEE lines. This is an amendment to the agreement budgeted on BNA #015 that was approved at the November 6, 2018 Commissioners meeting.

HEALTH DEPARTMENT: BUDGET AMENDMENT (BNA #040)

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<u>Account Number</u>	<u>Project Code</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
012.539.4.310.39		FP/Federal Grants - HMHC	\$8,727.00	
012.536.5.210.00		FP/Professional Services	\$7,260.00	
012.536.5.490.00		FP/Dues-Subscriptions	\$1,467.00	

Explanation of Revisions: Budget allocation for \$8,727 in additional funding from the Division of Public Health for Healthy Mothers. \$1,467 will be used to subscribe 3 providers the up to date app and \$7,260 will be used for the lab processing fees.

ENVIROMENTAL HEALTH: HABITAT FOR HUMANITY FEE WAIVER

Habitat for Humanity has requested the continued support and partnership with the Cleveland County Solid Waste program. Typically, Habitat for Humanity has one to two construction projects per year. For each construction project Republic Service provides a container and hauling to the agency for construction and demolition debris. Given the public health significance of handling the construction and demolition waste properly tipping fees have been waived for disposal in prior years. Protecting the public’s health is a primary purpose of the Cleveland County Health Department’s mission. Providing the resource for proper management and disposal of the waste will continue to significantly reduce health risks posed to the public. Additionally, this resource will promote adherence to solid waste ordinance, while maintaining a positive working relationship with Habitat for Humanity.

ACTION: Commissioner Hutchins made the motion, seconded by Commissioner Bridges, and unanimously adopted by the Board, ***to approve the Habitat for Humanity Fee Waiver.***

CANCELLATION OF DEED OF TRUST: BARBARA PRINE

In 2012, the County, by and through the Community Development Program, agreed to provide Barbara Prine up to the initial sum of \$58,085.00 to renovate and upgrade her home located at 117 Fulton Street, King Mountain, North Carolina and a deed of trust was executed. Ms. Prine did retain ownership of the property but has since passed away. The Deed of Trust needs to be cancelled.

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the Cancellation of the Deed of Trust for Barbara Prine.***

SATISFACTION OF SECURITY INSTRUMENT
N.C.G.S. § 45-36.10; N.C.G.S. § 45-37(a)(7)

STATE OF NORTH CAROLINA – COUNTY OF CLEVELAND

The undersigned is the secured creditor in the security instrument identified as follows:

Type of Security Instrument: Deed of Trust

Original Grantors: Barbara Prine

Security Party: County of Cleveland

Recording Data: The security instrument is recorded in Book 1634 at page 1604 in the office of the Register of Deeds for Cleveland County, North Carolina.

This satisfaction terminates the effectiveness of the security instrument.

This 16 day of April, 2019.

Cleveland County
By and through its Board of Commissioners

By: Susan K. Allen
Susan K. Allen, Chair

ATTEST:

Phyllis Nowlen
Phyllis Nowlen, Clerk to the Board

STATE OF NORTH CAROLINA - COUNTY OF CLEVELAND

I, Velda A. Curcio, Notary Public, certify that Susan K. Allen personally came before me this day and acknowledged that she is the chair of the Cleveland County Board of Commissioners and that by authority duly given, and as the act of the corporation, the foregoing instrument was signed in its name by its Chair person.

Witness my hand and official seal, this 16 day of April, 2019.

My Commission Expires: 6-20-20

Velda A. Curcio
Notary Public

CONTINGENCY FUNDS CRICKET LANE

The county received a request for \$167,000 in North Carolina Department of Transportation (NCDOT) contingency funds from the North Carolina House of Representatives and the Senate to bring Cricket Lane (a private road) up to minimum unpaved standards for inclusion into the state-maintained network. Cricket Lane was established pre-1975 and is eligible for contingency funds. The total project cost is \$334,000.

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Whetstine, and unanimously adopted by the Board to, ***approve the \$167,000 in contingency funds for Cricket Lane.***



PUBLIC HEARINGS

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT FOR PROJECT CHOICE

Vice-Chairman Whetstine called Brian Epley, County Manager, to the podium to present the Economic Development Incentive Agreement for Project Choice. Project Choice is an existing industry considering expansion in Cleveland County amongst other locations. For the county to be as competitive as possible, staff seeks direction from the Board to facilitate an incentive package for this company. The proposal from Project Choice includes 403 new jobs with an average salary of \$43,294. This is the largest diverse number of jobs announcement to date in Cleveland County and the salary is 10% higher than the average median income in Cleveland County. The initial investment is \$59 million dollars over a five-year period which equals \$336,000 of additional county revenue. If approved, this incentive package will keep Cleveland County competitive. The County is wanting to offer to Project Choice a four year - 25% tax incentive, additionally \$150,000 paid to the company to assist them with grading costs. The company will be located in the Foothills Commerce Center on Washburn Switch Road in Shelby.

Vice-Chairman Whetstine opened the Public Hearing at 6:41 pm for anyone wanting to speak for or against the Economic Development Incentive Agreement for Project Choice. (*Legal Notice was published in the Shelby Star on Friday, March 22, 2019*).

Dr. Jason Hurst, Cleveland Community College President, 137 S. Post Rd., Shelby – spoke in favor of the incentive package for Project Choice. Dr. Hurst has worked in different areas of economic development for the past twenty-five years and complimented the Board and staff with the partnerships created to continually expand economic development in the county. One of Dr. Hurst’s top priority is work force development. The college currently has programs designed to train students to fill the diverse range of jobs being offered for this company. He sees no downside to approving the proposed incentive package to Project Choice. This is a great opportunity for the Community College to partner directly with the company and provide training and workforce for them. In closing, Dr. Hurst reiterated the positive opportunities and economic growth Cleveland County can offer if this incentive package is approved.

Hearing no further comments, Vice-Chairman Whetstine closed the Public Hearing at 6:44 pm.

Vice-Chairman Whetstine opened the floor to the Board for questions and discussion. Commissioner Hutchins stated Project Choice is a great opportunity for the community in many different aspects which include workforce growth, above average salaries and a partnership with the college. Commissioner Bridges echoed the same comments as Commissioner Hutchins.

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and adopted by the Board to, *approve the Economic Development Incentive Agreement for Project Choice.* (copy found on Page ____ of Minute Book ____).


REGULAR AGENDA

UPDATED RETENTION SCHEDULES

Vice-Chairman Whetstine recognized Senior Staff Attorney Elliot Engstrom to present the updated retention schedules. The General Records Schedule for Local Government Agencies allows the County to dispose of records according to a state-approved schedule published by the North Carolina Department of Natural and Cultural Resources (DNCR). The schedule must be approved in order to be valid. It has been approved in the past, but DNCR has published a new schedule that must be approved. The retention schedule also allows the County to dispose of certain records once their administrative value ends, and it allows the County to decide what that timeframe is. Staff recommend setting 30 days as the default retention period for records that the County may destroy once their administrative value ends. However, DNCR allows County staff to adjust these periods at later dates based on best practices.

New Local Government Records Retention Schedule

Elliot Engstrom
Senior Staff Attorney
April 16, 2019



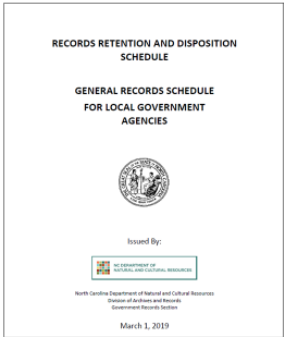
Public Records Retention Schedules

- ▶ Default rule is that County must always seek approval of North Carolina Department of Natural and Cultural Resources (DNCR) to destroy any records (N.C.G.S. § 121-5(b)).
- ▶ However, DNCR creates public records retention schedules that, once adopted, serve as a proxy for agency approval to destroy records (N.C.G.S. § 121-5(c)).
- ▶ DNCR has created a new retention schedule for local governments.



Public Records Retention Schedules

- Schedule allows county staff to decide how long to keep records of limited administrative value.
- This retention schedule will replace some previously adopted retention schedules.



Action Requested

- Adopt the Records Retention and Disposition Schedule, as pre-approved by the NC Department of Natural and Cultural Resources.

Vice-Chairman Whetstine opened the floor to the Board for questions and discussion. Vice-Chairman Whetstine asked Mr. Engstrom what would happen if the retention schedule was not approved. Mr. Engstrom advised the County would not legally be able to throw anything away. Commissioner Hardin inquired if this schedule also pertains to text messages and emails; Mr. Engstrom stated it does.

ACTION: Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and adopted by the Board to, *approve the updated Retention Schedule for Cleveland County as pre-approved by the North Carolina Department of Natural and Cultural Resources.*

2019 Local Government Agencies General Records Retention and Disposition Schedule


The records retention and disposition schedule and retention periods governing the records series listed herein are hereby approved. In accordance with the provisions of Chapters 121 and 132 of the *General Statutes of North Carolina*, it is agreed that the records do not and will not have further use or value for official business, research, or reference purposes after the respective retention periods specified herein and are authorized to be destroyed or otherwise disposed of by the agency or official having custody of them without further reference to or approval of either party to this agreement. The local government agency agrees to comply with 07 NCAC 04M .0510 when deciding on a method of destruction. Confidential records will be destroyed in such a manner that the records cannot be practicably read or reconstructed. However, records subject to audit or those legally required for ongoing official proceedings must be retained until released from such audits or official proceedings, notwithstanding the instructions of this schedule. **Public records, including electronic records, not listed in this schedule are not authorized to be destroyed.**

All local government agencies and the Department of Natural and Cultural Resources agree that certain records series possess only brief administrative, fiscal, legal, research, and reference value. These records series have been designated by retention periods that allow these records to be destroyed when "reference value ends." All local government agencies hereby agree that they will establish and enforce internal policies setting minimum retention periods for the records that Natural and Cultural Resources has scheduled with the disposition instruction "destroy when reference value ends." If a local government agency does not establish internal policies and retention periods, the local government agency is not complying with the provisions of this retention schedule and is not authorized by the Department of Natural and Cultural Resources to destroy the records with the disposition instruction "destroy when reference value ends."

All local government agencies and the Department of Natural and Cultural Resources concur that the long-term and/or permanent preservation of electronic records requires additional commitment and active management by the agency. Agencies agree to comply with all policies, standards, and best practices published by the Department of Natural and Cultural Resources regarding the creation and management of electronic records.


It is further agreed that these records may not be destroyed prior to the time periods stated; however, for sufficient reason they may be retained for longer periods. This schedule supersedes the general standards in all previous local government retention and disposition schedules and is to remain in effect from the date of approval until it is reviewed and updated.

APPROVAL RECOMMENDED


Municipal/County Clerk or Manager
Title: County Clerk


Sarah E. Koonts, Director
Division of Archives and Records

APPROVED


Head of Governing Body
Title: Board Chairman


Susi H. Hamilton, Secretary
Department of Natural and Cultural Resources

Municipality/County: Cleveland

LEASE AGREEMENT WITH CLEVELAND COMMUNITY COLLEGE

Vice-Chairman Whetstine called Kerri Melton, Assistant County Manager, to the podium to present the Lease Agreement with Cleveland Community College (CCC). Cleveland County owns Parcels 60406 and 25684 located off of North Post Road in Shelby. The Community College has identified this property as ideal for use by its Electrical Line-Worker Academy. In particular, CCC would like to use all of Parcel 60406 and the eastern portion of Parcel 25684. In the proposed lease, the County would lease the land to CCC for one dollar (\$1.00) through March 1, 2029. CCC may only use the premises for CCC programs and activities. CCC further accepts

liability for its activities on the property and for certain repairs and improvements to the property. The lease also contains a right of first refusal under which the County must, to the extent permissible under law, offer to sell the property to CCC before selling it to any third party during the term of the lease.



