



COUNTY OF DARE

PO Box 1000. Manteo. NC 27954

DARE COUNTY BOARD OF COMMISSIONERS

Dare County Administration Building
954 Marshall C. Collins Dr., Manteo, NC

Monday, March 19, 2018

“HOW WILL THESE DECISIONS IMPACT OUR CHILDREN AND FAMILIES?”

AGENDA

- 5:00 PM** **CONVENE, PRAYER, PLEDGE OF ALLEGIANCE**
- ITEM 1** Opening Remarks - Chairman's Update
- ITEM 2** Public Comments
- ITEM 3** 2 Year Contract for Google GSuite
- ITEM 4** Public Hearing – 5:30 p.m.
 1. Public Hearing - Food Stands and Mobile Food Units
- ITEM 5** Consent Agenda
 1. Approval of Minutes (03.05.18)
 2. Award of FY2017-2018 Equipment Financing
 3. Resolution to Approve Sole Source Purchase
 4. Proclamation - Mirlo Commemoration
 5. Jail Commissary Increase
 6. Tax Collector's Report
- ITEM 6** Commissioners' Business & Manager's/Attorney's Business

UPCOMING MEETINGS ---

Community Meeting, Manteo - 7 p.m. March 19, 2018

Community Meeting, Buxton – 6 p.m. March 20, 2018

Commissioners Meeting - 9 a.m. Tuesday, April 3, 2018



Opening Remarks - Chairman's Update

Description

Dare County Chairman Robert Woodard will make opening remarks.

Board Action Requested

Informational Presentation

Item Presenter

Chairman Robert Woodard



Public Comments

Description

The Board of Commissioners will provide time on the agenda for Public Comments. Each regularly scheduled meeting begins with an opportunity for anyone to speak directly to the entire Board of Commissioners for up to five minutes on any topic or item of concern.

In an effort to encourage public participation, the Board accepts public comments from 2 locations - - -

- Public Comments can be made at the Commissioners Meeting Room in Manteo.
- Public Comments can be made via a video link at the Fessenden Center in Buxton.

Board Action Requested

Hear Public Comments

Item Presenter

Robert Outten, County Manager



2 Year Contract for Google GSuite

Description

This is a two year contract for Goole GSuite, which is used for E-mail, and other Google cloud services. This in upgrade to our recently expired agreement. This new agreement will add additional needed services such as unlimited drive storage and team drives.

The new contract has an increased cost of \$8.83 per user per month over the previous cost of \$7.63 per user per month. This cost increase was partially addressed in the 2019 budget but not fully funded due to the inability of Google to provide an exact cost at the time the budget submitted and subsequent requests for additional licenses.

Board Action Requested

Approval of the 2 year Contract.

Item Presenter

Matthew Hester, Bobby Outten

SALES ORDER

Document Date: 03/08/2018

Customer Information

Customer Name: Dare County

Account Number: 000000553

Business Address: 954 Marshall C Collins Drive

City: Manteo

State: NC

Zip Code: 27954

Domain Name: darenc.com

Dealer Number: 000000253

Term: 24 Months

Billing Frequency: Annual

Renewal:

Primary Technical Contact

First Name:	Matt
Last Name:	Hester
Phone:	410.428.2264
Email:	matthew.hester@darenc.com

Primary Billing Contact

First Name:	Matt
Last Name:	Hester
Phone:	410.428.2264
Email:	matthew.hester@darenc.com

Recurring Services

Products & Services	Monthly Rate	Qty	Subtotal
G Suite Business G Suite Business, Unlimited Storage per Mailbox, Google Vault.	\$8.00	765	\$6,120.00
Admin Support and Training Cloud Services Support and Training for Named Administrators.	\$0.83	765	\$634.95
UberConference Basic UberConference HD Audio Conferencing. Up to 10 Users. No PIN for Organizer.	\$0.00	765	\$0.00

Subtotal **\$6,754.95**

Total \$6,754.95

Terms & Conditions

This Sales Order is subject to the Master Services Agreement, located at <http://neocloud.com/msa> ("MSA"), which is incorporated herein by reference. Together, this Sales Order and the MSA constitute a binding agreement ("Agreement") between Customer and Cloud Service Partners, Inc. ("CSP") dba NeoCloud ("NeoCloud"). Unless otherwise stated herein, all capitalized terms not defined in this Sales Order are defined in the MSA. By signing below, Customer accepts the terms of this Sales Order, the MSA and any attachments. In the event Customer has previously executed a Sales Order, the MSA incorporated herein may be different from the terms of previous Agreements. In the event the parties executed previous Sales Orders, Customer hereby represents that it is in compliance with all of the terms of those Sales Orders. Notwithstanding anything to the contrary in any previous agreement between Customer and NeoCloud the current MSA shall supersede the terms of any previous Agreement, addendum or amendment.

By entering into this Sales Order, Customer agrees that it is not relying on any representations, or promises, whether written or oral, other than as contained in this Agreement. An authorized officer or manager of Customer must execute this Sales Order. This Sales Order is not valid until counter-signed by NeoCloud. Any and all pricing terms set forth in this Sales Order expire 60 days after Document Date.

The parties agree that the terms of the Agreement are hereby amended and modified as follows:

1. The first sentence in Section 7.1 is hereby deleted in its entirety and replaced with the following:
"NeoCloud may request to use the name and logos of Customer on NeoCloud websites and other marketing documents, for the purpose of identifying Customer as a customer, provided that the form of use of any Customer logo is approved in advance in writing by Customer, such approval not to be unreasonably withheld or delayed."

2. The first sentence in Section 3.2 is hereby deleted in its entirety and replaced with the following:
"Customer shall pay all invoices within thirty(30) days after date of invoice."

Except as expressly modified by this Addendum, the terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflict between the terms of this Addendum and the terms of the Agreement, the terms of this Addendum shall control. This Addendum may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

An authorized officer or manager of Customer must execute this Addendum. This Addendum is not valid until counter-signed by an authorized officer of NeoCloud at NeoClouds' main office. Any and all terms set forth in

this Addendum expire 60 Days after submission to Customer.

CSP dba NeoCloud:

Customer:

By:

By:

Name: Van Murray

Name:

Title: CEO

Title:

Date:

Date:

D.A.

M.K.



Public Hearing - Food Stands and Mobile Food Units

Description

Last month, the Board scheduled a public hearing on a set of zoning text amendments for food stands and mobile food units in unincorporated Dare County. Following the close of the hearing, the Board will be in a position to take action on all of the amendments, to only adopt some of the amendments, or may choose not to act on the amendments. A detailed staff report, the draft text amendments, and draft motions for the various actions are attached with this cover sheet.

Board Action Requested

Conduct hearing and act on proposed amendments for food establishments.

Item Presenter

Donna Creef, Planning Director



STAFF REPORT: March 19, 2018 Board of Commissioners Meeting
ITEM: Public Hearing – Food Stand/Mobile Food Unit Regulations
FROM: Donna Creef, Planning Director

Last month the Board scheduled a public hearing on a set of proposed amendments to the Zoning Ordinance to address food stands and mobile food units in unincorporated Dare County. The full text of the proposed revisions is attached to my staff report. The proposed regulations are summarized below:

1. Amend six older zoning districts (C-2, C-2H, C-3, I-1, VC-2, SP-C) to add food stands and mobile food units to the lists of uses in these districts.
2. Amend the definition section of the Zoning Ordinance to revise or adopt the definitions of food establishment (new), food stand (revise) and mobile food unit (new).
3. Amend the Zoning Ordinance to adopt a new section (Section 22-58.5) to establish review procedures for food stands and mobile food units.

The Planning Board reviewed these amendments last year and voted unanimously on July 10, 2017 to recommend favorable action by the Board of Commissioners on these proposed amendments.

The section on commercial development in the 2009 Land Use Plan includes a discussion of zoning amendments to address drive-thru window service at restaurants but does not include any discussion about food stands and/or mobile food units. Policy LUC #5 encourages the continued existence and development of locally-owned businesses in unincorporated Dare County. Policy LUC #6 states that commercial development should be designed to meet the needs of Dare County's unincorporated village and not to serve as regional commercial centers. Based on my review of the land use plan information and policies, there is no inconsistency with the 2009 Land Use Plan.

Following the close of the public hearing, all required procedures to act on the proposed amendments will have been completed. The Board may choose to adopt all of the amendments as recommended by the Planning Board, may choose to revise the proposed regulations based on input at the hearing, may choose to adopt the revised definitions and review procedures without amending the six older districts to add food stands/mobile food units, or may choose to not adopt any of the regulations. I have included draft motions for each of these options. Should it be the consensus of the Board to take favorable action on some or all of the amendments, a finding of consistency statement should also be adopted. A draft consistency statement is included with the staff report and the concluding paragraphs stating the Board's findings should be read as part of any motion for adoption.

DRAFT MOTIONS

To adopt the full set of amendments as recommended by the Planning Board: “I move that all of the proposed zoning amendments for food establishments be adopted as recommended by the Planning Board. This includes amending the C-2, C-2H, C-3, I1, VC-2 and SP-C districts to add food stands and mobile food units. A finding of consistency is also adopted as part of this motion and this consistency statement shall be part of the public record.

To make revisions to the proposed amendments and then adopt the revisions: “I move the proposed amendments be revised (insert specifics) and to adopt the revised amendments. A finding of consistency is also adopted as part of this motion and this consistency statement shall be part of the public record.”

To only adopt the revised definitions and new review procedures: I move to adopt the proposed revisions to Section 22-2 Definitions and to adopt the new Section 22-58.5 Food stands and mobile food units. A finding of consistency is also adopted as part of this motion and this consistency statement shall be part of the public record.”

No motion is needed if the Board chooses not to act on the proposed amendments.

KEY POINTS of RECOMMENDATIONS

1. Amend six older districts to add food stands as follows:

Avon – C-2 and C-3
Buxton C-2, C-3 and I-1
Hatteras C-2H
Manteo Out – C-3 and I-1
Colington -- VC-2
Stumpy Point – SP-C

2. Amend current food service definitions to be more consistent with State health regulations.
3. Amend Zoning Ordinance to add a new section of review procedures for food stands and mobile food units. These regulations include several conditions for food stands:

Must be affiliated with existing restaurant
Must be located in parking lot of existing business
Must provide 10 parking spaces
May provide a maximum of 8 outdoor seats
If outdoor seats provided, then public restrooms must be made available, no portable toilets.
No storage sheds or temporary buildings used for food stands

Attachments

New section 22-58.5 review procedures for mobile food establishments
Proposed revisions to Section 22-2 Definitions
Matrix of zoning districts and current food service uses
Draft finding of consistency if favorable action is taken by Board.

Section 22-58.5 Food Stands and Mobile Food Units (New Section Proposed for ZO)

Intent and Effect: The section shall apply to the review, approval and operation of any food stand and/or mobile food unit as permitted in the individual zoning districts of unincorporated Dare County. These regulations shall be effective (insert date of adoption) and apply to any food stand authorized by Dare County after this adoption date.

Mobile food units: Mobile food units as defined in Section 22-2 of the Dare County Zoning Ordinance may be authorized as a food stand subject to the conditions and procedures set forth in this section.

