

**NORTHAMPTON COUNTY  
REGULAR SESSION  
September 15, 2014**

**Be It Remembered that the Board of Commissioners of Northampton County met on September 15, 2014 with the following present: Robert Carter, Fannie Greene, Virginia Spruill, and Chester Deloatch**

**Absent: Joseph Barrett**

**Others Present: Kimberly Turner, Scott McKellar, and Michelle Nelson**

**Agenda Work Session:**

A 10-minute work session was held to discuss today's agenda items. Chairman Carter called upon County Manager Kimberly Turner for input. Ms. Turner mentioned that the Closed Session G.S. 143-318.11(a)(3)—Tab 7 should be removed from the agenda. The Board had no changes.

**Regular Session:**

Chairman Carter called the meeting to order, welcomed everyone, and announced when citizens could make comments.

Vice-Chairwoman Greene delivered the Invocation and the Pledge of Allegiance was recited.

**Approval of Regular Session Minutes for September 3, 2014:**

A motion was made by Chester Deloatch and seconded by Fannie Greene to approve the Regular Session Minutes for September 3, 2014. **Question Called: All present voting yes. Motion carried.**

**Approval of Agenda for September 15, 2014:**

A motion was made by Virginia Spruill and seconded by Chester Deloatch to approve the amended agenda for September 15, 2014. **Question Called: All present voting yes. Motion carried.**

**Granville-Vance Home Health Agency Contract, Roanoke Chowan Rehab Inc. Contract, Northeastern Carolina Physical Therapy Inc. Contract, and Susan G. Komen Grant Contract:**

Mr. John White, Acting Health Director, appeared before the Board to request approval of an agreement between Granville-Vance Home Health Agency and Northampton County Health Department's Home Health Agency for the purpose of providing quality improvement services to Granville-Vance while their staff is on medical leave.

Chairman Carter asked Mr. White what is going to happen to the position in Northampton County while the personnel will be away at Granville-Vance. Mr. White responded that the

Health Department should be covered without any problems, and the staff member will only be away one day a week. He doesn't feel it will negatively affect them at all.

Commissioner Spruill asked if this was just one staff member and not a whole staff. Mr. White confirmed that it will be only one employee.

A motion was made by Fannie Greene and seconded by Chester Deloatch to approve the proposed contract between Northampton County Health Department Home Health Agency and Granville-Vance Home Health Agency for quality improvement services as presented above with an effective date of September 1, 2014. **Question Called: All present voting yes. Motion carried.**

Mr. White also appeared before the Board to request approval for the agreement between Northampton County Health Department Home Health Agency and Roanoke Chowan Rehab, Inc. for the purpose of providing physical therapy services to home health patients.

This is a renewal contract that has been amended as to the period of the contract and an increase in the rates in comparison to what other counties are paying for the same services.

Commissioner Spruill asked if this contract has been vetted by the Attorney. Mr. White confirmed that it has been.

Chairman Carter mentioned that the County Manager has concurred with this decision.

A motion was made by Virginia Spruill and seconded by Fannie Greene that the Board of County Commissioners approve the proposed contract between Northampton County Health Department Home Health Agency and Roanoke Chowan Rehab for physical therapy services as presented above with an effective date of September 1, 2014. **Question Called: All present voting yes. Motion carried.**

Mr. White also appeared before the Board to request approval for the agreement between Northampton County Health Department Home Health Agency and Northeastern Carolina Physical Therapy for the purpose of providing physical therapy services to home health patients.

Mr. White mentioned that this is a new contract and this one is needed (in conjunction with the Roanoke Chowan Rehab Inc. contract) because the issue is that Roanoke Chowan is very dependable for the eastern end of the county. They are based in Ahoskie, and have had a hard time getting employees to cover the Henrico/ Vulture area. Northeastern Carolina Physical Therapy is based in Roanoke Rapids and in the past the Health Department has had a relationship with them and will try to get them to cover the Henrico area.

Vice-Chairwoman Greene asked if this is for people going into residences. Mr. White responded yes, and confirmed that this is part of the Home Health Services.

A motion was made by Chester Deloatch and seconded by Fannie Greene to approve the agreement between Northeastern Carolina Physical Therapy and Northampton County Health Department. **Question Called: All present voting yes. Motion carried.**

Finally, Mr. White appeared before the Board to seek approval for Northampton County Health Department to enter into a contract with Susan G. Komen to provide \$25,000 in grant funds to Northampton County Health Department to implement a community based Breast Cancer prevention educational program. These funds will go towards staff salaries, incentives, educational materials, meeting and travel expenses.

He is asking the Board for approval in accepting these funds.

A motion was made by Fannie Greene and seconded by Virginia Spruill to enter into a contract with Susan G. Komen North Carolina Triangle to the Coast to accept funding for a Breast Cancer initiative. **Question Called:** *All present voting yes.* **Motion carried.**

Chairman Carter asked Mr. White the status of the Director position for the Health Department (Mr. White is Acting Director). Mr. White stated that the Board of Health asked him to research the necessary educational credentials that he could take to qualify him for the Director position. Mr. White has begun researching, but has not yet started to take classes.

Commissioner Spruill mentioned that this is an observation that other people may be looking at, but it appears that the position is being held open so that he may qualify for it. Mr. White responded that it is open to anyone, and they can turn in an application. Commissioner Spruill asked if the Health Department had received applications. Mr. White said they haven't received an application for some time now. He said they had one or two at the very start. Commissioner Spruill asked who does the advertising for the position. Mr. White responded that the Health Department does as well as the Human Resources office. He mentioned that the Board of Health decides when a position should be advertised.

Chairman Carter asked if the State gave notice or a time frame on this position. Mr. White mentioned that they did not give a time frame. He said the last correspondence they had from the State was that if he or anyone else was going to move towards getting the educational requirements in place, they had to notify them and as long as they were working towards getting the degree requirements, then everything should be OK.

Chairman Carter said he would think it will take about a couple of years before getting the degree requirement. Mr. White said they have approved around the State for this to be in progress, and this is nothing unique to Northampton County. As of right now, he said they know what the Health Department is doing. Mr. Carter asked if the Health Department had referred to the County Manager on this. Mr. White said not a whole lot. Mr. Carter noted that she needed to be kept abreast of what is going on. He is asking Ms. Turner to get involved and find out about this situation.

Chairman Carter also mentioned that the Board wants to make sure that they are covering the State's rules and regulations. If the State has said that they will allow Mr. White to work towards getting the degree, he thinks the Board needs something in writing that this is going on.

Commissioner Spruill agreed. Vice-Chairwoman Greene mentioned that it wouldn't hurt to get something. She mentioned that she did remember getting a letter one time about this where it said there were some things the County needed to do. Mr. White confirmed that they did receive a letter shortly after Sue Gay retired, that basically said what Mr. White has reiterated to the

Board—that the State will work with them as long as he or an applicant was working towards a degree.

However, there was a letter that was sent first that mentioned that the County was in violation. Mr. White said he got that issue straight, but that was a letter that went to other Counties as well.

Chairman Carter recommended that Mr. White send a copy of the letter to Ms. Turner. He also mentioned that the reason he is inquiring about this is because if the State decides to come down on Northampton County, they will come down on this Board.

**PLEASE SEE SCANNED DOCUMENTS WHICH ARE  
HEREBY MADE A PART OF THESE MINUTES:**





## NORTHAMPTON COUNTY HEALTH DEPARTMENT

9495 NC 305 HIGHWAY  
POST OFFICE BOX 635  
JACKSON, NORTH CAROLINA 27845



### DECISION PAPER

**TO:** Northampton County Board of County Commissioners  
**FROM:** Northampton County Health Department  
**DATE:** September 3, 2014  
**RE:** Granville-Vance Home Health Agency for Quality Improvement Services

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#### **PURPOSE:**

The purpose of this decision paper is to request the Board of Commissioners' approval of an agreement between Granville-Vance Home Health Agency and Northampton County Health Department's Home Health Agency for the purpose of providing quality improvement services to Granville-Vance while their staff is on medical leave.

#### **FACTS:**

1. Granville-Vance Home Health Agency currently has a staff member that provides quality improvement services; she is currently on maternity leave.
2. Northampton County Health Department Home Health staff would only have to provide services from September 1, 2014 through November 30, 2014.
3. This agreement would show the willingness of Northampton County Health Department's Home Health Agency to provide assistance when needed.
4. This contract was sent to Michelle Nelson on July 30, 2014 to go through the contract process.
5. The Board of Health approved this contract at their meeting held on August 21, 2014.
6. Effective date of the contract will be September 1, 2014, upon approval.

#### **DISCUSSION:**

Granville-Vance Home Health is a neighboring agency in need of assistance at this time. The employee that provides Quality Improvement services for the agency is currently on medical leave. Northampton County Home Health is able to provide that service for the time needed through an employee who can adjust her schedule to provide the needed assistance. This will show our county's understanding and willingness to help when needed. The contract was sent to Michelle Nelson on July 30, 2014 to go through the contract process. The Board of Health approved this contract during their August 21, 2014 meeting.

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**RECOMMENDATIONS:**

The Northampton County Health Department's Home Health Agency recommends that the Commissioners approve the proposed contract between Northampton County Health Department Home Health Agency and Granville-Vance Home Health Agency for quality improvement services as presented above with an effective date of September 1, 2014.

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Respectfully submitted,

  
John L. White  
Acting Health Director

**COORDINATION:**

County Manager:

Concur Kimberly L. Turner 9/9/14  
Concur with Comment \_\_\_\_\_  
Non-concur \_\_\_\_\_

Finance Director:

Concur Pat Wick 9-9-14  
Concur with Comment \_\_\_\_\_  
Non-concur \_\_\_\_\_

## **INTERLOCAL AGREEMENT**

THIS INTERLOCAL AGREEMENT made and entered into by and between the NORTHAMPTON COUNTY, NORTH CAROLINA, hereinafter referred to as "Northampton," and the GRANVILLE-VANCE HOME HEALTH AGENCY, a division of the Granville-Vance District Health Department, hereinafter referred to as "GRANVILLE-VANCE."

### **W I T N E S S E T H:**

Whereas, GRANVILLE-VANCE has a need for Quality Improvement Services, and

Whereas, NORTHAMPTON employs a full time Quality Improvement Coordinator, and NORTHAMPTON is willing to provide Quality Improvement Services to assist GRANVILLE-VANCE, and

NOW, THEREFORE, GRANVILLE-VANCE agrees as follows:

1. Provide supervision while Quality Improvement Coordinator is working within GRANVILLE-VANCE.
2. Provide reimbursement to NORTHAMPTON at the rate of \$45.00 per hour.
3. Have Quality Improvement Coordinator function in the same capacity in GRANVILLE-VANCE as far as job description and expectations.
4. Agree to the terms of the Health Insurance Portability and Accountability Act as in the Business Associate Agreement attached hereto as Exhibit A.

NOW, THEREFORE, NORTHAMPTON agrees as follows:

1. To provide Quality Improvement service 1-2 days (15 hours) per week. Days may vary slightly on an as needed basis.
2. To accept the amount of \$45.00 per hour for the services.
3. To bill by the 5<sup>th</sup> of each month for the preceding month's hours.
4. NORTHAMPTON will provide liability coverage for the Coordinator.

### **CIVIL RIGHTS**

Both parties shall assure that no person, on the grounds of race, color, age, religion, sex, marital status, immigration status, national origin or otherwise qualified handicapped individual, solely by reason of his/her handicap (unless otherwise medically indicated), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity covered by this agreement.

### **TERM**

The contract term shall be effective September 1, 2014 through November 30, 2014, and may be terminated, with or without cause, at any time by either party after giving thirty days written notice.

AMENDMENTS

This agreement may be modified or amended by mutual consent of both parties, with approval by the respective governing boards. Any such modification or amendment must be in writing, duly executed by both parties and shall be attached to and become part of this agreement.

AUTHORIZATION AND SIGNATURE WARRANTY

The undersigned represent and warrant that they are authorized to bind their principals and the respective Counties of Granville, Vance and Northampton, North Carolina to the terms of this agreement.