April 16, 2019

Property Lease Agreement- Cleveland Community College

KERRI MELTON, ASSISTANT COUNTY MANAGER

Property Map







PARCELS 60406 AND 25684

2

Purpose






PARCELS 60406 AND 25684

3

Electrical Lineworker Academy



- 7 graduating classes totaling 136 students
- 100% job fill rate
- 98% students received Class A CDL

PARCELS 60406 AND 25684

4

Lease Agreement Details




- Lease payment of \$1 per year for a total of 10 years
- Property may only be used for programs and activities of Cleveland Community College
- Community College responsible for repairs and improvements to the property
- Community College accepts liability for injuries or damages
- Community College has first right of refusal should the County decide to sell the property.

PARCELS 60406 AND 25684

5


Future Goals of Lineworker Academy



- Classroom will be located in Allies Place restaurant
- Heavy Equipment/CDL Training on site
- Increase in class size from 19 to 24 students

PARCELS 60406 AND 25684

6



Questions?

7

Vice-Chairman Whetstine opened the floor to the Board for questions and discussion. Each of the Commissioners commented on the positive outcomes with the proposed partnership and the greater opportunities that will become available for the students. Dr. Jason Hurst, President of the Community College came forward and spoke more in detail about the Electrical Line-Worker Academy and the community growth that comes from the graduates of this training program.

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges and unanimously adopted by the Board to, *approve the lease agreement with Cleveland Community College.*

STATE OF NORTH CAROLINA

COUNTY OF CLEVELAND

This AGREEMENT dated this the 11th day of April 2019 by and between Cleveland Community College, a North Carolina community college having its principal place of business at 137 S. Post Road in Shelby, NC (hereinafter the "Lessee") and Cleveland County, a body politic organized under the laws of North Carolina having its principal place of business at 311 East Marion Street in Shelby, NC (hereinafter the "Lessor"):

WITNESSETH:

1. **Premises**

The Lessor does hereby rent and lease to the Lessee, and the Lessee does hereby rent and lease from the Lessor, the premises described as the entirety of Cleveland County Parcel Number 60406 as well as Cleveland County Parcel Number 25684 excepting the following portion:

BEGINNING at a nail and cap located in the centerline of Spake Circle (SR 2066) S. 29-02-33 E. 1242.05 feet from NCGS Monument "Foam" and running thence a common boundary with Shelby Elk's Lodge #1709 (Deed Book 1100, Page 2424) S. 86-12-30 E. 354.68 feet passing a rebar at 31.55 feet, to a set rebar, thence a new line S. 28-35-37 E. 376.06 feet to a set rebar; thence another new line S. 12-53-20 E. 171.81 feet to a set rebar; thence another new line S. 27-52-17 W. 227.44 feet to a set rebar in the northeastern line of Claudia S. Borders (Deed Book 1636, Page 220); thence a common boundary with Claudia S. Borders N. 57-19-23 W. 369.62 feet to a set rebar, the southeastern corner of a parcel owned by Timothy J. Smolzer (Deed Book 1296, Page 2384); thence a common boundary with the east line of the Smolzer lot N. 08-17-52 E. 180.93 feet to a rebar, the northeastern corner of the Smolzer parcel; thence with the north line of Smolzer N. 81-39-02 W. 200.97 feet to a railroad spike in the centerline of Spake Circle, passing a rebar at 170.97 feet; thence with the center line of Spake Circle the following five (5) courses and distances: 1) N. 08-21-40 E. 54.54 feet to a railroad spike; 2) N. 08-20-25 E. 65.72 feet to a nail and cap; 3) N. 06-40-05 E. 52.92 feet to a nail and cap; 4) N. 03-55-42 E. 43.31 feet to a nail and cap and 5) N. 05-03-05 W. 100.07 feet to a nail and cap, the point and place of BEGINNING containing 5.822 acres and being a portion of that property conveyed to County of Cleveland by Harvestworks, Inc. by deed dated March 7, 2016 and recorded in Book 1714, Page 1699, Cleveland County Registry.

Said portion of Cleveland County Parcel Number 25684 shall not be leased to the Lessee and shall remain fully under the control and in the possession of the Lessor.

insurance company or companies reasonably satisfactory to Lessor. Such policies shall be non-cancelable except after ten (10) days' written notice to Lessor, if requested by Lessor. Such policies or duly executed certificates of insurance with respect thereto shall be delivered to Lessor prior to the Rental Commencement Date and renewals thereof as required shall be delivered to Lessor at least thirty (30) days prior to the expiration of the respective policy terms. Lessee may fulfill its obligations under this section through the use of comparable self-insurance. In the case that lessee fulfills its obligations under this section through comparable self-insurance, the limit of such self-insurance shall be One Million and No/ 100 Dollars (\$1,000,000.00).

6. **Duty to Keep Premises in Good Order.**

Lessee hereby covenants and agrees to keep the Premises in as good order, repair and condition as the same are in as of the commencement of the term hereof, or may be put in thereafter, damage by fire or unavoidable casualty, acts of God, eminent domain and normal wear and tear excepted; and at the termination hereof, to peaceably yield up said Premises and all additions, alterations, and improvements thereto in such good order, repair and condition. Lessee shall also abide by the covenants regarding maintenance as set forth in 5.1 above.

7. **Comply with Laws.**

Lessee agrees that it will promptly comply at its own expense with all requirements of any governmental authority having competent jurisdiction.

8. **Additional Lessee Obligations.**

Lessee covenants and agrees as follows:

(1) To pay, when due, all rents and other charges set forth herein;

(2) That, without limitation of any other provision herein, the Lessor and its employees shall not be liable for any injuries to any person or damages to property or the Premises or due to any act or neglect of any employee or other third party. Without limitation, this provision shall apply to injuries and damage caused by nature, rain, snow, ice, wind, water, steam, gas, or odors in any form and the like situated or occurring on the Premises.

(3) To permit Lessor and its agents to examine the Premises at reasonable times and upon reasonable notice and, if Lessor shall so elect, to inspect the status of the Premises.

(4) Not to permit any employee of the Lessee to violate any covenant or obligation of Lessee hereunder.

(5) Not to suffer or permit any lien of any nature or description to be placed against the Premises, or any portion thereof, and, in the case of any such lien attaching by reason of the conduct of Lessee, to immediately pay and remove the same. This provision shall not be interpreted as meaning that the Lessee has any authority or power to permit any lien of any nature

2. **Terms and Termination**

To have and to hold said premises for a term commencing on April 1, 2019 and unless sooner terminated as herein provided, extending for nine years and eleven months through March 1, 2029. Any termination of this Lease and the Term shall be made by written notice given not later than the date, or within the period of time, specifically provided herein. Notice of termination of the Lease and the Term shall be given not less than thirty (30) days prior to the effective date of such termination. In the event of any termination, the parties shall reasonably cooperate to fully effectuate the provisions hereof pertinent to such termination in order to carry out the purpose and intentions of such provisions.

3. **Rent**

Lessee hereby agrees and covenants to pay to the Lessor as rental for the Premises the amount of one dollar and zero cents (\$1.00) by check to the Lessor at its principal location at 311 E. Marion Street in Shelby, NC, or at such other place as Lessor shall designate to Lessee in writing. Said rental shall be paid prior to the first day of the lease.

4. **Permitted Uses**

Lessee may use the premises only for programs and activities of Cleveland Community College.

5. **Acceptance of Premises; Repairs; Alterations; Liability**

5.1 The Lessee, by taking possession of the Premises, shall accept and shall be held to have accepted the same as suitable and safe for the use intended by the Lessee and third parties. After possession of the Premises has been delivered to the Lessee, the Lessee is solely responsible for the maintenance of the Premises and to make any repairs or improvements to the Premises, including but not limited to the paved areas, curbs, parking bumpers, shrubberies, or grass and wooded areas. However, the Lessee shall in no way be responsible for the pump station located on the leased portion of Cleveland County Parcel Number 25684

5.2 Lessee does hereby agree to indemnify and save Lessor harmless from and against any and all liability for any injury to or death of any person or persons or any damages to property in any way arising out of or connected with the condition, use or occupancy of the Premises, or in any way arising out of the activities in the Premises, and from all costs, expenses and liability, including, but not limited to, court costs and reasonable attorneys' fees, incurred by Lessor in connection therewith.

5.2 Lessee shall, at its sole cost and expense, procure and maintain throughout the Term of this lease a policy or policies of insurance, insuring Lessee and Lessor against any and all liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of the condition of the Premises, the use or occupancy of the Premises or any construction work being done on the Premises by Lessee. The limit of such policy shall be in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) and shall be written by any

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or description to attach to or be placed upon the Lessor's title or interest in the Premises, or any portion thereof.

(6) To keep the Premises equipped with all safety appliances required by law or public authority because of the specific use or occupancy of the Premises by the Lessee.

(7) To refrain from adding or removing any structures on the property without the express written consent of Lessor.

9. **Self-help**

If either party shall at any time breach or default in the performance of any of the obligations of such party under the Lease beyond any applicable period of grace, notice or cure, the other party shall have the right to reasonably perform such obligation of the first party including the payment of money and the performance of any other act. All reasonable sums paid and all reasonably necessary incidental costs and expenses in connection therewith shall be payable immediately upon demand by the party so incurring. Lessor may enter the Premises to exercise its rights hereunder, and amounts owed by Lessee hereunder shall be additional rent. Lessee shall have the right, at its sole discretion, to offset amounts owed by Lessor hereunder, to deduct such amounts from rent or charges due hereunder, or to terminate this lease for failure of Lessee to pay amounts hereunder.

10. **Damage to Property; Eminent Doman.**

If all of the Premises or such parts thereof as will make the Premises unusable for the purposes contemplated by this Lease, be damaged or taken under the power of eminent domain (or a conveyance in lieu thereof), then this Lease shall terminate as of the date possession is taken by the condemner. Lessor reserves and accepts all rights to damages to said Premises the leasehold hereby created, accrued or substantially accruing by reason of anything lawfully done in pursuance of any public, or other authority; and by way of confirmation, Lessee grants to Lessor all Lessee's rights to such damages and covenants to execute and deliver such further instruments of assignment thereof in form and substance satisfactory to Lessee as Lessor may from time to time requires, without otherwise waiving its rights set forth above.

11. **Loss of Personal Property**

Lessee agrees that all personal property brought into the Premises shall be at the risk of the Lessee or third parties only and the Lessor shall not be liable for theft thereof or any damage thereto occasioned from any acts or omissions of Lessee or any other person.

12. **Lessor's Right to Sell; Right of First Refusal**

12.1. **Right to Sell.** Except as otherwise provided in this Section 12, Lessor shall have the right to sell, assign, transfer, or otherwise alienate its interest in the Premises. Upon such sale, assignment, transfer, or alienation, the new owner shall succeed to all of Lessor's obligations hereunder, and Lessee shall be bound to the new owner to the same extent as it was bound to

Lessor. At such time, Lessor hereunder shall be entirely freed and relieved of any further obligation or responsibility under this Lease. In the event of any such sale or prospective sale, Lessee agrees to execute in a timely manner such estoppels certificates, or similar documents, in such form as any buyer or prospective buyer of the building may reasonably request.

12.2. Notice Requirements. Notwithstanding the above paragraph, during the term of the Agreement, before Lessor may sell the Premises to a third party, Lessor shall first offer the Premises to Lessee following the procedures set forth in this section. Lessee shall have forty-five (45) days following the date Lessor first presents Lessee such offer to decide whether to try to negotiate an agreement for the purchase of the Premises from Lessor. If Lessee desires to try to negotiate such an agreement, Lessee shall, within said 45-day period, deliver to Lessor written notice thereof. Promptly after receipt of such notice, the parties shall commence good faith negotiations exclusively with each other for a period not to exceed 90 days after the date Lessee gives the requisite notice to Lessor.