Approval procedures: A food stand listed as a “permitted” use in the applicable zoning district shall be subject to administrative approval by the Dare County Planning Department. A food stand listed as a “conditional” use in the applicable zoning district shall be subject to Planning Board review and Board of Commissioners approval according to the provisions of Section 22-68 of the Dare County Zoning Ordinance. An up-to-date site plan depicting the location of the proposed food stand shall be provided to the Dare County Planning Department as part of the review process. Approval from the Dare County Health Department shall be obtained and proof of the Health Department approval submitted to the Planning Department.

Location: A mobile food unit shall be located on a parcel of land in conjunction with an existing commercial structure or use. Only one mobile food unit shall be located on a parcel of land in conjunction with an existing commercial structure or use. Written approval from the owner of the commercial use shall be submitted as part of the site plan review process. A food stand proposed for use as a principal, stand-alone use may be permitted subject to the review procedures set forth in this section and in the applicable zoning district. Any food stand shall be limited to the seating restrictions of this section

Seating: An unenclosed, outdoor seating area may be provided for customers of the food stand. The maximum number of seats shall not exceed eight seats. The location of the seating shall be identified on the site plan submitted for the food stand and seating shall not be located in any setback area, parking area, or stormwater management area. A food stand shall not feature indoor seating.

Public Restrooms: Any food stand, both permanent and mobile food units, that provides outdoor seating shall provide public restrooms on the same site for use by their customers and employees. Public restrooms of the affiliated business or restaurant may be used to meet this requirement if the restrooms meet the requirements of the North Carolina Plumbing Code. Portable toilets shall not be used to meet this public restroom requirement.

Setbacks: Any food stand shall meet the zoning setbacks for a principal use structure applicable to the site where such food stand is to be located.

Parking: Ten parking spaces, as required by Section 22-56 for food stands, shall be identified on the site plan for the property where the food stand will be located. Parking spaces for the existing business affiliated

with the food stand may be approved for use by the food stand if the hours of operation for the food stand and the business do no overlap.

Restaurant Affiliation: A restaurant shall be affiliated with a food stand as required by NC Health regulations. The affiliated restaurant shall be located in Dare County.

Signage: A separate freestanding business sign for the food stand shall not be displayed. Temporary signage or sandwich board signs shall not be used. Advertising for the food stand may be incorporated into the freestanding sign for the existing business if such sign does not exceed the allowable square footage as established by the Dare County Sign Ordinance. Signage on the outside of the food stand attached to the unit may be authorized by the Planning Department during the approval process. One flag as defined in the Dare County Sign Ordinance may be displayed at the food stand location according to the provisions of the Dare County Sign Ordinance. Any flag displayed at the food stand shall not interfere with line of sight clearances in parking areas.

Solid Waste: Trash receptacles for customer and employee use shall be provided onsite by the food stand operator. Approval to use the solid waste containers of the affiliated business shall be submitted as part of the approval process. Solid waste containers provided at public beach accesses or other public sites shall not be used.

Hours of Operation: Hours of operation for any food stand shall be established during the approval process and noted in the approval certificate issued by the Planning Department.

Annual Review: Annual review of any mobile food unit approved as a food stand is required and shall include the submission of documentation from the affiliated business and restaurant.

Other conditions:

Any mobile food unit authorized as a food stand shall be kept in a “ready to move” state and shall not have the wheels or tires removed from the unit. Pre-fabricated accessory structures intended for storage purposes and constructed off-site or factory-built shall not be used as food stands.

No drive-thru window service whereby patrons are served while seated in vehicle shall be permitted at a food stand.

Nothing in these regulations shall be interpreted to apply to catering services or special event food vendors as approved by the Dare County Health Department or to emergency response feeding services offered as part of emergency response operations.

Proposed amendments to definitions to be consistent with State Health definitions (new text underlined, text for deletion in strikethrough)

Food establishment: an operation that is conducted in a mobile, stationary, temporary or permanent facility or location and where consumption is on premises or off the premises.

~~Food stand – Any place or premises where food and beverages, including ice cream and other frozen items, are prepared and sold or delivered to patrons for off-premises consumption only. In order to qualify as food stand, no indoor or outdoor seating may be provided for on-premise consumption.~~

Food stand: any food establishment that prepares or serves food and does not provide indoor seating facilities for customers to use while eating or drinking. A permitted food stand may elect to provide tables and not more than eight seats for customers to use while eating and drinking on the premises. Such seating shall be provided in an unenclosed, outdoor area.

Mobile food unit: a food establishment or pushcart designed to be readily moved and vend food.

Drive-in restaurant or refreshment stand – any place or premises used for sale, dispensing or serving food, refreshments or beverages in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments or beverages on the premises. (no change recommended)

Restaurant – Any place or premises where food and beverages are prepared and served to patrons for on-premises consumption. Seating may be located indoors or outdoors. Delivery service and take-out service may also be offered in addition to the on-premises consumption. This term shall not include drive-in restaurant or food stand as defined elsewhere in this appendix. (no change recommended)

RESTAURANTS ALLOWED CURRENTLY						
DISTRICT	C-2	C-2H	C-3	I-1	VC-2	SP-C
Avon	YES		YES			
Buxton	YES		YES	YES		
Hatteras		YES				
Colington					YES	
Manteo Out			YES	YES		
Stumpy Point						YES
Frisco	S-1 zoning – all uses permitted -- no changes needed – review procedures for mobile food units recommended					
RWS	S-1 zoning – all uses permitted -- no changes needed -- review procedures for mobile food units recommended					
Wanchese	No changes recommended – review procedures for mobile food units recommended					
Manns Harbor	No changes recommended – review procedures for mobile food units recommended					
East Lake	No changes recommended – review procedures for mobile food units recommended					

ZONING AMENDMENT CONSISTENCY STATEMENT

On March 19, 2018 the Dare County Board of Commissioners considered zoning text amendments to the Dare County Zoning Ordinance to address food establishments. The proposed amendments revise the definitions of food establishment, food stand and mobile food unit, establish a new section of review procedures for food stands and mobile food units and add food stands and mobile food units to the C-2, C-2H, C-3, I-1, VC-2, and SP-C commercial districts.

The 2009 Dare County Land Use Plan is the comprehensive plan for unincorporated Dare County adopted by the Dare County Board of Commissioners on December 6, 2010.

A review of the Dare County Land Use Plan found the following policies to be applicable to these zoning text amendments:

Land Use Compatibility Management Topic

Policy # LUC # 5

Dare County encourages the continued existence and development of locally-owned businesses in unincorporated Dare County.

Implementation Strategy for LUC #5 – Inventory of older existing commercial businesses and consideration of zoning amendment to ensure their replacement or repair in the event of damage from a natural disaster.

Policy #LUC6

Commercial development should be designed to meet the needs of Dare County's unincorporated village and not serve as regional commercial centers. The gross floor area limitations of the Dare County Zoning Ordinance and other applicable land use codes shall be used as a tool to manage the footprint of commercial structures. The goal is to manage the size of commercial structures, which serve as a disincentive for regional commercial centers for location in villages.

Consistency Findings

Based upon a review of these policies and the favorable recommendation of the Dare County Planning Board, the Board of Commissioners hereby finds these text amendments to be consistent with the 2009 Dare County Land Use Plan since the amendments will add “food stands” and “mobile food units” to the older commercial zoning districts used in unincorporated Dare County providing equity in these older districts with the newer zoning regulations adopted in the last decade and will make the zoning ordinance definitions more consistent with the North Carolina restaurant codes.

The Board of Commissioners further finds the adoption of these amendments to be reasonable and in the public interest by providing continuity in the commercial districts applied in unincorporated Dare County in reference to food establishments and by establishing review procedures for food stands and mobile food units to ensure these establishments are properly reviewed and approved by Dare County.

Robert L. Woodard, Chairman
Dare County Board of Commissioners



Consent Agenda

Description

1. Approval of Minutes (03.05.18)
2. Award of FY2017-2018 Equipment Financing
3. Resolution to Approve Sole Source Purchase
4. Proclamation - Mirlo Commemoration
5. Jail Commissary Increase
6. Tax Collector's Report

Board Action Requested

Approval

Item Presenter

County Manager, Robert Outten



Approval of Minutes

Description

The Board of Commissioners will review and approve their previous Minutes, which follow this page.

Board Action Requested

Approve Previous Minutes

Item Presenter

County Manager, Robert Outten



COUNTY OF DARE, NORTH CAROLINA

District 1: Roanoke Island & Mainland; District 2: Nags Head, Colington, Kill Devil Hills; District 3: Kitty Hawk, Southern Shores, Duck; District 4: Chicamacomico, Avon, Buxton, Frisco, Hatteras; District 5: At Large

Regularly scheduled Board meetings are videotaped and can be viewed at www.darenc.com

MINUTES

DARE COUNTY BOARD OF COMMISSIONERS MEETING

Dare County Administration Building, Manteo, NC

9:00 a.m., March 5, 2018

Commissioners present: Chairman Robert Woodard, Vice Chairman Wally Overman
Jack Shea, Steve House, Jim Tobin

Commissioners absent: Rob Ross, Danny Couch

Others present: County Manager/Attorney, Robert Outten
Deputy County Manager/Finance Director, David Clawson
Public Information Officer, Dorothy Hester
Clerk to the Board, Gary Lee Gross

A full and complete account of the entire Board of Commissioners meeting is archived on a video that is available for viewing on the Dare County website www.darenc.com.

Chairman Woodard called the meeting to order at 9:04 a.m. He invited Rev. Keith Dey from Emmanuel Lutheran Church to share a prayer, and then he led the Pledge of Allegiance to the flag. Chairman Woodard announced that Commissioners Ross and Couch had an excused absence due to a prior commitment.

ITEM 1 – OPENING REMARKS – CHAIRMAN’S UPDATE

Following is a brief outline of the items mentioned by Chairman Woodard during his opening remarks, which can be viewed in their entirety in a video on the Dare County website –

- Chairman Woodard gave a report on the recent rally conducted in Raleigh related to the BOEM public meeting on offshore energy, which was also attended by Vice Chairman Overman, Commissioner Ross, and the County Manager. The Chairman announced that he will be going to Washington, D.C. this week to speak against offshore drilling.
- He noted that the very recently completed Buxton beach nourishment project was finished just in time before the onset of the brutal weather that has hit the Outer Banks.
- The Chairman shared a detailed report from NCDOT listing the roads that were still experiencing impacts from the recent coastal storm.
- George Henderson, one of the founding members of the Dare County Airport Authority, was presented a certificate of appreciation for his 47 years of continuous service. Mr. Henderson was recognized for his aeronautical experience, long-standing commitment, and insightful leadership, which has caused general aviation in Dare County to flourish.

ITEM 2 – PRESENTATION OF COUNTY SERVICE PINS

- 1) Anna Gallop, Social Services Division, received a 10-year pin.
- 2) Cynthia Crabtree, Social Services Division, received a 15-year pin.
- 3) Chuck Earley, EMS, received a 30-year pin.

ITEM 3 – EMPLOYEE OF THE MONTH – MARCH 2018

Debi Equils received the Employee of the Month award from Shanna Fullmer who described the many ways that Ms. Equils is an asset to the Public Works Department.

