

Town of Montreat
Board of Commissioners Meeting Agenda – Public Forum
March 8, 2018 – 6:30 p.m.
Walkup Building

I. Call to Order

- Welcome
- Moment of Silence

II. Agenda Adoption

III. Public Comments

IV. Adjournment

**Town of Montreat
Board of Commissioners
Town Council Meeting
March 8, 2018 – 7:00 p.m.
Walkup Building**

I. Call to Order

- Pledge of Allegiance
- Moment of Silence

II. Agenda Adoption

III. Presentations and Reports:

A. Requirements for Large Building Construction and Repair Contracts in North Carolina

IV. Mayor's Communications

V. Consent Agenda

A. Meeting Minutes Adoption

- February 1, 2018, Town Council Agenda Meeting Minutes
- February 8, 2018, Town Council Public Forum Minutes
- February 8, 2018, Town Council Meeting Minutes

B. Resolution #18-03-002 Honoring William "Billy" Graham

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the governing body requests discussion of an item, it will be removed from the Consent Agenda and considered separately.

VI. Town Administrator's Communications

- Consent Agenda Review
- Texas Road Bridge Update
- Town Hall Update
- Florida Terrace Update
- Other Items

VII. Administrative Reports

- Administration
- Finance
- Planning and Zoning
- Police
- Public Works and Water
- Sanitation

- Streets

VIII. Public Comment – Agenda Items

Public comments will be heard during this period for only those items listed on the meeting agenda.

IX. Old Business

A. Rules of Procedure

- **Suggested Motion:** Move to amend Rules 4 and 7 as presented to reorganize the Town meeting schedules.

X. New Business

A. Appoint Katie Widmer to Landcare Committee

- **Suggested Motion:** Move to appoint Katie Widmer to the Landcare Committee for a term of three years to expire on January 31, 2021.

B. Appoint Mark Spence to Board of Adjustment

- **Suggested Motion:** Move to appoint Mark Spence to the Board of Adjustment for a term of three years to expire on January 31, 2021.

C. Appoint Mason Blake to Planning & Zoning

- **Suggested Motion:** Move to appoint Mason Blake to the Planning & Zoning Committee for a term of two years to expire on January 31, 2020.

D. Appoint Bill Scheu to Open Space Conservation Committee

- **Suggested Motion:** Move to appoint Bill Scheu to the Open Space Conservation Committee for a term of two years to expire on January 31, 2020.

E. Appoint the following persons to the Bridge Aesthetics Committee

- Jane Alexander
- Walter Somerville

- **Robin Melvin**
- **Mason Blake**
- **Shannon Ingersoll**
- **Randi Collie**
- **Suggested Motion:** Move to appoint the above people to the Bridge Aesthetics Committee.

F. Website Overhaul Contract

- **Suggested Motion:** Move to approve and execute the Max WebGear Contract as presented.

G. Contract Authority Delegation

- **Suggested Motion:** Move to amend Rule 23 of the Rules of Procedure as presented to delegate contract authority for contracts valued under \$5,000 to the Town Administrator.

H. Discussion of Part-Time Bookkeeper with Possible Action

I. Discussion of Communications Advisory Committee with Possible Action

J. GovDeals Property Disposal Resolution #18-03-001

- **Suggested Motion:** Move to approve Resolution #18-03-001 declaring certain items surplus and authorizing disposal by private negotiation and sale.

K. Bridge Beautification Committee

- **Suggested Motion:** Move to establish a citizens advisory committee for the aesthetics and design of pedestrian bridge on Texas Road.

L. First Class Mailing Solutions Postage Meter Lease and Support Contract

- **Suggested Motion:** Move to approve and execute the First Class Mailing Solutions Postage Meter Contract as presented.

M. Administrative Process for Bid and Contract Related to the Construction of the Public Works Building

- **Suggested Motion:** Move to direct staff to select a contract method, prepare and advertise a bid for the building of a Public Works facility as soon as possible.

I. Public Comment – Other Topics

Public comments will be heard during this period for other public business items or topics not listed on the meeting agenda.

II. Commissioner Communications

III. Meeting Dates

Tree Board: Tuesday, March 27, 2018, 9:30 a.m.
Town Services Building

Good Friday: Friday, March 30, 2018
Town Services Offices Closed

Florida Terrace Bid Opening: Wednesday, April 4th, 3:00 p.m.
Town Services Building

Montreat Town Council Agenda Meeting: Thursday, April 5th, 7:00 p.m.
(tentative upon this evening's vote) Walkup Building

Montreat Town Council Meeting: Thursday, April 12th, 7:00 p.m.
Public Forum begins at 6:30 p.m.
Walkup Building

Native Plant Sale and Arbor Day Celebration: Saturday, April 28th
Moore Center Field
Time TBD

- IV. Closed Session (on 3/08/2018): To enter into Closed Session in accordance with North Carolina General Statute §143-318.11(6) to discuss a personnel matters and to approve Closed Session Minutes from September, 2017.**
- V. Adjournment**

Basic Legal Requirements for Construction Contracting with North Carolina Local Governments

*Norma Houston
UNC School of Government¹*

Local governments in North Carolina are subject to specific legal requirements that govern contracting for construction and repair projects. This outline summarizes basic procurement requirements under North Carolina law, specific legal requirements for construction and repair contracts, additional legal requirements for projects involving public buildings, and exceptions to competitive procurement requirements specific to construction and repair projects.

I. Basic Public Procurement Requirements

Public entities, including local governments, must comply with all applicable competitive bidding requirements to avoid the contract being rendered void and unenforceable. Local governments may not assume responsibility for construction contracts or guarantee payments for materials or labor unless all competitive bidding requirements are followed. [G.S. 143-129(b)]²

Basic Procurement Method Analysis: Contract Type + Cost = Procurement Method

To know which procurement method is required for a specific contract, first identify the type of contract and that contract's estimated cost:



1. Type of Contract

- a. Purchase – purchase of supplies, materials, apparatus, and equipment
- b. Construction and repair

¹ This outline was originally prepared with the generous assistance of Eileen Youens, former Assistant Professor of Public Law with the School of Government. <http://youensconsulting.com/>.

² *Hawkins v. Town of Dallas*, 229 N.C. 561, 50 S.E.2d 561 (1948); *Nello L. Teer Co. v. North Carolina State Hwy. Comm'n*, 265 N.C. 1, 143 S.E.2d 247 (1965).

II. Specific Bidding Requirements for Construction/Repair Contracts

The following legal requirements apply to all construction and repair contracts, including contracts for building construction and repair, unless otherwise noted. They are organized in a step-by-step outline that generally follows the construction contracting process.

Step 1: Develop project specifications

1. **Selecting project designers** – In hiring an architect and/or engineer, a local government must use the Qualifications Based Selection (QBS) process unless the local government exempts itself. [G.S. 143-64.31, -64.32]
2. **Licensure requirements notice** – Architects and/or engineers preparing specifications must include information about licensure requirements in the invitation to bidders and project specifications. [G.S. 87-15]

Step 2: Solicit bids

1. **Informal bidding** – Bids for projects in the informal bidding range must be “secured.” The statutes do not specify any particular requirements for securing informal bids, so local governments can solicit by any method they choose, such as a newspaper ad, website posting, email, mail, or phone. [G.S. 143-131(a)]
2. **Formal bidding** – Formal advertisement is required for projects in the formal bidding range. Advertisements must meet statutory requirements:
 - a. Advertise in a newspaper of general circulation within the local government’s jurisdiction, by electronic means, or both, for at least 7 full days before the bid opening; advertising by electronic means only requires governing board approval at a regular meeting.
 - b. Advertisement must include the time and location where plans and specifications are available, the time, date, and location of the bid opening, and a statement reserving the local government’s right to reject any and all bids.
[G.S. 143-129(b)]

Step 3: Receive bids (form of bids)

1. **Informal bids may be received in any form** – Informal bids are not required to be sealed or received in any form, so they may be received via fax, electronically, by phone, or in any other form specified by the local government. [G.S. 143-131]

withdraw his bid to Superior Court within 20 days of receiving the local government's ruling. Any bidder who withdraws may *not* rebid on the project or provide materials, equipment, or labor to a contractor or subcontractor performing on the contract from which the bidder withdrew without the written permission of the local government; a violation of this second prohibition is a Class 1 misdemeanor. A withdrawn bid counts toward the 3-bid minimum required for formal bid opening. [G.S. 143-129.1]

3. **When bid documents become public records** – Bid documents submitted by bidders eventually become open to public inspection³. The point in time when bids submitted by bidders become public varies depending on the procurement method.
 - a. **Below informal bidding range** – Bid documents become open for public inspection when they are received by the local government (or, if sealed, when opened).
 - b. **Informal bidding range** – The record of bids (and bid documents) become open for public inspection when the contract is awarded.
 - c. **Formal bidding range** – Bid documents become open for public inspection when the bids are opened at the public bid opening.