12.3. Negotiations. If Lessor does not receive said notice within said 45-day period, or if Lessor receives said notice within said period but Lessor and Lessee do not enter into a legally binding, written agreement for the purchase and sale of the Premises within said 90-day period, Lessor shall thereafter be free for 100 days to enter into an agreement with a third party on terms no more favorable to the third party than Lessor offered to Lessee.

12.4. Expiration. If Lessor does not enter into a legally binding, written agreement with a third party within the 100-day period, Lessor's right to sell the Premises to a third party shall expire and the procedure described in this Section shall be applicable again, and Lessor, prior to selling the Premises to a third party, shall first offer to try to negotiate the sale of the Premises to Lessee. Upon each repetition of this procedure, notice shall once again be due.

12.5 Compliance with Applicable Law. The parties acknowledge that in carrying out the procedures of this Section, Lessor must comply with Article 12 of Chapter 160A of the North Carolina General Statutes. To the extent that any provision of this section conflicts with these statutes or any other applicable law, said provision shall be severed from the Agreement with the remaining portions of the Agreement remaining in effect.

13. Hazardous Materials

13.1 Lessee shall not use, generate, manufacture, produce, store, release, discharge or dispose of on, in or under the Premises, or transport to or from the Premises, any Hazardous Materials (as defined below), or allow any other person or entity to do so. Lessee shall comply with all local, state and federal laws, ordinances and regulations relating to Hazardous Materials on, in, under or about the Premises.

13.2 Lessee shall promptly notify Lessor should Lessee receive notice of, or otherwise become aware of, any: (1) pending or threatened environmental regulatory action against Lessee or the Premises; (2) claims made or threatened by any third party relating to any loss or injury resulting from any Hazardous Material; or (3) release or discharge, or threatened release or discharge, of any Hazardous Material in, on, under or about the Premises.

14.2 Lessee retains possession of the Premises, or any part thereof, after the expiration or termination of this Lease, Lessee's holding over shall constitute a renewal of this Lease on a month-to-month basis on the same terms and conditions hereof.

14.3 In addition, Lessee shall indemnify Lessor against all liabilities and damages reasonably sustained by Lessor by reason of any such retention of possession.

15. Default and Remedies

15.1. Lessee Default. The occurrence of any one of the following during the Term of this Lease, or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Lessee:

- (1) Failure to pay base rent to Lessee by the date required;
- (2) Failure to make any other payment due hereunder for a period of ten (10) calendar days after written notice of such default has been given to Lessee;
- (3) Default in the performance of any other of the terms, conditions, or covenants contained in this Lease to be observed or performed by Lessor, if such default is not cured within thirty (30) days after written notice thereof, or if such default cannot be cured within thirty (30) days, Lessee does not within such (30) days commence such cure promptly and pursue the same with diligence to completion; or
- (4) If Lessee shall abandon the Premises.

15.2. Lessor Default. The occurrence of any one of the following during the Term of this Lease, or any renewal or extension therefor, shall constitute a breach of this Lease on the part of the Lessor:

- (1) Lessor fails to pay any amount due and payable hereunder by Lessor and fails to cure such failure to pay within ten (10) days after the effective date of written Notice given by Lessee demanding such amount be paid;
- (2) Lessor fails to comply with or abide by and perform any non-monetary obligation imposed on Lessor under this Lease within thirty (30) days after the effective date of written Notice given by Lessee demanding that such obligation be performed;

15.3 Lessor's Remedies. Upon the occurrence of a Lessee Default, Lessor shall have the immediate right of reentry without resort to legal proceedings and the right to terminate and cancel this Lease. If Lessor should elect to reenter as herein provided, or should it take possession pursuant to legal proceedings, it may either terminate this Lease or it may from time to time without terminating this Lease, relet the Premises for such term and at such rentals and upon such other terms and conditions as the Lessor may deem advisable, provided however, that Lessor shall be considered to be under a duty by reason of this provision to take all appropriate and reasonable action to mitigate Lessor's damages by reason of Lessee Default and expressly shall have a duty

13.3 Lessee agrees to indemnify, defend and hold Lessor harmless from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorneys' fees) arising out of or involving any Hazardous Material brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Material under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, the costs of any required or necessary repair, cleanup or detoxification of the Premises, and the preparation and implementation of any closure, remedial or other required plan. The indemnity contained in this subsection 30(c) shall survive the termination or expiration of this Lease unless specifically so agreed by Lessor in writing at the time of such termination or expiration.

13.4 Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damage, including the cost of remediation, which result from Hazardous Material which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations shall include, but not be limited to, the costs of any required or necessary repair, cleanup or detoxification of the Premises, and the preparation and implementation of any closure, remedial or other required plan. The indemnity contained in this subsection 30(d) shall survive the termination or expiration of this Lease.

13.5 The term "Hazardous Materials" shall mean any element, compound, mixture, solution, particle or substance which is dangerous or harmful or potentially dangerous or harmful to the health and welfare of life or environment, including but not limited to explosives, petroleum products, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation: (1) any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "hazardous pollutants" or "toxic pollutants," as those terms are used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act and the Clean Water Act", or any amendments thereto, or any regulations promulgated thereunder, or any other law or regulation promulgated by any federal, municipal, state, county or other governmental or quasi-governmental authority and/or agency or department thereof; (2) any "PCBs" or "PCB items" (as defined in 40 C.F.R. §761.3); or (3) any "asbestos" (as defined in 40 C.D.F.R. 763.63).

14. End of Term; Holding Over

14.1 Upon the expiration of the Term or earlier termination of this Lease, Lessee shall quit and surrender the Premises to Lessor, clean and in as good order and condition as the Premises were at the time of Lessee's initial occupancy thereof, ordinary wear and tear excepted.

to mitigate Lessee's damages. No such reentry or taking possession of the Premises by Lessor shall be construed as an election to terminate this Lease unless a written notice of such intention be given by Lessor to Lessee at the time of such reentry; but, notwithstanding any such reentry and reletting without termination, Lessor may at any time thereafter elect to terminate this Lease for such previous breach upon written notice to Lessee.

15.4 Lessee's Remedies. Upon the occurrence of Lessor Default, Lessee may: (i) terminate this Lease by giving written Notice to Lessor and upon such termination Lessee shall be entitled to recover from Lessor such damages as may be permitted under applicable law, and (ii) pursue any other remedy herein provided or as provided by law.

16. Required Approval of State Board of Community Colleges

This lease is contingent upon Lessee receiving any necessary approvals or authorizations from the State Board of Community Colleges.

17. Severability

If any provision of this Lease or its application to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

18. Notice

All notices, demands, elections and other communications (collectively, "Notices") required or permitted to be given under this Lease shall be in writing and shall be either given by personal delivery or transmitted by email, by facsimile transmission, by nationally recognized overnight express service or by certified mail return receipt requested, to the addresses set forth below. Any Notice given in the manner set forth in this Section 25 shall be deemed given and delivered as follows: Notices delivered by personal delivery shall be effective upon receipt; Notices transmitted by email or by facsimile shall be effective on the date they are transmitted, if received not later than 4:30 p.m. on the day they are transmitted or, if not, on the next succeeding business day; Notices delivered by nationally recognized overnight express service shall be effective on the date they are delivered; Notices delivered by mail shall be effective on the earlier of the date they are actually received or on the third (3rd) business day after they are deposited with the U.S. Postal Service in a sealed wrapper, with first class certified postage prepaid and return receipt requested. Electronically delivered Notices shall be considered a "writing" for purposes hereof if properly addressed as provided below. Either party may change its address (es) by written notice to the other party pursuant to the provisions hereof.

If to Lessor, to: Brian Epley
County Manager
Cleveland County
Post Office Box 1210

Shelby, NC 28151-1210

With a copy to: Elliot Engstrom
Senior Staff Attorney
Cleveland County
Post Office Box 1210
Shelby, NC 28151

If to Lessee, to: Dr. Jason Hurst
President
Cleveland Community College
137 S. Post Road
Shelby, NC 28152

19. Assignment

Lessee shall not, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed, assign this Lease, or any interest thereunder, or sublet the Premises or any part thereof

20. Captions

The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease nor the intent of any provision hereof.

21. Law

This lease shall be interpreted by and under the laws of the State of North Carolina.

22. Entire Agreement Herein

The parties acknowledge that this Lease and the exhibits attached hereto contain the entire agreement between the parties with respect to the Property, and supersede any prior oral or written understandings. No modification of this Lease shall be effective unless made in writing and duly executed by both parties.

[SIGNATURE PAGE TO FOLLOW]

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IN WITNESS WHEREOF the parties hereto have executed this Lease as of the day and year first above-written.

CLEVELAND COUNTY, NORTH CAROLINA
By: Susan R. Allen
Name: Susan R. Allen
Title: Board Chairman

*approved at the April 16th 2019
Commissioners Meeting

Attested to by: Phyllis Nowlen
Phyllis Nowlen, Clerk to the Board of Commissioners

Cleveland Community College
By: Jason Hurst
Name: Jason Hurst
Title: President

State of North Carolina
Cleveland County

On 16th day of April, 2019, Jason Hurst (name),
(title) of Cleveland Community College personally appeared before me
and she or he executed the above instrument and acknowledged the same to be his or her free act
and deed and the free act and deed of said Company.

Phyllis A. Nowlen
Notary Public

My commission expires: 6-20-20

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COMMISSIONER REPORTS

Commissioner Hardin – all of the Commissioners participated in the fifth annual Cleveland Cup. She also attended the NCACC District Meeting and a Medicaid Conference.

Commissioner Bridges – also attended the NCACC District Meeting and the Medicaid conference. He thanked staff for their continued hard work and all that they do.

Commissioner Hutchins – echoed Commissioner Bridges comments. He also attended the Veterans Advisory Board meeting and the Council on Aging meeting.

Commissioner Whetstine – commented on the Cleveland Cup. He also reviewed the Agriculture Census, the National Day of Prayer and the April 30th Job Fair.

ADJOURN

There being no further business to come before the Board at this time, Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board, *to adjourn the meeting*. The next meeting of the Commission is scheduled for *Tuesday, May 7, 2019 at 6:00 p.m. in the Commissioners Chambers located at 311 E. Marion St., Shelby.*

*Ronnie Whetstine, Vice-Chairman
Cleveland County Board of Commissioners*

*Phyllis Nowlen, Clerk to the Board
Cleveland County Board of Commissioners*

COUNTY OF CLEVELAND, NORTH CAROLINA

AGENDA ITEM SUMMARY

Community Care (N3CN) Agreement

Department: Social Services

Agenda Title: Community Care (N3CN) Agreement

Agenda Summary:

Proposed Action:

ATTACHMENTS:

File Name	Description
<input type="checkbox"/> N3CN_Staff_Report.pdf	N3CN Staff Report
<input type="checkbox"/> Cleveland_County_DSS_Agreement.pdf	N3CN Agreement
<input type="checkbox"/> Additional_Signatures.pdf	N3CN Sign Page

STAFF REPORT

To: Board of Commissioners

From: Elliot Engstrom, Senior Staff Attorney

Subject: N3CN Participation Agreement

Date: June 25, 2019

Summary Statement:

Staff recommends signing a participation agreement with N3CN on behalf of the Cleveland County Department of Social Services.

Review:

Staff at the Cleveland County Department of Social Services have requested access to information maintained by North Carolina Community Care Networks, Inc. ("N3CN"). N3CN provides a data platform to facilitate the access, use, maintenance, storage, and transfer of Protected Health Information ("PHI") and other data relating to the County's involvement in care management and provider services administered by N3CN. However, N3CN can only provide access to this data if those requesting it have signed a participation agreement.

The Cleveland County Health Department entered into this same agreement with N3CN in January of 2019. However, the Department of Social Services answers to a different board than the Health Department, and therefore it must enter into the contract on its own. Because of Board of Commissioners has assumed the powers of the Social Services Board, it is the Board of Commissioners that must approve this agreement on behalf of DSS.