ITEM 4 – PUBLIC COMMENTS

The Manager outlined the procedure for making public comments in Manteo and via the video link to the Fessenden Center in Buxton. Following is a brief summary of citizen remarks, which can be viewed in their entirety in a video on the Dare County website –

The following comments were made in Manteo –

1. Willo Kelly, Government Affairs Liaison with the Outer Banks Association of Realtors and the Outer Banks Home Builders Association, alerted Commissioners to a rate filing that, if approved, would result in a huge increase in insurance rates for Dwelling policies that are written for non-owner occupied structures such as rental properties and second homes. She noted that the rate filing would have a greater impact on coastal communities than the statewide average. She urged everyone to file comments opposing the rate filing and provided details on how to make public comments. Ms. Kelly also advised property owners to shop around when presented with Consent to Rate forms by their existing insurance carrier.

The following comments were made in Buxton –

2. Nicole Jennette spoke on behalf of Wendy Stowe Sisler who she said lost her son after a long struggle with addiction. She explained that Ms. Sisler has since become an advocate for mental health and substance abuse treatment services in memory of her son Cory. Ms. Jennette voiced support for PORT Health Services and outlined the need for an outpatient treatment facility in Hatteras Village noting that it is difficult for people to travel off the island for treatment especially during storms. She urged the Board of Commissioners to support the endeavor to bring a larger and more diverse treatment facility to her community.

ITEM 5 – PROCLAMATION – AMERICAN RED CROSS MONTH

Carolyn Self, Community Volunteer Leader for the Greater Albemarle Area of the American Red Cross, asked the Board to proclaim March as American Red Cross Month in an effort to applaud the heroes in Dare County who deliver help and hope during disasters. She also outlined a new Red Cross program “Sound the Alarm” that provides smoke alarms to help prevent fire related deaths. Commissioner House spoke in support of the Red Cross by noting his long-term affiliation with the organization and shared a quote from Clara Barton, the founder of the American Red Cross.

MOTION

Commissioner Shea motioned to proclaim March 2018 as American Red Cross Month. Vice Chairman Overman seconded the motion.

VOTE: AYES unanimous

ITEM 6 – REPORT FROM THE NORTH CAROLINA COASTAL FEDERATION

Erin Fleckenstein from the North Carolina Coastal Federation gave a recap of the recent rally that was held in Raleigh to oppose offshore drilling. She expressed thanks for the strong stand that the Board of Commissioners has taken against offshore drilling. Details were provided about the public comment process and Ms. Fleckenstein urged everyone to submit remarks about the adverse impact offshore drilling would have for the Outer Banks.

ITEM 7 – NC COOPERATIVE EXTENSION – REPORT TO THE PEOPLE

Shannon Brooks, County Extension Director presented a comprehensive report on the agency's accomplishments during 2017. She reported that 103 volunteers provided over 7,200 hours of service to the people of Dare County with an economic value of over \$174,000. Ms. Brooks outlined the many services provided by Cooperative Extension including pesticide collection, soil testing, the Master Gardener Program, and 4-H activities.

ITEM 8 – FIVE YEAR GENERAL FUND FINANCIAL PROJECTION

A five year projection for the County's General Fund was presented by Finance Director David Clawson. He explained that this type of projection is recognized as a best practice that is viewed favorably by the credit rating agencies. Commissioners were told that the five year projection shows a Fund Balance decline from 32.8% to 31.7% at the end of fiscal year 2019. It was noted that modest deficits may occur in 2020, 2021 and 2022. Mr. Clawson reported that the projection shows a decrease in debt service as a percentage of total expenditures from 17.11% to 11.40%, which he said is a major ratings factor.

ITEM 9 – REVISED RESOLUTION INDICATING THE DATE OF THE HATTERAS VILLAGE VOTER REFERENDUM (Att. #1)

Mr. Outten reported that the resolution previously adopted that called for a voter referendum in the Hatteras voting precinct regarding the use of ad valorem taxes for multiuse pathways did not indicate the date for election. He said In order to comply with NCGS 163-287 a revised resolution is needed indicating May 8, 2018 as the date for the voter referendum.

MOTION

Commissioner House motioned to approve the revised resolution indicating May 8, 2018 as the referendum date in the Hatteras Voting Precinct.

Commissioner Shea seconded the motion.

VOTE: AYES unanimous

ITEM 10 – CONSENT AGENDA

The Manager announced the items as they were visually displayed in the meeting room.

MOTION

Commissioner House motioned to approve the Consent Agenda:

- 1) Approval of Minutes (02.20.18) **(Att. #2)**
- 2) Government Education Access Channels 2018-2019 Proposed Budget

Commissioner Shea seconded the motion.

VOTE: AYES unanimous

ITEM 11 – BOARD APPOINTMENTS

- 1) Community Advisory Committee for Long-Term Care Facilities (Nursing Home Advisory Board)
Commissioner Shea motioned to recommend that the applications of Richard Burris and Susie Walters be forwarded to the Ombudsman to undergo training required by the NC General Statutes prior to their names being submitted to the Board of Commissioners at a future date for formal appointment to the Dare Co. Community Advisory Committee, also known as the Nursing Home Advisory Board.

Commissioner Tobin seconded the motion.

VOTE: AYES unanimous

- 2) Juvenile Crime Prevention Council (JCPC)

Commissioner Shea and Commissioner House motioned to appoint Molly McGinnis to fulfill the term of Teresa Twyne as the School Superintendent Designee to the JCPC.

Commissioner Tobin seconded the motion.

VOTE: AYES unanimous

- 3) Upcoming Board Appointments

The upcoming Board appointments for April, May and June 2018 were announced.

ITEM 12 – COMMISSIONERS' BUSINESS & MANAGER'S/ATTORNEY'S BUSINESS

Commissioners and the County Manager frequently make extensive remarks, which can be viewed in their entirety in a video on the Dare County website. Following is a brief summary outline of the items mentioned by Commissioners during this segment –

Commissioner Tobin

- Welcomed the new Cooperative Extension 4-H Agent and mentioned the community partnership with Mano al Hermano.
- Raised a concern about the blue fin tuna quota and asked the Board to support a collaborative effort to strategically push for a more equitable allotment that will be fair for the watermen of Dare County.

Commissioner House

- Asked everyone to carefully monitor the next storm front that may be developing.
- Expressed concern about the issue raised by Willo Kelly during Public Comments concerning the insurance rate filing and said the Board needs to address this with North Carolina's Insurance Commissioner.

Vice Chairman Overman

- Congratulated the service pin recipients and the Employee of the Month.
- Thanked Dare County Cooperative Extension for their helpful programs and services.

Commissioner Shea

- Commended the service pin recipients and the Employee of the Month for all they do to make Dare County a wonderful place to live, work, and raise a family.
- Expressed hope that people survived the recent wind storm without property damage.
- Thanked the American Red Cross for all that they do to help those in distress.
- Agreed that the County needs to reach out to the NC Insurance Commissioner on the rate filing that was mentioned during Public Comments.

Chairman Woodard

- Addressed the insurance rate filing and voiced his concern about the impact it would have on coastal communities. He concurred on the need to reach out to the North Carolina Insurance Commissioner.
- The Chairman reported on a request from Hyde County to support a joint letter to the NCDOT Ferry Division asking for a comprehensive survey of Hatteras Inlet. The County Manager noted that the purpose of the survey is to look for a more direct navigational route. The following motion was made following Board discussion -

MOTION

Commissioner House and Commissioner Shea motioned to sign on to the joint letter. Vice Chairman Overman seconded the motion.

VOTE: AYES unanimous

MANAGER'S/ATTORNEY'S BUSINESS

1. Mr. Outten thanked all the County Departments and staff for their efforts during the recent storm. He explained how County resources were strategically staged during the event to help minimize storm impacts.
2. The County Manager explained that North Carolina Insurance Commissioner Mike Causey is planning a trip to Dare County in March and expressed hope that a meeting with Dare County officials can be arranged during his visit.

Prior to adjournment, Public Information Officer Dorothy Hester explained how people can sign up to receive automatic notifications from Emergency Management. She also provided details about the Board's upcoming Community Meeting that is designed to give citizens the opportunity to talk with Commissioners on a more informal basis about issues of concern. Finance Director David Clawson noted that bid opening will occur soon for the Nags Head beach nourishment project.

At the conclusion of the meeting, Chairman Woodard asked for a motion to adjourn.

MOTION

Commissioner Shea motioned to adjourn the meeting.

Commissioner House seconded the motion.

VOTE: AYES unanimous

At 10:51 a.m., the Board of Commissioners adjourned until 5:00 p.m., March 19, 2018.

Respectfully submitted,

[SEAL]

By: _____
Gary Lee Gross, Clerk to the Board

APPROVED: By: _____
Robert Woodard, Chairman
Dare County Board of Commissioners



Award of FY2017-2018 Equipment Financing

Description

On March 1, 2018, Finance received proposals for financing in the amount of \$1,977,531 with a three year term for acquisition of County vehicles and equipment as approved in the fiscal year 2017-2018 operating budget. Responses were received from seven financial institutions. The lowest total cost proposal was submitted by Capital One Public Funding (COPF) at a rate of 2.48%. The bid tabulation and financing documents are attached.

Board Action Requested

Adopt the attached Resolution to award the three year financing to COPF at a rate of 2.48% and authorize the County Manager and staff to execute all necessary documents.

Item Presenter

David Clawson

County of Dare, NC
RFP Dated February 16, 2018
\$1,977,531
3 year term

	Rate	1/4ly Pymt	Fees	Total Cost of Loan	Day Count Rule	Prepayment Premium
Capital One Public Funding	2.480%	\$ 171,557.97	\$ -	\$ 2,058,695.64		2%
Carlyle Capital Markets Inc -No Bid						
City National Capital Finance	2.550%	\$ 171,702.46	\$ -	\$ 2,060,429.52	360 Day Year	0%
PNC Equipment Finance	2.660%	\$ 172,004.03	\$ 250.00	\$ 2,064,298.36		3%
SunTrust Equipment Finance & Leasing Corp	2.815%	\$ 172,429.46	\$ 500.00	\$ 2,069,653.52		3% year 1, 2% year 2, 1% year 3
The Bancorp Bank	2.970%	\$ 173,038.33	\$ -	\$ 2,076,459.96		0%
US Bancorp Government Leasing and Finance Inc	2.630%	\$ 171,921.75	\$ -	\$ 2,063,061.00		3%

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING CONTRACT IN THE AMOUNT OF \$1,977,531 WITH CAPITAL ONE PUBLIC FUNDING, LLC TO FINANCE THE ACQUISITION OF CERTAIN EQUIPMENT FOR USE BY THE COUNTY OF DARE, NORTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED INSTRUMENTS, AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH

BE IT RESOLVED by the governing body for the County of Dare, North Carolina (the “County”):

Section 1. The governing body of the County does hereby find and determine:

(a) The County proposes the acquisition of certain equipment, which may include fixtures as more fully described in the hereinafter mentioned Contract (collectively, the “Equipment”);

(b) After consideration, the governing body of the County has determined that the most advantageous manner of financing thereof is by an installment contract pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended;

(c) Pursuant to Section 160A-20, the County is authorized to finance the acquisition of personal property, including fixtures, by installment contracts that create a security interest in the property financed to secure repayment of the financing; and

(d) Capital One Public Funding, LLC (“COPF”) has proposed to enter into an Installment Financing Contract with the County to finance the Equipment pursuant to which COPF will lend the County the amount of \$1,977,531 (the “Contract”).

Section 2. The governing body of the County hereby authorizes and directs the County Manager and Finance Director to execute, acknowledge and deliver the Contract on behalf of the County in such form and substance as the person executing and delivering such instruments on behalf of the County shall find acceptable. The Clerk is hereby authorized to affix the official seal of the County to the Contract and attest the same.