Step 5: Evaluate Bids

1. **Evaluation** – Once bids are received (informal) or opened (formal), the local government must evaluate bids to determine if the bids conform to the project specifications and meet all applicable legal requirements.
2. **Bidders must be licensed** – A licensed general contractor must oversee the project if it costs over \$30,000. [G.S. 87-1(a)] General contractor oversight is not required if the local government is acting as its own general contractor by using its own forces. [G.S. 143-135, G.S. 87-1(b)(2)] If the local government is acting as its own general contractor, it must submit an owner-contractor affidavit to the local building inspector attesting to its eligibility to act as its own general contractor. [G.S. 87-14]⁴

³ Information in bids that is a "trade secret" remains confidential even after the bid becomes public. [G.S. 132-1.2; G.S. 66-152] For more information on trade secrets, see, Youens, Eileen, "[Bidding Confidential](#)," Coates' Canons Local Government Law blog, UNC School of Government, April 8, 2010. For more information on when bid documents become public records, see Youens, Eileen, "[When are Bids and Proposals Subject to Public Inspection?](#)," LGLB No. 119, UNC School of Government (February 2009).

⁴ The affidavit requirement for owner-contractor construction projects was enacted by the General Assembly in 2011 ([S.L. 2011-376](#)). More information about this new requirement and a sample affidavit are available on the SOG's [Local Government Purchasing and Contracting website](#) under "[Legislative Updates](#)."

2. **Project in the informal bidding range** – Governing board approval is not required (unless by local policy); the contract can be awarded by any official or employee authorized by the governing board to award contracts on behalf of the local government.
3. **Projects in the formal bidding range** - Governing board approval is required and cannot be delegated to an individual officer or employee. [G.S. 143-129(a)]

Step 8: Execute the Contract

1. **Who can execute** – Contracts for projects in both the informal and formal bidding ranges (as well as contracts below the statutory competitive bidding threshold) can be executed by the governing board chair or any other official or employee authorized by board to execute contracts on behalf of the local government. The statutes do not impose a specific time frame within which the *local government* must execute the contract. However, for contracts in the formal bidding range, the *contractor* is required to execute the contract within 10 days of award or else forfeit his bid deposit/bond (see Step 4, 2b). [G.S. 143-129(b)]
2. **Contracts must be in writing** – For cities, *all* contracts must be in writing *regardless* of the cost of the contract, so *all* municipal contracts for construction and repair work *must* be in writing. [G.S. 160A-16] For other local governments, written contracts are statutorily required for construction and repair projects in the formal bidding range.⁷ [G.S. 143-129(c)] In light of the North Carolina Court of Appeals' recent interpretation of the preaudit requirement (see Kara Millonzi's [blog post](#) on these cases), local governments should no longer enter into *any* oral contracts, *even if* state statutes do not require the contract to be in writing.
3. **Performance and Payment Bonds** – For projects costing more than \$300,000,⁸ performance and payments bonds must be received from *each* contractor with a contract costing over \$50,000. Each bond must be for 100% of the contract amount and must be executed by a NC-licensed surety. Bonds are effective when the contract is awarded. If contractor does not provide performance and payment bonds, the contractor forfeits his bid bond/deposit. If a public official or employee who is responsible for obtaining performance and payment bonds does not do so, that official or employee is guilty of a Class 1 misdemeanor. [G.S. 44A-26; G.S. 44A-32; G.S. 143-129(b), (c)]

⁷ When purchasing supplies, materials, apparatus, and equipment, the Uniform Commercial Code requires a written contract for the sale of goods costing \$500 or more. This requirement does not apply to construction and repair contracts.

⁸ Note that the \$300,000 amount is less than the \$500,000 threshold for projects in the formal bidding range.

III. Additional Requirements for Large Building Construction & Repair Contracts

The following legal requirements apply to the erection, construction, alteration, or repair of a building where the cost of the contract is *over \$300,000* (unless otherwise noted). These requirements are *in addition* to the requirements for construction and repair contracts outlined in Section II.

Step 1: Develop Project Specifications

1. **Drawing plans** – Plans and specifications for certain building projects involving the expenditure of public funds must be prepared by an architect or engineer or both, depending on project. The architect and/or engineer must be “particularly qualified by training and experience for the type of work involved.” [G.S. 133-1.1] Projects subject to this requirement are those costing over:¹⁰
 - a. \$300,000 for repairs not involving major structural change in framing or foundation support systems;
 - b. \$100,000 for repairs affecting “life safety systems;”
 - c. \$135,000 for repairs involving major structural changes in framing or foundation support systems; and
 - d. \$135,000 for construction of, or additions to, public buildings.
2. **Separate specifications** – Separate specifications are required for “subdivisions or branches” of work on the project, meaning certain trades as well as general construction work:
 - a. HVAC and cold storage with a cooling load of 15 tons or more;
 - b. plumbing and gas fittings;
 - c. electrical; and
 - d. all other general work.[G.S. 143-128(a)]
3. **Limitations on specifications** – Architects, engineers, and project designers (collectively referred to as “designers”) are subject to certain limitations in drawing project specifications, *regardless* of the cost of the project. Violations are a Class 1 misdemeanor. These limitations are:

¹⁰ Projects that are not required to be prepared by an architect and/or engineer must receive a certificate of compliance with the State Building Code unless the project (i) is approved by State Construction Office, (ii) is exempt from the State Building Code, or (iii) costs less than \$100,00 and does not involve the alteration of life safety systems. [G.S. 133-1.1(d)]

- a. **Separate- (or Multi-) Prime** – The local government accepts bids separately and awards to the lowest responsive, responsible bidder for each category of work (“branches or subdivisions”; see Step 1, 2 above) for which separate specifications are required: (i) HVAC and cold storage with a cooling load of 15 tons or more; (ii) plumbing and gas fittings; (iii) electrical; and (iv) all other general work. Additional categories of work also can be contracted separately. Each contractor is directly responsible to the local government and to other contractors for full performance of his or her contract. [G.S. 143-128(b)]
- b. **Single-Prime** – The local government accepts bids from general contractors for the *entire* project and awards to the lowest responsive, responsible bidder, and the general contractor contracts with subcontractors for branches or divisions of work on the project. The bidders must identify on their bids the subcontractors for HVAC, electrical, plumbing, and general work. Once the contract is awarded, the general contractor is directly responsible to the local government, and subcontractors are directly responsible to the general contractor. The winning contractor cannot substitute subcontractors unless (i) the contractor determines that a subcontractor’s bid is nonresponsive or nonresponsible; (ii) a subcontractor refuses to enter into the contract; or (iii) with approval by the local government if the contractor shows good cause for the substitution. [G.S. 143-128(d)]
- c. **Dual bidding (both Separate- and Single-Prime)**¹³ – The local government may choose to accept both separate-prime and single-prime bids for the same project, and then award the contract to the lowest responsive, responsible bidder in either category. In determining whether to award on a separate-prime or single-prime basis, the local government may consider the costs of construction oversight, time for completion, and other factors it deems appropriate. Separate-prime bids must be received – but not opened – one hour before the deadline for single-prime bids. A separate-prime bidder cannot underbid his bid to a single-prime contractor. For projects in the formal bidding range (\$500,000 or more), in counting bids to determine if the 3-bid minimum requirement for opening has been met, each single-prime bid counts as one bid, and each full set of separate prime bids in the 4 branches or divisions specification categories counts as one bid. If 3 single-prime bids are received but a full set of separate-prime bids is not, no separate-prime bids can be opened. [G.S. 143-128(d1), G.S. 143-132]
- d. **Construction Management at Risk (CM@R)** – Under a construction management at risk contract, the construction manager, who must be a licensed general contractor, provides construction management services such as preparing and coordinating bid packages and construction administration, and guarantees the cost of the project. The construction manager at risk acts as the fiduciary of the local government in

