

NORTH CAROLINA  
NEW HANOVER COUNTY

**INTERLOCAL AGREEMENT FOR  
THE DISPOSITION OF AUTHORITY  
SURPLUS PROPERTY**

THIS AGREEMENT for the disposition of Authority property (the “Agreement”) is entered into and made effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between **CAPE FEAR PUBLIC UTILITY AUTHORITY**, a public utility authority duly authorized under Article 1 of North Carolina General Statutes Chapter 162A (the “Authority”) and **BRUNSWICK COUNTY** (the “Recipient Governmental Unit”), collectively hereinafter referred to as the “Parties.”

WITNESSETH

WHEREAS, pursuant to N.C. Gen. Stat. §160A-274, the Authority is authorized to exchange with, lease to, lease from, sell to, or purchase from any other governmental unit any personal property of the Authority, with or without consideration.

WHEREAS, the Authority owns 70 GE/MDS iNet-II 900 – Access Point radios that have been declared as surplus property of the Authority as no longer needed for any governmental use by the Authority.

WHEREAS, Brunswick County is a regional neighbor of the Authority.

WHEREAS, the Parties wish to enter into this Agreement under the authority of N.C. Gen. Stat. §160A-274.

WHEREAS, at a regular meeting on August 10, 2022, the Cape Fear Public Utility Authority Board, by Resolution, approved the disposition of the surplus equipment set forth in Exhibit A (the “Equipment”) to the Recipient Governmental Unit.

WHEREAS, the Authority has determined that it is in its best interest to convey the Equipment to Brunswick County and deems it wise to do so for no consideration.

NOW, THEREFORE, in consideration of the promises and other considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**A. DISPOSAL OF SURPLUS PROPERTY**

The Authority hereby conveys the surplus Equipment to the Recipient Governmental Unit for no consideration, and the Recipient Governmental Unit accepts the Equipment and hereby agrees and affirms that the Equipment will be utilized for governmental purposes.

**B. DISCLAIMER OF WARRANTIES**

THE EQUIPMENT IS CONVEYED BY THE AUTHORITY “AS IS” AND THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS,

IMPLIED OR STATUTORY, WITH RESPECT TO THIS AGREEMENT OR THE EQUIPMENT. THE AUTHORITY SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE AUTHORITY DOES NOT GUARANTEE THAT THE EQUIPMENT WILL MEET THE REQUIREMENTS OR NEEDS OF THE RECIPIENT GOVERNMENTAL UNIT OR MAKE ANY REPRESENTATION AS TO THE CONDITION OF THE EQUIPMENT.

Nothing in this section will be construed to limit the Recipient Governmental Unit's ability to pursue any available warranty claims with the Equipment manufacturer.

#### C. LIMITATION OF LIABILITY

THE PARTIES ACKNOWLEDGE THAT THE AUTHORITY WILL CONVEY THE EQUIPMENT TO THE RECIPIENT GOVERNMENTAL UNIT WITHOUT CHARGE. ACCORDINGLY, IN NO EVENT SHALL THE AUTHORITY BE LIABLE TO THE RECIPIENT GOVERNMENTAL UNIT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF DATA, LOSS OF BUSINESS, OR LOSS OF OPPORTUNITY, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER THEORY AND REGARDLESS OF WHETHER RECIPIENT GOVERNMENTAL UNIT HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

#### D. INDEMNIFICATION

To the fullest extent provided by law, the Recipient Governmental Unit shall indemnify, save, defend, and hold harmless the Authority and its officers, agents, and employees from and against any and all liabilities, liens, obligations, losses, claims, damages, actions, suits, proceedings, costs, and expenses, including without limitation attorneys' fees, imposed or incurred by or asserted against the Authority arising out of or resulting from the Equipment or the Authority's disposition of the Equipment.

#### E. GENERAL TERMS AND CONDITIONS

1. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement, or condition.
2. Applicable Law. All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Agreement shall be New Hanover County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Southern Division.
3. Amendment. This Agreement may not be amended except in writing executed by the Parties hereto.

4. Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, that provision of this Agreement will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in full force and effect.
5. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
6. Entire Agreement. This Agreement is the complete and exclusive understanding and agreement between the parties regarding the subject matter of this Agreement and supersedes all prior agreements, understandings, and communications, oral or written, between the parties regarding the subject matter of this Agreement.

ATTEST:

**BRUNSWICK COUNTY**

\_\_\_\_\_  
Clerk to the Board

By: \_\_\_\_\_  
Chairman, Board of Commissioners

[SEAL]

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that she is the Clerk to the Board of County Commissioners of Brunswick County, and that by authority duly given and to act as Chairman of the Board of Commissioners, the foregoing instrument was signed in its name by its Chairman, sealed with its official seal and attested to by its Clerk herein above named.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

(SEAL)


APPROVED AS TO FORM

\_\_\_\_\_  
Robert V. Shaver, Jr., County Attorney /  
Bryan W. Batton, Assistant County Attorney  
Brunswick County, NC

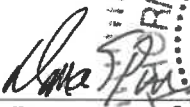
CAPE FEAR PUBLIC UTILITY AUTHORITY SEAL:

235 Government Center Drive  
Wilmington, North Carolina 28403

BY:

  
Kenneth R. Waldroup  
Executive Director

ATTEST:

  
Donna S. Pope  
Clerk to the Board



NORTH CAROLINA  
New Hanover COUNTY

I, Sara J. Eskew the undersigned Notary Public do hereby certify that Donna S. Pope personally came before me this date and acknowledged that she is the Clerk to the Board of Cape Fear Public Utility Authority, Wilmington, North Carolina, and that, by authority duly given and the act of the Board, the foregoing document was signed in its name by its Executive Director, sealed with its corporate seal, and attested by herself as its Clerk.

WITNESS my hand and official seal this the 11 day of August, 20 22.

Sara J. Eskew  
Notary Public

My commission expires: 5/9/2026


#### AUTHORITY ATTORNEY'S CERTIFICATION

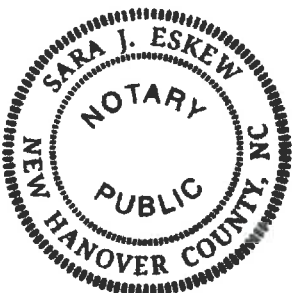
This instrument has been reviewed and is approved as to <sup>Signature only</sup> ~~form~~ this the 11 day of August, 20 22.

  
Nicolette Fulton  
Deputy Authority Attorney

#### AUTHORITY ACCOUNTANT'S CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act this the 10 day of August, 20 22.

  
John McLean  
Chief Financial Officer



## EXHIBIT A

### Description of Surplus Equipment

Brunswick County			
<b>Description</b>	<b>Number</b>	<b>Unit Cost</b>	<b>Total</b>
GE/MDS iNet-II 900 Access Point radio	70	\$200.00	\$14,000.00
<b>Total Value</b>			<b>\$14,000.00</b>