Section 3. The proper officers of the County are authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this Resolution and the Contract.

Section 4. Notwithstanding any provision of the Contract, no deficiency judgment may be rendered against the County in any action for breach of a contractual obligation under the Contract and the taxing power of the County is not and may not be pledged directly or indirectly to secure any moneys due under the Contract, the security provided under the Contract being the sole security for COPF in such instance.

Section 5. The County covenants that, to the extent permitted by the Constitution and laws of the State of North Carolina, it will comply with the requirements of the Internal Revenue Code of 1986, as amended (the “Code”) as required so that interest on the County’s obligations under the Contract will not be included in the gross income of COPF.

Section 6. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this 19th day of March, 2018.

Chairman, Board of County Commissioners

[SEAL]

COUNTY OF DARE, NORTH CAROLINA

Clerk to the Board

INSTALLMENT FINANCING CONTRACT/SECURITY AGREEMENT

BETWEEN

CAPITAL ONE PUBLIC FUNDING, LLC

AND

COUNTY OF DARE, NORTH CAROLINA

DATED AS OF
MARCH 28, 2018

INSTALLMENT FINANCING CONTRACT/SECURITY AGREEMENT

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and is not part of the Installment Financing Contract/Security Agreement.)

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Sally DeFosse
Assistant Finance Director
COUNTY OF DARE,
NORTH CAROLINA

INSTALLMENT FINANCING CONTRACT/SECURITY AGREEMENT

This **INSTALLMENT FINANCING CONTRACT/SECURITY AGREEMENT**, dated as of March 28, 2018 (this “*Contract*”), is between **CAPITAL ONE PUBLIC FUNDING, LLC** (the “*Lender*”), and its successors and assigns, and the **COUNTY OF DARE, NORTH CAROLINA** (the “*County*”), a political subdivision of the State of North Carolina (the “*State*”), validly existing under and by virtue of the Constitution, statutes and laws of the State.

PREAMBLES

WHEREAS, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, to enter into installment financing contracts in order to finance the purchase of real or personal property;

WHEREAS, the Board of Commissioners of the County (the “*Board of Commissioners*”) has determined that it is in the County’s best interests to receive an advance of funds in an aggregate principal amount of \$1,977,531 (the “*Advance*”) under this Contract in order to finance all or a portion of the costs of the Property (as defined below), in exchange for which the County will make Installment Payments and Additional Payments (as each term is defined below) on the terms set forth below;

WHEREAS, the Board of Commissioners has authorized, approved and directed the County’s execution, performance and delivery of this Contract by a resolution passed and adopted by the Board of Commissioners on March 19, 2018 (the “*Resolution*”);

WHEREAS, the Board of Commissioners adopted a reimbursement resolution on July 17, 2017 (the “*Reimbursement Resolution*”) setting forth its intent to reimburse itself for expenditures made with respect to the Property on or after 60 days prior to the date of adoption of the Reimbursement Resolution;

WHEREAS, the Lender’s execution, delivery and performance of this Contract has been authorized, approved and directed by all necessary and appropriate action of the Lender;

WHEREAS, the County’s obligation to make the Installment Payments and Additional Payments constitutes a limited obligation of the County, payable solely from currently budgeted appropriations of the County; does not constitute a general obligation or other indebtedness of the County within the meaning of the Constitution of the State; and does not constitute a direct or indirect pledge of the faith and credit or taxing power of the County within the meaning of the Constitution of the State;

WHEREAS, in order to secure the County’s obligations under this Contract, pursuant to the terms of this Contract, the County is creating a security interest for the benefit of the Lender, in all of the County’s right, title and interest in the Property; and

WHEREAS, no deficiency judgment may be rendered against the County in any action for breach of a contractual obligation under this Contract, and the taxing power of the County is not and may not be pledged in any way directly or indirectly or contingently to secure any money due under this Contract;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants in this Contract contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. **Definitions.** The following terms have the meanings specified below unless the context clearly requires otherwise:

“*Additional Payments*” means the reasonable and customary expenses and fees of the Lender, any expenses of the Lender in defending an action or proceeding in connection with this Contract and any taxes or any other expenses, including, but not limited to, licenses, permits, state and local income, sales and use or ownership taxes or property taxes which the Lender is expressly required to pay as a result of this Contract (together with interest that may accrue thereon in the event that the County shall fail to pay the same, as set forth in this Contract).

“*Advance*” means the original aggregate principal amount equal to \$1,977,531 advanced by the Lender for the purposes provided in this Contract, as such amount advanced may be adjusted by amendment to this Contract.

“*Board of Commissioners*” means the duly elected governing Board of Commissioners of the County, or any successor to its functions.

“*Business Day*” means a day other than a Saturday or Sunday on which the Lender, at its principal corporate offices, is not required or authorized by law to remain closed.

“*Closing Date*” means March 28, 2018.

“*Code*” means the Internal Revenue Code of 1986, as amended, including regulations promulgated thereunder.

“*Collateral*” has the meaning set forth in Section 2.3 herein.

“*Costs of Acquisition*” shall be deemed to include the payment of, or the reimbursement to the County from the following items:

- (1) obligations incurred or assumed for the Property in connection with the acquisition of the Property;
- (2) the cost to acquire the Property; including, without limitation, the Lender’s fees and expenses incurred in connection with the delivery of the Advance to the County, if any, legal fees and expenses, taxes, inspection costs, the cost of permit fees, filing and recording costs in connection with the granting of any lien on, or security interest in, the Collateral; and
- (3) all other costs which are considered to be a part of the costs of acquiring the Property in accordance with generally accepted accounting principles and which will not affect

the tax status for federal income tax purposes of the designated interest component of the Installment Payments payable by the County under this Contract, including sums required to reimburse the County for advances made by the County that are properly chargeable to the acquisition of the Property.

“*County*” means the County of Dare, North Carolina, a political subdivision of the State, validly existing under and by virtue of the Constitution, statutes and laws of the State, and any successor to its functions.

“*County Representative*” means (1) the County Manager, the County Finance Director or the person or persons at the time designated to act on behalf of the County for the purpose of performing any act under this Contract by a written certificate furnished to the Lender containing the specimen signatures of such person or persons and signed on behalf of the County by the County Manager or the Finance Director of the County, or (2) if any or all of the County’s rights and obligations are assigned under this Contract, the person or persons at the time designated to act on behalf of the County and the assignee by a written certificate similarly furnished and of the same tenor.

“*Event of Default*” means any of the events of default as defined in Section 13.1.

“*Fiscal Year*” means a twelve-month period commencing on July 1 of any year and ending on June 30 of the immediately succeeding year, or such other twelve-month period which may subsequently be adopted as the Fiscal Year of the County.

“*Installment Payment Date*” means each date that an Installment Payment is due and payable to the Lender in accordance with the terms of this Contract and Exhibit A hereto.

“*Installment Payments*” means, collectively, the payments made by the County to the Lender as described in Article III and in the Payment Schedule attached hereto.

“*Interest Rate*” means 2.48% per annum, calculated on a 360-day basis for the actual number of days elapsed in the interest period.

“*Lender*” means Capital One Public Funding, LLC and its successors and assigns.

“*Lender Representative*” means any person or persons at the time designated to act on behalf of the Lender for purposes of performing any act on behalf of the Lender under this Contract by a written certificate furnished to the County containing the specimen signatures of such person or persons and signed on behalf of the Lender by any vice president.

“*Net Proceeds*” when used with respect to any proceeds from policies of insurance required under this Contract or the proceeds from any sale or lease of the Collateral pursuant to this Contract or otherwise, means the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds.

“*Payment Schedule*” means the document setting forth the County’s Installment Payments which is attached hereto and incorporated herein by reference.

“*Property*” means the vehicles listed on Exhibit B hereto and all additions and accessions thereof and thereto.

“*Revenues*” means all revenues derived from this Contract, including all Installment Payments and all Net Proceeds not applied to the replacement of the Collateral.

“*State*” means the State of North Carolina.

“*Tax Certificate*” means the Tax Certificate dated as of the Closing Date and executed by the County in connection with the execution and delivery of this Contract.

“*UCC*” means the Uniform Commercial Code or any successor law as in effect from time to time in the State, currently Chapter 25 of the North Carolina General Statutes.

ARTICLE II THE ADVANCE; SECURITY AGREEMENT

Section 2.1 ***Advance.*** The Lender hereby makes an advance to the County of the Advance, and the County hereby accepts from the Lender the Advance to be applied in accordance with the terms and conditions of this Contract. The County will use the proceeds of the Advance to pay the Costs of Acquisition of the Property. On the Closing Date, the Lender shall, at the direction of the County, deposit the Advance in an account established with a financial institution acceptable to the Lender and such deposit shall be used solely for Costs of Acquisition.

Section 2.2 ***Security for Payment and Performance.*** This Contract secures the County’s payment, as and when the same shall become due and payable, of all Installment Payments and Additional Payments and the County’s timely compliance with all terms, covenants and conditions of this Contract.

Section 2.3 ***UCC Security Agreement.*** (a) This Contract is intended as and constitutes a security agreement pursuant to the UCC adopted in the State with respect to the Property, all personal property acquired by the County with funds advanced by Lender pursuant to this Contract, all personal property and equipment obtained in substitution or replacement therefore, and all property obtained in substitution or replacement for any portion of the Property, and all proceeds of the foregoing (collectively, the “*Collateral*”). The County hereby grants to the Lender a security interest in the Collateral to secure the Installment Payments and any Additional Payments.

(b) The County shall execute, deliver and file, or cause to be filed, in such place or places as may be required by law, financing statements (including any continuation statements required by the UCC or requested by the Lender) in such form as the Lender may reasonably require to perfect and continue the security interest in the Collateral.

(c) With respect to the Collateral, the Lender shall have all of the rights and remedies of a secured party under the applicable provisions of the UCC as adopted in the State, including without limitation the right to cause such to be sold under the provisions of the UCC, and otherwise as provided by law. In exercising its remedies, the Lender may proceed against the Collateral and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of the Lender’s remedies. Upon demand by the Lender following an event of default hereunder, the County will assemble all Collateral and any items of personal property and make them available to the Lender at the office of the Lender or a place which is hereby deemed to be reasonably convenient to both parties. The Lender shall give the County at least five (5) days’ prior written notice by mail of the time and place of any public sale or other disposition of such Collateral or of the time of or after which any private sale or any other intended disposition is to be made and shall otherwise comply with applicable law, if any, with respect to the posting of notices. Any person permitted by law to

purchase at any such sale may do so. Such Collateral may be sold at any one or more public or private sales as permitted by applicable law. All expenses incurred in realizing on such Collateral shall be borne by the County. The County represents and warrants that the County's name and address appearing below are correct in every respect.

ARTICLE III INSTALLMENT PAYMENTS; ADDITIONAL PAYMENTS

Section 3.1. *Amounts and Times of Installment Payments and Additional Payments.*

(a) Subject to the provisions of Article XV, the County shall repay the Advance in Installment Payments consisting of an interest component and a principal component, as applicable, on each Installment Payment Date in the amounts set forth in this Contract and the Payment Schedule attached to this Contract. The County hereby approves the Advance by the Lender to the County pursuant to this Contract in the amount of \$1,977,531 to be repaid by the County in Installment Payments at an interest rate per annum equal to the Interest Rate.