¹³ Technically speaking, dual bidding is not a contracting method, but rather a bidding method.

total value of all building construction projects costing \$30,000 or more.¹⁶ Goals are adopted after notice and public hearing. A “historically underutilized business” is defined as a business that is at least 51% owned and managed by minority or socially and economically disadvantaged persons. A “minority person” is a citizen or lawful permanent resident who is either (i) African American; (ii) Hispanic; (iii) Asian American; (iv) American Indian; (v) handicapped; or (vi) female. A “socially and economically disadvantaged person” is someone who qualifies as such under federal law.¹⁷ HUB’s must be certified by the NC Office for Historically Underutilized Businesses to count toward meeting participation goals.

In addition to adopting HUB participation goals, local governments and, in some instances bidders, must engage in efforts to recruit HUB participation in certain building construction projects; these efforts vary depending on the cost and funding source of the project.

[G.S. 143-128.2(a), (g); G.S. 143-128.4(a), (a1), (b), ((e); 15 U.S.C. 673(a)(5)-(6)]

- a. **Building construction projects in the informal bidding range (\$30,000-\$500,000)** – Local governments must (i) solicit HUB participation in contracts; (ii) document efforts to recruit HUB participation; (iii) maintain a record of HUB contractors solicited; and (iv) report all data on HUB participation efforts to the NC Office for Historically Underutilized Businesses. [G.S. 143-131(b)]

It is important to note an inconsistent overlap in the statutory requirements for HUB participation for building construction projects costing between \$300,000 and \$500,000. While one statute (G.S. 143-131) imposes the HUB solicitation and reporting requirements described in this subsection on construction projects in the informal bidding range – which extends to projects costing up to \$500,000 – another statute (G.S. 143-128.2) imposes more stringent requirements on building projects costing \$300,000 or more (these requirements are described in the next subsection). *For projects costing between \$300,000 and \$500,000, the safest course of action is to follow the more stringent requirements of G.S. 143-128.2.*

- b. **Building construction projects costing \$300,000 or more** – Local governments must establish *good faith efforts* for HUB participation prior to bid solicitation. Good faith efforts to encourage HUB participation apply to both local governments and bidders:
 - i. **Local government good faith efforts obligations** – The local government must (i) develop and implement a HUB outreach plan; (ii) attend scheduled pre-bid conferences; (iii) notify interested HUBs of the opportunity to bid on a project at

¹⁶ HUB participation efforts do not apply to building construction projects costing less than \$30,000 or to any construction or repair projects not involving public buildings. Local governments may choose to apply these goals to these categories of projects under their local policies.

¹⁷ 15 U.S.C. 637(a)(5).

Steps 3-8: Receive, Open, and Evaluate Bids, Determine Successful Bidder, and Award and Execute the Contract

For these steps in the construction contracting process, there are no special requirements for large building construction and repair projects beyond those required for all construction and repair projects (See Steps 3-8 in Section II).

Step 9: Contract Management: Dispute Resolution

1. **Dispute Resolution Procedures** – Local governments are required to use the dispute resolution process adopted by the State Building Commission (see State Building Commission [Dispute Resolution Rules](#)), or else adopt another dispute resolution process that includes mediation. This requirement applies to *all* public building construction projects *regardless of the cost of the project*.²⁰ The dispute resolution process must be made available to all parties involved in the construction project. The local government may set minimum thresholds for the dollar amount of the dispute (the threshold cannot exceed \$15,000), and may require that the parties participate in mediation prior to initiating litigation. [G.S. 143-128(f1),(g)]

IV. Exceptions to Competitive Procurement Requirements

Construction and repair projects costing \$30,000 or more are exempt from competitive bidding requirements in certain circumstances.

1. **Force Account Work** – Local governments may use their own forces (employees) on construction and repair projects when the total cost of the project is less than \$125,000 or the total cost of the labor is less than \$50,000. The work must be performed by employees on the permanent payroll, and approved by the governing board. If the cost of the project is over \$30,000, the local government must submit an owner-contractor affidavit to the local building inspector attesting to its eligibility to act as its own general contractor in lieu of hiring a licensed general contractor to supervise the project.²¹ [G.S. 143-135; G.S. 87-14]
2. **Change Orders** – Changes made to the project after award of the contract are not subject to competitive bidding requirements if the original contract was competitively

²⁰ The statutes are internally inconsistent on whether a dispute resolution process is required for separate-prime contracts. G.S. 143-128(e) states that the public body “may” provide for a dispute resolution process for separate-prime contracts. However, G.S. 143-128(g) states that the dispute resolution process under subsection (f1) “shall” apply to “any erection, construction, alteration, or repair” of public buildings. Since the language in subsection (g) was enacted after the language in subsection (e), it is reasonable to assume that the General Assembly intended the dispute resolution process to apply to separate-prime contracts as well as all other public building construction projects. (See S.L. 2001-496).

²¹ More information about the owner-contractor affidavit requirements and a sample affidavit are available on the School of Government’s [Purchasing and Contracting website](#) under “[Legislative Updates](#).”

- ❖ Houston, Norma, and Ross, Jessica Jansepar, *HUB Participation in Building Construction Contracting by N.C. Local Governments: Statutory Requirements and Constitutional Limitations*, Local Government Law Bulletin No. 131, February, 2013. <http://sogpubs.unc.edu/electronicversions/pdfs/lglb131.pdf>

New Construction Delivery Methods Authorized for North Carolina Local Governments

*Norma Houston
September 2013*

Overview

In 2013, the General Assembly enacted legislation authorizing three new contracting methods for public construction projects: design-build (DB), design-build bridging (DBB), and public-private partnerships (P3). [S.L. 2013-401/H857](#)¹ (Public Contracts/Construction Methods/DB/P3) accomplishes this in three primary ways:

1. Amends G.S. 143-128 authorizing these new construction delivery methods for large building construction projects.
2. Requires governmental units to enter into these contracts under the qualifications-based selection method of G.S. 143-64.31 (the Mini-Brooks Act).
3. Establishes specific procurement requirements for each type of contract by enacting three new statutes: G.S. 143-128.1A (for DB), G.S. 143-128.1B (for DBB), and G.S. 143-128.1C (for P3).

The new delivery methods are authorized for any state and local government construction project provided that the statutory requirements are met. The legislation also imposes more stringent reporting requirements on public entities utilizing both the new construction delivery methods and construction management at risk. Finally, the legislation places a cap on the ability of local governments to exempt themselves from the Mini-Brooks Act.

Prior to H857's enactment, state law authorized four contracting methods for large building construction projects: single-prime, separate-prime (also referred to as multi-prime), dual-bidding (bidding both single- and separate-prime simultaneously), and construction management at risk.² Design-build and P3 were considered alternative construction methods requiring either State Building Commission approval or legislative authorization. While design-build and P3 were not statutorily restricted for building construction projects costing \$300,000 or less³ or projects that did not involve a building (such as installing sewer pipes or erecting a water tank), the competitive bidding requirements of Article 8 of Chapter 143 made entering

¹ S.L. 2013-401 became effective on September 22, 2013, and applies to all projects bid on or after that date.

² G.S. 143-128(a1).

³ The limitations on construction contracting methods under G.S. 143-128(a1) only apply to construction and repair projects involving *buildings* that cost over \$300,000 (G.S. 143-128(g)(2)).

design work can be done in phases, allowing construction to commence and proceed in phases to expedite project completion, or the design work can be finalized prior to construction. Under both systems, the designer continues to work with the builder throughout the project addressing unforeseen issues or design revisions as the project proceeds.