Attachment:

N3CN Participation Agreement

Action Requested:

Approve and execute the N3CN Participation Agreement

NORTH CAROLINA COMMUNITY CARE NETWORKS, INC. PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (the "Agreement") will be effective when signed by the named Participant below (the "Effective Date") and is made and entered into by and between **NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.**, a North Carolina nonprofit corporation ("N3CN") and the **Participant** named herein below ("Participant"), on behalf of itself and any Participating Entities for whom Participant has the authority to bind to this Agreement. N3CN and Participant are individually a "Party", and collectively, the "Parties".

Legal Name of Participant

Address of Participant

RECITALS

- A. N3CN provides a Data Platform to facilitate the access, use, maintenance, storage, and transfer of Protected Health Information ("PHI") and other Data relating to Participant's involvement in Care Management and Provider Services administered by N3CN.
- B. The Data originates from multiple sources such as the State, Participant, N3CN, and third parties.
- C. The form of this Agreement has been presented to and accepted by the State and is intended to be executed without material changes to its terms.
- D. The Parties wish to enter into this Agreement to set forth the permissions and obligations of the Parties related to access, use, maintenance, storage, and transfer of Data through the Data Platform.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is admitted and acknowledged by the Parties, and wishing to be legally bound, the Parties agree as follows:

- 1. **Supersedure.** This Agreement shall be deemed to and hereby does supersede and replace any prior or contemporaneous oral or written agreements and understandings between the Parties related to access, use, maintenance, storage, or transfer of Data between the Parties. Without limiting the foregoing, this Agreement specifically supersedes:
 - a. *The North Carolina Community Care Networks, Inc. Participation Agreement;*
 - b. *The Community Care of North Carolina, Inc. Participation Agreement;*
 - c. *The Contract to Participate in the Statewide Enhanced Primary Care Case Management Program;*
 - d. *The Technology Enabled Care Coordination Agreement;*
 - e. Any other prior agreements between the Parties controlling access to and protection of State-owned data.

2. **Incorporation of Recitals.** The Recitals to this Agreement are hereby incorporated into and made part of this Agreement.
3. **Rules of Construction.**
 - a. The words “include” and “including,” and all variations, will be deemed to be followed by the words “without limitation” and not deemed terms of limitation.
 - b. The word “and” includes the meaning of an alternative as well as the meaning of addition.
 - c. The word “or” includes the meaning of addition as well as the meaning of an alternative.
 - d. The word “any” includes the meaning of a singular item and the meaning of all items.
 - e. Sections and headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.
 - f. The Parties waive any common law or statutory rule of construction which favors the non-writing Party, and the Parties agree that this Agreement, including all terms, conditions, and provisions, must be construed without regard to which Party wrote that term, condition, or provision.
 - g. References to Participant will be deemed to include reference to Participant’s Authorized Users unless the context requires otherwise.
4. **Definitions.** All capitalized terms will have the meaning defined herein below; any capitalized term not defined herein or elsewhere in this Agreement shall have the meaning defined in the HIPAA Regulations or, if not defined in the HIPAA Regulations, the term shall have the meaning ascribed to it by other Applicable Law.
 - a. **Affiliate.** “Affiliate” means any entity that owns, is owned by, or shares common ownership with, a Party.
 - b. **Applicable Law.** “Applicable Law” means all state and federal statutes and regulations governing the activities of N3CN and Participant in connection with their participation in programs administered by N3CN and governing the access, use, transmission, storage, and maintenance of PHI and other Personally Identifiable Information.
 - c. **Authorized User.** “Authorized User” means Participant’s employees, workforce members, and contractors who have been authorized by N3CN, or by Participant’s Site Administrator under N3CN’s then-current data use policy, to use the Data Platform for a Permitted Purpose and who have been assigned a user name and password to access the Data Platform. Authorized Users may only be Natural Persons.
 - d. **Business Associate.** “Business Associate” has the meaning ascribed to this term in **45 CFR §160.103**.
 - e. **Business Associate Agreement (“BAA”).** “BAA” means the business associate contract or other arrangement between the Covered Entity and the Business Associate that establishes the Permitted Purposes for PHI and requires the Business Associate to comply with the privacy and security provisions of HIPAA related to PHI.

- f. **Care Management.** “Care Management” refers to a broad array of healthcare-related activities including care coordination, care planning, case management, quality improvement, quality assessment, and population-based activities performed by a care manager or related position on behalf of Participants and Enrollees to promote better health outcomes at a reduced cost.
- g. **Confidential Information.** “Confidential Information” means any and all information of strategic or commercial value relating to a Party’s or any Affiliate’s business or operations that a Party discloses to the other Party and that is either (i) designated in writing as confidential or proprietary at the time of disclosure or in a reasonable period after disclosure, or (ii) should reasonably be regarded as confidential or proprietary given the nature and circumstances of its disclosure. All proprietary information is Confidential Information. All business information that derives value in not being generally known to the public, or which has the potential to cause reputational damage to a Party, is Confidential Information. This Agreement is Confidential Information.
- h. **Confidentiality Agreement.** “Confidentiality Agreement” means an agreement between Participant and its Authorized Users that establishes Permitted Uses and all restrictions and obligations related to the access, use, maintenance, storage, and transfer of the Data and the Confidential Information made available pursuant to this Agreement.
- i. **Covered Entity.** “Covered Entity” has the meaning ascribed to this term in **45 CFR §160.103**.
- j. **Data.** The “Data” means all PHI, IIHI, and PII accessed, used, maintained, stored, or transferred through the Data Platform or otherwise pursuant to this Agreement and *the 2019 Primary Care Case Management Agreement Between The North Carolina Department of Health and Human Services Department of Health Benefits and North Carolina Community Care Networks, Inc.* and any successor agreement between the State and N3CN authorizing use of State-owned data.
- k. **Data Breach.** “Data Breach” means an impermissible access, use, or disclosure of the Data that does or is likely to compromise the security or privacy of the Data. To be deemed likely to compromise the privacy or security of the Data, the unauthorized access, use, or disclosure must be determined to meet the following criteria: (i) The Data is clearly or likely to be identifiable to specific individuals; (ii) The person accessing, using, or disclosing the Data is acting in an unauthorized manner or outside the control of either Party and is likely to use the Data other than for a Permitted Purpose; (iii) The Data was actually acquired or viewed; and (iv) the risk of an unpermitted use or disclosure causing harm to either Party or to the specific individual identified has not been or cannot be mitigated.
- l. **Data Platform.** “Data Platform” means collectively the software, hardware, applications, systems, and other code and devices controlled, leased, or used by N3CN or any Affiliate to facilitate the acquisition, use, maintenance, storage, and transfer of Data between the Parties. The Data Platform also includes any backup systems and Data created and maintained to enable N3CN and Participant to recover from any event resulting in a loss of access to the Data Platform or the Data.
- m. **Enrollee.** “Enrollee” means a person identified by the State as eligible for Medicaid or Health Choice services.
- n. **Health Plan.** “Health Plan” has the meaning ascribed to this term in **45 C.F.R. §160.103**.

- o. **HIPAA Regulations.** “HIPAA Regulations” mean the standards for privacy of Individually Identifiable Health Information and the security standards for the protection of Electronic Protected Health Information as promulgated under **45 C.F.R. Parts 160 and 164** by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996 and the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”) of the American Recovery and Reinvestment Act of 2009, in effect on the Effective Date of this Agreement and as may be amended, modified, or renumbered hereafter.
- p. **Individual.** “Individual” has the meaning ascribed to this term in **45 C.F.R. § 160.103** and includes a personal representative in accordance with **45 C.F.R. § 164.502(g)**.
- q. **Individually Identifiable Health Information (“IIHI”).** “IIHI” means information that is a subset of health information, including demographic information collected from an individual, and: employer, or health care clearinghouse; and (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) That identifies the individual; or ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- r. **Minimum Necessary Standard.** “Minimum Necessary Standard” has the meaning ascribed to that term in **45 C.F.R. § 164.502**, and this standard must be used in all situations described in that section as situations to which the standard applies.
- s. **Natural Person.** “Natural Person” means only living people.
- t. **Participating Entity.** “Participating Entity” means any person or entity owned or controlled by or under the supervision of Participant that will by means of the signature authority of Participant access or use Data covered under this Agreement.
- u. **PCCM Network.** “PCCM Network” refers to any of the entities defined as a PCCM Network under the State Plan of North Carolina or approved as a PCCM Network by the State.
- v. **Permitted Purpose.** “Permitted Purpose” includes the following activities, provided those activities are performed in compliance with all Applicable Laws:
 - i. *Treatment.* Treatment means the provision, coordination, or management of health care and related services by one or more healthcare providers.
 - ii. *Health Care Operations.* Health Care Operations includes quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines; population-based activities relating to improving health, reducing health care costs, protocol development, case management and care coordination.
 - iii. *Payment.* Payment means activities undertaken by: (1) a Health Plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or (2) a health care provider or Health Plan to obtain or provide reimbursement for providing health care. Payment activities include (1) determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims; (2) risk adjusting amounts due based on Enrollee health status and demographic characteristics; (3) billing, claims management,

collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance), and related health care data processing; (4) review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges; (5) utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services; and (6) disclosure to consumer reporting agencies of information relating to collection of premiums or reimbursement.

- iv. **Public Health.** Public Health means the activities described in **45 C.F.R. §164.512(b)**.
- v. **Research.** Research means a systematic investigation, including development, testing, and evaluation, designed to contribute to generalizable knowledge.
- vi. **Administration.** Administration means carrying out N3CN's proper management and oversight of its Data Platform and its responsibilities under *the 2019 PRIMARY CARE CASE MANAGEMENT SERVICES CONTRACT # 37761 BETWEEN THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH BENEFITS AND NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.* or any successor agreement for accessing and using State-owned data, this Agreement, and Applicable Law, this Agreement, and any other agreement between N3CN and any third party for accessing and using Data through the Data Platform. Without limiting the generality of the foregoing, Administration also includes performing record maintenance, conducting or assisting in audits permitted or required, evaluating performance of the Data Platform, conducting technical system support on the Data Platform and the Data, carrying out N3CN's and Participant's functions and obligations under this Agreement (including any necessary data extractions from Participant's systems and applications), and all applicable BAAs, other agreements, and policy and procedure documents, and all other activities authorized by the N3CN Board of Directors consistent with Applicable Law.
- w. **Person.** "Person" means both a Natural Person and any entity managed by Natural Persons, except where Person is part of the term "Natural Person".
- x. **Personally Identifiable Information ("PII").** "PII" means a Natural Person's first name or initial followed by their last name in combination with identifying information as defined in **North Carolina General Statute § 14-113.20(b)**, other than email addresses and related internet account information.
- y. **Protected Health Information ("PHI").** "PHI" means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
- z. **Provider Services.** "Provider Services" refer to activities that support healthcare providers participating in the PCCM Program, including Practice Support, Behavioral Health Integration, and Pharmacy Support.
- aa. **Representative.** "Representative" includes any employee, contractor, agent, officer, or consultant of a Party, including any Affiliate.
- bb. **Required by Law.** "Required by Law" has the meaning ascribed to this term in **45 C.F.R. § 164.103**.
- cc. **State.** "State" refers to the State of North Carolina, including all administrative agencies involved in the management of Medicaid and Health Choice data, populations, and programs.