(b) Each Installment Payment shall be paid in the amounts and at the times set forth in the attached Payment Schedule, except as otherwise provided in this Contract. If an Installment Payment is due on any day which is not a Business Day, such Installment Payment shall be made on the next succeeding Business Day and the County shall make such Installment Payment on such Business Day with additional interest due thereon as provided in Section 16.3 of this Contract. Installment Payments shall be sufficient in the aggregate to repay the principal amount of the Advance, together with interest thereon, as the same shall become due and payable. The County shall pay any Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed. All payments shall be made in lawful currency of the United States.

Section 3.2. ***Place of Payments.*** All payments required to be made to the Lender hereunder shall be made to the Lender as wire transfers to the Lender on the payable date as directed by the Lender or as may be otherwise directed in writing by the Lender.

Section 3.3. ***Late Charges.*** An Installment Payment that is not paid within five (5) days of the due date thereof is subject to a late payment charge of 4% of the amount of the past due Installment Payment. Interest with respect to the principal component of such unpaid Installment Payment shall continue to accrue at the Interest Rate until paid.

Section 3.4. ***No Abatement.*** There will be no abatement or reduction of the Installment Payments or Additional Payments by the County for any reason, including but not limited to, any failure by the County to appropriate sufficient funds for the payment of the Installment Payments or Additional Payments, any defense, recoupment, setoff, counterclaims or any claim (real or imaginary) arising out of or related to the Collateral or the Property. The County assumes and shall bear the entire risk of loss and damage to the Property from any cause whatsoever, it being the intention of the parties that the Installment Payments shall be made in all events unless the obligation to make such Installment Payments is terminated as otherwise provided herein.

Section 3.5. ***Prepayment of the Advance.*** The Advance may be optionally prepaid in whole at any time on ten (10) days prior written notice to the Bank at a prepayment price equal to 102% of the par amount of the Advance to be prepaid, plus accrued interest to the prepayment date.

**ARTICLE IV
[RESERVED]**

**ARTICLE V
[RESERVED]**

**ARTICLE VI
COVENANTS OF THE COUNTY**

Section 6.1. **Care and Use.** The County shall use, and shall cause the use of, the Collateral in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole cost and expense, shall service, repair and maintain the Collateral so as to keep the Collateral in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace any part of the Collateral as may from time to time become worn out, unfit for use, lost, stolen, destroyed or damaged. Any and all additions to or replacements of the Collateral and all parts thereof shall constitute accessions to the Collateral and shall be subject to all the terms and conditions of this Contract and included in the term “*Collateral*” as used in this Contract.

Section 6.2. **Inspection.** The Lender has the right upon reasonable prior notice to the County to inspect the Collateral and observe the use of the Collateral during normal business hours.

Section 6.3. **Taxes.** The County agrees to pay when due any and all taxes relating to the Collateral and the County’s obligations under this Contract including, but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licensees and charges imposed on the ownership, possession or use of the Collateral by any governmental body or agency, together with any interest and penalties.

Section 6.4. **Insurance.** The County shall maintain, or cause to be maintained, at its own expense, except as hereinafter provided, insurance with respect to the Collateral against such casualties and contingencies in amounts not less than is customary in similar activities and similarly situated. Without limiting the foregoing, the County shall maintain, or cause to be maintained, except as hereinafter provided, the following insurance:

- (a) Insurance against loss and/or damage to the Collateral under a policy or policies covering such risks as are ordinarily insured against by similar property, including without limiting the generality of the foregoing, fire, lightning, windstorm, windblown rain, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke and uniform standard extended coverage and vandalism and malicious mischief endorsements, war risk (to the extent obtainable from an agency of the United States Government). Such insurance policy shall be in an amount not less than the lesser of (1) the full replacement cost of the Collateral, or (2) the prepayment price of all outstanding Installment Payments; *provided, however*, that no such insurance policy may have a deductible amount of more than \$100,000. No such insurance policy shall be written such that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior written consent thereto by the Lender. The term “full insurable value” shall mean the actual replacement cost of the Collateral (excluding any uninsurable items), without

deduction for physical depreciation, and shall be determined once every three years by an insurance consultant, in any case, selected and paid for by the County. Each such policy shall contain a replacement cost endorsement.

(b) Comprehensive general liability insurance protecting the County and the Lender as their respective interests may appear, against liability for injuries to persons and/or property, occurring on, in or about the Collateral, in the minimum amount of \$100,000 liability to any one person for property damage, \$1,000,000 liability for personal injury for any one occurrence and an aggregate annual liability limit of not less than \$2,000,000, with a deductible amount of not more than \$100,000.

(c) Workers' compensation insurance respecting all employees of the County working with the Collateral in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; *provided, however*, that the County may be self-insured with respect to all or any part of its liability for workers' compensation.

Each insurance policy obtained pursuant to this Section shall (1) be issued by a generally recognized and responsible insurance company qualified under the laws of the State to assume the risks covered by such policy, (2) name the Lender and the County as either an insured or a loss payee, as their respective interests may appear, (3) with respect to the policies contained in paragraph (a) above, contain standard clauses naming the Lender as co-insured, and (4) unless unavailable from the insurer, provide that such policy shall not be cancelled or modified in any way adverse to any insured party without at least 30 days' prior written notice to each insured party named therein. The County shall have the right to receive the proceeds from any insurance maintained pursuant to this Section, subject, however, to the limitations of this Article VI.

All such policies shall be deposited with the Lender provided that in lieu of such insurance policies there may be deposited with the Lender a certificate or certificates of the County attesting the fact that the insurance required by this Section is in full force and effect. Prior to the expiration of any such policy, the County shall furnish the Lender evidence satisfactory to the Lender that such insurance policy has been renewed or replaced or is no longer required by this Contract.

In lieu of separate insurance policies, the County may maintain blanket or umbrella insurance policies if such policies provide the same coverage required by this Section with protection against each risk not reducible by claims for other risks to amounts less than that specified in this Section and the County deposits with the Lender a certificate or certificates of the respective insurers evidencing such coverage and stating, as required, the amount of coverage with respect to the Collateral or any part thereof.

In lieu of policies of insurance written by commercial insurance companies meeting the requirements of this Section, the County may maintain a program of self-insurance or participate in group risk financing programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs.

Section 6.5. ***Risk of Loss.*** The County shall bear all risk of loss or damage to the Collateral.

Section 6.6. ***Performance by the Lender of the County's Responsibilities.*** Any performance required of the County or any payments required to be made by the County may, if not timely performed or paid, be performed or paid by the Lender, and, in such event, the Lender shall be immediately

reimbursed by the County for such payments or other performance by the Lender, with interest thereon at a rate equal to the Interest Rate applied to determine the interest component of Installment Payments.

Section 6.7. **Financial Statements.** Upon the request of the Lender, the County agrees that it will furnish the Lender current audited financial statements within 270 days of the end of each Fiscal Year, carrying an unqualified opinion of a certified public accountant and prepared in accordance with generally accepted accounting principles and presented on a consistent basis.

The County represents and warrants to the Lender that all financial statements which have been delivered to the Lender in connection with this Contract fairly and accurately reflect the County's financial condition and there has been no material adverse change in the County's financial condition as reflected in the financial statements since the date thereof. The County will submit to the Lender, together with the financial statements submitted under this Section, a certificate from the Finance Director or other responsible official stating that the County is in compliance with the terms of this Contract and detailing any Events of Default.

ARTICLE VII TITLE; LIENS

Section 7.1. **Title.** Title to the Collateral and any and all additions, repairs, replacements or modifications thereto shall be in the County from and after the Closing Date. On the Closing Date, this Contract will be in full force and effect and no events of default shall have occurred hereunder. On payment or provision for payment in full of all of the County's obligations hereunder, including the principal components of the Installment Payments then outstanding and all other payments due hereunder, this Contract will terminate.

The County will cause the title to the Property, when issued, to show the Lender as the first lienholder as follows:

Capital One Public Funding, LLC
275 Broadhollow Road
Melville, New York 11747
Attention: Cathy Deluca

Section 7.2. **Liens.** The County shall not directly or indirectly create, incur, assume or suffer to exist any pledge, lien, charge, security interest, encumbrance or claim on or with respect to the Collateral or any interest therein, except for: (1) the lien and security interest of the Lender in the Collateral; (2) restrictions and exceptions which do not interfere with or impair the intended use of the Collateral; and (3) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Collateral and as do not materially impair title thereto. The County shall promptly, at its own expense, take such action as may be necessary duly to discharge any such pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time. The County shall reimburse the Lender for any expense incurred by the Lender in order to discharge or remove any such pledge, lien, security interest, charge, encumbrance or claim.

**ARTICLE VIII
DAMAGE OR DESTRUCTION;
USE OF NET PROCEEDS**

Section 8.1. ***Damage or Destruction.*** If, during the term of this Contract, (1) the Collateral or any portion of the Collateral is destroyed, or is damaged by fire or other casualty; (2) a material defect in the Collateral becomes apparent; or (3) title to or the use of all or any portion of the Collateral is lost by reason of a defect in title thereto, the County shall continue to be obligated, subject to the provisions of Section 8.2, to pay the amounts specified in Section 3.1 at the respective times required.

Section 8.2. ***Obligation of the County to Repair and Replace the Collateral.*** Subject to the provisions of Section 8.3, the Net Proceeds of any insurance policies or Net Proceeds made available by reason of any occurrence described in Section 8.1 shall be applied to the prompt repair, restoration, modification, improvement or replacement of the damaged or destroyed Collateral. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the County, subject to the security interest granted by this Contract, and shall be included as part of the Collateral under this Contract.

Section 8.3. ***Insufficiency of Net Proceeds; Discharge of the Obligation of the County to Repair the Collateral.*** If the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Collateral as required under Section 8.2, the County may elect to proceed under either of the following options:

(a) The County may complete the work and pay any cost in excess of the amount of the Net Proceeds, and the County agrees that, if by reason of any such insufficiency of the Net Proceeds, the County shall make any payments pursuant to this Section, the County is not entitled to any reimbursement therefor from the Lender nor is the County entitled to any diminution of the amounts payable under Section 3.1; or

(b) The obligation of the County to repair or replace the Collateral under Section 8.2 may be discharged by causing the Net Proceeds to be applied towards the prepayment of all of the then outstanding principal component of the Installment Payments as permitted under Section 3.5 or as otherwise agreed to by the Lender. If the Net Proceeds exceed the amount necessary to prepay the then outstanding principal component of the Installment Payments, such excess shall be paid to or retained by the County.

Within 120 days of the occurrence of an event specified in Section 8.1, the County shall commence the repair, restoration, modification, improvement or replacement of the Collateral, or shall elect, by written notice to the Lender, to proceed under the provisions of paragraph (b) above. If the County shall, after commencing the repair, restoration, modification, improvement or replacement of the Collateral, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) are insufficient for the accomplishment thereof, the County may elect to proceed under Section 8.3(b).

Section 8.4. ***Cooperation of the Lender.*** The Lender shall cooperate fully with the County in filing any proof of loss with respect to any insurance policy covering the events described in Section 8.1. In no event shall the Lender or the County voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Collateral without the written consent of the other.

