

The North Carolina Department of Commerce ("Commerce"), an agency of the State of North Carolina ("State"), enters into this Critical Needs Infrastructure Grant Agreement ("Grant Agreement") with **Brunswick County** (the "Grantee"), each being referred to individually as a "Party" and, collectively with Commerce, the "Parties".

WHEREAS, the North Carolina General Assembly ("General Assembly") has determined that it is the policy of the State to assist with disaster recovery; and

WHEREAS, North Carolina Session Law 2016-124, the Disaster Recovery Act of 2016, allocated funds to construct new infrastructure for residential structures outside the 100-year floodplain or repair or replace existing infrastructure. For the purposes of this Grant Agreement, infrastructure shall include water, sewer, sidewalks, storm drainage and other similar projects that provide assistance or relief for Hurricane Matthew, the wester wildfires, or Tropical Storms Julia and Hermine;

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as set out herein, the Parties mutually agree to the following terms and conditions:

1. Scope of Program/Agreements to be Executed. As a condition of the Grant Agreement, the highest elected official (or non-profit officer) of the Grantee shall execute two originals of this Grant Agreement in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one original to Commerce.
2. Changes in the Project or Other Conditions.
 - (a). A "Project Change" is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or other infrastructure improvement, and any filing of bankruptcy by the Grantee. Prior to implementing a proposed Project Change, the Grantee shall submit the proposed Project Change in writing to Commerce for review. The failure of the Grantee to do so will subject it to the penalties and remedies set forth in Paragraph 13(b) of this Grant Agreement, unless Commerce (in its sole discretion) expressly waives this requirement of pre-implementation review in writing. In any event, there shall be no Project Changes unless expressly approved of by Commerce in its sole discretion in a separate, written agreement stating, if applicable, the costs and schedule for completing the Project Change.
 - (b). Additionally, the Grantee shall immediately notify Commerce of any change in conditions or local law, or any other event, which may significantly affect its ability to oversee, administer or perform this Grant Agreement or the Project. In its sole discretion, Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.
3. Term of Grant Agreement. The effective period of this Grant Agreement shall commence on **4/3/2017** ("Effective Date") and shall terminate on **4/3/2020** unless terminated on an earlier date under the terms of this Grant Agreement (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by Commerce.
4. Funding and Administrative Expenses.
 - (a). Commerce grants to the Grantee an amount not to exceed **\$216,000.00** for expenditures directly relating to the Project. If Commerce determines that the actual costs of the

Project are less than the Grant amount, Commerce, in its sole discretion, may reduce the amount of the Grant accordingly. If the Grantee determines that the actual costs of the Project are less than the Grant amount, it shall report so to Commerce and return any surplus Grant funds it has received to Commerce.

- (b). The Grantee hereby represents and warrants that all Grant funds shall be utilized exclusively for the purpose of the Project solely as set forth in Exhibit A and consistent with all applicable laws, rules, regulations and requirements (including, without limitation, all language in the Disaster Recovery Act of 2016 regarding this funding), and that the Grantee shall not make or approve of any improper expenditure of Grant funds.

5. Independent Status of the Grantee.

The Grantee is an entity independent from Commerce. The Grant Agreement, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between or among Commerce, the Grantee or any third party. Nor shall the Grant Agreement or the Project be construed to make the Grantee (including its employees, agents, members or officials) or any third party employees, agents, members or officials of Commerce. Neither the Grantee nor any third party shall have the ability to bind Commerce to any agreement for payment of goods or services or represent to any person that they have such ability.

6. Method of Payment. Commerce shall pay the Grant funds to the Grantee in accordance with the Payment Schedule attached hereto as Exhibit B after receipt of written requests for payment from the Grantee certifying that the conditions for such payment under this Grant Agreement have been met and that the Grantee is entitled to receive the amount so requested and any other documentation that may be required by Commerce.

7. Obligation of Funds. The Grantee shall not obligate Grant funds subsequent to the Termination Date of this Grant Agreement. All obligations outstanding as of the Termination Date shall be liquidated within thirty days after the Termination Date.

8. Project Records.

- (a). The Grantee shall maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this Grant Agreement separate from accounts for other awards, monetary contributions or other revenue sources for this Project.
- (b). The Grantee shall retain all financial records, supporting documents and all other pertinent records related to the Grant Agreement and the Project in accordance with basic State records retention policy standards for a period of five (5) years from the Termination Date. In the event such records are audited, all such records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.