**IN WITNESS WHEREOF**, the parties have caused this instrument to be executed by their duly authorized officers.

**GRANVILLE-VANCE HOME HEALTH  
AGENCY**

**BY:** \_\_\_\_\_  
**Director, Granville-Vance Home Health Agency**

**NORTHAMPTON COUNTY  
NORTH CAROLINA**

**BY:** \_\_\_\_\_  
**Kimberly L. Turner, County Manager**

**CERTIFICATION:** This instrument has been preaudited in the manner required by Local Government Budget and Fiscal Control Act.

**Certified:** \_\_\_\_\_  
Granville-Vance Finance Officer Date

**APPROVED AS TO CONTENT**

\_\_\_\_\_  
Director, Granville-Vance Home Health Agency Date

**APPROVED AS TO FORM**

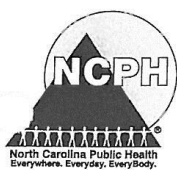
\_\_\_\_\_  
Northampton County Attorney Date

**CERTIFICATION:** This instrument has been preaudited in the manner required by Local Government Budget and Fiscal Control Act.

**Certified:** Dot Vicks 9-9-14  
Northampton County Finance Officer Date

**APPROVED AS TO CONTENT**

[Signature] 9-9-14  
Director, Northampton County Health Dept Date



# NORTHAMPTON COUNTY HEALTH DEPARTMENT

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JACKSON, NORTH CAROLINA 27845



## DECISION PAPER

**TO:** Northampton County Board of County Commissioners  
**FROM:** Northampton County Health Department  
**DATE:** September 3, 2014  
**RE:** Roanoke Chowan Rehab for Physical Therapy Services

### PURPOSE:

The purpose of this decision paper is to request approval from the Board of Commissioners for the agreement between Northampton County Health Department Home Health Agency and Roanoke Chowan Rehab, Inc. for the purpose of providing physical therapy services to home health patients.

### FACTS:

1. The Northampton County Health Department's Home Health Agency has worked with Roanoke Chowan Rehab for several years.
2. This contract is a renewal with changes only to the dates for the period of the contract and rates paid to the therapists.
3. The following rate changes have been proposed because of the competitive compensation rates offered by surrounding agencies.

Service	Proposed Rate	Previous Rate
LPT Visit	\$80.00	\$69.50
LPTA Visit	\$80.00	\$59.50
Initial OASIS	\$115.00 (electronic record)	\$110.00
	\$105.00 (paper record)	\$110.00
OASIS Discharge	\$105.00 (electronic record)	\$67.00
	\$80.00 (paper record)	\$67.00

4. An electronic copy of the contract was emailed to county attorney Mr. Scott McKellar, to go through the contract process, on September 3, 2014.
5. The agreement was presented to and approved by the Board of Health at their August 21, 2014 meeting.
6. Effective date of the contract will be September 1, 2014, upon approval.

### DISCUSSION:

Roanoke Chowan Rehab, Inc. has been a dependable vendor for Northampton County Health Department's Home Health Agency for several years. The proposed rate changes will allow the Home Health Agency to compete with surrounding agencies by

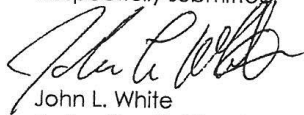
providing a reasonable compensation for the physical therapy services rendered by Roanoke Chowan Rehab. The Board of Health approved this contract at their meeting held on August 21, 2014. The contract was submitted to Mr. Scott McKellar, county attorney, on September 3, 2014 to go through the contract process.

**RECOMMENDATIONS:**

The Northampton County Health Department recommends that the Commissioners approve the proposed contract between Northampton County Health Department Home Health Agency and Roanoke Chowan Rehab for physical therapy services as presented above with an effective date of September 1, 2014.

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Respectfully submitted,



John L. White  
Acting Health Director

**COORDINATION:**

County Manager:

Concur Kimberly L. Jernan 9/9/14  
Concur with Comment \_\_\_\_\_  
Non-concur \_\_\_\_\_

Finance Director :

Concur Det Vicks 9-9-14  
Concur with Comment \_\_\_\_\_  
Non-concur \_\_\_\_\_

AGREEMENT BETWEEN  
NORTHAMPTON COUNTY HOME HEALTH AGENCY  
AND ROANOKE CHOWAN REHAB, INC

THIS AGREEMENT is made and entered into this 1st day of September 2014, by and between Northampton County Home Health Agency (hereinafter referred to as "Agency") and Roanoke Chowan Rehab, Inc. (hereinafter referred to as "Provider").

WITNESSETH

WHEREAS, the Agency is a Medicare-certified home health agency and a North Carolina licensed Home Care Agency, and

WHEREAS, the Agency has a need for additional qualified personnel to care for its patients; and

WHEREAS, the Provider has employees duly licensed and registered to provide these services to the Agency's patients,

NOW, THEREFORE, in consideration of these premises, promises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows.

**1. Provider's Responsibilities.** The Provider agrees to provide qualified physical therapists and physical therapy assistants to provide the following services to the Agency on an as-needed basis: direct patient care; initial assessments and reassessments of patients, patient evaluation, patient care planning and patient teaching. Provider and its servants, agents and employees shall:

- A. Provide physical therapy to the Agency's patients as requested and assigned by the Agency.
- B. Provide all services in accordance with a plan of care established by the provider within one week of the referral with a copy given to the agency and approved by the patient's attending physician. Provider shall review and revise the plan of care as the patient's condition changes, but shall not alter a patient plan of care without prior approval of the patient's attending physician and shall notify the Agency of any changes. The length of service offered by the Provider will be controlled by the physician's plan of treatment, which is updated every 60 days.
- C. Coordinate patient care, evaluate patient progress and provide discharge planning for those patients under its care, and provide appropriate documentation of such activities.
- D. Assessments and reassessments will be completed according to CMS regulatory requirements. The provider, Roanoke Chowan Rehab, Inc. will be liable for damages incurred as a result of missed assessments.
- E. Provide all services in accordance with all: Agency policies and procedures; state and federal laws, rules and regulations; and currently approved methods, standards of practice and codes of ethics in the medical community. Provider shall require its visiting staff to complete the Agency's orientation program.
- F. Provide services to Agency's as approved by the Agency. Every Monday, Provider shall submit a weekly schedule to the Agency indicating when patients are to receive services. Provider will notify the Agency and patients of any changes in the schedule.



- G. Maintain clinical records and reports, which constitute the Agency's medical records, including notes and personal observations of the patient's progress and notification of planned visits. All clinical and progress notes shall be completed and submitted within five working days as required by the Agency's policies and procedures. The provider will comply with standards for documentation including objectively measurable assessments.
  - H. Maintain the confidentiality of all medical records and information in accordance with state and federal laws, rules and regulations, and Agency policies.
  - I. Maintain on file and make available to Agency upon request, verification of the qualifications of its personnel, including the following:
    - 1. Current resume.
    - 2. Valid North Carolina professional license and copies of annual renewal.
    - 3. Results of initial and annual TB screening. If the individual has a positive TB test, there must be annual documentation from a physician that he/she is free of communicable disease.
    - 4. Evidence of Hepatitis B vaccine or appropriate signed release form.
    - 5. Documentation of competency testing and critical skills verification at hire and annually thereafter.
    - 6. Documentation of initial and annual OSHA Bloodborne Pathogens/Safety training, or verification that the individual received such training prior to providing services.
    - 7. Verification and results of criminal background check.
    - 8. Valid NC drivers' license and proof of car insurance.
    - 9. Documentation of CPR certification.
    - 10. Documentation of a minimum of 12 hours of employment related in-service/continuing education per year.
  - J. Require appropriate personnel to attend and participate in such multi-disciplinary meetings and conferences with patients, patients' families and Agency personnel in planning the implementation of the patient's plan of care as may from time to time be requested by Agency.
  - K. Provide services without regard to patients' race, religion, sex, age, national origin or disability.
  - L. Maintain responsibility for FICA, state and federal taxes, workers compensation and unemployment compensation insurance for all of Provider's staff.
  - M. Provide services for the Agency in the following counties: **Licensed Physical Therapists and physical therapy assistants**— Northampton County and possibly in the other service areas which include Bertie, Hertford, Halifax and Warren County if agreed upon by the provider.
  - N. The provider and agency will communicate on a regular basis, (at least weekly), and patient communications will be documented. The provider will be notified of referrals via telephone, e-mail, and/or fax.
2. *Agency's Responsibilities.* The Agency shall:
- A. Retain full responsibility for acceptance of new patients and assignment of patients to Provider.

- B. Review and monitor all Services for care coordination, supervision and evaluation in accordance with its clinical record review and quality assessment and improvement procedures. Agency shall have the overall responsibility for maintaining the quality of their services provided to patients and insure that the Provider upholds its responsibilities under this Agreement.
  - C. Retain ownership of all records and other documents relating to those patients for whom Provider renders the Services, and Provider acknowledges it has not rights to claims or ownership interest in such records.
  - D. Incorporate the Provider's clinical and progress notes into the patient's medical record maintained by the Agency and give the Provider access as needed to medical records for patients for whom Provider renders services.
  - E. Orient the Provider's staff to the Agency's policies, procedures, operations and OSHA/infection control procedures, and inform the Provider of any changes in the Agency's policies and procedures.
3. **Compensation.** Agency shall pay Provider, as sole and exclusive compensation for all Services provided pursuant to this Agreement, the sum of \$80.00 per visit for licensed physical therapy and licensed physical therapy assistant visits which includes travel time, patient care, and documentation. For an initial OASIS comprehensive assessment and a reassessment performed by the physical therapist, the Agency shall pay Provider, as sole and exclusive compensation for all services the following sums: electronic records: \$115.00, paper records: \$105.00; OASIS discharge electronic records: \$105.00, paper discharge records: \$80.00.
4. **Term and Termination.** The term of this Agreement shall be one year, beginning September 1, 2014 and ending on August 31, 2015. This Agreement may be renewed for additional periods upon consent of both parties. Notwithstanding the above, either party may, in its sole discretion, with or without cause, terminate the Agreement at any time upon thirty (30) days written notice to the other party. In addition, Agency may terminate this Agreement at any time upon the occurrence of any of the following events:
- A. Provider fails to maintain the qualifications specified by this Agreement, or
  - B. Provider fails to maintain professional liability insurance as required by this Agreement, or
  - C. Upon the bankruptcy, insolvency or dissolution of the Provider, or
  - D. Provider breaches any other term or condition of this Agreement and fails to cure such breach within ten (10) days of receipt or written notice of the breach.
5. **Relationship of Parties.**
- A. Provider acknowledges recognizes and defines itself as being an independent contractor of the Agency and not an employee or agent thereof, and shall at no time hold itself out as an employee or agent of the Agency.
  - B. Neither party shall solicit any person for employment or services or discuss with any person potential employment or provision of services while such person is an employee on active status with the other party without the express written permission of the employing party. In addition, neither party shall employ or contract for services with any former employee of the other party without the party's express written permission until a period of two (2) years has lapsed from such former employee's last date of employment in active status.

**6. Indemnification and Insurance.**

- A. Indemnification. To the extent allowed by law, Agency and Provider shall indemnify and hold harmless one another from and against any and all claims, liabilities, damages, fines, penalties, taxes, costs and expenses, including reasonable attorneys' fees and costs of settlement, which either party may suffer, sustain or become subject to as a result of any act or omission of the other party or the other party's officers, employees, agents or servants in performing its duties hereunder
  - B. Insurance. Provider shall procure and maintain insurance of not less than one million dollars (\$1,000,000) per claim and three million dollars (\$3,000,000) aggregate for professional liability, and shall maintain comprehensive general liability and such other insurance as shall be necessary to insure Provider and Provider's employees against damages arising from the duties and obligations of this Agreement. Copies of certificates of insurance shall be available upon request.
7. **Access to Books and Records.** Provider agrees as follows: Until the expiration of four (4) years after the furnishing of any Service pursuant to this Agreement, Provider shall, upon written request, make available to the Secretary of HHS, the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement and such books, documents, and records as may be necessary to certify the nature and extent of the cost or value of services to be performed by Provider thereunder, including but not limited to the records and reports required to be maintained by the Provider.