ARTICLE IX
REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COUNTY

Section 9.1. *Representations, Warranties and Covenants of the County.* The County represents, warrants and covenants to and with the Lender (all such representations, warranties and covenants to be continuing) that:

(a) The County is a political subdivision of the State, validly organized and existing under the laws of the State and has all powers necessary to enter into the transactions contemplated by this Contract and to carry out its obligations hereunder;

(b) The County agrees that during the term of this Contract, it will take no action that would adversely affect its existence as a political subdivision in good standing in the State, cause the County to be consolidated with or merge into another political subdivision of the State or permit one or more other political subdivisions of the State to consolidate with or merge into it, unless the County is the surviving entity or the entity created thereby expressly assumes in writing the County's obligations hereunder;

(c) This Contract and all other documents relating hereto and thereto, and the performance of the County's obligations hereunder and thereunder, have been duly and validly authorized, executed and delivered by the County and approved under all laws, regulations and procedures applicable to the County including, but not limited to, compliance with public meeting and bidding requirements, and, assuming the due authorization, execution and delivery hereof and thereof by the other parties hereto and thereto, constitute valid, legal and binding obligations of the County, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and such principles of equity as a court having proper jurisdiction may impose;

(d) Neither the execution and delivery of this Contract or the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or results in a breach of the terms, conditions, or provisions of any restriction or any agreement or instrument to which the County is now a party or by which the County is bound or constitutes a default under any of the foregoing, nor conflicts with or results in a violation of any provision of applicable law or regulation governing the County and no representation, covenant and warranty in this Contract is false, misleading or erroneous in any material respect;

(e) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best of the County's knowledge, threatened, against or affecting the County challenging the validity or enforceability of this Contract or any other documents relating hereto and the performance of the County's obligations hereunder and thereunder, and compliance with the provisions hereof or thereof, under the circumstances contemplated hereby or thereby, does not and will not in any material respect conflict with, constitute on the part of the County a breach of or default under, or result in the creation of a lien, security interest or other encumbrance on any property of the County (except as contemplated herein or therein) pursuant to any agreement or other instrument to which the County is a party, or any existing law, regulation, court order or consent decree to which the County is subject;

(f) The estimated Costs of Acquisition are not less than \$1,977,531 and, other than procedural requirements which are a prerequisite to the acquisition of the Property, no approval

or consent is required from any governmental authority with respect to the entering into or performance by the County of this Contract and all other documents related hereto and thereto and the transactions contemplated hereby and thereby or if such approval is required, such approval has been duly obtained;

(g) The Advance and any investment earnings thereon will be used only for the purposes permitted herein and the Tax Certificate;

(h) There are no liens, security interests or encumbrances on the Collateral other than the security interest created by this Contract and any other liens permitted thereby;

(i) The resolutions relating to the performance by the County of this Contract and the transactions contemplated hereby, have been duly adopted, are in full force and effect, and have not been in any respect modified, revoked or rescinded;

(j) The Property is essential to the proper, efficient and economical operation of the County and the delivery of services and permits the County to carry out its public functions that it is authorized and required by law to perform;

(k) The County reasonably believes sufficient funds will be available to satisfy all of its obligations hereunder;

(l) The County shall (1) cause its Finance Director to include the Installment Payments coming due in any Fiscal Year in the corresponding annual budget request and shall require the Finance Director to use his or her best efforts to obtain an appropriation therefor and (2) require that the deletion of such funds from the County's final budget be made only pursuant to an express resolution of the Board of Commissioners which explains the reason for such action. This covenant on the part of the County contained in this Section 9.1(l) shall be deemed to be and shall be construed to impose by law ministerial duties and it shall be the duty of each and every public official of the County to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the County to carry out and perform the covenant in this subparagraph and the agreements in this Contract to be carried out and performed by the County; *provided, however*, that nothing contained in this Section 9.1(l) shall obligate the County to so appropriate the funds included in such proposed budget;

(m) Funds appropriated by the County to make Installment Payments due in any Fiscal Year shall be used for no other purpose;

(n) The County agrees that during the term of this Contract, it will maintain the appropriate insurance required pursuant to this Contract; and

(o) The County has or will have good and marketable title to the Collateral.

ARTICLE X TAX COVENANTS AND REPRESENTATIONS

Section 10.1. *Tax Covenants and Representations.*

(a) The County covenants that it will not take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the

interest portion of the obligations created by this Contract for federal income tax purposes. The County will not directly or indirectly use or permit the use of any proceeds of any fund created under this Contract or any funds of the County, or take or omit to take any action that would cause the obligations created by this Contract to be an “*arbitrage bond*” within the meaning of Section 148(a) of the Code. The County will maintain books on which will be recorded (1) the Lender, or (2) any assignee of the Installment Payments due under this Contract, as the registered owner of such Installment Payments. To that end, the County has executed and delivered the Tax Certificate and will comply with all of the requirements of Section 148 of the Code to the extent applicable. The County further covenants that this Contract is not a “*private activity bond*” as defined in Section 141 of the Code.

(b) Without limiting the generality of the foregoing, the County agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the obligation created under this Contract from time to time. This covenant shall survive the termination of this Contract.

(c) The County acknowledges that the Lender is advancing the Advance at the Interest Rate based on the premises that the interest components of the Installment Payments received under this Contract is exempt from federal and State income taxation based on State and federal laws in effect as of the Closing Date. If, as a result of any action or failure to take any action by the County, the interest received by the Lender hereunder shall be deemed to be taxable income to the Lender by any governmental agency or court of competent jurisdiction, then, at the sole option of the Lender, either (1) the remaining Installment Payments shall become immediately due and payable or (2) the Interest Rate and remaining interest components of the Installment Payments will be adjusted upward in order to provide for the payment of interest by the County at a taxable rate which will preserve the Lender’s after-tax economic yield with respect to the obligations created by this Contract. In such event, the County agrees to indemnify and hold harmless the Lender from any cost and expense incurred as a result of the loss of the tax-exempt status of the obligation created by this Contract, specifically including without limitation all administrative expenses arising in connection with the amendment of the Lender’s income tax returns. In addition, if any action or failure to take any action by the County shall adversely affect the Lender’s after-tax economic yield with respect to the obligation created under this Contract, the Interest Rate and the Installment Payments shall be adjusted to produce an after-tax yield to the Lender equivalent to the Lender’s after-tax yield immediately prior to such action or inaction.

(d) Notwithstanding any provision in this Contract to the contrary, if the County shall provide to the Lender an opinion of nationally recognized bond counsel reasonably acceptable to the Lender to the effect that any action required under this Article X is no longer required, or to the effect that some further action is required, to maintain tax-exempt status, the County and the Lender may rely conclusively on such opinion in complying with the provisions of this Article X.

(e) The County hereby agrees to revise the Interest Rate in the event of a breach of any of the representations set forth in this Article X.

ARTICLE XI INDEMNIFICATION

Section 11.1 ***Indemnification.*** To the fullest extent permitted by applicable law, the County hereby agrees to indemnify, protect and save the Lender and its officers, employees, directors, members and agents harmless from all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys’ fees that (1) arise in tort, in contract, under 42 U.S.

Code §1983 or under the public bidding laws of the State or (2) arise out of, are connected with, or result, directly or indirectly, from the Property or any portion thereof, including, without limitation, the manufacture, selection, acquisition, delivery, possession, condition, construction, improvement, environmental or other condition, lease, use operation or return of the Property or any portion thereof. The indemnification arising under this Article XI shall continue in full force and effect notwithstanding the payment in full of all of the obligations under this Contract.

ARTICLE XII DISCLAIMER OF WARRANTIES

Section 12.1. ***No Representations by the Lender.*** The County acknowledges and agrees that the Lender has not designed the Collateral, that Lender has not supplied any plans or specifications with respect thereto and that the Lender (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Collateral or similar property, (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Collateral or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Collateral or any component part thereof or any property or rights relating thereto at any stage of the acquisition, construction and equipping thereof, (c) has not at any time had physical possession of the Collateral or any component part thereof or made any inspection thereof or of any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Collateral or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the County intends therefore, or (iii) is safe in any manner or respect.

Section 12.2. ***Disclaimer by the Lender.*** THE LENDER MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROPERTY OR ANY COMPONENT PART THEREOF TO THE COUNTY OR IN REGARD TO ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATIONS WITH RESPECT TO: THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE CONDITION THEREOF; THE SAFETY OR QUALITY THEREOF; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE LENDER THEREIN; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE ADVANCE WILL BE SUFFICIENT (TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE COUNTY) TO PAY THE COST OF ACQUIRING THE PROPERTY; OR ANY OTHER CHARACTERISTICS OF THE PROPERTY, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROPERTY OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE COUNTY AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE LENDER ARE HEREBY WAIVED BY THE COUNTY.

ARTICLE XIII DEFAULT AND REMEDIES

Section 13.1. ***Definition of Event of Default.*** The County shall be deemed to be in default hereunder on the happening of any of the following events of default (each, an “*Event of Default*”):

- (a) The County fails to pay any Installment Payment or Additional Payment when due;

(b) The County fails to budget and appropriate money sufficient to pay all Installment Payments and the reasonably estimated Additional Payments coming due in the following Fiscal Year of the County;

(c) The County deletes from its duly adopted budget any appropriation for the purposes specified in clause (b) above;

(d) The County fails to perform or observe any term, condition or covenant of this Contract on its part to be observed or performed, other than as referred to in clauses (a), (b) or (c) above, or breaches any warranty by the County herein contained, for a period of 30 days, unless the Lender shall agree in writing to an extension of such time prior to its expiration;

(e) Any bankruptcy, insolvency or reorganization proceedings or similar litigation, is instituted by the County, or a receiver, custodian or similar officer is appointed for the County or any of its property, and such proceedings or appointments are not vacated or fully stayed within 90 days after the institution or occurrence thereof;

(f) Any representation, warranty or statement made by the County herein or in any other document executed or delivered in connection herewith is found to be incorrect or misleading in any material respect on the date made; or

(g) An attachment, levy or execution is levied on or against any portion of the Collateral.

Section 13.2. **Remedies on Default.** On the occurrence of any Event of Default, the Lender may exercise any one or more of the following remedies as the Lender, in its sole discretion, shall elect:

(a) Declare the unpaid portion of the then outstanding principal components of the Installment Payments immediately due and payable, without notice or demand to the County;

(b) Proceed by appropriate court action to enforce the performance by the County of the applicable covenants of this Contract or to recover for any breach thereof;

(c) Exercise all the rights and remedies of a secured party or creditor under the Uniform Commercial Code of the State and the general laws of the State with respect to the enforcement of the security interest granted or reserved hereunder including, without limitation, to the extent permitted by law, re-enter and take possession of the Collateral without any court order or other process of law and without liability for entering the premises and to sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of the County, and apply the proceeds of any such sale, lease, sublease or other disposition, after deducting all costs and expenses, including court costs and attorneys' fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition, toward the balance due under this Contract and, thereafter, to pay any remaining proceeds to the County; or

(d) Pursue any other remedy available at law or equity to the Lender.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE COUNTY IN FAVOR OF THE LENDER IN VIOLATION OF SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED,

INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER WHEN THE SALE OF ALL OR ANY PORTION OF THE COLLATERAL IS INSUFFICIENT TO PRODUCE ENOUGH MONEY TO PAY IN FULL ALL REMAINING OBLIGATIONS UNDER THIS CONTRACT.

Section 13.3. **Further Remedies.** This Contract shall remain in full force and effect and the County shall be and remain liable for the full performance of all its obligations under this Contract. All remedies of the Lender are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy.