- dd. **State-owned data.** “State-owned data” means Medicaid and Health Choice Claims Data and Medicaid and Health Choice enrollment data, provided by the State to either Party, and for which the State of North Carolina is the Covered Entity for HIPAA purposes.
- ee. **Subcontractor.** “Subcontractor”, when capitalized, means those entities including PCCM Networks to which N3CN contractually delegates any of its care management or provider support responsibilities which are contractual responsibilities of N3CN under contracts with the State or any other payor of healthcare or care management services.
5. **Intent of the Parties.** It is the express intent of the Parties that this Agreement be executed to ensure that Data accessed, used, stored, maintained, or transferred through the Data Platform as part of participation in Care Management and Provider Services are protected from unauthorized use or disclosure and are used and disclosed consistent with Permitted Purposes, N3CN and State policies and procedures, and Applicable Law.
6. **License to the Data.** During the Term of this Agreement, and subject to the terms and obligations of this Agreement and all applicable policies and procedures, for each type of Data owned or controlled by a Party, that Party grants to the other Party and its Authorized Users a limited, non-exclusive, non-transferable, non-commercial license to access, use, maintain, store, and transfer Data through the Data Platform for the Permitted Purposes subject to all obligations and restrictions contained in this Agreement. Each Party’s license granted hereunder ends immediately upon the termination or expiration of this Agreement. The ending of a Party’s license hereunder does not terminate a Party’s obligations to keep and to make available any Data required to be kept or made available to meet any obligation Required by Law or required by *the 2019 PRIMARY CARE CASE MANAGEMENT SERVICES CONTRACT # 37761 BETWEEN THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH BENEFITS AND NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.* or any successor agreement between N3CN and the State related to the access and use of State-owned data.
7. **License to the Data Platform.** During the Term of this Agreement, and subject to the terms and obligations of this Agreement and all applicable policies and procedures, N3CN grants to Participant and to Participant’s Authorized Users a limited, non-exclusive, non-transferable, non-commercial license to access and use the Data Platform solely to enable Participant to fulfill its obligations under this Agreement and *the 2019 PRIMARY CARE CASE MANAGEMENT SERVICES CONTRACT # 37761 BETWEEN THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH BENEFITS AND NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.* or any successor agreement between N3CN and the State related to the access and use of State-owned data. Participant and Participant’s Authorized Users must at all times comply with all applicable N3CN and State policies regarding access to and use of State-owned data and any component of the Data Platform. When Participant’s license to the Data Platform ends for any reason, Participant and all its Authorized Users must immediately cease all access to and use of the Data Platform and any Data.
8. **Participants.** This Agreement will be used by all entities participating in Care Management and Provider Services administered by N3CN. Types of Participants include:
- a. Behavioral Health Providers (non-LME/MCO)
 - b. County or other Government Agency

- c. Division of State-owned Hospital Facilities (“DSOHF”)
- d. HIV Case Management Providers
- e. Hospital and Hospital Systems
- f. Local Management Entity / Managed Care Organization (“LME/MCO”)
- g. Primary Care Provider (“PCP”), Group Practices
- h. Subcontractor

If Participant does not clearly fit into one of the categories a-g, Participant will be deemed to be in category h regardless of any similarities or dissimilarities Participant has to other categorizations.

9. **General Obligations Applicable to Participant.** Participant is responsible for its Participating Entities and Authorized Users, including any breach of this Agreement by its Participating Entities or Authorized Users or by anyone using Participant’s facilities or any equipment or software owned, leased, or controlled by Participant to access or use the Data Platform or the Data, including for any purpose other than a Permitted Purpose. In recognition of these obligations, Participant agrees to:
- a. Follow all Applicable Law.
 - b. Work with designated care managers and other N3CN and Subcontractor staff under the PCCM Program to enhance continuity of care for Enrollees and to help promote self-management of physical and behavioral health conditions for Enrollees.
 - c. Ensure its Authorized Users have all necessary equipment, software, and other resources to access and use the Data Platform and the Data in accordance with the technical and operational specifications provided by N3CN.
 - d. Ensure Participant’s Representatives, Participating Entities, and Authorized Users access and use the Data Platform and access, use, store, maintain, and transfer Data only for Permitted Purposes and consistent with all Applicable Law.
 - e. Maintain and provide to N3CN as requested an ongoing list of all Participating Entities and Authorized Users of Participant.
 - f. Monitor all access and use of the Data Platform and all access, use, storage, maintenance, and transfer of Data occurring at any location owned, leased, or controlled by Participant or any Authorized User of Participant, or occurring through equipment under the ownership or control of Participant or any Authorized User of Participant.
 - g. Implement and maintain reasonable administrative, technical, and physical safeguards to protect the confidentiality, integrity, and availability of the Data Platform and the Data.
 - i. Administrative safeguards must include written policies and procedures for managing access, use, storage, maintenance, transfer, and disclosure of Data and access and use of the Data Platform and must include sanctions for any violations of those policies and procedures.
 - ii. Technical safeguards must include appropriate security lockouts, password management, data encryption, and related mechanisms to ensure the privacy and security of the Data Platform and the Data.
 - iii. Physical safeguards must include restricted access to places where the Data Platform may be accessed or used, and where the Data may be accessed, used, stored, maintained, or transferred.

- h. Ensure Authorized Users have appropriate role-based access to the Data Platform and the Data that complies with the Minimum Necessary Standard under HIPAA.
- i. Implement and maintain written policies and procedures that address: (1) identification and authorization of Authorized Users; (2) audit controls and periodic reviews to ensure all access and use occurs by Authorized Users for Permitted Purposes only; (3) notification to Authorized Users of any changes in the Data Platform, the Data, or the policies and processes through which they are accessed or used; (4) notification to N3CN of any violation of this Agreement, including any unauthorized access to or use of the Data Platform or any unauthorized access, use, storage, maintenance, or transfer of the Data; and (5) protection against malware and other mechanisms, both tangible and intangible, designed to disrupt, destroy, damage, or delay the operation of the Data Platform or the Data.
- j. Follow all N3CN and State-issued policies and procedures related to accessing, using, storing, maintaining, transferring, monitoring, and auditing State-owned data and Data within the Data Platform. This obligation includes communicating to N3CN and working with N3CN to resolve any suspected violations of those policies and procedures including any suspected breaches of PHI, IIHI, or PII.
- k. Report to N3CN monthly or as requested the results of all periodic audits and reviews to ensure all access to and use of the Data Platform and the Data are by Authorized Users for Permitted Purposes according to Applicable Law. Participant must perform audits and reviews at least monthly.
- l. Cooperate fully with N3CN, the State, and any regulatory or credentialing authority in any investigation or audit by making available all personnel, and all books, records, and related information created or maintained in connection with Participant's access and use of the Data Platform or access, use, storage, maintenance, or transfer of Data.
- m. Notify N3CN as soon as practical after first becoming aware of a Data Breach. In the case of a breach involving social security numbers, Participant must notify N3CN within sixty minutes of becoming aware of the breach. This timeline is a State requirement for all entities accessing and using State-owned data. For confirmed breaches of PHI, notification must be made to N3CN within twenty-four hours. This timeline also is a State requirement for entities accessing and using State-owned data. The notification will include, to the extent available:
 - i. A brief description of what happened, including the date of the Data Breach and the date of discovery of the Data Breach;
 - ii. The identification of each Individual whose Data has been, or is reasonably believed to have been, accessed, acquired, used, or Disclosed;
 - iii. A description of the roles of the people involved in the Data Breach (e.g., employees, Authorized Users, service providers, unauthorized persons, etc.);
 - iv. A description of the types of Data involved in the Data Breach (whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of identifiable information);
 - v. The number of Individuals or records impacted/estimated to be impacted by the Data Breach;

- vi. A description of actions taken to investigate the Data Breach, to mitigate harm to Individuals, and to protect against any further Data Breaches;
 - vii. The current status of the Data Breach (under investigation or resolved);
 - viii. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address; and
 - ix. Corrective actions taken and planned to prevent a similar Data Breach.
- n. Ensure that any subcontractors, agents, or other third parties used by Participant or by any Authorized User execute all necessary documents binding those subcontractors, agents, or other third parties to protect the privacy and security of the Data Platform and the Data consistent with the obligations of this Agreement and all Applicable Law.

10. N3CN Data Obligations. N3CN agrees to:

- a. Follow all Applicable Law.
- b. Ensure N3CN's workforce members, including any contractors, access and use the Data Platform and access, use, store, maintain, and transfer Participant Data only for Permitted Purposes and consistent with all Applicable Law.
- c. Monitor all access and use of the Data Platform and all access, use, storage, maintenance, and transfer of the Data occurring at a location owned, leased, or controlled by N3CN, or occurring through equipment under the ownership or control of N3CN, to ensure all access and use is only for Permitted Purposes and consistent with all Applicable Law.
- d. Implement and maintain reasonable administrative, technical, and physical safeguards to protect the confidentiality, integrity, and availability of the Data Platform and the Data.
 - i. Administrative safeguards must include written policies and procedures for managing access, use, storage, maintenance, transfer, and disclosure of Data and access and use of the Data Platform and must include sanctions for any violations of those policies and procedures.
 - ii. Technical safeguards must include appropriate security lockouts, password management, data encryption, and related mechanisms to ensure the privacy and security of the Data Platform and the Data.
 - iii. Physical safeguards must include restricted access to places where the Data Platform and the Data may be accessed, used, or disclosed.
- e. Ensure N3CN workforce members have appropriate role-based access to the Data Platform and the Data that complies with the Minimum Necessary Standard under HIPAA.
- f. Implement and maintain written policies and procedures that address: (1) proper access to and use of the Data Platform and the Data; (2) audit controls and periodic reviews to ensure access to and use of the Data Platform and the Data is for Permitted Purposes only; (3) notification to Participant of any changes in the Data Platform, the Data, or the policies and processes through which they are accessed or used; (4) notification to Participant of any unauthorized access to or use of Participant Data by N3CN's Authorized Users of which N3CN becomes aware (unless N3CN is required not to make such notification as part of an ongoing criminal investigation); and (5) protection against malware and other mechanisms, both tangible and intangible, designed to disrupt, destroy, damage, or delay the operation of the Data Platform or the Data.

- g. Notify Participant as soon as practical after first becoming aware of a Data Breach affecting Data provided by Participant. For disclosures of social security numbers or confirmed breaches of Participant data, this notice will occur promptly after reporting the Data Breach to the State unless the State or an investigatory agency requests notification be delayed so as not to hinder any law enforcement activities or investigations. The notification will include, to the extent available:
 - i. A brief description of what happened, including the date of the Data Breach and the date of discovery of the Data Breach;
 - ii. The identification of each Individual whose Data has been, or is reasonably believed to have been, accessed, acquired, used, or Disclosed;
 - iii. A description of the roles of the people involved in the Data Breach (e.g., employees, Authorized Users, service providers, unauthorized persons, etc.);
 - iv. A description of the types of Data involved in the Data Breach (whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of identifiable information);
 - v. The number of Individuals or records impacted/estimated to be impacted by the Data Breach;
 - vi. A description of actions taken to investigate the Data Breach, to mitigate harm to Individuals, and to protect against any further Data Breaches;
 - vii. The current status of the Data Breach (under investigation or resolved);
 - viii. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address; and
 - ix. Corrective actions taken and planned to prevent a similar Data Breach.
- h. Ensure that any subcontractors, agents, or other third parties used by N3CN execute all necessary documents binding those subcontractors, agents, or other third parties to protect the privacy and security of the Data Platform and the Data consistent with the obligations of this Agreement and all Applicable Law.

11. Obligations Based on Category of Participant. This Agreement must include the applicable exhibit(s), as listed below and incorporated herein by reference, to describe additional obligations specific to Participant's type of entity. If Participant is a type that does not have additional obligations based on its type, Participant will not have an attached exhibit. If Participant may perform obligations as more than one type of entity, more than one exhibit will be attached, and all those obligations will apply to Participant.

- a. Division of State-owned Hospitals and Facilities. Additional DSOHF obligations will be those described in Exhibit: DSOHF.
- b. County or other Government Agency. Additional County obligations will be those described in Exhibit: Governmental Entity.
- c. Subcontractor. Additional Subcontractor obligations will be those described in Exhibit: Subcontractor.