The new design-build statutes define a design-builder as “an appropriately licensed person, corporation, or entity that, under a single contract, offers to provide or provides design services and general contracting services.”⁶ Architectural and engineering services must be performed by licensed architects and engineers, and contracting services must be performed by a licensed general contractor. While it is possible for one individual to hold both an architect or engineering license and a general contractor license, a design-builder typically is a corporation or firm that employs both licensed designers and licensed general contractors, or a construction firm that subcontracts with an architect or engineer. The new design-build statute requires the design-builder to certify that each licensed designer and subconsultant who is a member of the design-build team was selected based on “demonstrated competence and qualifications” under the qualifications-based selection process of the Mini-Brooks Act (G.S. 143-64.31).⁷

To enter into a design-build contract, the unit of government must follow specific procurement procedures set out in the new G.S. 143-128.1A.

1. *Criteria for Using DB:*⁸ The unit must establish written criteria for determining when design-build is appropriate for a project. While the criteria must be in writing, governing board approval is not specifically required (although it may be highly advisable). The statute requires the unit to adopt the criteria for each project.

The criteria must address at least the following six factors:

- 1) The unit’s ability to “adequately and thoroughly” define the project requirements in the RFP;
- 2) Time constraints for project delivery;
- 3) The unit’s ability to ensure that a quality project can be delivered;
- 4) The availability of qualified staff or outside consultants experienced in design-build to manage and oversee the project;
- 5) Good faith efforts to comply with historically underutilized business participation requirements (G.S. 143-128.2 and -128.4) and to recruit and select small business entities (the term “small business entities” is not defined in the statute); and

⁶ G.S. 143-128.1B(a)(2).

⁷ G.S. 143-128.1A(e).

⁸ G.S. 143-128.1A(b).

included in the RFQ. The unit then negotiates a contract at a “fair and reasonable price” with the highest ranked design-builder. As with other contracts subject to the Mini-Brooks Act, the unit cannot solicit project cost estimates or fees in the RFQ, and can only negotiate contract price after ranking the respondents based on qualifications. If negotiations with the highest-ranked respondent are not successful, the unit may initiate negotiations with the second-highest ranked and so on, until the unit either rejects all proposals or selects a design-builder with whom to contract. During its evaluation process, the unit may, if it chooses to do so, interview some or all of the respondents.

6. *P/P Bonds:*¹³ Once the contract is awarded, the selected design-builder must provide bonds under Article 3 of Chapter 44A, which requires performance and payment bonds for 100% of the contract amount for each contract more than \$50,000 on projects costing over \$300,000.
7. *Substituting Key Personnel:*¹⁴ After contract award, the design-builder can only substitute key personnel (the contractors, subcontractors, and design professionals identified in the design-builder’s response to the RFQ) after obtaining written approval from the unit. This requirement does not apply if the design-builder selects contractors, subcontractors, and design professionals under the competitive bidding requirements of Article 8 of Chapter 143.

Design-Build Bridging Contracting

The design-build bridging construction method is a two-step process that differs from design-build in two significant ways. First, the unit contracts separately with an architect or engineer to design 35% of the project and then solicits proposals from design-build firms based on the partial project design. The unit then contracts with a design-builder to complete the design and perform construction. The preliminary design documents act as “bridging” documents between initial project concept and the design-build phase (hence the name of this construction method). These bridging documents, termed “design criteria” in the new design-build bridging statute, provide enough project requirements in preliminary drawings and specifications to enable design-build bidders to submit a responsive bid.¹⁵

¹³ G.S. 143-128.1A(f).

¹⁴ *Id.*; G.S. 44A-26.

¹⁵ G.S. 143-128.1B(a)(3). Because of the cost involved in preparing a response to a design-build solicitation, the North Carolina State Building Commission recommends developing bridging documents to reduce costs to potential bidders and encourage competition.

3. *Published Notice:*¹⁷ The unit must issue a public notice of a request for proposals (RFP). The statute does not specify the minimum time for or method of publication, so units may wish to follow the published notice procedures for formal purchase and construction contracts under G.S. 143-129. As with other contracts subject to the Mini-Brooks Act, the unit must make good faith efforts to notify minority firms.
4. *RFP Requirements:*¹⁸ The RFP notice must include general information on the same eight items required for a design-build RFQ, but must also include two additional elements: (1) the design criteria package prepared by the design criteria design professional; and (2) a statement that each design-build bidder must submit *with its proposal in a sealed envelope* its fees for providing the general conditions of the contract, design services and general construction services.
5. *Receiving Responses:*¹⁹ As with design-build, the unit must receive at least three responses to its RFP in order to consider proposals. If the unit receives less than three responses, it must resolicit (just as is required for formal construction bids). After the second advertisement, the unit may consider proposals even if three are not received. Each bidder must certify that all members of its design-build team who are licensed design professionals, including subconsultants, were selected as required under the Mini-Brooks Act.
6. *Evaluating Responses and Awarding the Contract:*²⁰ After receiving proposals, the unit evaluates and ranks them, and then groups the top three without specific ordinal ranking. From among these three respondents the unit selects the design-builder who is the lowest responsive, responsible bidder based on the cumulative amount of fees for providing the general conditions of the contract, design services, and general construction services, and taking into consideration quality, performance, and the time specified in the proposal for performance of the contract.
7. *Subcontractors:*²¹ The design-builder with whom the unit contracts must use the competitive bidding requirements of Article 8 of Chapter 143 in hiring first-tier subcontractors on the project (design professionals are not considered first-tier subcontractors).²²

¹⁷ G.S. 143-128.1B(d).

¹⁸ *Id.*

¹⁹ G.S. 143-128.1B(e).

²⁰ *Id.*

²¹ G.S. 143-128.1B(f).

²² G.S. 143-128.1B(a)(5).

the developer to purchase materials for the project at a reasonable price. If the project utilizes the design-build construction delivery method, the procurement requirements of the new G.S. 143-128.1A apply.

The private developer with whom the unit contracts cannot perform any design or construction work on the project unless a contractor defaults, a qualified replacement cannot be obtained in a timely manner, and the unit approves. Performance and payment bond requirements apply along with specific procedures for claims under a payment bond made against the private developer.²⁷

Reporting Requirements

The reporting requirements of G.S. 143-64.31(b) apply to design-build, design-build bridging, and P3 contracts. Units must report to the NC Department of Administration the reason why the particular design-builder or private developer was selected, contract terms, firms considered but not selected and their proposed fees, the procurement procedure, a detailed explanation of why that construction delivery method was used in lieu of a traditional bidding method, and the anticipated benefits.

The legislation also amended the Mini-Brooks Act to establish an enforcement mechanism for compliance with reporting requirements. Under the new subsection (d) of G.S. 143-64.3, the unit must submit the required report within 12 months of taking beneficial occupancy of the project. A unit that does not comply is prohibited from using CMR, design-build, design-build bridging, or P3 until it files the delinquent report. While noncompliance does not void existing contracts (the new G.S. 143-64.31(d) specifies that “contracts entered into in violation of this prohibition shall not be deemed ultra vires and shall remain valid and fully enforceable.”), the statute now creates a private cause of action for an injunction against the local government compelling it to file the required reports and from commencing or continuing a design-build or P3 project until the reports are filed. Plaintiffs are not entitled damages or attorney’s fees, and a four year statute of limitation applies.²⁸ This enforcement mechanism is applicable to CMR contracts as well as design-build, design-build bridging, and P3.

²⁷ G.S. 143-128.1C(g).

²⁸ The prohibition against recovering attorney’s fees does not include fees recovered under Rule 11 of the Rules of Civil Procedure (G.S. 1A-11) or where there is a finding of a nonjusticiable issue (G.S. 6-21.5). The statute of limitations is calculated from the date on which the unit took beneficial occupancy of the project for which the report is due.