9. Monitoring, Reports and Auditing.

- (a). The Grantee agrees to ensure compliance and provide its assistance with such monitoring and auditing requirements as the State may request, including following the Termination Date of this Grant Agreement. Additionally, the Grantee shall regularly monitor all performance under Grant-supported activities to ensure that time schedules are being met and other performance goals are being achieved.
- (b). The Grantee shall furnish Commerce detailed written progress reports according to the time periods specified in Exhibit C or as otherwise requested by Commerce. Such reports should describe the progress made by the Grantee toward achieving the purpose(s) of the Project. Such descriptions should include the successes and problems encountered during the reporting period. Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until Commerce is in receipt of the delinquent report and the report meets with Commerce's approval, in Commerce's sole discretion.
- (c). The Grantee acknowledges and agrees that, with regard to the Grant funds, it will be subject to the audit and reporting requirements prescribed by N.C.G.S §159-34, Local Government Finance Act - Annual independent audit; rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of Grant funding received by the Grantee and are subject to change from time to time.
- (d). Within thirty (30) days after the Termination Date, the Grantee shall submit a final report to Commerce describing the activities and accomplishments of the Project. The final report shall include a review of performance and activities over the entire Project period. In the final report, the Grantee should describe the Project, how it was implemented, to what degree its established objectives were met and the difficulties encountered, what was changed and the cost.
- (e). The Grantee grants the State and any of its related agencies, commissions or departments (including, without limitation, Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor, and examine all of the books, papers, records and other documents relating to the Grant Agreement or the Project. In addition, the Grantee agrees to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, Commerce) for other financial and organizational materials to permit the State to comply with its fiscal monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

10. Termination; Availability of Funds.

- (a). If the Grantee fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under this Agreement, the Grantee agrees that Commerce has the right to terminate this Grant Agreement by giving the Grantee written notice specifying the Termination Date of either agreement, which Commerce may determine in its sole discretion. Upon such termination, Commerce shall have no responsibility to make additional Grant payments. Upon such termination, the Grantee shall not expend any Grant funds without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.

- (b). The obligations of Commerce to pay any amounts under this Grant Agreement are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant become unavailable, the Grantee agrees that Commerce has the right to terminate this Grant Agreement by giving written notice specifying the Termination Date of either agreement, which Commerce shall determine in its sole discretion. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Grantee shall not expend any Grant funds without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.
11. Liabilities and Loss. The Grantee hereby agrees to release, indemnify and hold harmless the State (including, without limitation, Commerce), and their respective members, officers, directors, employees, agents and attorneys (together, the "Indemnified Parties"), from any claims of third parties arising out of any act or omission of the Grantee or any third party in connection with the performance of this Grant Agreement or the Project, and for all losses arising from their implementation. Without limiting the foregoing, the Grantee hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether arising out of acts, omissions, or negligence of the Grantee or of any third party, or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.
12. Grantee Representations and Warranties. The Grantee hereby represents and warrants that:
- (a). The execution and delivery of this Grant Agreement have been duly authorized by all necessary Grantee action and are not in contravention of law or in contravention of the provisions of any indenture agreement or undertaking to which the Grantee is a party or by which it is bound.
- (b). There is no action, suit, proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the knowledge of the Grantee, threatened against or affecting it that could or might adversely affect the Project or any of the transactions contemplated by this Grant Agreement, the validity or enforceability of this Grant Agreement, or the abilities of the Grantee to discharge its obligations under this Grant Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the Grantee shall be liable to Commerce for repayment of the entire amount of the Grant and this Grant Agreement may be terminated by Commerce effective upon notice.
- (c). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Grant Agreement by the Grantee or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The Grantee shall provide Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution

of this Grant Agreement.

13. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 13 are in addition to those repayment requirements and other remedies set forth elsewhere in this Grant Agreement, including the requirements to repay unspent Grant funds. No remedy conferred or reserved by or to the State is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Grant Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b). If there is a breach of any of the requirements, covenants or agreements in this Grant Agreement, or if there are any representations or warranties which are untrue as to a material fact in this Grant Agreement or the Project (including the performance thereof), the Grantee agrees that Commerce may require repayment from the Grantee of an amount of Grant funds to be determined in Commerce's sole discretion but not to exceed the amount of Grant funds the Grantee has already received under this Grant Agreement.