- d. Hospital, Hospital Groups, Primary Care Practices, Primary Care Practice Groups. These additional obligations will be described in Exhibit: Hospital / Hospital Groups / Primary Care Practices / Primary Care Practice Groups.

12. Mutual Business Associate Obligations. Each Party individually stands as a Business Associate to the other Party regarding PHI provided by that other Party, whether the providing Party is itself a Covered Entity or a Business Associate for that PHI. Therefore, each Party individually agrees to the following Business Associate Agreement provisions for any PHI it accesses or uses for which it is not the owner or the primary custodian. Each Party, in its role as a Business Associate, agrees to:

- a. Use PHI in its possession only as permitted or required by this Agreement or as otherwise Required by Law.
- b. Disclose PHI in its possession to third parties only if (i) the disclosures are Required By Law, or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under **45 CFR §164.504(e)(4)**, and the third party agrees in writing to notify Business Associate of any instances of which it becomes aware that the confidentiality of the information has been breached.
- c. Comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information (ePHI), to prevent use or disclosure of PHI other than as provided for by this Agreement.
- d. Acknowledge its continuing obligations under HIPAA and agree to comply with any subsequent regulations promulgated under HIPAA and any guidance thereto.
- e. Acknowledge that (i) the foregoing requirements shall apply to Business Associate in the same manner that such requirements apply to a Covered Entity, and (ii) Business Associate shall be subject to the civil and criminal enforcement provisions set forth at **42 USC 1320d-5 and 1320d-6**, as amended from time to time, for failure to comply with the requirements and any applicable guidance subsequently issued by the Secretary of the Department of Health and Human Services ("Secretary") with respect to such requirements.
- f. Disclose to its subcontractors, agents, or other third parties only the minimum PHI necessary to perform or fulfill the Permitted Uses.
- g. Transmit any ePHI it creates, receives, or maintains in a manner that the ePHI is rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of technology or methodology specified by the Secretary in the guidance issued under **section 13402(h)(2) of Public Law 111-5**.
- h. Establish procedures for mitigating any deleterious effects from any improper use or disclosure of PHI from Business Associate or any subcontractor or agent thereof.
- i. Make available all records, books, agreements, policies, and procedures relating to the use or disclosure of PHI to the Secretary for purposes of investigating or determining compliance with HIPAA.
- j. Upon prior written request, make available to the other Party during normal business hours at Business Associate's offices all records, books, agreements, policies, and procedures relating to

the use and disclosure of PHI to determine Business Associate's compliance with the terms of this Agreement.

- k. Document all disclosures of PHI that require an accounting of disclosures as required under **45 CFR §164.528**. Business Associate further agrees, within thirty (30) days of receiving a written request from the other Party, to provide to that Party such information as is requested and reasonably available to permit that Party to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with **45 CFR §164.528**.
- l. Notify the other Party within ten (10) business days of Business Associate's discovery of:
 - i. any use or disclosure of PHI not provided for by this Agreement;
 - ii. any breach of unsecured PHI as defined at **45 CFR §164.402**; and
 - iii. any Security Incident of which it becomes aware. Pings and related broadcast actions not resulting in any known or suspected security interference shall not be reported except as aggregate statistics of such events as requested by the other Party.

Notification under this section shall include, as reasonably available, the identification of each individual whose PHI has been, or is suspected to have been, accessed, acquired, or disclosed. Business Associate further agrees to make available in a reasonable time and manner any other available information needed by the other Party to respond to individual and governmental inquiries regarding any of the notifications received from Business Associate. The Party responsible for any Data Breach, through its actions or omissions or through those of its agents, shall be responsible for notifying the persons affected and any administrative bodies in accordance with Applicable Law. The Parties agree to coordinate any public announcement required under Applicable Law.

- m. Comply with all the restrictions on access, use, disclosure, storage, and transmission of PHI found in the *2019 PRIMARY CARE CASE MANAGEMENT SERVICES CONTRACT # 37761 BETWEEN THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH BENEFITS AND NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.* and any successor agreement between N3CN and the State for accessing and using State-owned data.

13. Mutual Covered Entity Obligations. To the extent either Party is a Covered Entity regarding any Data it provides, accesses, or uses through the Data Platform, that Party agrees to:

- a. inform the Business Associate of any changes in the notice of privacy practices that the Covered Entity provides to individuals pursuant to **45 CFR §164.520** that affect Business Associate's use or disclosure of PHI, and provide to the Business Associate, upon request, a copy of the notice of privacy practices currently in use.
- b. inform the Business Associate of any changes in, or revocation of, the authorization provided pursuant to **45 CFR §164.508**, to the extent relevant to any obligations under this Agreement.
- c. inform the Business Associate, in writing and in a timely manner, of any arrangements required of Covered Entity under **45 CFR § part 160 and 164** that may affect the use or disclosure of PHI required by the Business Associate under this Agreement, including restrictions regarding the use or disclosure of PHI as provided for in **45 CFR §164.522**.
- d. make any amendments to PHI that Covered Entity agrees to pursuant to **45 CFR §164.526**.

- e. document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with **45 CFR §164.528**.

14. Participant Obligations when neither a Covered Entity nor a Business Associate. Any Participant who does not fit the description of a Covered Entity or a Business Associate, by executing this Agreement agrees to be bound to all the obligations for safeguarding the privacy and security of the Data Platform and the Data as if Participant were a Business Associate, for all Data accessed or used by Participant.

15. Ownership of Data. Access to or use of Data under this Agreement does not change the ownership of Data accessed or used. Notwithstanding the foregoing, Data provided through the Data Platform may become integrated into patient records and may no longer be separable from the Data of the receiving entity. The Parties acknowledge it is impractical to require deletion of Data that has been integrated into other systems and applications, but that Data shall remain under all the privacy and security and Permitted Use restrictions set forth in this Agreement.

16. Confidential Information. Confidential Information disclosed to a Party must be kept confidential until it has been disclosed publicly by someone authorized by the owner of the Confidential Information. Confidential Information must only be retained while needed to perform under this Agreement. When the need to perform ends for any reason, that Confidential Information disclosed, including all copies, must be returned to the disclosing Party or destroyed with a certificate of destruction attested by the person responsible for its destruction. Records that cannot be destroyed or returned must be kept confidential until those records have lost their confidential nature through no fault of the Party receiving the Confidential Information. A record of this Agreement may be retained securely as a record of the Party's obligations. Confidential Information must only be used for the specific purpose for which it was disclosed. A Party receiving Confidential Information must take all reasonable measures to prevent unauthorized disclosure. At a minimum, a Party must treat Confidential Information with as much security as it treats its own confidential information, and never with less than reasonable care.

17. Term and Termination.

- a. **Term.** This Agreement commences on its Effective Date and continues through the thirty-first day of December of the year in which it was signed by Participant (the "Initial Term"). Thereafter, this Agreement renews automatically for consecutive one (1) year Terms (the "Renewal Terms") until terminated by one of the Parties as provided herein below. The Initial Term and all Renewal Terms are collectively the "Term" of this Agreement.
- b. **Automatic Termination.** If Participant is participating only in the State program covered by the *2019 PRIMARY CARE CASE MANAGEMENT SERVICES CONTRACT # 37761 BETWEEN THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH BENEFITS AND NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.*, then this Agreement will terminate immediately upon the termination of that contract, except that this Agreement will continue in force under any successor agreement between N3CN or its Affiliate and the State for accessing and using State-owned data. Additionally, if any Applicable Law is changed making Participant's

access or use of the Data Platform or the Data unlawful, or Participant becomes ineligible to access or use the Data Platform or the Data, then this Agreement will end immediately upon that change.

- c. **Termination by Participant.** Participant may terminate this Agreement for any or no reason sixty (60) days after providing written notice to N3CN of Participant's intent to terminate, provided Participant also terminates participation in and ceases all activities related to any programs covered by this Agreement. Termination of this Agreement will cause N3CN to de-authorize Participant and all Participant's Authorized Users from accessing the Data Platform and the Data.
- d. **Termination by N3CN.** N3CN may terminate this Agreement for any or no reason thirty (30) days after providing written notice to Participant of N3CN's intent to terminate. Termination of this Agreement will cause N3CN to de-authorize Participant and all Participant's Authorized Users from accessing the Data Platform and the Data. N3CN may terminate this Agreement immediately if it determines Participant has caused or allowed a Data Breach which would require notification to affected Individuals and the State.
- e. **Survival of Data Obligations.** In addition to any other survival terms in this Agreement, the Parties expressly acknowledge that termination of this Agreement will not and shall not be deemed to relieve any Party or its Authorized Users from maintaining the privacy and security of any Data accessed or used by or incorporated into that Party's systems and applications, and State-owned data may not be used for any purpose other than performing under this Agreement and may not be disclosed to any third party for any reason without the prior written permission of N3CN and the State.

18. Disclaimers.

- a. **Clinical Decision Support and Information.** The Data Platform and the Data may contain information, protocols, and input relating to clinical decision-making. The Parties mutually understand and agree that any such information, protocols, and input available through the Data Platform do not, and shall not be construed to act as, a substitute for a healthcare provider's professional judgment. THE PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OF ACCURACY OR COMPLETENESS OF ANY DATA OR INFORMATION INPUT INTO THE DATA PLATFORM BY ANY PARTY, AUTHORIZED USER, OR ANY THIRD PARTY. PARTICIPANT AND EACH AUTHORIZED USER ASSUME ALL RISK AND RESPONSIBILITY FOR ITS USE OF SUCH DATA, INFORMATION, PROTOCOLS, AND INPUT OBTAINED FROM OR THROUGH THE DATA PLATFORM. N3CN DOES NOT RECOMMEND OR ENDORSE ANY PROVIDER OF HEALTHCARE OR HEALTHCARE RELATED PRODUCTS, ITEMS, OR SERVICES, AND NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO IMPLY ANY SUCH ENDORSEMENT.
- b. **External Networks, Devices, Carrier Lines, and Exchanges.** Connections to external data repositories and information technology systems ("Networks") may be made available through or in conjunction with the Data Platform to facilitate the storage and transmission of Data. External monitoring and alert devices ("Peripherals") may also be made available through or in conjunction with the Data Platform to facilitate telehealth services. Participant hereby agrees and acknowledges that N3CN may access such Networks and Peripherals to facilitate various features in the Data Platform and that PHI may be stored and transmitted using such Networks and Peripherals. N3CN MAKES NO REPRESENTATION OR WARRANTY REGARDING THE AVAILABILITY

OF ANY PARTICULAR NETWORKS OR CARRIER LINES OR PERIPHERALS OR ANY PARTICULAR DATA SOURCE OR NETWORK PARTICIPANT OR DEVICE MANUFACTURER. PARTICIPANT ACKNOWLEDGES THAT ACCESS TO THE SYSTEM WILL BE PROVIDED OVER VARIOUS FACILITIES AND COMMUNICATION LINES, AND INFORMATION WILL BE STORED ON REMOTE SERVERS, REPOSITORIES, AND STORAGE MEDIA AND TRANSMITTED OVER LOCAL EXCHANGE AND INTERNET BACKBONE CARRIER LINES AND MOBILE NETWORKS AND THROUGH ROUTERS, SWITCHES, AND OTHER DEVICES OWNED, MAINTAINED, AND SERVICED BY THIRD-PARTY CARRIERS, UTILITIES, AND SERVICE PROVIDERS, ALL OF WHICH ARE BEYOND N3CN'S CONTROL. AT ANY TIME, SERVERS, REPOSITORIES, PERIPHERALS, DATA SOURCES, AND OTHER NETWORK PARTICIPANTS MAY BE ADDED OR DELETED WITHOUT PRIOR NOTICE. PARTICIPANT ACKNOWLEDGES AND AGREES THAT AT ANY TIME AND WITHOUT PRIOR NOTICE, A DATA SOURCE MAY ELECT NOT TO SEND OR RECEIVE DATA OR MESSAGES AND A PERIPHERAL MAY NO LONGER BE AVAILABLE IN CONJUNCTION WITH THE DATA PLATFORM. IN ADDITION, N3CN HEREBY DISCLAIMS ANY LIABILITY FOR OR RELATING TO: (I) THE INTEGRITY, PRIVACY, SECURITY, CONFIDENTIALITY, OR USE OF ANY INFORMATION OR DATA WHILE IT IS TRANSMITTED VIA CARRIER LINES; OR (II) ANY DELAY, FAILURE, INTERRUPTION, INTERCEPTION, LOSS, TRANSMISSION, OR CORRUPTION OF ANY DATA OR INFORMATION ATTRIBUTABLE TO TRANSMISSION ON THE CARRIER LINES. USE OF THE CARRIER LINES IS SOLELY AT THE RISK OF PARTICIPANT AND ITS AUTHORIZED USERS, AND IS SUBJECT TO ALL APPLICABLE LOCAL, STATE, AND NATIONAL LAWS.