**8. Compliance with Laws**

- A. It is understood and agreed upon between the parties that the compensation under this Agreement is consistent with fair market value in arms-length transactions. It is not determined in a manner that takes into account the volume or value of any referrals or business generated or to be generated between the parties, under this Agreement or any other agreement between the parties, for which payment may be made in whole or in part under the Medicare or Medicaid program.
- B. Nothing contained in this Agreement shall require either party or any physician or hospital to admit or refer any patients to the other party or otherwise to use any health care facility or service as a precondition to receiving the benefits set forth herein. It is agreed and recognized that patients have the freedom to choose their health care provider and all patients will be afforded that opportunity.
- C. It is the intent of the parties to conduct their relationship in full compliance with the applicable federal and state laws prohibiting payments for referrals (hereinafter referred to as the "Anti-Referral Laws"). The parties agree that neither will intentionally conduct itself under this agreement in a manner that poses a bona fide risk of violation of the Anti-Referral Laws. If legislation is passed that would hinder either party's ability to obtain reimbursement from Medicare or Medicaid due to any provision of this Agreement, or would prohibit the payment of the compensation under this Agreement, then the parties shall negotiate in good faith to amend this Agreement to attempt to avoid such prohibition in a manner that complies with all applicable laws and regulations.

**9. Miscellaneous**

- A. Notices. All notices, payments and any other communications required to be in writing shall be given either in person or by registered or certified mail, return receipt requested, U.S. postage prepared, addressed as follows:

<b>Agency Name and Address</b>	<b>Provider Name and Address</b>
Northampton Co Home Health Agency	Roanoke Chowan Rehab, Inc.
John L. White, Acting Health Director	Rick Vick, President
PO Box 635	P.O. Box 576
Jackson, NC 27845	Ahoskie, NC 27910

- B. Governing Law. This Agreement shall be governed and construed under the laws of the State of North Carolina to interpretation, construction and performance.
- C. Waiver. The waiver by either party of a breach of any provision of this Agreement shall not operate as a waiver of any subsequent breach thereof.
- D. Assignment. The rights and obligations of the Provider under this Agreement, as an independent contractor, relate to specialized personnel services rendered by the Provider and may not be assigned by the Provider without the prior written approval of the Agency. Agency may, in its sole discretion, assign its rights and obligations under this Agreement to any parent, subsidiary, affiliate, or successor entity.
- E. Amendments. This Agreement may be amended only by written amendment executed by both parties.
- F. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- G. Headings. The headings in this Agreement are for reference purposes only and shall not affect the meaning of this Agreement.
- H. Entire Agreement. This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements, either oral or in writing, with respect to the subject matter hereof.
- I. Severability. If any provision of this Agreement or the application thereof is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.
- J. HIPPA Compliance: In addition to and without limitation of the foregoing, if and to the extent, and for as long as required by the provisions of 45 CFR Part 160 and Part 164 enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPPA) effective April 14, 2003, and as amended from time to time, each health plan, health care clearinghouse and/or health care provider shall appropriately safeguard, in accordance with the HIPPA regulations, all Protected Health Information made available to it by, or obtained by it from another party.
- K. E-Verify Compliance: Employers and their subcontractors with twenty-five (25) or more employees in the State of North Carolina as defined in Article 2 of Chapter 64 of the North Carolina General Statutes must comply with E-Verify requirements in order to contract with governmental units. E-Verify is a program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees. Provider certifies that it is aware of and in compliance with the

requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes. In addition, Provider certifies that to the best of its knowledge, any subcontractors employed by it as a part of this agreement are in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes. Provider acknowledges and agrees that local governments are prohibited from contracting with persons or entities that do not comply with E-Verify requirements and that Agency and the County of Northampton, North Carolina are relying on the certifications set forth herein in order to contract with Provider.


IN WITNESS WHEREOF, the parties have caused their duly authorized officials to execute this Agreement on the date indicated above.

**AGENCY**

**PROVIDER**

Northampton County Home Health

Roanoke Chowan Rehab, Inc.

By:   
John L. White  
Acting Health Director

By: \_\_\_\_\_  
Rick Vick, LPT/President  
Roanoke Chowan Rehab, Inc.

Date: 9-9-14

Date: \_\_\_\_\_

THIS instrument has been pre-audited in the manner required by the local Government Budget and Fiscal Control Act.

  
\_\_\_\_\_  
Northampton County Finance Officer

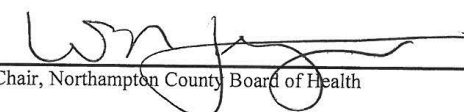
9-9-14  
Date

\_\_\_\_\_  
Manager, Northampton County

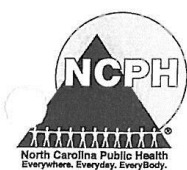
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Date

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Chair, Northampton County Board of Commissioners

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Chair, Northampton County Board of Health

\_\_\_\_\_  
Date



## NORTHAMPTON COUNTY HEALTH DEPARTMENT

9495 NC 305 HIGHWAY  
POST OFFICE BOX 635  
JACKSON, NORTH CAROLINA 27845



### DECISION PAPER

**TO:** Northampton County Board of County Commissioners  
**FROM:** Northampton County Health Department  
**DATE:** September 3, 2014  
**RE:** Northeastern Carolina Physical Therapy for Physical Therapy Services

#### PURPOSE:

The purpose of this decision paper is to request approval from the Board of Commissioners for the agreement between Northampton County Health Department Home Health Agency and Northeastern Carolina Physical Therapy for the purpose of providing physical therapy services to home health patients.

#### FACTS:

1. The Northampton County Health Department's Home Health Agency has had previous contracts with Northeastern Carolina Physical Therapy, Inc. over the years.
2. Northeastern Carolina Physical Therapy will provide much needed assistance to the patient on the western end of the county.
3. The current physical therapy coverage for the western end is inadequate.
4. The following rate changes have been proposed because of the competitive compensation rates offered by surrounding agencies.

Service	Proposed Rate	Previous Rate
LPT Visit	\$80.00	\$69.50
LPTA Visit	\$80.00	\$59.50
Initial OASIS	\$115.00 (electronic record)	\$110.00
	\$105.00 (paper record)	\$110.00
OASIS Discharge	\$105.00 (electronic record)	\$67.00
	\$80.00 (paper record)	\$67.00

5. An electronic copy of the contract was emailed to county attorney Mr. Scott McKellar, to go through the contract process, on September 3, 2014.
6. The agreement was presented to and approved by the Board of Health at their August 21, 2014 meeting.

#### DISCUSSION:

Northeastern Carolina Physical Therapy has been a vendor for Northampton County Health Department's Home Health Agency in past years. The current therapist servicing

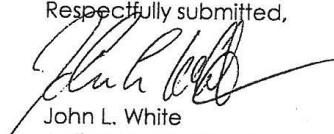
the western end of the county's home health population is not adequately providing the services needed. The proposed rate changes will allow the Home Health Agency to compete with surrounding agencies by providing a reasonable compensation for the physical therapy services rendered by Northeastern Carolina Physical Therapy, Inc. The Board of Health approved this contract at their meeting held on August 21, 2014. The contract was submitted to Mr. Scott McKellar, county attorney, on September 3, 2014 to go through the contract process.

**RECOMMENDATIONS:**

The Northampton County Health Department recommends that the Commissioners approve the proposed contract between Northampton County Health Department Home Health Agency and Northeastern Carolina Physical Therapy, Inc. for physical therapy services as presented above.

---

Respectfully submitted,

  
John L. White  
Acting Health Director

**COORDINATION:**

County Manager:

Concur Kimberly S. Jerman 9/9/14  
Concur with Comment \_\_\_\_\_  
Non-concur \_\_\_\_\_

Finance Director :

Concur Pat Vido 9-9-14  
Concur with Comment \_\_\_\_\_  
Non-concur \_\_\_\_\_

**AGREEMENT BETWEEN  
NORTHAMPTON COUNTY HOME HEALTH AGENCY  
AND NORTHEASTERN CAROLINA PHYSICAL THERAPY, INC.**

THIS AGREEMENT is made and entered into this 16th day of September 2014, by and between Northampton County Home Health Agency (hereinafter referred to as "Agency") and Northeastern Carolina Physical Therapy, Inc. (hereinafter referred to as "Provider").

**WITNESSETH**

WHEREAS, the Agency is a Medicare-certified home health agency and a North Carolina licensed Home Care Agency, and

WHEREAS, the Agency has a need for additional qualified personnel to care for its patients; and

WHEREAS, the Provider has employees duly licensed and registered to provide these services to the Agency's patients,

NOW, THEREFORE, in consideration of these premises, promises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows.

**1. *Provider's Responsibilities.*** The Provider agrees to provide qualified physical therapists and physical therapy assistants to provide the following services to the Agency on an as-needed basis: direct patient care; initial assessments and reassessments of patients, patient evaluation, patient care planning, patient teaching, and outpatient therapy if applicable. Provider and its servants, agents and employees shall:

- A. Provide physical therapy to the Agency's patients as requested and assigned by the Agency.
- B. Provide all services in accordance with a plan of care established by the provider within one week of the referral with a copy given to the agency and approved by the patient's attending physician. Provider shall review and revise the plan of care as the patient's condition changes, but shall not alter a patient plan of care without prior approval of the patient's attending physician and shall notify the Agency of any changes. The length of service offered by the Provider will be controlled by the physician's plan of treatment, which is updated every 60-62 days.
- C. Coordinate patient care, evaluate patient progress and provide discharge planning for those patients under its care, and provide appropriate documentation of such activities.
- D. Assessments and reassessments will be completed according to CMS regulatory requirements. The provider, Northeastern Carolina Physical Therapy, Inc. will be liable for damages incurred as a result of missed assessments.
- E. Provide all services in accordance with all: Agency policies and procedures; state and federal laws, rules and regulations; and currently approved methods, standards of practice and codes of ethics in the medical community. Provider shall require its visiting staff to complete the Agency's orientation program.
- F. Provide services to Agency's as approved by the Agency. Every Monday, Provider shall submit a weekly schedule to the Agency indicating when patients are to receive



services. Provider will notify the Agency and patients of any changes in the schedule.

- G. Maintain clinical records and reports, which constitute the Agency's medical records, including notes and personal observations of the patient's progress and notification of planned visits. All clinical and progress notes shall be completed and submitted within five working days as required by the Agency's policies and procedures.
  - H. Maintain the confidentiality of all medical records and information in accordance with state and federal laws, rules and regulations, and Agency policies.
  - I. Maintain on file and make available to Agency upon request, verification of the qualifications of its personnel, including the following:
    - 1. Current job description.
    - 2. Valid North Carolina professional license and copies of annual renewal.
    - 3. Results of initial and annual TB screening. If the individual has a positive TB test, there must be annual documentation from a physician that he/she is free of communicable disease.
    - 4. Evidence of Hepatitis B vaccine or appropriate signed release form.
    - 5. Documentation of competency testing and critical skills verification at hire and annually thereafter.
    - 6. Documentation of initial and annual OSHA Bloodborne Pathogens/Safety training, or verification that the individual received such training prior to providing services.
    - 7. Verification and results of criminal background check.
    - 8. Valid NC drivers' license and proof of car insurance.
    - 9. Documentation of CPR certification.
    - 10. Documentation of a minimum of 12 hours of employment related in-service/continuing education per year.
  - J. Require appropriate personnel to attend and participate in such multi-disciplinary meetings and conferences with patients, patients' families and Agency personnel in planning the implementation of the patient's plan of care as may from time to time be requested by Agency.
  - K. Provide services without regard to patients' race, religion, sex, age, national origin or disability.
  - L. Maintain responsibility for FICA, state and federal taxes, workers compensation and unemployment compensation insurance for all of Provider's staff.
  - M. Provide services for the Agency in the following counties: **Licensed Physical Therapists and physical therapy assistants**—Western half of Northampton County as defined and agreed upon by the Provider and the Agency in other service areas if indicated by agency and agreed upon by provider.
  - N. The Provider and agency will communicate on a regular basis, (at least weekly) and patient communications will be via telephone, e-mail, and/or fax.
2. **Agency's Responsibilities.** The Agency shall:
- A. Retain full responsibility for acceptance of new patients and assignment of patients to Provider.