**Town of Montreat
Board of Commissioners
Town Council Agenda Meeting
February 1, 2018
Walkup Building**

Board members present: Mayor Tim Helms
Commissioner Kitty Fouche
Commissioner Bill Gilliland
Commissioner Alice Lentz
Commissioner Tom Widmer

Board members absent: Mayor Pro Tem Kent Otto

Town staff present: Alex Carmichael, Town Administrator
Dave Arrant, Chief of Police

Approximately 3 members of the public were also present. Mayor Helms called the meeting to order at 7:00 p.m., led the group in reciting the Pledge of Allegiance, and held a moment of silence.

Agenda Approval

Commissioner Lentz moved to adopt the agenda as presented. Commissioner Gilliland seconded and the motion passed 4/0.

Mayor's Communications

Mayor Helms stated that he had no communications for the evening.

Consent Agenda Review

The proposed Consent Agenda will include the following items:

- January 4, 2018, Town Council Agenda Meeting Minutes
- January 11, 2018, Town Council Public Forum Minutes
- January 11, 2018, Town Council Meeting Minutes

Town Administrator's Communications

- Mr. Carmichael stated that in the Texas Road Bridge process the Town of Montreat is looking for approval from the State Historic Preservation Office and then a signature from the engineer, DeWayne Sykes, and then it will go to the Department of Transportation for final approval.
- Mr. Carmichael stated that he will have additional communications next week.

Administrative Reports

Police Chief: Reports were in written form as requested by Council. Commissioner Widmer pointed out that there was a discrepancy in the month on the Police Report: stated December 2018 when it was supposed to be January 2018. Chief Arrant stated that he would make the correction prior to next week's meeting.

Public Works Director: Reports were in written form as requested by Council

Finance Officer: Mr. Carmichael stated that he hoped there would be an Executive Summary from the Finance Officer next week.

Public Comments

Mayor Helms reiterated that this Public Comment period was intended for remarks pertaining to items listed on the meeting agenda, including staff reports and communications.

Old Business

There was no Old Business to discuss this evening.

New Business

- A. Asbestos Abatement Contract: Mr. Carmichael stated that earlier in the year the Town of Montreat put out an informal bid process for asbestos abatement. The Town received two responses. The first response was a combination asbestos/demolition from D.H. Griffin which was \$9,050 and asbestos only from Southeastern Environmental Group, Inc for \$7,040. Mr. Carmichael stated that he has been told these estimates are all considered relatively high. An additional informal bid has been issued with responses due back by Tuesday, February 6th. Commissioner Lentz asked how many more bids would be received. Mr. Carmichael stated that he advertised on the website and sent the bid to three additional firms but so far he had not received a response.
- B. Appointment of Deputy Town Clerk & Oath of Office: This position was previously held by Stefan Stackhouse and it slipped through the cracks when he retired. The minutes are being recorded this evening and Town Clerk Angie Murphy will transcribe them and certify the signatures upon completion. Mr. Carmichael stated that this appointment would allow him to step in as Deputy Town Clerk in Ms. Murphy's absence and certify the minutes and signatures. Commissioner Widmer asked if there would be a conflict of interest between his position as

**Montreat Board of Commissioners
Town Council Agenda Meeting Minutes
February 1, 2018**

Town Administrator and Deputy Town Clerk. Mr. Carmichael stated that the reality of a small town is that staff routinely serves in dual positions.

Public Comments-Other Topics

Mayor Helms reiterated that the Public Comment period were for remarks pertaining to public business items not listed on the meeting agenda, including any reports or communications from other community entities.

Commissioner Communications

There were no Commissioner Communications this evening.

Upcoming Meeting Dates

Mayor Helms reviewed the following list of upcoming meeting dates and deadlines:

<u>February Town Council Meeting:</u>	February 8, 2018, 7:00 p.m. Walkup Building Public Forum begins at 6:30 p.m.
<u>Annual Board Retreat:</u>	February 13, 2018, 3:00-8:00 p.m. The Left Bank
<u>Tree Board:</u>	February 27, 2018, 9:30 a.m. Town Services Building
<u>March Town Council Agenda Meeting:</u>	March 1, 2018, 7:00 p.m. Walkup Building
<u>Montreat Landcare:</u>	March 7, 2018, 9:00 a.m. Allen Building Swannanoa Room
<u>March Town Council Meeting:</u>	March 8, 2018, 7:00 p.m. Public Forum begins at 6:30 p.m. Walkup Building
<u>Tree Board:</u>	Tuesday, March 27, 2018, 9:30 a.m. Town Services Building

**Montreat Board of Commissioners
Town Council Agenda Meeting Minutes
February 1, 2018**

Closed Session (on 2/08/2018): There will be a Closed Session in accordance with North Carolina General Statute 143-318.11(6) to discuss a personnel matter as well as approving Closed Session Minutes for May and June.

Adjournment

There being no further business, Commissioner Gilliland moved to adjourn the Town Council Meeting. Commissioner Lentz seconded and the motion carried 4/0. The meeting was adjourned at 7:18 p.m.

Tim Helms, Mayor

Angela Murphy, Town Clerk

**Town of Montreat
Board of Commissioners
Town Council Public Forum Meeting
February 8, 2018
Walkup Building**

Board members present: Mayor Tim Helms
Mayor Pro Tem Kent Otto
Commissioner Kitty Fouche
Commissioner Bill Gilliland
Commissioner Alice Lentz
Commissioner Tom Widmer

Board members absent: None

Town staff present: Alex Carmichael, Town Administrator
Angie Murphy, Town Clerk

Approximately 10 members of the public were also present. Mayor Helms called the meeting to order at 6:30 p.m., led the group in a moment of silence.

Agenda Approval

Commissioner Lentz moved to adopt the agenda as presented. Commissioner Gilliland seconded and the motion passed 5/0.

Public Forum

Tom Frist of 98 Frist Road mentioned the recent passing of Sam Hope and how much he meant to the Town. Mr. Frist stated that he felt bad about the declined participation in the valuable Public Forum period. Mr. Frist also stated that he would like to informally hear about the annexation and the sale of the Creek Side Property. Mr. Carmichael stated that the Town closed on the Creek Side Property around Christmas. On tonight's agenda there is a proposal for asbestos abatement which will take a three week process to complete and then the Town can move forward with demolition. The Town of Montreat and Town of Black Mountain sent a joint resolution to the General Assembly in December. The General Assembly will meet again in May and it is likely that the entire delegation will be in support of the annexation since both Towns are in agreement. The de-annexation/annexation could happen as early as summer. The annexation process will not put us behind in the demolition of the Creek Side Building. Mr. Carmichael stated that Town Staff are in the process of rerouting power lines and water lines for the new Public Works Building and the next step will be to have an engineer cap off the existing well. Mr. Frist asked if the Police Force would be divided into the current Town Services Building rather than in the new Town Hall. Mr. Carmichael stated that would be up to the discretion of the Council. The current Town Services Building floods often so it would be a hard building to keep evidence and public records safe. The current Town Services Building will still be used for water production as the lease states. Mayor Helms stated that Council will take the existing space study and start paring it down considerably.

**Montreat Board of Commissioners
Town Council Public Forum Meeting Minutes
February 8, 2018**

Mayor Helms envisions the building keeping with the spirit of Montreat but with the ability to add-on in the future if needed. All of these decisions will of course be made by Council. Mr. Frist asked for an update on the Texas Road Bridge. Mr. Carmichael stated that the Town is still waiting to hear from the State Historic Preservation Office. Once they approve our engineer can sign the document and then it will go to the Department of Transportation. Mayor Helms stated that the Florida Terrace Property has been rezoned residential into two relatively equal sized lots and it will eventually be put up for sale.

Mary Jo Clark of Montreat, thanked the Commission for running for office. She stated she was hopeful for the future of Montreat.

Joe Kirkland of Montreat College announced that every 2nd week of February the College routinely likes to expose to their students injustices in the world. This year they are focusing on Compassion International. There will be speakers on Monday and Wednesday at 10:00 a.m. in Graham Chapel. On the Black Mountain Campus Compassion International will have a 80 ft truck which expands 40 ft wide and will house an interactive experience. The College is expecting 2,000 visitors between 11:00 a.m. to 7:00 p.m. Monday thru Thursday.