- c. **Data Platform Services and Software.** THE DATA PLATFORM IS PROVIDED ON AN "AS IS" BASIS ONLY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, N3CN DOES NOT REPRESENT OR WARRANT THAT THE DATA PLATFORM WILL MEET THE REQUIREMENTS OF ANY PERSON OR ENTITY OR WILL OPERATE ERROR-FREE OR CONTINUOUSLY, AND N3CN MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES AGREE THAT NO AGREEMENTS, REPRESENTATIONS, OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT HAVE BEEN MADE, AND THAT NO FUTURE AGREEMENT, REPRESENTATION, OR WARRANTY UNDER THIS AGREEMENT SHALL BE EFFECTIVE UNLESS EXPRESSLY STATED IN AN AMENDMENT TO THIS AGREEMENT.
- d. **Patient Information.** PATIENT INFORMATION THAT MAY BE PROVIDED TO PARTICIPANT AND THEIR AUTHORIZED USERS THROUGH THE DATA PLATFORM ARE BEING PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, WHETHER STATUTORY OR COMMON LAW, ARISING FROM COURSE OF DEALING, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. NO PARTY WARRANTS THAT THE PERFORMANCE OF ITS SYSTEM OR THE DATA PLATFORM OR THE DELIVERY OF PATIENT INFORMATION WILL BE TIMELY, UNINTERRUPTED, OR ERROR FREE.

- 19. **Limitations of Party Liability.** This provision is not meant to and shall not be deemed to limit the applicability of the *North Carolina Tort Claims Act* and any immunities available to government entities thereunder, including any sovereign immunity claim. Subject to the limitations described below, each Party agrees to be liable for all actions and failures to act of its Representatives, Participating Entities, and Authorized Users, including with respect to Participant any unauthorized access or use of Data or the Data Platform by anyone using facilities, equipment, or software owned, leased, controlled, or

used by Participant, its Participating Entities, or its Authorized Users. Without limiting the classification of other types of damages, damages arising from breaches of indemnification, confidentiality, insurance, or data privacy and security obligations are expressly agreed to be direct damages.

- a. **Damages Subject to Complete Limitation of Liability.** NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY, OR TO ANY THIRD PARTY, FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES WHETHER ARISING IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY, REGARDLESS OF WHETHER A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY FOR SUCH DAMAGES. N3CN SHALL HAVE NO LIABILITY TO PARTICIPANT OR TO ANY THIRD PARTY FOR ANY CLAIMS OR DAMAGES ARISING OUT OF OR RELATED TO PARTICIPANT'S FAILURE TO PROVIDE THE DATA REQUIRED IN THE FORMAT REQUIRED BY THIS AGREEMENT.
- b. **Damages Not Subject to Limitation of Liability.** NEITHER PARTY SHALL CLAIM ANY EXCLUSION OR LIMITATION OF LIABILITY RELATED TO ITS INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, OR TO DAMAGES RESULTING FROM THAT PARTY'S, ITS REPRESENTATIVES', OR ITS AUTHORIZED USERS' ACTS OR OMISSIONS THAT RESULT IN OR ALLOW A DATA BREACH.
- c. **Damages Subject to a Cap.** THE PARTIES AGREE TO LIMIT THEIR LIABILITY TOWARD THE OTHER FOR OTHER DIRECT DAMAGES TO THE AMOUNT OF INSURANCE COVERAGE MAINTAINED BY THE INSURED PARTY, OR THE AMOUNT OF INSURANCE REQUIRED BY STATUTE OR THIS AGREEMENT, WHICHEVER IS GREATER, FOR THE TYPE OF DAMAGE SUSTAINED. NOTWITHSTANDING THE FOREGOING, IN THE EVENT A PARTY DROPS OR LOWERS OR FAILS TO OBTAIN INSURANCE COVERAGE OTHER THAN AS AGREED TO IN WRITING BETWEEN THE PARTIES, THOSE DIRECT DAMAGES WILL NOT BE SUBJECT TO ANY CAP.
- d. **Acts of Other Participants.** Neither Party to this Agreement shall be responsible to the other for any claims, demands, expenses, costs, damages, liabilities, or losses, including reasonable attorney fees (collectively "Claims"), which may arise from any acts or failures to act by other participants or any persons acting for or on behalf of another participant. Participant shall hold N3CN harmless against all Claims arising from or relating to the acts or omissions of its Authorized Users and any person who uses the security credentials of one of those Authorized Users, whether lawfully or unlawfully. N3CN shall hold Participant harmless against all Claims arising from or relating to the acts or omissions of its Authorized Users and any person who uses the security credentials of one of those Authorized Users, whether lawfully or unlawfully.
- e. **Patient Care.** Participant and Participant's Authorized Users are solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management of Individuals resulting from or in any way related to the use of the Data Platform or the Data. Neither Participant nor any of their Authorized Users shall have any recourse against N3CN for any Claim made by or on behalf of any Enrollee or other patient, and Participant, on behalf of itself, its Representatives, and its Authorized Users hereby irrevocably waives any and all Claims against N3CN, whether now existing or hereafter accruing, relating to or resulting from Participant's or its Authorized Users' use or misuse of the Data Platform or the Data.

20. **Notices.**

- a. **Business operations/issues Notices.** The primary means of communication between the Parties for Notice purposes regarding business operations and other non-legal issues related to performance under this Agreement shall be email. Either Party may change its email address of its contacts by giving written notice to the other Party of such change.
- i. N3CN Business email: jalexander@communitycarenc.org
 - ii. Participant Business email: _____

Business operations and other non-legal issues allowing or requiring notice may also be sent by US Mail and delivered to the addresses provided herein below.

- b. **Legal Notices.** All Notices allowed or required under this Agreement relating to legal matters, including contract amendments, contract termination, breaches of the Agreement or any obligation contained therein, audits, and all related legal matters must be sent by US Mail, certified with return receipt requested, or by a nationally recognized courier (e.g. FedEx, UPS), and must be addressed using the address information provided below, as amended by the Parties from time to time.
- i. For N3CN: *2300 Rexwoods, Drive, Raleigh, NC 27607 ATTENTION: General Counsel*
 - ii. For Participant: _____

21. **Remedies.** The rights and remedies of the Parties under this Agreement are cumulative and will not be construed as available only in the alternative. The Parties agree a material breach of its Confidentiality, Indemnification, or Insurance obligations would cause injury and damage which could not adequately be compensated for in an action at law. Therefore, a Party will be entitled to injunctive and other equitable relief in the event of a material breach, or to prevent the imminent breach of any such obligation by the other Party or its Representatives or Authorized Users, without the need for prior proof or any posting of bond. Resort to equitable relief will not be construed to be a waiver of any other rights or remedies of the Parties.

22. **Amendments.** The form of this Agreement has been accepted by the North Carolina Department of Health and Human Services, Department for Health Benefits (“DHB”), for use under the contract *the 2019 PRIMARY CARE CASE MANAGEMENT SERVICES CONTRACT # 37761 BETWEEN THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH BENEFITS AND NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.* and any successor agreement between N3CN and the State for accessing and using State-owned data. N3CN will not entertain substantive changes to the terms of this Agreement when used for protecting State-owned data. If Participant is not participating in any State-funded programs or using any State-owned data, this Agreement may be amended only in a writing signed by both Parties. The Parties agree that if Participant signs but does not date the Agreement, N3CN may fill in the date of Participant’s signature without need for a formal amendment and will notify Participant of this act if it occurs.

23. **Assignment.** N3CN may assign or transfer this Agreement to an Affiliate, a successor-in-interest, or to an acquirer of all or substantially all of the assets of N3CN. Participant may not assign or transfer this Agreement, or any part thereof, without the prior written consent of N3CN. In the event Participant purchases or is purchased by another entity, no new Authorized Users are permitted until

the Parties amend this Agreement to reflect the change in ownership and the acceptance by the new participant of all the obligations of Participant under this Agreement. This Agreement shall inure to the benefit of N3CN, Participant, their successors and permitted assigns.

24. **Waiver.** If either Party waives the enforcement of any obligation or right created under this Agreement, that waiver shall not operate as or be construed as an amendment or modification of this Agreement. Further, such waiver will not bar any subsequent enforcement of the same or any other obligation or right under this Agreement.
25. **Integration.** This Agreement contains the entire understanding of the Parties as to its contents and supersedes all other prior and contemporaneous contracts, documents, and agreements in relation to the subject matter of this Agreement.
26. **Severability.** If any of the provisions this Agreement are adjudicated by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement will remain in full force and effect and the invalid, void, or unenforceable provision will not be part of the Agreement.
27. **Independent Contractors.** The Parties to this Agreement are contracting as independent contractors one toward the other, and nothing herein shall be construed to create a joint venture, agency, partnership, or employer-employee relationship. Neither Party will have the power to bind the other Party. Neither Party will have any claim against the other Party for employee benefits of any kind.
28. **No Third-Party Beneficiaries.** This Agreement does not and will not create in any natural person, corporation, partnership or other organization or entity other than N3CN and Participant any benefits or rights, and this Agreement will be effective only as to N3CN and Participant and their successors and permitted assigns. Any third party who benefits from any provision of this Agreement shall be deemed an incidental beneficiary only.
29. **Duplicate & Electronic Originals.** This Agreement may be executed simultaneously in one or more counterparts, each of which is deemed an original but all of which together constitute a single instrument. Any conflict among duplicate originals shall be resolved to give full effect to the agreement under common sense rules of construction. A conflict will not render the agreement void, invalid, or unenforceable. Copies transmitted electronically are the equivalent to originals, as are signatures applied to such documents and transmitted electronically. The Parties agree that signed electronic copies will be binding upon them the same as though they were hardcopies with original signatures.
30. **Insurance.** Each Party agrees to self-insure, or to obtain and maintain reasonable policies of insurance of types and in amounts sufficient to protect itself, its employees, and its agents against foreseeable liabilities arising from work contemplated under this Agreement. To the extent a Party does not maintain a sufficient self-insurance fund or insurance, the cap on liability for direct damages will not apply to that under-insured Party.
31. **Survival.** Any provisions of this Agreement, including pass-through State requirements, that by their nature extend beyond the Term or expiration of the Agreement, will survive the termination or expiration of the Agreement. Without limiting the generality of the foregoing, the Confidentiality,

Indemnification, Insurance, and Remedies provisions will survive termination or expiry of this Agreement. In addition, any entity in possession of or having access to State-owned data must continue to protect the privacy and security of that data after termination of this Agreement so long as that entity retains possession of or access to that data and may not use or allow access to that data for any purpose without the prior written consent of N3CN or the State.