- B. Review and monitor all Services for care coordination, supervision and evaluation in accordance with its clinical record review and quality assessment and improvement procedures. Agency shall have the overall responsibility for maintaining the quality of their services provided to patients and insure that the Provider upholds its responsibilities under this Agreement.
  - C. Retain ownership of all records and other documents relating to those patients for whom Provider renders the Services, and Provider acknowledges it has not rights to claims or ownership interest in such records.
  - D. Incorporate the Provider's clinical and progress notes into the patient's medical record maintained by the Agency and give the Provider access as needed to medical records for patients for whom Provider renders services.
  - E. Orient the Provider's staff to the Agency's policies, procedures, operations and OSHA/infection control procedures, and inform the Provider of any changes in the Agency's policies and procedures.
3. **Compensation.** Agency shall pay Provider, as sole and exclusive compensation for all Services provided pursuant to this Agreement, the sum of \$80.00 per visit for licensed physical therapy and licensed physical therapy assistant visits which includes travel time, patient care, and documentation. For an initial OASIS comprehensive assessment and a reassessment performed by the physical therapist, the Agency shall pay Provider, as sole and exclusive compensation for all services the following sums: electronic records: \$115.00, paper records: \$105.00; OASIS discharge electronic records: \$105.00, paper discharge records: \$80.00.
4. **Term and Termination.** The term of this Agreement shall be one year, beginning September 16, 2014 and ending on September 15, 2015. This Agreement may be renewed for additional periods upon consent of both parties. Notwithstanding the above, either party may, in its sole discretion, with or without cause, terminate the Agreement at any time upon thirty (30) days written notice to the other party. In addition, Agency may terminate this Agreement at any time upon the occurrence of any of the following events:
- A. Provider fails to maintain the qualifications specified by this Agreement, or
  - B. Provider fails to maintain professional liability insurance as required by this Agreement, or
  - C. Upon the bankruptcy, insolvency or dissolution of the Provider, or
  - D. Provider breaches any other term or condition of this Agreement and fails to cure such breach within ten (10) days of receipt or written notice of the breach.
5. **Relationship of Parties.**
- A. Provider acknowledges recognizers and defines itself as being an independent contractor of the Agency and not an employee or agent thereof, and shall at no time hold itself out as an employee or agent of the Agency.
  - B. Neither party shall solicit any person for employment or services or discuss with any person potential employment or provision of services while such person is an employee on active status with the other party without the express written permission of the employing party. In addition, either party shall employ or contract for services with any former employee of the other party without the party's express written permission until a period of two (2) years has lapsed from such former employee's last date of employment in active status.

**6. Indemnification and Insurance.**

- A. Indemnification. To the extent allowed by law, Agency and Provider shall indemnify and hold harmless one another from and against any and all claims, liabilities, damages, fines, penalties, taxes, costs and expenses, including reasonable attorneys' fees and costs of settlement, which either party may suffer, sustain or become subject to as a result of any act or omission of the other party or the other party's officers, employees, agents or servants in performing its duties hereunder
- B. Insurance. Provider shall procure and maintain insurance of not less than one million dollars (\$1,000,000) per claim and three million dollars (\$3,000,000) aggregate for professional liability, and shall maintain comprehensive general liability and such other insurance as shall be necessary to insure Provider and Provider's employees against damages arising from the duties and obligations of this Agreement. Copies of certificates of insurance shall be available upon request.

**7. Access to Books and Records.** Provider agrees as follows: Until the expiration of four (4) years after the furnishing of any Service pursuant to this Agreement, Provider shall, upon written request, make available to the Secretary of HHS, the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement and such books, documents, and records as may be necessary to certify the nature and extent of the cost or value of services to be performed by Provider thereunder, including but not limited to the records and reports required to be maintained by the Provider.

**8. Compliance with Laws**

- A. It is understood and agreed upon between the parties that the compensation under this Agreement is consistent with fair market value in arms-length transactions. It is not determined in a manner that takes into account the volume or value of any referrals or business generated or to be generated between the parties, under this Agreement or any other agreement between the parties, for which payment may be made in whole or in part under the Medicare or Medicaid program.
- B. Nothing contained in this Agreement shall require either party or any physician or hospital to admit or refer any patients to the other party or otherwise to use any health care facility or service as a precondition to receiving the benefits set forth herein. It is agreed and recognized that patients have the freedom to choose their health care provider and all patients will be afforded that opportunity.
- C. It is the intent of the parties to conduct their relationship in full compliance with the applicable federal and state laws prohibiting payments for referrals (hereinafter referred to as the "Anti-Referral Laws"). The parties agree that neither will intentionally conduct itself under this agreement in a manner that poses a bona fide risk of violation of the Anti-Referral Laws. If legislation is passed that would hinder either party's ability to obtain reimbursement from Medicare or Medicaid due to any provision of this Agreement, or would prohibit the payment of the compensation under this Agreement, then the parties shall negotiate in good faith to amend this Agreement to attempt to avoid such prohibition in a manner that complies with all applicable laws and regulations.

**9. Miscellaneous**

- A. Notices. All notices, payments and any other communications required to be in writing shall be given either in person or by registered or certified mail, return receipt requested, U.S. postage prepared, addressed as follows:
- |  |   |
|--|---|
| <p><b>Agency Name and Address</b><br/> Northampton Co Home Health Agency<br/> John L. White, Acting Health Director<br/> PO Box 635<br/> Jackson, NC 27845</p> | <p><b>Provider Name and Address</b><br/> Northeastern Carolina Physical Therapy.<br/> Arnold Brown, President<br/> 114 Professional Drive<br/> Roanoke Rapids, NC 27870</p> |
|--|---|
- B. Governing Law. This Agreement shall be governed and construed under the laws of the State of North Carolina to interpretation, construction and performance.
- C. Waiver. The waiver by either party of a breach of any provision of this Agreement shall not operate as a waiver of any subsequent breach thereof.
- D. Assignment. The rights and obligations of the Provider under this Agreement, as an independent contractor, relate to specialized personnel services rendered by the Provider and may not be assigned by the Provider without the prior written approval of the Agency. Agency may, in its sole discretion, assign its rights and obligations under this Agreement to any parent, subsidiary, affiliate, or successor entity.
- E. Amendments. This Agreement may be amended only by written amendment executed by both parties.
- F. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- G. Headings. The headings in this Agreement are for reference purposes only and shall not affect the meaning of this Agreement.
- H. Entire Agreement. This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements, either oral or in writing, with respect to the subject matter hereof.
- I. Severability. If any provision of this Agreement or the application thereof is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.
- J. HIPPA Compliance: In addition to and without limitation of the foregoing, if and to the extent, and for as long as required by the provisions of 45 CFR Part 160 and Part 164 enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPPA) effective April 14, 2003, and as amended from time to time, each health plan, health care clearinghouse and/or health care provider shall appropriately safeguard, in accordance with the HIPPA regulations, all Protected Health Information made available to it by, or obtained by it from another party.
- K. E-Verify Compliance: Employers and their subcontractors with twenty-five (25) or more employees in the State of North Carolina as defined in Article 2 of Chapter 64 of the North Carolina General Statutes must comply with E-Verify requirements in order to contract with governmental units. E-Verify is a program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees. Provider certifies that it is aware of and in compliance with the

requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes. In addition, Provider certifies that to the best of its knowledge, any subcontractors employed by it as a part of this agreement are in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes. Provider acknowledges and agrees that local governments are prohibited from contracting with persons or entities that do not comply with E-Verify requirements and that Agency and the County of Northampton, North Carolina are relying on the certifications set forth herein in order to contract with Provider.


IN WITNESS WHEREOF, the parties have caused their duly authorized officials to execute this Agreement on the date indicated above.

**AGENCY**

**PROVIDER**

Northampton County Home Health

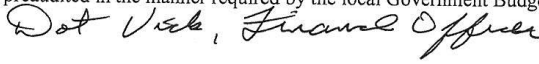
Northeastern Carolina Physical Therapy, Inc.

By:   
John L. White  
Acting Health Director

By: \_\_\_\_\_  
Arnold Brown, PT/President  
Northeastern Carolina Physical Therapy, Inc.


Date: 9-9-14 Date: \_\_\_\_\_

THIS instrument has been preaudited in the manner required by the local Government Budget and Fiscal Control Act.

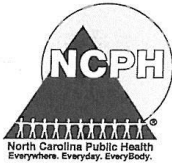


\_\_\_\_\_  
Arnold Brown, PT/President Northeastern Carolina Physical Therapy

\_\_\_\_\_  
Chairwoman, Northampton County Board of Commissioners

  
\_\_\_\_\_  
Chairman, Northampton County Board of Health

\_\_\_\_\_  
Manager, Northampton County



## NORTHAMPTON COUNTY HEALTH DEPARTMENT

9495 NC 305 HIGHWAY  
POST OFFICE BOX 635  
JACKSON, NORTH CAROLINA 27845



### DECISION PAPER

**TO:** Northampton County Board of Commissioners  
**FROM:** Northampton County Health Department  
**DATE:** September 15, 2014  
**RE:** Susan G. Komen Grant Contract

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#### **PURPOSE:**

The purpose of this decision paper is to seek the approval of the County Commissioners for Northampton County Health Department to enter into a contract with Susan G. Komen.

#### **FACTS:**

1. Northampton County Health Department's goal is to seek methods and resources to improve the quality and quantity of life of its valued citizens utilizing preventive and screening measures.
2. The Health Department made application to the Susan G. Komen North Carolina Triangle to the Coast in December of 2013.
3. The purpose of the grant was to seek funding to implement a community-based breast cancer prevention education.
4. The proposed contract was faxed to Scott McKellar, County Attorney on August 18, 2014 for review.
5. Said grant funding was accepted by the Board of Health on August 21, 2014 contingent upon contract approval by the County Commissioners.

#### **DISCUSSION:**

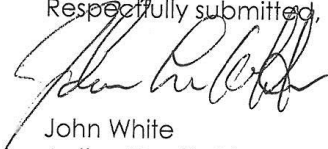
Northampton County is one of three counties listed in the 2011 Komen NC Triangle Community Profile as having the highest breast cancer mortality rates within the service area. The health department constantly strives to seek methods and resources to improve the lives of its valued citizens utilizing preventive and screening measures. In December 2013, the health department made application to Susan G. Komen North Carolina Triangle to the Coast to seek funding for a community-based breast cancer prevention education intervention with the intent to reduce and eliminate breast cancer disparities in Northampton County. The first round of funding did not include the health department; however, additional funding was filtered through the

State and Northampton was granted funding for its proposed initiative. The Susan G. Komen grant project seeks to increase access to early breast detection through breast health awareness by providing a framework model addressing barriers experienced by the uninsured/underinsured rural population. Previous studies demonstrate that these women are likely to underutilize any form of breast screening. Focus groups lead by eight breast cancer survivors have been trained with the Voices and Faces of Breast Cancer Orientation and Training Program Resource Guide. These eight women will be ambassadors to fulfill this part of the project during quarterly meetings held in various churches and communities throughout the county. The health department has been offered \$25,000.00 to implement this project. Funding will pay a portion of 2 health department staff salaries as well as incentives, educational materials, meeting and travel expenses incurred during the project. The proposed contract was faxed to County Attorney Scott McKellar on August 18, 2014. Grant funding was accepted by the Board of Health on August 21, 2014 contingent upon contract approval by the County Commissioners.

**RECOMMENDATION:**

Recommend that the Board of Commissioners approve for Northampton County Health Department to enter into a contract with Susan G Komen North Carolina Triangle to the Coast to accept funding for a breast cancer initiative.