Judy Shuford of 613 Greybeard Trail, heard there was going to be a public input process in the appearance of the new Town Hall. Mr. Carmichael stated that we would discuss the next steps in the process at the retreat which will be held on February 13th in the Left Bank building. Mrs. Shuford thinks public input is an important part of the process.

There being no further business, Commissioner Gilliland moved to adjourn the Town Council Meeting. Commissioner Lentz seconded and the motion carried 5/0. The meeting was adjourned at 6:50 p.m.

Tim Helms, Mayor

Angela Murphy, Town Clerk

**Town of Montreat
Board of Commissioners
Town Council Meeting
February 8, 2018
Walkup Building**

Board members present: Mayor Tim Helms
Mayor Pro Tem Kitty Fouche
Commissioner Bill Gilliland
Commissioner Kent Otto
Commissioner Mary Standaert
Commissioner Ann Vinson

Board members absent: None

Town staff present: Alex Carmichael, Town Administrator
Angie Murphy, Town Clerk
Justyn Whitson, Police Officer
Barry Creasman, Public Works Director
Adrienne Isenhower, Zoning Administrator

Approximately 15 members of the public were also present. Mayor Helms called the meeting to order at 7:00 p.m., led the group in reciting the Pledge of Allegiance, and held a moment of silence.

Agenda Approval

Commissioner Gilliland moved to approve the agenda as presented. Commissioner Widmer seconded the motion carried 5/0.

Mayor's Communications

Mayor Helms remarked that there had been a lot of illness and subsequent deaths plaguing Montreat and he asked to keep those affected in our thoughts and prayers.

Consent Agenda Review

The proposed Consent Agenda will include the following items:

- January 4, 2018, Town Council Agenda Meeting Minutes
- January 11, 2018, Town Council Public Forum Minutes
- January 11, 2018, Town Council Meeting Minutes

Town Administrator's Communications

- Mr. Carmichael stated that Adrienne Isenhower met with High Country Surveyors today and they have completed the field work portion of the Florida Terrace Recombination Survey. Mr. Carmichael expects to have that completed and recorded by next week which will allow us to start advertising the property for sale.
- Mr. Carmichael stated that on the table tonight there was a financial report from Erin Marie Wheeler. Mrs. Wheeler will be at the retreat to answer any questions and is available to answer questions by phone from the office.
- Commissioner Fouche asked about the MSD discrepancy as mentioned in the Executive Summary. Mr. Carmichael stated that MSD provides sewer service for Montreat but they base their billing on what we report for water usage. We have a one month bill of over \$100,000 and we believe that the utility billing module and the general ledger module are experiencing a miscommunication between each other. This miscommunication has led to increasingly high water bills for residents as well. Buncombe County is working with us to investigate the correct amount of monies owed to MSD. Commissioner Widmer asked what the material impact of this would mean to Montreat. Mr. Carmichael stated that the Town had withheld the most recent payment due to allow time to investigate the correct amount.

Administrative Reports

Police Chief: Reports were in written form as requested by Council.

Public Works Director: Reports were in written form as requested by Council.

Streets/Sanitation: Reports were in written form as requested by Council.

Public Comments

Mayor Helms reiterated that this Public Comment period was intended for remarks pertaining to items listed on the meeting agenda, including staff reports and communications.

There were no public comments at this time.

Old Business

There was no Old Business to discuss this evening.

New Business

- A. Asbestos Abatement Contract: Mr. Carmichael stated that in September of last year the Town received two asbestos abatement bids in an informal bid process. This January the Town reached out to three more firms and publicized the request on the Town website and we had no responses. Mr. Carmichael stated that he has presented the lowest bid from September to Council for approval this evening. Southeastern Environmental Group, Inc. will be ready tomorrow to move forward with the permit process which will take approximately two weeks. Then they will remove the asbestos in a one-day process and then the asbestos removal will be certified. The total time for the whole process will be three weeks. Commissioner Gilliland moved to approve the contract for Asbestos Abatement as presented. Commissioner Lentz seconded the motion. Commissioner Fouche questioned why other firms did not respond to the bid request. Mr. Carmichael stated that a lot of work is put into a bid request and this is a relatively small job. Commissioner Widmer stated that this proposal was 5 months old and questioned whether the price would still be accepted. Mr. Carmichael stated that he had spoken with the company and they are standing by their initial bid. The motion carried 5/0.
- B. Appointment of Deputy Town Clerk & Oath of Office: Commissioner Gilliland moved to appoint Alex Carmichael as Deputy Town Clerk. Commissioner Fouche seconded the motion. Mr. Carmichael stated that among the duties of Town Clerk is transcribing and certifying the minutes. By appointing Mr. Carmichael as Deputy Town Clerk he will be able to transcribe and certify in the absence of Ms. Murphy. The motion carried 5/0. Town Clerk Angie Murphy administered the Oath of Office for Mr. Carmichael.

Public Comments-Other Topics

Mayor Helms reiterated that the Public Comment period were for remarks pertaining to public business items not listed on the meeting agenda, including any reports or communications from other community entities.

There was no Public Comment this evening.

Commissioner Communications

Commissioner Fouche responded to a rumor that she was moving to Highland Farms. That rumor is not true she will remain residing in Montreat.

Commissioner Widmer reported that he did a ride-along with Chief Arrant last month. Commissioner Widmer spent two hours driving the 26 miles of road which officers usually do 2-3 times a shift. There was not a whole lot going on but Commissioner Widmer is grateful for that statistic. Commissioner Widmer stated that we should feel confident in the work of the Police Department.

Upcoming Meeting Dates

Mayor Helms reviewed the following list of upcoming meeting dates and deadlines:

<u>Annual Board Retreat:</u>	February 13, 2018, 3:00-8:00 p.m. The Left Bank
<u>Tree Board:</u>	February 27, 2018, 9:30 a.m. Town Services Building
<u>March Town Council Agenda Meeting:</u>	March 1, 2018, 7:00 p.m. Walkup Building
<u>Montreat Landcare:</u>	March 7, 2018, 9:00 a.m. Allen Building Swannanoa Room
<u>March Town Council Meeting:</u>	March 8, 2018, 7:00 p.m. Public Forum begins at 6:30 p.m. Walkup Building
<u>Tree Board:</u>	Tuesday, March 27, 2018, 9:30 a.m. Town Services Building

Closed Session

Commissioner Widmer moved to enter into Closed Session in accordance with North Carolina General Statute 143-318.11(6) to discuss a personnel matter as well as approving Closed Session Minutes for May and June. Mayor Pro Tem Otto seconded and the motion carried 5/0.

Upon returning to Open Session no business was conducted.

Adjournment

There being no further business, Commissioner Widmer moved to adjourn the Town Council Meeting. Commissioner Gilliland seconded and the motion carried 5/0. The meeting was adjourned at 7:57 p.m.