32. **Authority to Sign.** N3CN and Participant warrant they have the capacity to enter into and perform the obligations under this Agreement and all activities contemplated herein, and that all corporate and other actions required to authorize them to enter into and perform this Agreement were properly taken.

33. **Governing Law.** This Agreement will be governed by and construed under, and the rights and liabilities of the Parties determined by, the laws and regulations of the State of North Carolina.

34. **Captions and Headings.** The headings and captions in this Agreement are for convenience only and will not affect the interpretation of the Agreement.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, execute this Participation Agreement as of the dates provided herein below:

North Carolina Community Care Networks, Inc.

[Legal Name of Participant]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**Exhibit
Governmental Entity**

For all Counties, health districts, and other governmental agencies or entities that participate in Care Management and Provider Services, these Participants will have the following additional specific obligations:

1. Work with N3CN and any designated Subcontractors to review periodic performance measures and other metrics from both standard and ad hoc reports and compare performance with quality, access, cost, and utilization benchmarks.
2. Participate in Provider Satisfaction Surveys administered by N3CN.
3. Provide the Care Management and Provider Services for the programs listed in the Payments section below.
4. Follow all published DHB, Department, and N3CN policies regarding travel expenses, international contractors, use of State funds, and other matters applicable to performance under this Agreement.
5. Comply within a reasonable timeframe with all N3CN requests for information related to financial and clinical activities of Participant performed pursuant to contract #37761 and any successor contract.

Payments.

For any governmental entity participating in the following programs, payment for participation as of the date of execution of the Agreement, subject to change by action of the State, will be per member per month (“PMPM”) payments as follows:

<u>Program (or Eligibility Category as appropriate)</u>	<u>PMPM Payment</u>
Care Coordination for Children (“CC4C”)	\$4.56
Obstetric Care Management (“OBCM”)	\$4.96

These payments will be made monthly, in arrears, on a net thirty (30) basis from the date N3CN receives the data on which the payment will be based. If payment amounts due to Participant for a given program decrease by more than fifty percent, N3CN may at its discretion change the frequency of payment for that program up to an annual payment. Payments will be distributed to Participant from the appropriate PCCM Network until such time as the program oversight and payment obligations are transferred to N3CN. Once N3CN assumes these responsibilities, all payments will be made via electronic funds transfer (“EFT”).

Payments may be discontinued at any time if: 1) N3CN no longer receives sufficient funds from the State to continue these services; 2) Participant fails to meet any of the performance measures required of N3CN under its obligations to the State for any services being subcontracted to Participant; or 3) N3CN terminates its contract(s) funding any of the listed programs or services.

Payments listed in this exhibit are subject to change by the State at any time. In the event the State changes its PMPM payments or eliminates any of these programs, those changes will automatically apply to this exhibit without need to amend this exhibit or the Agreement.

This instrument has been pre-audited in the manner required by, and complies with, Article 3 of Chapter 159 of the North Carolina General Statutes, also cited as “The Local Government Budget and Fiscal Control Act.”

Lucas Jackson
Assistant Finance Director

Date

Reviewed and approved as to form and content:

Elliot Engstrom
Senior Staff Attorney

Date

COUNTY OF CLEVELAND, NORTH CAROLINA

AGENDA ITEM SUMMARY

Capital Equipment Lease

Department: Emergency Medical Services

Agenda Title: Capital Equipment Lease

Agenda Summary:

Proposed Action:

ATTACHMENTS:

File Name	Description
<input type="checkbox"/> EMS_Stretcher_Staff_Report.docx	Stretcher Agreement Staff Report
<input type="checkbox"/> Cleveland_County_EMS_Lease.pdf	Lease Agreement

STAFF REPORT

To: Cleveland County Board of Commissioners

Date: June 26, 2019

From: Ryan Wilmoth, Emergency Medical Services Director

Subject: Capital Equipment Lease of EMS Stretchers

Summary Statement:

Emergency Medical Services is requesting approval for a Capital Equipment lease option for automated stretchers through Ferno, in an effort to improve service delivery and reduce the amount of capital owned by the county for EMS operations.

Review:

Stretchers are essential for EMS operations and delivery of service. Ferno is an industry leading manufacturer of stretchers that surpass safety regulations and are designed to promote service delivery. Capital Lease options for stretchers have not previously been available until Ferno introduced this model in the recent past. The lease option allows for a 7-year term which encompasses service, maintenance, and warranty options on the stretchers. Also, a lease option reduces the amount of capital the county assumes by versus purchasing stretchers directly that have a rapid depreciation in value and no resale value at the end of service life.

Background:

Pursuing the lease option for Ferno stretchers allows EMS to upgrade current model stretchers to a more modern and efficient stretcher. The current stretchers used by EMS only provides minimal lifting assistance in a vertical manner and still exposes employees to strenuous physical forces. The Ferno stretchers will enhance the delivery of service to individuals requiring EMS services in Cleveland County by providing state of the art safety features and accessories directly related to medical care. Additionally, the Ferno stretchers are nearly fully automated and reduce the amount of recurrent physical stress placed on employees by offering lifting assistance in a multitude of methods and incorporating ergonomically friendly design.

Pros: Upgraded stretchers that offers state of the art safety features that meet current requirements, improved patient safety which reduces liability, and potential for decreased workers compensation claims related to back injuries.

Cons: No cons are identified at this time.

Fiscal Impact to Cleveland County Budget:

Currently no additional fiscal impacts will be realized to the overall budget.

Action Requested:

Approval of Capital Equipment lease for EMS stretchers.

FERNO FINANCIAL SERVICES



Ferno Financial Services is pleased to provide the following financing options on your consideration. We offer a wide range of financing solutions that can be designed to meet your specific needs. The financing options shown below are based the equipment selected for your specific requirements.

Customer Full Name: Cleveland County EMS **Finance Quote Dated:** 6/10/2019
Total Finance Amount: \$523,617.60 **Quote Expiration Date:** 7/20/2019
Ferno Sales Contact: Travis Kirkland (770) 283-0764 **Ferno Quote Number:** 4590

LEASE QUOTE

\$1.00 Purchase Lease*

Finance Rate 0%

7 ANNUAL PAYMENTS

\$74,802.43 each

***Financing Terms**

Financing is subject to credit approval, documentation, and final sale amount

Customer will own the equipment at end of lease term for \$1.00

The Finance Rate is subject to change based on changes in the 5 year SWAP rate (theice.com) from the Quote

Expiration Date until all of the equipment is installed and accepted. The rate is fixed thereafter for the full lease term

Credit Application

Legal Business Name: _____ Years Under Current Ownership _____

Amount Financed*: \$ _____ Office Phone #: _____ Office Fax #: _____ Federal Tax ID #: _____

Company Address: _____ City: _____ St: _____ Zip: _____

Equipment Address (if different): _____ City: _____ St: _____ Zip: _____

Business Type: ☐ Corporation ☐ LLC ☐ C-Corp. ☐ Non-Profit ☐ Sub S Corp. ☐ Partnership ☐ LLP ☐ GP_Proprietorship

Other Business Type (please explain): _____

Section below to be completed for Partnerships, Proprietorships and if Corporation has three owners or less:

Owner #1 Name: _____ Date of Birth: _____ Home Phone #: _____ % Owner: _____

Home Address: _____ City: _____ St: _____ Zip: _____ SS#: _____

Owner #2 Name: _____ Date of Birth: _____ Home Phone #: _____ % Owner: _____

Home Address: _____ City: _____ St: _____ Zip: _____ SS#: _____

Please read the terms below then print name, sign and date:

By signing below, the undersigned consents to and authorizes the use of his/her consumer credit report by Ferno-Washington, Inc. or its assignee from time to time as may be needed in the credit and collection process and further authorizes banks, trade references and financial institutions the right to release information to Ferno-Washington, Inc. or its assignee **IMPORTANT NEW CUSTOMER INFORMATION:** To help the government fight the funding of terrorism and money laundering activities, Federal law requires financial institutions to obtain, verify and record identifying information on new customers. The personal data requested above will allow us to identify each person signing this application. We may also ask for copies of driver's licenses or other identifying documents. By providing us with a telephone number for a cellular phone or other wireless device, you are expressly consenting to receiving communications at that number – including but not limited to prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system – from Ferno-Washington, Inc. its assignee and its affiliates and agents. This express consent applies to each such telephone number that you provide to us now or in the future and permits such calls regardless of their purpose.

Print Name: _____ **Signature:** _____ **Date:** _____

*** If there are additional owners, please provide on a second application form.**

Please fax completed application to (800) 863-0582

*The monthly payments quoted in this proposal are valid for 30 days from the date hereof and are predicated on a like term, fixed rate interest rate swaps as published by the Federal Reserve on the date listed above. Should the proposed financing not commence within 60 days from the date hereof, any increase in the Swap yield will cause a corresponding increase in the monthly payment.

COUNTY OF CLEVELAND, NORTH CAROLINA

AGENDA ITEM SUMMARY

Resolution to Cancel the August 20, 2019 Regular Commissioners Meeting

Department: Commissioners

Agenda Title: Resolution to Cancel the August 20, 2019 Regular Commissioners Meeting

Agenda Summary:

Proposed Action:

ATTACHMENTS:

File Name	Description
<input type="checkbox"/> Cancel_meeting_date_August_20_2019.pdf	DRAFT Resolution

**CHANGE IN REGULAR MEETING SCHEDULE OF THE
CLEVELAND COUNTY BOARD OF COMMISSIONERS**

WHEREAS, the Cleveland County Board of Commissioners have decided that it is appropriate to cancel their regular meeting of **August 20, 2019.**

NOW, THEREFORE, BE IT RESOLVED, THAT, the Cleveland County Board of Commissioners cancel their meeting in accordance with the mandates of North Carolina General Statute 153A-40. The regular meeting schedule as adopted by the Board will resume September 3, 2019.

ADOPTED THIS 2nd DAY OF JULY, 2019.

Susan Allen, Chairman
Cleveland County Board of Commissioners

ATTEST:

Phyllis Nowlen, Clerk
Cleveland County Board of Commissioners

COUNTY OF CLEVELAND, NORTH CAROLINA

AGENDA ITEM SUMMARY

Set Public Hearing for Bank Installment Financing

Department: Finance

Agenda Title: Set Public Hearing for Bank Installment Financing

Agenda Summary:

Proposed Action:

ATTACHMENTS:

File Name

Description

No Attachments Available

COUNTY OF CLEVELAND, NORTH CAROLINA

AGENDA ITEM SUMMARY

Agriculture Economic Development Partnerships

Department:

Agenda Title: Agriculture Economic Development Partnerships

Agenda Summary: Greg Traywick, Agriculture Extension Director

Proposed Action:

ATTACHMENTS:

File Name

Description

No Attachments Available

COUNTY OF CLEVELAND, NORTH CAROLINA

AGENDA ITEM SUMMARY

Cleveland County Historic Preservation Commission

Department:

Agenda Title: Cleveland County Historic Preservation Commission

Agenda Summary: Phyllis Nowlen, Clerk to the Board

Proposed Action:

ATTACHMENTS:

File Name

Description

No Attachments Available

COUNTY OF CLEVELAND, NORTH CAROLINA

AGENDA ITEM SUMMARY

Region C Workforce Development Board

Department:

Agenda Title: Region C Workforce Development Board

Agenda Summary: Phyllis Nowlen, Clerk to the Board

Proposed Action:

ATTACHMENTS:

File Name

Description

No Attachments Available

COUNTY OF CLEVELAND, NORTH CAROLINA

AGENDA ITEM SUMMARY

Adjourn

Department:

Agenda Title: The next meeting of the Commission is scheduled for Tuesday, August 6, 2019 at 6:00 p.m. in the Commissioners Chambers located at 311 E. Marion St., Shelby.

Agenda Summary:

Proposed Action:

ATTACHMENTS:

File Name

Description

No Attachments Available