Section 13.4. **No Setoff Rights in Deposit Accounts.** Notwithstanding anything in this Contract to the contrary, the Lender shall have no right of setoff with respect to any County deposit account maintained with the Lender.

ARTICLE XIV ASSIGNMENT

Section 14.1. **Assignment.** Except pursuant to this Contract, the County will not sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance on or against any interest in this Contract or the Collateral (except for any permitted encumbrances under Section 7.2) without the prior written consent of the Lender. The County's interest in this Contract may not be assigned or transferred by operation of law.

The Lender may, at any time and from time to time, assign to an affiliate of the Lender, a bank, insurance company or similar financial institution all or any part of its interest in the Collateral, the Property or this Contract, including, without limitation, the Lender's rights to receive Installment Payments payable to the Lender hereunder. Any assignment made by the Lender or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Lender pursuant to this Contract.

The County agrees that this Contract may become part of a pool of obligations at the Lender's or its assignee's option. The Lender or its assignees may assign or reassign all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract. Notwithstanding the foregoing, no assignment or reassignment of the Lender's interest in this Contract shall be effective unless and until the County shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each such assignee.

The County further agrees that the Lender's interest in this Contract may be assigned in whole or in part on terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Contract, provided the County receives a copy of such agency contract and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Contract a written record of each assignment and reassignment of such certificates of participation.

The County agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the County, and the County shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the County shall thereafter make all payments in accordance with the notice to the assignee

named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

ARTICLE XV LIMITED OBLIGATION OF THE COUNTY

Section 15.1. *Limited Obligation of the County.* NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND ANY PAYMENTS APPROPRIATED IN THE SOLE DISCRETION OF THE COUNTY FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; *PROVIDED, HOWEVER,* THAT ANY FAILURE OR REFUSAL BY THE COUNTY TO APPROPRIATE FUNDS WHICH RESULTS IN ITS FAILURE TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBTAIN THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE COUNTY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION HEREUNDER, AND THE TAXING POWER OF THE COUNTY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY AMOUNTS DUE HEREUNDER. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE COUNTY'S FUNDS, NOR SHALL ANY PROVISION OF THIS CONTRACT RESTRICT THE FUTURE ISSUANCE OF ANY OF THE COUNTY'S BONDS OR OBLIGATIONS PAYABLE FROM ANY CLASS OR SOURCE OF THE COUNTY'S FUNDS. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE XV AND ANY OTHER PROVISION OF THIS CONTRACT, THIS ARTICLE XV SHALL TAKE PRIORITY.

ARTICLE XVI MISCELLANEOUS

Section 16.1. *Notices.* Any and all notices, requests, demands, and other communications given under or in connection with this Contract are only effective if made in writing and delivered either personally or mailed by certified or registered mail, postage prepaid, or return receipt requested, and addressed as follows:

IF TO THE COUNTY:	County of Dare, North Carolina P.O. Box 1000 (U.S. Mail) 954 Marshall C. Collins Drive (Physical Address) Manteo, NC 27954 Attention: County Manager
IF TO THE LENDER:	Capital One Public Funding, LLC 275 Broadhollow Road Melville, New York 11747 Attention: Cathy Deluca

The County and the Lender may, by written notice to each other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 16.2. **Time.** Time is of the essence of this Contract and each and all of its provisions.

Section 16.3. **If Payment or Performance Date not a Business Day.** If the date for making any payment, or the last date for performance of any act or the exercising of any right, as provided in this Contract, is not a Business Day, such payment shall be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Contract; provided, however, that interest will continue to accrue after such nominal payment date and such extension of time will be included in computing the amount of interest due in connection with such payment when actually made.

Section 16.4. **Waiver.** No covenant or condition of this Contract can be waived except by the written consent of the Lender. Any failure of the Lender to require strict performance by the County or any waiver by the Lender of any terms, covenants or contracts in this Contract shall not be construed as a waiver of any other breach of the same or any other term, covenant or contract in this Contract.

Section 16.5. **Section Headings.** All section headings contained in this Contract are for convenience of reference only and are not intended to define or limit the scope of any provision of this Contract.

Section 16.6. **Entire Contract.** This Contract, together with any schedules and exhibits attached to this Contract, constitutes the entire agreement between the parties, and this Contract shall not be modified, amended, altered or changed except as the County and the Lender may subsequently agree in writing.

Section 16.7. **Binding Effect.** Subject to the specific provisions of this Contract, this Contract is binding on and inures to the benefit of the parties and their respective successors and assigns (including expressly any successor of the Lender).

Section 16.8. **Covenants of County not Covenants of Officials Individually.** No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or employee of the County in such person's individual capacity, and neither the members of the Board of Commissioners nor any other officer of the Board of Commissioners or the County shall be subject to any personal liability or accountability by reason of the execution and delivery of this Contract. No member of the Board of Commissioners or any agent or employee of the County shall incur any personal liability in acting or proceeding or if not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Contract.

Section 16.9. **Severability.** If any portion of this Contract is determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Contract shall continue in full force and effect.

Section 16.10. **Governing Law.** This Contract shall be construed, interpreted and enforced in accordance with, the laws of the State.

Section 16.11. **Execution in Counterparts.** This Contract may be executed in any number of counterparts, each of which is an original and all of which constitute but one and the same instrument.

Section 16.12. **E-Verify.** The Lender understands that "E-Verify" is a federal 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 pursuant to federal

law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Lender is not an “employer” as defined in Section 64-25(4) of the General Statutes of North Carolina, as amended. The Lender will require that any subcontractor that it uses in connection with the transactions contemplated by this Contract certify to such subcontractor’s compliance with E-Verify.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the County and the Lender have caused this Installment Financing Contract/Security Agreement to be executed by their duly authorized officers as of the day and year first above written.

COUNTY OF DARE, NORTH CAROLINA

[SEAL]

By: _____
Name: _____
Title: _____

ATTEST:

Name: _____
Title: _____

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT/SECURITY AGREEMENT,
DATED AS OF MARCH 28, 2018, BETWEEN CAPITAL ONE PUBLIC FUNDING, LLC
AND THE COUNTY OF DARE, NORTH CAROLINA]

CAPITAL ONE PUBLIC FUNDING, LLC,
as the Lender

By: _____
Catherine DeLuca
Vice President

PAYMENT SCHEDULE

<u>Date</u>	<u>Payment</u>	<u>Interest</u>	<u>Principal</u>	<u>Balance</u>	<u>Purchase Price</u>
3/28/18				\$1,977,531.00	
7/1/2018	\$ 171,557.97	\$12,808.99	\$ 158,748.98	1,818,782.02	\$1,855,157.66
10/1/2018	171,557.97	11,276.45	160,281.52	1,658,500.50	1,691,670.51
1/1/2019	171,557.97	10,282.70	161,275.27	1,497,225.23	1,527,169.73
4/1/2019	171,557.97	9,282.80	162,275.17	1,334,950.06	1,361,649.06
7/1/2019	171,557.97	8,276.69	163,281.28	1,171,668.78	1,195,102.16
10/1/2019	171,557.97	7,264.35	164,293.62	1,007,375.16	1,027,522.66
1/1/2020	171,557.97	6,245.73	165,312.24	842,062.92	858,904.18
4/1/2020	171,557.97	5,220.79	166,337.18	675,725.74	689,240.25
7/1/2020	171,557.97	4,189.50	167,368.47	508,357.27	518,524.42
10/1/2020	171,557.97	3,151.82	168,406.15	339,951.12	346,750.14
1/1/2021	171,557.97	2,107.70	169,450.27	170,500.85	173,910.87
4/1/2021	<u>171,557.97</u>	<u>1,057.12</u>	<u>170,500.85</u>	0.00	
Total	\$2,058,695.64	\$81,164.64	\$1,977,531.00		

*Interest rate of 2.48%, calculated on a 360-day basis for the actual number of days elapsed in the interest period.

PROPERTY DESCRIPTION

<u>Department</u>	<u>Description</u>	<u>Count</u>	<u>Total Amount</u>	<u>VIN</u>
Tax Assessor	Vehicle	1	\$ 14,704	_____
General Services	Vehicles	2	61,000	_____

Sherriff Office	Vehicles	12	365,000	_____

Emergency Medical Services	Ambulances	3	638,400	_____

Emergency Medical Services	Vehicles	2	63,000	_____

Planning	Vehicle	1	27,456	_____
Health and Social Services	Vehicles	9	169,507	_____

Parks and Recreation	Vehicle	1	27,200	_____
Public Works	Vehicles	4	93,069	_____

Sanitation	Trash trucks	2	518,195	_____



Resolution to Approve Sole Source Purchase

Description

Dare County Board of Elections is required to use voting machines that have been "certified" for use in the State of North Carolina by the State Board of Elections and Ethics Committee. Without this certification a machine cannot be used.

The current voting machine used by Dare County is the ES&S model 100, which is no longer certified. The Dare County Board of Elections intends to use ES&S model DS200 that is certified for use in NC.

Since the ES&S model DS200 is the only machine certified for NC, a sole source purchase is required since the competitive bidding requirements cannot be met.

Board Action Requested

Approve the resolution to make a Sole Source purchase.

Item Presenter

Robert Outten - County Manager

**RESOLUTION AUTHORIZING THE USE OF A SOLE SOURCE PURCHASE
PURSUANT TO G.S. 143-129(e)(6)**

WHEREAS, the County of Dare desires to purchase replacement voting machines for the Dare County Board of Elections; and

WHEREAS, the purchase of 22 replacement machines is critical for the operation of the Dare County Board of Elections; and

WHEREAS, North Carolina General Statute 143-129(e)(6) authorizes a unit of local government to purchase from a sole source when performance or price competition for a product is not available, a needed product is available from only one source of supply, or standardization or compatibility is the overriding consideration; and

WHEREAS, The Dare County Board of Elections currently is in possession of 22 Model 100 Scanners and Ballot Boxes that are out dated and no longer certified by the North Carolina State Board of Elections and Ethics Enforcement; and

WHEREAS, the Dare County Board of Elections must purchase the replacement machines from Election Systems and Software, LLC (“ES&S”) because they are the only vendor that offers North Carolina State Board of Elections and Ethics Enforcement certified machines for use in the State of North Carolina.

NOW, THEREFORE BE IT RESOLVED, by the Dare County Board of Commissioners that:

1. The County of Dare is authorized to enter into a contract in the amount of \$125,081.90 with ES&S for the sole source purchase, installation and replacement of the existing Model 100 Scanners and Ballot Boxes.
2. The County Manager is authorized to execute the agreement with ES&S and is directed to take all steps necessary to place the 22 replacement machines on order before April 19, 2018.
3. This Resolution shall be effective upon its adoption.

This the 19th day of March, 2018.

COUNTY OF DARE, NORTH CAROLINA

[SEAL]

Robert Woodard, Chairman

Gary Gross, Clerk to the Board



Proclamation - Mirlo Commemoration

Description

On February 5, 2018 the Chicamacomico Historical Association gave a comprehensive presentation on the events that are planned to commemorate the 100th anniversary of the rescue of the British oil tanker, the S.S. Mirlo, which took place on August 16, 1918.

The Chicamacomico Historical Association requests that the Board of Commissioners issue the enclosed Proclamation establishing August 16, 2018 as Mirlo Commemoration Day and August 13 through 17, 2018 as Mirlo Commemoration Week in Dare County.