**Montreat Board of Commissioners
Town Council Meeting Minutes
February 8, 2017**

Tim Helms, Mayor

Angela Murphy, Town Clerk



TOWN OF MONTREAT

P. O. Box 423
Montreat, NC 28757
Tel: (828)669-8002 Fax: (828)669-3810
www.townofmontreat.org

RESOLUTION #18-03-002 HONORING WILLIAM "BILLY" GRAHAM

WHEREAS, William Franklin "Billy" Graham, Jr. was born on November 7, 1918, to William Franklin Graham and Morrow Coffey Graham and was ordained into the Southern Baptist Convention in 1939 ; and

WHEREAS, Reverend Graham married fellow Wheaton College classmate, Ruth McCue Bell in 1943, and from their union five children were born: Virginia Leftwich, Anne Morrow, Ruth Bell, William Franklin, and Nelson Edman; and

WHEREAS, Reverend Graham has been an admired and respected resident of the Montreat community since 1945; and

WHEREAS, after World War II, Reverend Graham gained international prominence as an evangelist through a series of crusades that began in 1949; and

WHEREAS, since 1950, Reverend Graham has conducted his ministry through the Billy Graham Evangelistic Association (BGEA), reaching multitudes of people by means of a weekly radio program, a newspaper column, magazine articles, televised crusades, and evangelistic films ; and

WHEREAS, Reverend Graham has received numerous awards and honorary degrees including the Gold Award of the George Washington Carver Memorial Institute, Big Brother of the Year Award, International Brotherhood Award from the National Conference of Christians and Jews, the Sylvanus Thayer Award from the United States Military Academy Association of Graduates at West Point, the Templeton Foundation Prize for Progress in Religion, the North Carolina Award for Public Service, the Presidential Medal of Freedom, and the Congressional Gold Medal; and,

WHEREAS, Reverend Graham has authored 27 books, including many best-sellers, and his messages have reached over 210 million people in over 185 countries ; and

WHEREAS, over the course of his ministry, Reverend Graham has distinguished himself as a man of great faith, showing a genuine interest in reaching out to people from all walks of life who have sought his counsel; and

WHEREAS, Reverend Graham is beloved by millions over all the world, including many in Montreat who are proud to call him neighbor and friend; and

WHEREAS, Reverend Graham passed away on February 21, 2018 at the age of 99;

NOW, THEREFORE, BE IT RESOLVED that the Town of Montreat Board of Commissioners hereby mourns the passing and celebrates the life of William “Billy” Graham, honors his service to his country, community, family and faith, and directs that certified copies of this Resolution be presented to his family members.

READ, APPROVED AND ADOPTED, this the 8th day of March, 2018.

[SEAL]

Tim Helms, Mayor

ATTEST:

I hereby certify that this is a true and correct copy of this Resolution, duly adopted by the Town of Montreat on the 8th day of March, 2018, as it appears of record in the official minutes.

Angie Murphy
Town Clerk

**Town of Montreat
Public Input Meeting
February 27, 2018
Walkup Building**

Board members present: Commissioner Kitty Fouche

Town staff present: Alex Carmichael, Town Administrator
Angie Murphy, Town Clerk
Dave Arrant, Chief of Police
Barry Creasman, Public Works Director
Adrienne Isenhower, Zoning Administrator

Approximately 0 members of the public were also present. This was not a meeting of the Board of Commissioners and no action was taken.

Angela Murphy, Town Clerk



TOWN OF MONTREAT

P. O. Box 423
Montreat, NC 28757
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ADMINISTRATIVE REPORTS: Town Administration

Town Administration report for the period beginning February 1 and ending February 28, 2018.

Monthly Statistics

Public Meetings	6
Inter-Organizational /Intergovernmental Meetings	3
Agendas Prepared	4
Minutes Transcribed	6
Resolutions Drafted	2
Public Records Requests Processed	0
Water Bills Processed	674
Leak Adjustments	20
New Water Accounts Established	0
Purchase Orders	74
Account Reconciliations	153
Journal Entries Approved	78
Staff Hours: Regular	335.75
Staff Hours: Comp. Time Earned	7
Professional Development Hours	11
Website Posts	12
Social Media Posts	16
Code Red Alerts	1
Workers Compensation Claims	0

Upcoming Events and Schedule Changes

- The Florida Terrace property bid opening will be in the Town Services building on Wednesday, 4/4/18 at 3:00 PM. This is open to the public and all are welcome.

Comments

- The Board of Commission Retreat was held on February 13th. The Commission made community group and departmental assignments, discussed its rules of procedure, and set goals and priorities for the year. Minutes from the retreat are anticipated to be available in April.

Staff Communications

- The annual budget cycle officially began this month with the Board of Commissioners Retreat. Commissioners reviewed the Capital Improvement Plan (CIP) and discussed priorities. A public meeting is scheduled for February 27th in order to give the public an opportunity to deliver comments and feedback on the CIP to staff. Staff will present that feedback to the Commission in April.
- The recombination survey for the Florida Terrace property is complete and recorded with the Register of Deeds. The bid opportunity will be advertised on Wednesday, February 28th.
- Support for the Town's request for Re-Evaluation of Categorical Exclusion for Texas Road Bridge has been received from the State Historic Preservation Office and our engineer at KCI. All documentation has been submitted to the NC Department of Transportation.
- Asbestos abatement began on the Creekside House this month and is anticipated to be completed by the time of the March Agenda Meeting.

Water Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances
For the Period Ended January 31, 2018

	FYE 2018 Budgeted	Previously Reported	Current Month	FYE 2018 YTD Actual	FYE 17 Comparison YTD Actual	FYE 2018 Remaining Budget	Actual to Budget Percent	Statement Period Variance
								7
Revenues:								
Ad valorem taxes			\$ -			\$ -		
Other taxes and licenses		\$ -	\$ -	\$ -	\$ 27,357.55	\$ -		
MRA Comm Svc Fee			\$ -			\$ -		
Permits and Fees			\$ -			\$ -		
Sales and Services	\$ 315,700.00	\$ 257,000.73	\$ (64,101.82)	\$ 192,898.91	\$ 177,686.14	\$ 122,801.09		
Investment earnings	\$ 193.00	\$ 140.16	\$ 11.84	\$ 152.00	\$ 139.35	\$ 41.00		
Other revenues	\$ 52,710.00	\$ 25,614.50	\$ 10,540.72	\$ 36,155.22	\$ 8,141.46	\$ 16,554.78		
Subtotal - Normal Operating	\$ 368,603.00	\$ 282,755.39	\$ (53,549.26)	\$ 229,206.13	\$ 213,324.50	\$ 139,396.87		
Restricted intergovernmental			\$ -		\$ -	\$ -		
Total revenues	\$ 368,603.00	\$ 282,755.39	\$ (53,549.26)	\$ 229,206.13	\$ 213,324.50	\$ 139,396.87	62.18%	3.85%
Expenditures:								
Water Department	\$ 368,603.00	\$ 55,640.02	\$ 8,409.71	\$ 64,049.73	\$ 94,778.87	\$ 304,553.27	17.38%	40.96%
Total expenditures	\$ 368,603.00	\$ 55,640.02	\$ 8,409.71	\$ 64,049.73	\$ 94,778.87	\$ 304,553.27	17.38%	40.96%
Revenues over expenditures	\$ -	\$ 227,115.37	\$ (61,958.97)	\$ 165,156.40	\$ 118,545.63	\$ (165,156.40)		
Other financing sources (uses):								
Transfers to/from General Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Fund Balance Appropriated:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Total other financing sources (use)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Revenues and other sources over expenditures and other uses	\$ -	\$ 227,115.37	\$ (61,958.97)	\$ 165,156.40	\$ 118,545.63	\$ (165,156.40)		
Expenditure Recap:								
Salaries & Benefits	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Other Operating	\$ 288,603.00	\$ 53,821.32	\$ 8,409.71	\$ 62,231.03	\$ 73,806.98	\$ 226,371.97		
CIP/Grant Projects	\$ 80,000.00	\$ 1,818.70	\$ -	\$ 1,818.70	\$ 20,971.59	\$ 78,181.30		
Total Expenditures	\$ 368,603.00	\$ 55,640.02	\$ 8,409.71	\$ 64,049.73	\$ 94,778.57	\$ 304,553.27		

General Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances
For the Period Ended January 31, 2018