14. No Waiver by the State. Failure of the State (including, without limitation, Commerce) at any time to require performance of any term or provision of this Grant Agreement shall in no manner affect the rights of the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the State of any condition or the breach of any term, provision or representation contained in this Grant Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.

15. Special Provisions and Conditions.

- (a). Non-discrimination. The Grantee agrees not to discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this Grant Agreement.
- (b). Compliance with Laws. The Grantee shall at all times observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the Grant Agreement or the Project.
- (c). Non-Assignability. The Grantee shall not assign or transfer any interest in the Agreement without the prior written consent of Commerce; provided, however, that claims for money due to Grantee from Commerce under this Agreement may be assigned to any commercial bank or other financial institution without such approval.

16. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

If to Commerce:

Attn: **Melody Adams**
North Carolina Department of Commerce
Rural Economic Development Division
301 North Wilmington Street
4346 Mail Service Center
Raleigh, North Carolina 27699-4346

If to the Grantee:

Attn: **Ms. Ann B. Hardy**
Brunswick County
PO Box 249
Bolivia, NC 28422-0249

Any other address or notice addressed to the attention of such other individual as Commerce or the Grantee shall have specified in a notice delivered pursuant to this subsection.

17. Entire Agreement. This Grant Agreement supersedes all prior agreements between Commerce and the Grantee with regard to the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Commerce and the Grantee.
18. Execution. This Grant Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Grant Agreement which shall be sufficiently evidenced by one of such original counterparts.
19. Construction, Jurisdiction and Venue. This Grant Agreement shall be construed and governed by the laws of the State of North Carolina. The Grantee agrees and submits, solely for matters concerning this Grant Agreement, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purposes, that the only venue for any legal proceedings shall be Wake County, North Carolina. The place of this Grant Agreement, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract, tort, or otherwise, relating to its validity, construction, interpretation, and enforcement, shall be determined.
20. Severability. Each provision of this Grant Agreement is intended to be severable and, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Grant Agreement, but this Grant Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

Rural Economic Development Grant Agreement
State Appropriated Disaster Recovery-Infrastructure

2017-125-3214-2593

21. Acceptance. If the Grantee agrees to the Grant conditions as stated, please return the executed documents specified in Paragraph 1. This Grant may be withdrawn if Commerce has not received such documents within thirty (30) days from the date of the cover letter from Commerce to the Governmental accompanying this Grant Agreement and its Exhibits.

IN WITNESSETH WHEREOF, the parties hereto have executed this Grant Agreement as of the date first above written.

Brunswick County

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

Date: _____

North Carolina Department of Commerce

Signature: Kenny Flowers _____ [SEAL]

Printed Name: Kenny Flowers

Title: Assistant Secretary for Rural Economic Development

Date: 11/13/17

**EXHIBIT A
SCOPE OF SERVICES**

Summary: The project will assist with the cost of repair of an existing water main feed damaged by Hurricane Matthew. Work has been completed and funding is contingent upon the pending FEMA funding decision and final determination of unmet need.

**EXHIBIT B
PAYMENT SCHEDULE**

The Department of Commerce will issue grant payments up to the total grant amount upon receipt of the following:

1. A completed financial request form,
2. Copies of eligible project invoices that support the request amount, and
3. Satisfaction of all reporting requirements at the time of request.

Eligible expenditures may not be incurred subsequent to the termination date of the grant. Payments are subject to the availability of funds.

**EXHIBIT C
REPORTING SCHEDULE**

Progress reports are due on January 15th and July 15th for each year that the grant remains open. The final report and job verification documentation are due at the time of project completion or no later than 30 days after the grant end-date, whichever is sooner. The reporting schedule remains in effect for the duration of the grant including time extensions.

Failure to submit progress reports as required:

1. Will result in non-payment of payment requests,
2. Can result in the immediate termination of the grant,
3. Can result in the demand for immediate repayment of any funds paid by Commerce, and
4. Will negatively impact the grantee's eligibility for future Commerce grants.

All forms, including reporting and request for payment, can be found on the Commerce website at <http://www.nccommerce.com/rd/rural-grants-programs/forms> . Email completed forms and reports to rgpreports@nccommerce.com .