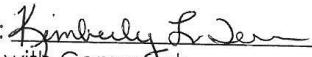
Respectfully submitted,

 A.H.D.

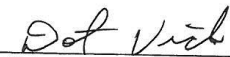
John White  
Acting Health Director

**CO-ORDINATION**

County Manager:

Concur:  9/3/14  
Concur with Comment: \_\_\_\_\_  
Non-concur: \_\_\_\_\_

Finance Director:

Concur:  9-2-14  
Concur with Comment: \_\_\_\_\_  
Non-concur: \_\_\_\_\_

## GRANT CONTRACT



SUSAN G. KOMEN NORTH CAROLINA TRIANGLE TO THE COAST AFFILIATE

PERIOD OF GRANT: September 1, 2014 through August 31, 2015

GRANTEE: Northampton County Health Department

PROJECT DIRECTOR: Cheryl Warren

BREAST CANCER PROJECT TITLE: Northampton Community Alliance for Breast Health Education: Addressing Disparities

*For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Susan G. Komen, North Carolina Triangle to the Coast Affiliate d/b/a Susan G. Komen ("Komen Affiliate") does hereby grant Northampton County Health Department ("Grantee") funds in the amount of \$25,000 ("Grant Funds" or "Grant") subject to the terms and conditions below ("Grant Contract"). This Grant Contract shall be null and void if not executed within 90 days of the date stamp above.*

1. Breast Cancer Project:
  - A. Unless otherwise stated herein, the breast cancer project ("Breast Cancer Project"), which is the subject of this Grant Contract, shall be implemented as described in Grantee's grant application to Komen Affiliate ("the Grant Application") found in the Grants eManagement System. To the extent that the terms of this Grant Contract conflict with the terms of the Grant Application, the terms of this Grant Contract shall prevail.
  - B. The Grant Funds shall be used exclusively as set forth in the budget ("Budget") in the Grant Application. No changes or modifications to the Breast Cancer Project, including but limited to the Budget, may be made without prior written approval of Komen Affiliate.



- C. Komen Affiliate shall receive copies of all surveys and tools, methodologies, studies, evaluations, presentations, training and educational materials, reports, articles and other publications and materials created in connection with the Breast Cancer Project (collectively, the "Materials") at no charge. Grantee grants Komen Affiliate, the Foundation (as such term is defined below) and the Foundation's affiliates a limited, non-exclusive license to use such Materials for their own non-commercial purposes. The documentation to be provided in this subparagraph C. should never include provision of any legally protected private information.
- D. Komen Affiliate shall be notified at least 30 days in advance in writing and must give prior written approval for any proposed changes to the design, key personnel, Budget, content, goals, objectives or timeline of the Breast Cancer Project.
- E. If Breast Cancer Project includes workshops, symposiums, lectures and/or health fairs, organizers will provide complimentary registration for at least (2) Affiliate representatives and an affiliate display area where appropriate.

2. Grant Payments and Remittance of Unspent Grant Funds:

- A. Grant Funds shall be payable in two equal installments of **\$12,500** each. The first payment shall be made to Grantee upon receipt by Komen Affiliate of this Grant Contract fully executed, and the second payment shall be made to Grantee after Komen Affiliate's receipt of timely Progress Report (as such term is defined below) that contain the required or satisfactory information, as determined by Komen Affiliate in its sole discretion. Notwithstanding the above, Komen Affiliate may require Grantee to deplete the current installment of the Grant Funds prior to receiving the payment of the next installment of the Grant Funds.
- B. Within 45 days after the expiration or early termination of this Grant Contract, Grantee shall remit to Komen Affiliate all unspent Grant Funds.

3. Reports/Submission Items and Right to Audit:

- A. A fully completed progress report substantially in the form found in the Grants eManagement System (GeMS) shall be due on **March 31, 2015**, and shall include, but not be limited to, the following information: a reasonably-detailed accounting of Grant Funds spent to date, with a detailed explanation of any

variances in the Budget; progress made toward meeting objectives outlined in the Grant Application; number of people served; notice or receipt of other sources of support for the Breast Cancer Project; copies or examples of all Materials produced as a result of the Breast Cancer Project; up to date documentation of Komen Affiliate acknowledgments; a listing of articles submitted for publication and the status of those articles; presentations made regarding the Breast Cancer Project; and signed affirmation from the authorized signatory of Grantee that the report has been reviewed and approved.

- B. Within 45 days following the expiration or early termination of the Grant, a comprehensive final report, substantially in the form found in the Grants eManagement System (GeMS) shall be due. In addition to the information referenced in Section 3.A, the Final Report must include an evaluation of the impact of Komen Affiliate's sponsorship of the Breast Cancer Project.
- C. Any and all surveys or other items submitted by Komen Affiliate to Grantee for completion regarding this Grant must be completed and returned to Komen Affiliate no more than 45 days following the expiration or early termination of the Grant.
- D. Grantee agrees to maintain accurate and complete records of the expenditure of the Grant Funds and agrees that Komen Affiliate may conduct an audit of such records at any time reasonably requested by Komen Affiliate.
- E. The reports provided for herein will not be considered confidential, and Komen Affiliate may contract with third parties to assist in the review and evaluation of such reports. Komen Affiliate shall not be responsible for any damages resulting from the disclosure of the content of such reports to third parties.

4. Acknowledgments and Licensed Mark:

- A. As a sponsor of the Breast Cancer Project, Komen Affiliate shall be given high visibility at all symposia, conferences and other presentations or events and recognition in all printed and electronic Materials created in connection with the Breast Cancer Project.
- B. Komen Affiliate has been granted by The Susan G. Komen Breast Cancer Foundation, Inc. d/b/a Susan G. Komen for the Cure (the "Foundation") a non-exclusive license to use the **Susan G. Komen, North Carolina Triangle to the Coast Affiliate** name in conjunction with the signature logo (the "Licensed

Mark"). Komen Affiliate grants Grantee a limited, non-exclusive sublicense to use the Licensed Mark solely to acknowledge Komen Affiliate's Grant hereunder. Komen Affiliate will provide Grantee with camera-ready artwork of said Licensed Mark. Grantee will present to Komen Affiliate for its approval prior to printing, distribution, publication, display or use any and all materials created by Grantee, its agents or spokespersons, which use or refer to the Licensed Mark. It is agreed and understood that Foundation retains all right, title and interest in and to the Licensed Mark, which shall remain the exclusive property of Foundation. Grantee is prohibited from transferring, sublicensing or assigning its rights to use the Licensed Mark.

- C. Komen Affiliate may release information regarding this Grant and the Breast Cancer Project to the general public and news media. Grantee grants to Komen Affiliate a non-exclusive license to include Grantee's name in information pertaining to the Grant that is released to the public.

5. Term and Early Termination of Grant:

- A. This Grant Contract shall be effective as of the date hereof and shall terminate on **August 31, 2015** except that the provisions of Sections 1.C, 2.B, 3.B, 3.C, 3.D, 3.E, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16 and 18 shall forever survive termination.
- B. If either party should fail to perform or be in breach of any of the terms, conditions, agreements, covenants, representations or warranties contained in this Grant Contract, or anticipatorily breach this Grant Contract, and such default is not curable, or if such default is curable but remains uncured for a period of 30 days after written notice thereof has been given to the defaulting party, the other party, at its sole election, may immediately terminate this Grant Contract by written notice thereof to the defaulting party. In the event of an early termination under this Section 5.B due to a breach by Grantee, Grantee shall provide Komen Affiliate with the Final Report and/or surveys required under Sections 3.B and 3.C, respectively, (with information available as of the termination date) and reimburse Komen Affiliate within 30 days of the termination date all unspent funds granted.
- C. Notwithstanding the provisions of Section 5.B, Komen Affiliate may terminate this Grant Contract immediately due to the occurrence of any one or more of the following events:

- (i) Komen Affiliate does not approve any of the Breast Cancer Project changes, as required by Section 1.D above.
- (ii) Komen Affiliate has a reasonable good faith basis to believe that there has been financial or administrative impropriety or fraud committed by Grantee.
- (iii) Grantee loses or changes its Internal Revenue Service tax exempt status.
- (iv) Grantee is debarred from the receipt of federal or state funding.
- (v) The Breast Cancer Project is not conducted in conformance with applicable laws, or any approvals, licenses or certifications required to conduct the Breast Cancer Project are not obtained or are suspended or revoked.
- (vi) Grantee commits a willful breach of this Agreement or an act of gross negligence or willful misconduct in connection with the Breast Cancer Project.

In the event of an early termination under this Section 5.C, Komen Affiliate shall have no further obligation to provide funding hereunder, and Grantee immediately shall (i) provide Komen Affiliate with the Final Report and/or surveys required under Sections 3.B and 3.C, respectively, which shall include all information available as of the termination date; (ii) reimburse Komen Affiliate for the full amount of funds granted hereunder that have been expended in connection with and subsequent to any of the above occurrences; and (iii) within 15 days of the termination date refund all unspent funds.

- D. Notwithstanding the provisions of Section 5.B and 5.C, Komen Affiliate may terminate the Agreement immediately and receive full reimbursement of the funds granted hereunder in the event Komen Affiliate does not receive the Final Report and/or surveys required under Section 3.B and 3.C, respectively, when due and/or such report and/or survey(s) do not contain the required or satisfactory information, as determined by Komen Affiliate in its sole discretion.
  - E. The provisions of this Section 5 shall not preclude Komen Affiliate from seeking any other remedies that may be available under this Agreement and applicable law.
6. Non-Guarantee of Additional Support: This Grant is accepted by Grantee with the understanding that Komen Affiliate is not obligated to provide any additional financial support, or other support, to Grantee, its agents or spokespersons, in connection with the Grant, the Grant Contract, the Breast Cancer Project or for any other reason.

7. Representations, Warranties, Covenants and Certifications:

A. Grantee Representations, Warranties, Covenants and Certifications:

- (i) Grantee represents and warrants that the Breast Cancer Project complies with and will continue to comply with all applicable laws, statutes, rules and regulations, as amended from time to time, including but not limited to the Health Insurance Portability & Accountability Act of 1996, and all applicable anti-terrorist financing and asset control laws, statutes and executive orders, including but not limited to the USA Patriot Act and Executive Order No. 13224.
- (ii) Grantee represents and warrants that it has not accepted any duplicative funding for the Breast Cancer Project. Grantee shall provide Komen Affiliate notice of all sources of additional funding for the Breast Cancer Project. In the event the additional funding may be duplicative of the funding provided by Komen Affiliate, then Grantee shall notify Komen Affiliate and Komen Affiliate at its sole discretion shall determine whether Grantee shall refuse the duplicative funding or accept the new funding and reimburse all duplicative funds granted hereunder to Komen Affiliate.
- (iii) Grantee represents that it has the authority to grant the license to the Materials as set forth in Section 1.C. No Materials to be delivered to Komen Affiliate, nor any element thereof, violate or will violate the right of privacy or publicity, or defame or violate any copyright, trademark or service mark or any common law or other right of any third-party.
- (iv) Grantee represents and warrants that it is a duly authorized department of the County of Northampton, North Carolina, a body politic and corporate organized and existing under the laws of the State of North Carolina.

B. Mutual Representations and Warranties:

- (i) Each party represents and warrants that it has all the requisite power and authority to execute, deliver and perform this Agreement and consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and

approved by all required action on the part of such party. This Agreement has been duly and validly executed and delivered by each party and constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with its terms.

- (ii) Each of the signatories to this Agreement represents and warrants in his or her capacity as an authorized signatory of such party and not individually that he or she has the capacity and has been duly authorized to execute this Agreement on behalf of the entity so indicated and that no additional authorization or approval is required.