Board Action Requested

Adopt Proclamation - Mirlo Commemoration Day & Mirlo Commemoration Week

Item Presenter

Presented on the Consent Agenda by the County Manager



A PROCLAMATION

**DECLARING AUGUST 16, 2018 AS MIRLO COMMEMORATION DAY &
AUGUST 13 THROUGH 17, 2018 AS MIRLO COMMEMORATION WEEK**

WHEREAS, the Coast of NC was the scene of a little known theater of Submarine Warfare during WWI; and

WHEREAS, on Aug 16 1918 German U-boat 117 torpedoed the Mirlo, a British Tanker fully loaded with fuel so desperately needed by our allies in England; and

WHEREAS, the explosion, 7 miles off the coast of Rodanthe, was noticed by Surfman Leroy Midgett who was on watch in the tower of the Chicamacomico Coast Guard Station; and

WHEREAS, Keeper John Allen Midgett, Jr immediately called his crew to action and, in spite of 15 foot seas and the lingering threat of U-boat activity, launched Surfboat 1046 into the sea; and

WHEREAS, in an ocean aflame with fuel, “Captain Johnny” and his surfmen rescued 42 of 51 British seamen and got them safely ashore; and

WHEREAS, in recognition of that daring rescue, John Allen and his crew were awarded the Gold Life Saving Medal as well as the Grand Cross of the American Cross of honor; and

WHEREAS, so impressed by this selfless effort King George VI had struck Gold Medals for John Allen and all of his crew; and

WHEREAS, equally impressed the British Board of Trade honored John Allen with a Silver Loving Cup; and

WHEREAS, in recognition of his lifetime of service to the USCG, John Allen has had 2 USCG Cutters named in his honor including the recently Christened National Security Cutter “John Allen Midgett, Jr”; and

WHEREAS, as we reflect upon a World War of 100 years ago, we note that August 16, 2018 is the 100th Anniversary of this rescue; and

WHEREAS, events such as the Mirlo rescue highlight what we all know about the rich history of our islands and honors the men and women who have braved the hardships of life on the Outer Banks for generations and risked their personal safety to keep countless ships safe.

NOW, THEREFORE, BE IT RESOLVED, that the Dare County Board of Commissioners hereby proclaims August 16, 2018 as Mirlo Commemoration Day and August 13 through 17, 2018 as Mirlo Commemoration Week in Dare County. This the 19th day of March, 2018.

Robert Woodard, Chairman

Attest:

Gary Lee Gross, Clerk to the Board



Jail Commissary Increase

Description

This request is for a Budget Amendment that increases both the Jail Commissary Income and Expense Line Items. This will enable the Jail Commissary to operate to the end of FY 18.

Board Action Requested

Approval of Budget Amendment

Item Presenter

Captain Allen Moran

DARE COUNTY

BUDGET AMENDMENT

F/Y 2017/2018

ACCOUNT	CODE			INCREASE	DECREASE
	Org	Object	Project		
<u>Department: Jail</u>					
<u>Revenues:</u>					
Jail Commissary	103520	441062		12,000	
<u>Expenditures:</u>					
Commissary Purchases	104520	514800		10,000	

Explanation:

NC State law requires all Jails to make snack and personal items available to inmates for purchase. Our Commissary Services are provided by a private contractor at a net profit of about 11% to Dare County. We are asking for an increase in both the Commissary income and expense accounts so our inmates can receive this service to the end of the fiscal year.

Approved by:

Board of Commissioners: _____

Date: _____

County Manager: _____

Date: _____

(sign in red)

Finance only:

Date entered: _____ Entered by: _____ Reference number: _____



Tax Collector's Report

Description

Feb 2018 Releases over \$100
Feb 2018 Refunds over \$100
Feb 2018 NCVTS Refunds over \$100

Board Action Requested

Approved

Item Presenter

Becky Huff, Tax Collector

Release Report for REAL ESTATE, PERSONAL PROPERTY and MOTOR VEHICLE

(Releases over (\$100.00))

Month: FEBRUARY

Date Range: 2/1/2018 - 2/28/2018

Submitted By: Becky Huff

Taxpayer Name	Parcel#	Bill Year	Reason	Value Released	Tax Released
MOOREFIELD, KENNETH	961434000	2017	PERSONAL PROP REMOVED	-200,293.00	-1,458.34
BASNIGHT ENTERPRISES, LLC	027823014	2017	DUPLICATE LISTINGS	<u>-32,145.00</u>	<u>-184.19</u>
Total Released:				-232,438.00	-1,642.53

Refund Report for REAL ESTATE, PERSONAL PROPERTY and MOTOR VEHICLE

(Refunds over \$100.00)

Month: FEBRUARY Date Range: 2/1/2018 - 2/28/2018 Submitted By: BECKY HUFF

Taxpayer Name	Parcel	Reason	Refund Amount
BOLTON, HELEN SUZANNE	000205000	Overpayment	-1,810.72
ANDERSON, DOUG	962587000	Overpayment	-431.94
SEA WAVES LLC	6165	Overpayment	-217.49
BLANCHARD, EDWARD V JR	000380010	Overpayment	-7,015.49
HARRIS, JOHN M	000597000	Overpayment	-1,420.24
FRIED, HARRY C	001389000	Overpayment	-1,317.50
WHITE, RONALD P	004715001	Overpayment	-145.02
MOSS, KIMBERLY ANNETTE	005276002	Overpayment	-200.00
BEACON ML PROPERTIES, LLC	005414005	Overpayment	-2,821.41
GARD, DORIS O'NEAL	006801000	Overpayment	-151.97
DOMANSKI, JULIAN	007501000	Overpayment	-742.50
SMITH, GLENN II	008286029	Overpayment	-2,415.05
KNAPP, BRADFORD I	008455000	Overpayment	-1,597.99
URICK, STEVEN	013679000	Overpayment	-1,514.35
HOPKINS, BENJAMIN J JR	008712011	Overpayment	-293.37
CAMPBELL, PHYLLIS M	009071000	Overpayment	-159.55
LANG, JOSEPH P	009355001	Overpayment	-3,604.44
STORY, DIANA C	010069021	Overpayment	-271.46
KING, BUDDY W	010449000	Overpayment	-1,873.53
LOESCH, LAWRENCE F	010499012	Overpayment	-1,637.01
ZHENG, FENG	010499022	Overpayment	-970.79
BATTS, THELMA CARROW	010553000	Overpayment	-200.00
LAPE, EDWARD G	010634000	Overpayment	-100.00
LARRICK, RICHARD P	011338000	Overpayment	-1,042.93
CARLSON, BARBARA S	011540000	Overpayment	-323.93
SPAULDING, STEPHEN R	011780000	Overpayment	-2,589.12
PLUNKETT, JAMES	014265001	Overpayment	-981.44
THORNTON, DAVID C	014277012	Overpayment	-5,861.58
PRICE, M RUTH TRUSTEE	014775000	Overpayment	-1,268.34
WELLING, ROGER R	014778000	Overpayment	-1,966.51
CRAWLEY, CHARLES R TRUSTEE	010734000	Overpayment	-2,071.53
VETTER, DANIEL PRESTON	015916000	Overpayment	-2,389.63
SORIENTE, MATTHEW M	017950000	Overpayment	-364.56
WEEKS, JOSEPH H JR	018004010	Overpayment	-100.00
PERRY, JERRY W	019376001	Overpayment	-1,508.22
STOVER, DUANE R	020627000	Overpayment	-180.00
STANLEY, JOSEPH STEPHEN JR	021484000	Overpayment	-1,936.21
EDWARDS, CHARLES B III	021828000	Overpayment	-100.00
AUSBAND, FRANCIS B	022519001	Overpayment	-1,618.74

Refund Report for REAL ESTATE, PERSONAL PROPERTY and MOTOR VEHICLE

(Refunds over \$100.00)

Month: FEBRUARY Date Range: 2/1/2018 - 2/28/2018 Submitted By: BECKY HUFF

Taxpayer Name	Parcel	Reason	Refund Amount
WINSLOW, KIM B	023005000	Overpayment	-1,308.22
BKS INVESTMENTS, LLC	024443007	Overpayment	-192.96
ORNDORFF, HAROLD C	024526052	Overpayment	-100.00
SELBY, LOVEY ELIZABETH	024621000	Overpayment	-173.23
BARNES, THOMAS W	025212010	Overpayment	-1,903.13
BACON, MARY FRIEDA REED	025446000	Overpayment	-138.63
WATSON, WILLIAM B JR	025694087	Overpayment	-2,430.75
CABELL, CHARLES L	025694336	Overpayment	-687.12
MARKS, JOHN R	025818016	Overpayment	-1,342.32
RICKS-SAMPLE, JACQUELINE P TTEE	027817023	Overpayment	-377.13
WILLIAMS, DARCY SALATHE	028812013	Overpayment	-1,394.52
ROBERTSON, ARTHUR FORREST TRUSTEE	028988000	Overpayment	-2,149.25
HARRIS, JOHN M	029039000	Overpayment	-753.06
TERRY, PAUL D	029300000	Overpayment	-3,291.91
CABELL, CHARLES L	029991127	Overpayment	-3,583.44
WHELESS, DWIGHT H	030558000	Overpayment	-568.42
STEPHENS, SAMUEL S	030835048	Overpayment	-158.51
CARLSON, CLARK K	031158000	Overpayment	-1,058.24
DPP PRPERTIES, LLC	031184000	Overpayment	-8,349.23
REDDY ICE CORPORATION	976823000	Overpayment	-2,932.20
SUGAR CREEK1 INC	653	Overpayment	-355.41
MARUNA, MARILYN	6951	Overpayment	-238.80
Total Refunds:			-88701.04

COMMISSIONERS' BUSINESS

MANAGER'S / ATTORNEY'S BUSINESS



North Carolina Vehicle Tax System

FEBRUARY 2018 REFUNDS OVER \$100

NCVTS Pending Refund report

Report Date 3/6/2018 3:39:39 PM

Payee Name	Secondary Owner	Address 1	Address 3	Refund Type	Create Date	Interest Change	Total Change
BOSWELL, KATHY DARLENE	HOLLON, JEFFREY EDWARD	318 GUNAS RD	KILL DEVIL HILLS, NC 27948	Proration	02/14/2018	\$0.00	(\$62.22)
						\$0.00	(\$50.42)
						Refund	\$112.64
GROSKE, RAYMOND THOMAS		343 SEA OATS TRL	KITTY HAWK, NC 27949	Proration	02/20/2018	\$0.00	(\$79.25)
						\$0.00	(\$55.29)
						\$0.00	(\$7.37)
						Refund	\$141.91
PEELE, MICHAEL ODEN	PEELE, CLAUDIA ZUNIGA	PO BOX 10	HATTERAS, NC 27943	Proration	02/20/2018	\$0.00	(\$76.10)
						\$0.00	(\$10.27)
						\$0.00	(\$1.55)
						\$0.00	(\$16.68)
						\$0.00	(\$13.30)
						Refund	\$117.90
						Refund Total	\$372.45

Tax Jurisdiction	District Type	Net Change
C99	COUNTY	(\$217.57)
T07	CITY	(\$50.42)
T08	CITY	(\$55.29)
T08BN	CITY	(\$7.37)
F06	FIRE	(\$10.27)
R01	FIRE	(\$1.55)
S99	SPECIAL	(\$16.68)
Y06	SPECIAL	(\$13.30)
Total		(\$372.45)