- 8. Non-endorsement: It is expressly agreed and understood by the parties hereto that the Grant shall not constitute an endorsement by Komen Affiliate of any entity, organization, company or individual, nor the products, actions, behavior or conduct of any entity, organization, company or individual, and any negligent or intentional misrepresentation by Grantee to the contrary, in any context and in any forum, shall constitute a material breach of this Agreement, and the same shall be grounds for immediate termination of this Agreement by Komen Affiliate. In the event of any such misrepresentation, Komen Affiliate may require Grantee to publicly acknowledge the misrepresentation in a like forum in which the misrepresentation was made. It is agreed that in the event of a breach of this provision, damages may not be an adequate remedy, and Komen Affiliate shall be entitled to whatever other remedies are available under applicable law.
- 9. Governmental Compliance: Grantee will cooperate with Komen Affiliate in supplying additional information to Komen Affiliate, or in complying with any procedures which might be required by any governmental agency in order for Komen Affiliate to establish that it has observed all requirements of the law with respect to this Grant.
- 10. Assignment: This Grant Contract is entered into by Komen Affiliate in reliance of the qualifications of Grantee and shall not be assigned by Grantee, voluntarily, involuntarily, directly or indirectly, by change of control, merger, operation of law or otherwise, without Komen Affiliate's prior written consent. The Grant Contract may be assigned by Komen Affiliate to the Foundation or to any affiliate of the Foundation without approval of the Grantee so long as all obligations of the Komen Affiliate are assumed by the assignee.
- 11. Indemnity and Insurance:
  - A. Grantee is solely responsible for conducting the activities related to the implementation of the grant, and shall solely choose the means and methods of

its activities, as well as solely provide applicable supervision, training, tools, equipment and the like to its agents and employees. In no respect shall persons performing activities on behalf of the Grantee be deemed to be agents or employees of Komen Affiliate, and shall not hold themselves out as such..

- B. As between the parties to this Grant Contract, Grantee is solely responsible for any liabilities whatsoever that may arise in connection with Grantee's direct or indirect involvement with the Breast Cancer Project. To the extent not prohibited under state or local laws which govern Grantee, such party agrees to indemnify and hold Komen Affiliate harmless from and against any and all costs, losses or expenses, including court costs and reasonable attorneys' fees, that Komen Affiliate may incur by reason of Grantee's negligence or other inappropriate conduct or omission, or by breach of any of the provisions of this Grant Contract or by reason of any third-party claim or suit arising directly or indirectly out of or through any connection with Grantee's performance or failure to perform pursuant to this Grant Contract.
  - C. Grantee agrees to maintain the following insurance during the term of this Grant Contract: (i) commercial general liability insurance with combined limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury, including death, and property damage; and (ii) excess/umbrella insurance, excess to the insurance set forth in (i) above, with a limit of not less than \$2,000,000. Grantee shall name Komen Affiliate as an additional insured under its commercial general liability insurance policy solely with respect to the Breast Cancer Project and any additional policies and riders entered into by Grantee in connection with the Breast Cancer Project. Upon execution of this Grant Contract, Grantee will provide a certificate of insurance evidencing the above coverage to Komen Affiliate, including documentation of its status as an endorsed specifically listed additional insured, and shall also immediately provide updated certificates upon any change in insurer or policy status. Provision of the coverage set forth herein in no manner waives any right to recovery from the Grantee.
12. Dispute Resolution: In the event of any dispute arising out of this Grant Contract, the parties shall use good faith efforts to resolve their differences amicably. In the event they are unsuccessful, the parties agree not to commence litigation until attempting to resolve their dispute through mediation. Either party may initiate the mediation process with 30 days' prior written notice to the other party. The dispute shall be submitted to mediation in Wake County, North Carolina. Costs of mediation shall be borne equally by the parties. Mediation of the dispute shall be completed within 15 days of commencement,

unless the parties extend the time by mutual agreement or unless the mediator declares the parties to be at an impasse. Notwithstanding the above, in the event that Komen Affiliate believes that immediate injunctive relief is required due to a violation of law or to protect the Licensed Mark, Komen Affiliate may invoke immediate powers of the appropriate court of law without the requirement to first mediate the dispute.

13. Entire Agreement: This Grant Contract supersedes any prior understandings or oral agreements between the parties regarding the subject matter hereof and constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and there are no agreements, understandings, representations or warranties between the parties with respect to the subject matter hereof other than those set forth herein. There shall be no amendment to this agreement except as mutually agreed to in writing, and designated and executed as such.
14. Governing Law and Venue: This Grant Contract shall be governed by and construed in accordance with the laws of the State of **North Carolina**. Any dispute arising out of or in connection with this Agreement that is not resolved under Section 12 shall be filed and heard in the state or federal courts of **North Carolina** and the parties consent to the exclusive jurisdiction of such courts.
15. Notice: Any notice by a party under this Agreement shall be in writing and either personally delivered, delivered by facsimile or sent via reputable overnight courier (such as Federal Express) or certified mail, postage prepaid and return receipt requested, addressed to the other party at the address specified in the preamble or such other address of which either party may from time to time notify the other.

All notices to Grantee shall be sent to:

Northampton County Health Department  
Attn: Cheryl Warren  
P.O. Box 635  
Jackson, NC 27845

All notices to Komen Affiliate shall be sent to:

Susan G. Komen, North Carolina Triangle to the Coast Affiliate  
c/o Executive Director  
600 Airport Blvd., Ste 100  
Morrisville, NC 27560  
Phone: 919-493-2873



Email: [grants@komennctc.org](mailto:grants@komennctc.org)

16. No Partnership: The nature of this Grant Contract is solely a funding agreement, and no employment, partnership, joint venture or agency relationship whatsoever is created. Further, pursuant to Paragraph 11. A herein, no duties or obligations whatsoever reside with the Komen Affiliate as to Grantee's activities through Grantee's agents and employees relating in any way to this Grant Contract.
17. Severability: If any provision of this Grant Contract shall be held to be invalid, illegal, unenforceable or in conflict with the law of any applicable institution, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
18. No Waiver: Failure of Komen Affiliate to enforce its rights under this Grant Contract shall not constitute a waiver of such rights.
19. Counterparts: This Grant Contract may be executed simultaneously in one or more counterparts. Each counterpart will be considered a valid and binding original. Once signed, any reproduction of this Grant Contract made by reliable means (e.g., photocopy, facsimile) shall be considered an original.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]*

AGREED TO AND ACCEPTED BY:

Susan G. Komen Breast Cancer Foundation North Carolina Triangle to the Coast Affiliate  
d/b/a Susan G. Komen, North Carolina Triangle to the Coast

By: \_\_\_\_\_ Date \_\_\_\_\_  
Name: Pam Kohl  
Title: Executive Director

Northampton County Health Department

By: \_\_\_\_\_  
Name: John L. White  
Title: Acting Health Director

This instrument has been pre-audited in the manner as

Per NC.G.S. 159-28 (a) Dot Vioh 9-2-14  
Finance Officer

**SIGNATURE PAGE:**

\_\_\_\_\_  
Chairperson  
Northampton County Board of Health

\_\_\_\_\_  
Date

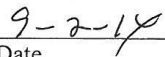
\_\_\_\_\_  
Chairperson  
Northampton County Commissioners

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kimberly Turner  
County Manager

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Dot Vick  
Finance Officer

  
\_\_\_\_\_  
Date

**Proposed Modification to the Clement's Mechanical Agreement:**

Mr. Gary Brown, EDC Director, appeared before the Board to seek approval for a revision to the Economic Development Agreement between Northampton County and Clement's Mechanical Inc., extending the date for obtaining a certificate of occupancy for the facility being constructed.

The County entered into an agreement with Clement's Mechanical around 13 months ago, which involved the company acquiring a 40-acre site in the Northampton Commerce Park, where they would build two structures: a 30,000 square foot headquarters and operations center. Because of continued adverse weather conditions, construction and work has been delayed.

Vice-Chairwoman Greene asked if the location is right at the turn going into Enviva. Mr. Brown said it is close, just 100 yards further North on the Eastside of Lebanon Church Rd. Vice-Chairwoman Greene then asked if they had just poured the concrete. Mr. Brown replied no; they've dug the footings.

Commissioner Spruill asked if there were any penalties involved if a company does not meet the occupancy date of closure. Mr. Brown said there may be, but it depends on the agreement with the company. There is a claw-back provision, for instance in the economic development agreement with the company. Were they not making good faith efforts to move toward that and came before you and made the presentation and demonstrated that, then the Board would have the right to claw-back the site. So depending on the economic development agreement from deal to deal, those conditions vary, but that's what it is as it relates to Clement's. Commissioner Spruill then asked, assuming that all good faith effort is going to be pursued in the future, are they looking for March as the closing out of all of this. Mr. Brown confirmed. Mr. Brown noted that in his conversations with Luke Clements (the owner) that he would like to be in the building by Christmas.


A motion was made by Virginia Spruill and seconded by Fannie Greene that the Board of Commissioners approve the amendment of the Economic Development Agreement between Northampton County and Clement's Mechanical, Inc. extending the date for the Company to reach substantial completion and obtaining a certificate of occupancy from September 30, 2013 to March 31, 2015. **Question Called: All present voting yes. Motion carried.**

County Attorney Scott McKellar mentioned that the amendment itself needs to be in writing and signed by both parties.

Vice-Chairwoman Greene said to Mr. Brown that she understands that the solar company is up and running. She asked him if he could update the Board. Mr. Brown said that his understanding is that they connected to the grid and went live about a month ago, and have had a couple of issues keeping the system online. There were a couple of breakers that kept being tripped. They are working out those bugs and don't anticipate any other hassles going forward.

**PLEASE SEE SCANNED DOCUMENTS WHICH ARE  
HEREBY MADE A PART OF THESE MINUTES:**

## Decision Paper

To: Northampton County Board of Commissioners  
From: Gary Brown, Northampton County Economic Development Commission   
Date: September 9, 2014  
Subject: Amendment of the Economic Development Agreement Between  
Northampton County and Clement's Mechanical Inc.

### PURPOSE:

To secure approval of the Northampton County Board of Commissioners of a revision to the economic development agreement between Northampton County and Clement's Mechanical Inc., extending the date for obtaining a certificate of occupancy for the facility being constructed.

### FACTS:

1. On August 5, 2013, Northampton County (the County) and Clement's Mechanical Inc. (the Company) entered into an economic development agreement (the Agreement, copy attached) providing for the construction of the Company's headquarters and operations center (the Facility) on a forty (40) acre site in the Northampton Commerce Park.
2. Article I of the Agreement provides for the Company to substantially complete and obtain a certificate of occupancy for the Facility by September 30, 2014. [See yellow highlight section of Article I , Page 2 of the attached Agreement] While the Company is progressing with construction of the Facility and the related CDBG-SBEA project has been successfully closed-out, several factors have delayed construction, particularly site development. Those factors include:
  - a. regulatory requirements necessitating revision of site development plans;
  - b. excessive wet and cold weather during the winter, spring and early summer of 2014;
  - c. contractual obligations of the company precluding utilization of the Company's workforce for construction of the Facility; and
  - d. continuing wet weather during the summer of 2014.
3. Accordingly, the Company requests the date for substantial completion and obtaining a certificate of occupancy be extended to March 31, 2015.

**Decision Paper: Revision to Clement's Mechanical Economic Development Agreement**  
**September 9, 2014**  
**Page 2**

**RECOMMENDATION:**

In consultation with and with the concurrence of Northampton County Manager Kimberly Turner, the Northampton County Economic Development Commission recommends:

**The Northampton County Board of Commissioners:**

Approve the amendment of the Economic Development Agreement between Northampton County and Clements Mechanical Inc. extending the date for the Company to reach substantial completion and obtaining a certificate of occupancy from September 30, 2013 to March 31, 2015.

**ROUTED FOR CONCURRENCE/COMMENT TO:**

Ms. Kimberly Turner, Northampton County Manager

Concur: Kimberly L. Turner 9/9/14 Non-Concur: \_\_\_\_\_

Comment: \_\_\_\_\_  
\_\_\_\_\_

**ACTION BY THE DECISION MAKER:**

APPROVED \_\_\_\_\_ DISAPPROVED \_\_\_\_\_

OTHER (SPECIFY) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

SIGNATURE & DATE \_\_\_\_\_

COPY

STATE OF NORTH CAROLINA

COUNTY OF NORTHAMPTON

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement"), is made this the 5 day of August, 2013 (Effective Date) by and between NORTHAMPTON COUNTY, a body politic and corporate of the State of North Carolina (hereinafter "the County"), and CLEMENTS MECHANICAL, INC., a North Carolina corporation, (hereinafter "the Company").

RECITALS:

The purpose of this Agreement is to describe certain incentives agreed to be provided by the County to the Company in consideration of the Company's location and establishment of a headquarters and operations facility in Northampton County, North Carolina (hereinafter the "Facility"), subject to the terms and conditions hereof.

NOW, THEREFORE, for and in consideration of the mutual promises, the adequacy and sufficiency of which is hereby acknowledged by the parties, terms and covenants contained in this Agreement and other good and valuable considerations, the parties agree as follows:

ARTICLE I:

PROPERTY TRANSFER

As of the date hereof the County owns 500+/- acres known as the Northampton Commerce Park particularly described in the Deed attached hereto as Exhibit A (the "Commerce Park"). A 40-acre portion of the Commerce Park as defined by the Survey attached hereto as Exhibit B (the "Real Property") is the site which will be conveyed in fee simple to the Company in accordance with the terms and conditions hereof and upon which the Company will locate and establish the Facility. The parties agree that the value of the Real Property at the time of this Agreement is \$12,750.00 per acre of 26.96 buildable acres and \$3,750.00 per acre of 13.036 uncleared acres for a total of \$392,625.00, which figure represents the value of the Real Property as stated in the initial project negotiations between the parties and subsequent grant agreements between the parties and the State of North Carolina.

Consideration for the Real Property shall consist of: (1) a payment of Ten Dollars (\$10.00) to the County, the receipt of which is hereby acknowledged, and (2) the covenants made by the Company set forth in Article IV of this Agreement, and other good and valuable considerations.

The intent of this Agreement is that the Company shall hold exclusive fee simple title subject to conditions subsequent and right to revert and to occupy the Real Property after the transfer of ownership to the Company at Closing, subject to the following:

It is understood and agreed that this conveyance is made and accepted, and the Real Property is hereby granted, subject to the following covenants, conditions, restrictions and reservations which shall apply to and run with the land. These covenants, conditions, restrictions and reservations are as follows:

By September 30, 2014, the Company shall substantially complete the construction of and receive a certificate of occupancy for the Facility on the Real Property conveyed by the County. The Company shall further invest a minimum of One Million One Hundred Thousand Dollars (\$1,100,000) in purchased or leased equipment and facility construction and improvements for the Facility and be fully operational and shall employ a minimum of twenty-six (26) individuals on a full-time basis.

It is further agreed that should the Company neglect or fail to obtain a certificate of occupancy for the Facility by September 30, 2014, the County, and its successors and assigns, may at any time thereafter serve on the Company a notice in writing specifying that the Company is in default of this Agreement and directing it to remedy such default or breach. Should the Company thereafter for a period of ninety (90) days (time being of the essence) fail fully and entirely to remedy such breach or default or to put forth a reasonable plan of completion to which the County consents (such consent not to be unreasonably withheld), then a notice in writing may be served on it by the County, notifying it that the County elects that the title to the Real Property shall revert to the County, and thereupon the title to the whole of such property shall immediately and without the necessity of any further action on the part of the County, revert to and revest in the County. The Company shall lose and forfeit all of its rights, title and interest in and to the whole of the real property except as below set forth.

In the event of such reversion of title, the Company shall have the right to re-enter the property to remove its personal property from the property at its sole cost and expense for a period of ninety (90) days from the date of the reversion. In the event of such reversion of title, the Company shall also have the right to re-enter the property to remove all improvements, fixtures, buildings, utilities, streets, footings, paved parking, foundation and other walls at its sole cost and expense, so that the premises shall be left clean and free of debris and all materials. No partial removal of improvements, fixtures, buildings, utilities, streets, footings, paved parking, foundation and other walls shall be allowed. Company will provide all labor and materials and whatever equipment may be necessary for the expeditious and proper execution of its duties and obligations hereunder. Prior to removing any improvements, fixtures, buildings, utilities, streets, footings, paved parking, foundation and other walls, the Company will furnish to the County a surety bond, both the form of the bond and the surety company to be satisfactory to the County as follows:

- A. A bond in the amount of One Million Dollars (\$1,000,000.00) conditioned on performance by Company of all of its duties as above set forth arising out of reversion of the real property to the County, guaranteeing immediate payment to County of all expenses incurred by County due to the failure of Company to perform its duties regarding demolition and clean-up as above set forth or by judgments entered against County arising out of all claims or suits referred to in the below indemnification paragraph;
- B. A bond in the amount of One Million Dollars (\$1,000,000.00) for injuries arising out of Company's performance of its duties under this Agreement in the event of a reversion of title.

Company will indemnify County against all suits or claims arising out of Company's performance of its duties under this contract, regardless of who makes the claim or whether the claim is based on the alleged negligence of Company. Company will defend all such actions at its own expense, including attorney's fees, and will satisfy any judgment rendered against County in any such action.

In addition, and insofar as such matters relate to events subject to the control of the Company and not the County or the State of North Carolina, should the Company fail to occupy the Real Property and to begin construction of the Facility within ninety (90) days of the Closing, the County shall have a right to cause the title of the property to revert to the County in the manner and upon the terms set forth above.

**ARTICLE II:**  
**CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE COMPANY**

2.1. Inspection. The Company shall be under no obligation to acquire the Real Property or otherwise perform under this Agreement unless the Company determines the Real Property to be suitable



for its intended purposes and until each of the following requirements of the Company is satisfied, in the Company's absolute discretion:

- (a) Flood Plain. The Real Property must not lie in a flood plain.
- (b) Environmental Conditions. The Company must be satisfied with its review of the environmental condition of the Real Property.
- (c) Governmental Approvals and Zoning. The Company must be able to obtain the appropriate county, state and federal authorities approvals relating to the Site required including, acceptable zoning for the Facility and development of the Site, site plan and development plan approvals (including any required drainage or storm water management, building permits for planned improvements, and approvals for the construction of utilities), any necessary governmental approvals for access, such as curb cuts or entrances and any wetlands or environmental approvals and permits. The Company must be able to obtain all necessary permits and approvals, free from extraordinary restrictions on the Company's ability to use any part of the Site except for: i) required buffer and/or yard or set-back areas; ii) limitations which may be imposed for protection of any environmentally sensitive and regulated areas; and, iii) any easements existing at the time of Closing for the development and operation of the Facility.

The Company acknowledges that the County has established zoning and other land-use regulations applicable to Real Property at the time of Closing and agrees that any requests made by the Company for a variance in those regulations, and/or failure to obtain such a variance, shall not constitute an extraordinary restriction. The Company further agrees to construct and connect on-site utilities in accordance with regulations established by the County at the time of Closing.

- (d) Title Insurance. The Company shall be under no obligation to acquire the Real Property from the County or otherwise perform under this Agreement unless the Company shall be able to procure at the Closing an owner's policy of title insurance with coverage acceptable to the Company and issued by a title insurance company licensed by the North Carolina Department of Insurance.

### **ARTICLE III: REAL PROPERTY CLOSING MATTERS**

3.1 Closing Date. Subject to the satisfaction of the conditions precedent set forth in Article II, the Closing of the transaction contemplated herein shall take place ten (10) days following written notification by the Company that (a) the last of the conditions precedent has been fulfilled, and (b) Company is prepared to close. The date upon which the Closing actually takes place, or, if more than one day is required to complete the Closing, the date upon which the Closing is actually accomplished, shall be deemed and considered the "Closing Date".

3.2 Deed and Title. At the Closing, the Company shall deliver to the County payment for the purchase of the Site as described in Article 1 above; and the County shall convey marketable and good title to the Real Property in fee simple, with the exception regarding occupancy and development provisions set forth in the fourth paragraph of Article I of this Economic Development Agreement, to the Company by the Special Warranty Deed, in substance and form acceptable to the Company.

3.3 Costs. Any unpaid ad valorem taxes due and payable within the calendar year of the Closing shall be prorated between the County and the Company as of the date of Closing. The Company shall also pay recording costs and the cost of the Owner's policy of title insurance.

3.4 Extension of Closing Date. Any party may extend the date of Closing up to an additional fourteen (14) days if necessary to complete all documentation, title examination and other matters necessary for closing.

3.5 Possession. The Company shall be given sole and exclusive possession of the Real Property at such time as the Special Warranty Deed is delivered by the County to the Company.

**ARTICLE IV:  
THE COMPANY'S INVESTMENT, JOB CREATION CONDITIONS APPLICABLE TO THE  
CONVEYANCE OF THE REAL PROPERTY**

On or before September 30, 2014, the Company shall invest a minimum of \$1,100,000 in purchased and leased equipment and facility construction and improvements for the Facility, which shall be installed or erected on or otherwise placed in service at the Real Property during this same period. Within this period the Company shall create and maintain a minimum of twenty-six (26) full-time permanent jobs at the Facility. Permanent job shall be interpreted to mean a full-time job for a full work week, rather than a part-time job or combination of part-time jobs for only part of a work week. The minimum twenty-six full-time permanent jobs created during this period shall be maintained for a term of five (5) years. During this five-year term, if the Company's full-time employment is reduced to 80% or less of the aforementioned minimum during any interval of six consecutive months, the Company shall pay to the County twenty thousand dollars (\$20,000) for each such interval up to a cumulative maximum total of two hundred thousand dollars (\$200,000).

The County and the Company hereby acknowledge that the Company already has in excess of 26 full-time employees and is accordingly in compliance with this condition of the Agreement. The Company is not obligated to create 26 new full-time jobs in addition to the number it has created as of the date of this Agreement.

Nevertheless, should the Company fail to satisfy the minimum investment standards (\$1,100,000) set herein on or before September 30, 2014, and until such time as the minimum investment standards are met, the Company shall be obligated to pay to the County a sum equal to the difference in the projected annual property tax obligation of the Company based upon the Company's anticipated minimum investment, and the annual ad valorem revenues actually paid by the Company during the same period.

**ARTICLE V:  
LOCAL, STATE AND OTHER PROJECT ASSISTANCE**

5.1 Grant Participation. The Company agrees and acknowledges that the Real Property to be conveyed by the County to the Company comprises the total project assistance obligation of the County to the Company. The County agrees and acknowledges that the Company's satisfaction of the requirements of Article IV of this Agreement constitutes the total obligation of the Company to the County, and that the Company's obligations under this Agreement shall terminate upon the Company's satisfactory performance of the requirements set forth in Article IV.

5.2 Program Thresholds. It is acknowledged by the parties that once a threshold of minimum investments for a grant under this Article IV has been met, the Company shall no longer thereafter be obligated to meet or maintain such thresholds. For the purposes of assessing the ad valorem taxable value of the investments made by the Company, such assessments shall be made annually by the County and the assessment of the County shall be the final determination.

5.3 Program Application and Annual Reporting. The Company agrees to provide to the County as and when requested any and all information reasonably necessary to document the capital investment and job creation by which the Company will qualify for participation in this Agreement.

5.4 Non-Local Inurements to the Company. The County acknowledges that the Company may qualify for additional project assistance and incentives available from the State of North Carolina and the United States of America, the provisions of which may accrue to the benefit of the Company in particular or businesses and industries in general. The County agrees to provide information and documentation about the economic conditions of the County's populace to support the Company in qualifying for the assistance and incentives described in this paragraph.

However, final determination of eligibility and the amount of assistance and incentives available to the Company shall be made by the State of North Carolina and the United States of America and any such other entities as may be appropriately responsible for making such determinations, and the County does not warrant that such concessions will be granted.

**ARTICLE VI:  
ENFORCEMENT**

This Agreement shall be a legally enforceable contract and shall be governed by and construed in accordance with the laws of the State of North Carolina. Pursuant to the provisions of North Carolina General Statutes §6-18 should the County be required to file civil action for the enforcement of this Economic Development Agreement and to restore fee simple title to the County as provided herein the County will be entitled to an award of reasonable attorney's fees and costs incurred in such civil action.

**ARTICLE VII:  
VENUE**

The venue for instituting any legal action arising out of this Agreement shall be in the appropriate division of the General Court of Justice of Northampton County, North Carolina.

**ARTICLE VIII:  
INDEMNIFICATION**

The Company hereby agrees to indemnify, protect and save the County and their officers, directors and employees harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorney's fees, arising out of, connected with, or resulting directly or indirectly from the actual operation of the Facility or the construction of the Facility pursuant to this Agreement, including without limitation, the possession, condition, construction or use thereof, insofar as such matters may be subject to the sole control of the Company and not within the control of the County. This indemnification arising under this Article shall survive the Agreement's termination.

**ARTICLE IX  
LIMITED OBLIGATION OF THE COUNTY**

NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE COUNTY'S SOLE DISCRETION FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN OF ANY CLASS OR SOURCE OF THE COUNTY'S MONIES, NOR SHALL ANY PROVISION OF THE AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE COUNTY GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE SHALL TAKE PRIORITY.

**ARTICLE X:**

Any communication required or permitted by this Agreement must be in writing, except as otherwise provided by this Agreement, and shall be sufficiently given and deemed given when delivered by hand or five (5) days after being mailed by postage prepaid, certified first-class mail and addressed as follows:

- |    |                               |   |
|----|-------------------------------|---|
| a. | <u>If to the County, to:</u>  | Northampton County Manager<br>Post Office Box 808<br>Jackson, NC 27845                          |
| b. | <u>If to the Company, to:</u> | Mr. Luke Clements<br>Clements Mechanical, Inc.<br>Post Office Box 70<br>Pleasant Hill, NC 27866 |

**ARTICLE XI:**

If the date for making any payment or the last day for performance of any act or the exercising of any right subject to this Agreement shall be a Saturday, Sunday, a legal holiday, or for any other reason a non-business day in Northampton County, NC, then such payment shall be made or act performed or right exercised on or before the next business day after the Saturday, Sunday, legal holiday, or other non-business day in Northampton County, NC.

**ARTICLE XII:**

This Agreement constitutes the entire contract between the parties, and it shall not be changed except in writing signed by all parties.

**ARTICLE XIII:**

This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**ARTICLE XIV:**

**LIABILITY OF OFFICERS AND AGENTS**

No officer, agent or employee of the Company or the County shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Article shall not relieve any other officer, agent or employee from the performance of any official duty provided by law.

**ARTICLE XV:**

**SEVERABILITY**

If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

IN WITNESS WHEREOF, Northampton County has caused this Agreement to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Commissioners and with the specific intent that this Agreement is executed by it as an instrument under seal, and Clements Mechanical, Inc. has caused this Agreement to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors and with the specific intent that this Agreement is executed by it as an instrument under seal, on the day and year first above written, and in duplicate originals, one of which is retained by each party.

This instrument has been pre-audited in the manner required by the North Carolina Local Government Budget and Fiscal Control Act.

BY: *Dorothy E. Vial*  
Northampton County Finance Officer

NORTHAMPTON COUNTY

BY: *Robert V. Carter*  
Robert V. Carter, Chairman  
Board of Commissioners



(Corporate Seal)  
BY: *Kimberly L. Palmer*  
Kimberly L. Palmer, Clerk  
Board of Commissioners

CLEMENTS MECHANICAL, INC.

BY: *Stephen L. Clements*  
Stephen L. Clements, President  
Clements Mechanical, Inc.

ATTEST:

(Corporate Seal)

BY: *Tammy V. Bridgers*  
Tammy V. Bridgers, Secretary  
Clements Mechanical, Inc.



**Gary Brown**

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**From:** Andy Gervasio <agclementsmechanical@gmail.com>  
**Sent:** Tuesday, September 02, 2014 4:32 PM  
**To:** Gary Brown

Mr. Brown,

This e-mail will confirm our recent conversations and serve as a formal request from Clements Mechanical for an extension for the completion of our facility at 112 and 183 Clements Way to be on March 31, 2015. As you know, while site and building pad preparation is nearing completion, construction of our facilities have been delayed largely owing to three (3) factors: 1) required revisions to our site plan; 2) contracted work schedules of Clements Mechanical and subcontractors; and, 3) exceptionally wet weather and soil conditions. We greatly appreciate the support and consideration of the Northampton County Board of Commissioners.

Thank You.

Andy Gervasio  
General Manager  
Clements Mechanical Inc.  
252-535-2090

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**Please acknowledge receipt of this e-mail.**

**Andy Gervasio GM**

Office: 252-535-2090  
Cell: 252-370-0546

**CMI**

**A Full Service Industrial Contractor**  
**Pleasant Hill, NC 27866**

**Management Matters:**

Ms. Kimberly Turner, County Manager, appeared before the Board to ask approval of a Resolution supporting our 2015-16 Legislative Goals Proposals that will go to the North Carolina Association of County Commissioners.

A motion was made by Fannie Greene and seconded by Chester Deloatch to adopt the resolution.

**Question Called:** *All present voting yes.* **Motion carried.**

Ms. Turner also provided the Board with a copy of the resolution that they agreed to adopt at the last Commissioners' Meeting concerning the Atlantic Coast Pipeline Project.

**PLEASE SEE SCANNED DOCUMENTS WHICH ARE  
HEREBY MADE A PART OF THESE MINUTES:**

# *Northampton County*

"A GREAT PLACE TO RAISE FAMILIES, PROFITS AND EXPECTATIONS"

BOARD OF COMMISSIONERS

P. O. BOX 808

JACKSON, N. C. 27845

PHONE (252) 534-2501 • FAX (252) 534-1166

## **RESOLUTION IN SUPPORT OF LEGISLATIVE GOALS PROPOSED BY THE NORTHAMPTON COUNTY BOARD OF COMMISSIONERS**

**WHEREAS**, the North Carolina Association of County Commissioners was founded in 1908 as a membership organization to represent the interests of counties before the General Assembly;

**WHEREAS**, all 100 counties are voluntary members of the North Carolina Association of County Commissioners, making the NCACC the official voice of North Carolina counties;

**WHEREAS**, every two years, the membership of the NCACC develops and approves a package of legislative proposals designed to protect and enhance the interests of county governments and the citizens who live in our 100 counties;

**WHEREAS**, the process to generate this package of legislative goals is deliberate and inclusive and provides extensive opportunities for counties to be involved;

**WHEREAS**, Northampton County is an active participant within the NCACC and participates in the process to develop these legislative proposals;

**WHEREAS**, the attached proposals represent the collective wishes of our county for the betterment of our community;

**NOW THEREFORE, BE IT RESOLVED** that the Northampton County Board of Commissioners adopts this resolution in support of the legislative proposals to be considered by the NCACC.

**Adopted this** \_\_\_\_ **day of** \_\_\_\_, **2014**

\_\_\_\_\_  
Robert Carter, Chairman

\_\_\_\_\_  
Michelle Nelson, Clerk to the Board



# *Northampton County*

"A GREAT PLACE TO RAISE FAMILIES, PROFITS AND EXPECTATIONS"

BOARD OF COMMISSIONERS

P. O. BOX 808

JACKSON, N. C. 27845

PHONE (252) 534-2501 • FAX (252) 534-1166

## **RESOLUTION IN SUPPORT OF THE ATLANTIC COAST PIPELINE PROJECT IN NORTHAMPTON COUNTY**

**WHEREAS**, Dominion, Duke Energy, Piedmont Natural Gas, and AGL Resources recently formed a joint partnership to build the Atlantic Coast Pipeline, a 550-mile natural gas transmission line extending from Harrison County, West Virginia to Robeson County in North Carolina; and

**WHEREAS**, much of the pipeline's 550-mile route will run through North Carolina, entering the State along the Interstate 95 corridor in Northampton County; and,

**WHEREAS**, homes, businesses, industries and utilities in Northampton County and throughout North Carolina are in need of improved access to the efficient, economical and environmentally friendly energy source provided by natural gas; and

**WHEREAS**, the Atlantic Coast Pipeline will make the abundant supplies of natural gas now being produced in the Appalachian shale basins, including the Marcellus and Utica formations, much more available to North Carolina; and,

**WHEREAS**, this improved availability will also have significant environmental benefits by supplying new power stations that operate on this clean fuel and allowing existing power facilities to convert to natural gas; and,

**WHEREAS**, construction of the pipeline and its ongoing operations will provide substantial economic benefits for our state providing better access to natural gas to aid North Carolina in recruiting new and expanding industrial operations, and lead to the creation of new employment opportunities for area residents.

**NOW, THEREFORE BE IT RESOLVED**, that the Board of Commissioners of the County of Northampton, North Carolina does hereby acknowledge the support of Northampton County Local Government for the construction of the Atlantic Coast Pipeline noting the significant benefits of the project for our state's consumers, utilities, industries and continued economic growth and development.

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Robert Carter, Chairman

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Michelle Nelson, Clerk to the Board

**Citizens/Board Comments:**

*Chairman Carter called for Citizens Comments.*

None were heard.

*Chairman Carter called for Board Comments.*

None were heard.

A motion was made by Virginia Spruill and seconded by Fannie Greene to recess regular session for the purpose of entering into a closed session. **Question Called:** *All present voting yes.*

**Motion carried.**

A motion was made by Virginia Spruill and seconded by Chester Deloatch to enter into closed session for the purpose of G.S. 143-318.11(a)(1). **Question Called:** *All present voting yes.*

**Motion carried.**

**Closed Session- G.S. 143-318.11(a)(1), General Statute §153A-98:**

A motion was made by Fannie Greene and seconded by Chester Deloatch to adjourn closed session. **Question Called:** *All present voting yes.* **Motion carried.**

A motion was made by Chester Deloatch and seconded by Virginia Spruill to enter into regular session. **Question Called:** *All present voting yes.* **Motion carried.**

Chairman Carter stated that Mr. Chris Wheeler, an employee with the County has come before the Board seeking outside employment. He noted that there has been discussion on this matter in closed session.

Commissioner Deloatch asked if it was proper to ever use a waiver on policy. Mrs. Rogers replied that yes, the policy states that the Board of Commissioners can move away from what is written in the policy. Commissioner Spruill said because what's written in the policy is that the Board follow the policy. Ms. Turner replied that she and Mrs. Rogers have to follow the policy. Mrs. Rogers quoted the policy which states "the County Board of Commissioners reserves the right to change, modify, eliminate, or deviate from the policy or procedure in this matter at any time by appropriate implementing necessary revisions directives or amendments". She mentioned again that the Board has the authority to make any changes to the policy.

Chairman Carter asked Mr. McKellar if the Board has the power to waiver after this, or should that be in another session. Mr. McKellar said policy doesn't address that, and he takes that to mean that the Board has the right to deviate from the policy at any time.

Mrs. Rogers noted to the Board that if they deviate from policy for one, they would have to consider it for the next case that comes up.

Commissioner Spruill wanted to clarify, that if they ruled against him, they would be deviating from the policy. Chairman Carter said no, if they rule for him, they would be deviating. Ms.

Turner stated that if the Board approves his request for outside employment then they would be deviating from policy.

A motion was made by Fannie Greene and seconded by Chester Deloatch that based on the information the Board has received today, and because she thinks it will be a benefit to the County, that they deviate from the policy and give him permission to do this. **Question Called:** *(2 yes: Commissioners Greene and Deloatch; 2 no: Commissioners Spruill and Carter).*

Chairman Carter stated that there is a tie. County Attorney McKellar noted that the matter will have to be tabled until the next meeting. It was a Board consensus to table the issue for a full Board.

Chairman Carter mentioned that Mr. Wheeler is working with this second employer, and the Board does not meet again for two weeks. He noted that they have to table the issue today, but what does the Board want to do about his contingent employment with this company. It was a Board consensus that Mr. Wheeler can continue working until there is a full Board to deal with the matter.

A motion was made by Chester Deloatch and seconded by Fannie Greene to adjourn. **Question Called:** *All present voting yes.* **Motion carried.**

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Michelle Nelson, Clerk to the Board  
"r.m. 09-15-14"