3

	FYE 2018 Budgeted	Previously Reported	Current Month	FYE 2018 YTD Actual	FYE 17 Comparison YTD Actual	FYE 2018 Remaining Budget	Actual to Budget %	Statement Period Variance
								7
Revenues:								
Ad valorem taxes	\$ 967,843.00	\$ 726,640.02	\$ 227,089.16	\$ 953,729.18	\$ 803,358.36	\$ 14,113.82		
Other taxes and licenses	\$ 425,600.00	\$ 140,396.58	\$ 412.56	\$ 140,809.14	\$ 195,018.02	\$ 284,790.86		
Unrestricted intergovernmental	\$ 105,983.00	\$ 24,058.94	\$ -	\$ 24,058.94	\$ 6,165.05	\$ 81,924.06		
Permits and Fees	\$ 48,530.00	\$ 9,005.25	\$ 3,249.00	\$ 12,254.25	\$ 26,033.00	\$ 36,275.75		
Community Service Fee	\$ 45,000.00	\$ 38,614.00	\$ -	\$ 38,614.00	\$ 35,810.40	\$ 6,386.00		
Sales and Services	\$ 12,050.00	\$ 1,628.31	\$ 20.00	\$ 1,648.31	\$ 5,258.65	\$ 10,401.69		
Investment earnings	\$ 6,800.00	\$ 2,481.67	\$ 144.24	\$ 2,625.91	\$ 1,257.48	\$ 4,174.09		
Other revenues	\$ 229,000.00	\$ 18,632.43	\$ -	\$ 18,632.43	\$ 4,658.69	\$ 210,367.57		
Subtotal - Normal Operating	\$ 1,840,806.00	\$ 961,457.20	\$ 230,914.96	\$ 1,192,372.16	\$ 1,077,559.65	\$ 648,433.84	64.77%	6.44%
Restricted intergovernmental	\$ 39,446.00	\$ 40,874.53		\$ 40,874.53	\$ 40,917.40	\$ (1,428.53)		
Contributions - Landcare	\$ -	\$ -		\$ -	\$ 2,000.00	\$ -		
Contributions - Open Space	\$ -	\$ -		\$ -		\$ -		
Total Revenues	\$ 1,880,252.00	\$ 1,002,331.73	\$ 230,914.96	\$ 1,233,246.69	\$ 1,120,477.05	\$ 647,005.31	65.59%	7.26%
Expenditures:								
Governing Body	\$ 72,229.00	\$ 18,627.09	\$ 129.98	\$ 18,757.07	\$ 20,571.94	\$ 53,471.93	25.97%	32.36%
Administration	\$ 298,139.00	\$ 175,376.32	\$ 20,654.88	\$ 196,031.20	\$ 189,473.50	\$ 102,107.80	65.75%	-7.42%
Public Buildings	\$ 434,514.00	\$ 53,276.61	\$ 1,260.77	\$ 54,537.38	\$ 50,064.29	\$ 379,976.62	12.55%	45.78%
Police	\$ 416,300.00	\$ 150,621.53	\$ 33,099.06	\$ 183,720.59	\$ 227,391.29	\$ 232,579.41	44.13%	14.20%
Building & Zoning	\$ 84,519.00	\$ 7,301.65	\$ 80.16	\$ 7,381.81	\$ 46,215.00	\$ 77,137.19	8.73%	49.60%
Public Works	\$ 130,219.00	\$ 93,466.08	\$ 2,472.42	\$ 95,938.50	\$ 45,199.12	\$ 34,280.50	73.67%	-15.34%
Streets	\$ 465,013.00	\$ 323,582.08	\$ 28,890.51	\$ 352,472.59	\$ 130,447.01	\$ 112,540.41	75.80%	-17.47%
Powell Bill	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.00%	0.00%
Sanitation	\$ 100,037.00	\$ 51,623.14	\$ 6,327.30	\$ 57,950.44	\$ 57,186.77	\$ 42,086.56	57.93%	0.40%
Env/Cons/Rec	\$ 7,000.00	\$ 9,339.97	\$ 10.95	\$ 9,350.92	\$ 6,147.87	\$ (2,350.92)	133.58%	-75.25%
Total expenditures	\$ 2,007,970.00	\$ 883,214.47	\$ 92,926.03	\$ 976,140.50	\$ 772,696.79	\$ 1,031,829.50	48.61%	9.72%
Revenues over expenditures	(127,718.00)	\$ 119,117.26	\$ 137,988.93	\$ 257,106.19	\$ 347,780.26	\$ (384,824.19)		
Other financing sources (uses):								
Transfer to/from Water Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Fund Balance Appropriated:	\$ 127,718.00	\$ -	\$ -	\$ -	\$ -	\$ 127,718.00		
Total other financing sources	\$ 127,718.00	\$ -	\$ -	\$ -	\$ -	\$ 127,718.00		
Revenues and other sources over expenditures and other uses	\$ -	\$ 119,117.26	\$ 137,988.93	\$ 257,106.19	\$ 347,780.26	\$ (257,106.19)		
Expenditure Recap:								
Salaries & Benefits	\$ 922,544.21	\$ 432,909.40	\$ 56,097.35	\$ 489,006.75	\$ 566,143.90	\$ 433,537.46		
Other Operating	\$ 411,525.79	\$ 198,588.96	\$ 33,363.98	\$ 231,952.94	\$ 185,285.77	\$ 179,572.85		
CIP/Grant Projects	\$ 673,900.00	\$ 251,716.11	\$ 3,464.70	\$ 255,180.81	\$ 21,267.12	\$ 418,719.19		
Total Expenditures	\$ 2,007,970.00	\$ 883,214.47	\$ 92,926.03	\$ 976,140.50	\$ 772,696.79	\$ 1,031,829.50		

General Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances
For the Period Ended January 31, 2018

3	FYE 2018 Budgeted	Previously Reported	Current Month	FYE 2018 YTD Actual	FYE 17 Comparison YTD Actual	FYE 2018 Remaining Budget	Actual to Budget %	Statement Period	Variance
								7	
Revenues:									
Ad valorem taxes	\$ 967,843.00	\$ 726,640.02	\$ 227,089.16	\$ 953,729.18	\$ 803,358.36	\$ 14,113.82			
Other taxes and licenses	\$ 425,600.00	\$ 140,396.58	\$ 412.56	\$ 140,809.14	\$ 195,018.02	\$ 284,790.86			
Unrestricted intergovernmental	\$ 105,983.00	\$ 24,058.94	\$ -	\$ 24,058.94	\$ 6,165.05	\$ 81,924.06			
Permits and Fees	\$ 48,530.00	\$ 9,005.25	\$ 3,249.00	\$ 12,254.25	\$ 26,033.00	\$ 36,275.75			
Community Service Fee	\$ 45,000.00	\$ 38,614.00	\$ -	\$ 38,614.00	\$ 35,810.40	\$ 6,386.00			
Sales and Services	\$ 12,050.00	\$ 1,628.31	\$ 20.00	\$ 1,648.31	\$ 5,258.65	\$ 10,401.69			
Investment earnings	\$ 6,800.00	\$ 2,481.67	\$ 144.24	\$ 2,625.91	\$ 1,257.48	\$ 4,174.09			
Other revenues	\$ 229,000.00	\$ 18,632.43	\$ -	\$ 18,632.43	\$ 4,658.69	\$ 210,367.57			
Subtotal - Normal Operating	\$ 1,840,806.00	\$ 961,457.20	\$ 230,914.96	\$ 1,192,372.16	\$ 1,077,559.65	\$ 648,433.84	64.77%	58.33%	6.44%
Restricted intergovernmental	\$ 39,446.00	\$ 40,874.53		\$ 40,874.53	\$ 40,917.40	\$ (1,428.53)			
Contributions - Landcare	\$ -	\$ -		\$ -	\$ 2,000.00	\$ -			
Contributions - Open Space	\$ -			\$ -		\$ -			
Total Revenues	1,880,252.00	1,002,331.73	230,914.96	1,233,246.69	\$ 1,120,477.05	647,005.31	65.59%	58.33%	7.26%
Expenditures:									
Governing Body	\$ 72,229.00	\$ 18,627.09	\$ 129.98	\$ 18,757.07	\$ 20,571.94	\$ 53,471.93	25.97%	58.33%	32.36%
Administration	\$ 298,139.00	\$ 175,376.32	\$ 20,654.88	\$ 196,031.20	\$ 189,473.50	\$ 102,107.80	65.75%	58.33%	-7.42%
Public Buildings	\$ 434,514.00	\$ 53,276.61	\$ 1,260.77	\$ 54,537.38	\$ 50,064.29	\$ 379,976.62	12.55%	58.33%	45.78%
Police	\$ 416,300.00	\$ 150,621.53	\$ 33,099.06	\$ 183,720.59	\$ 227,391.29	\$ 232,579.41	44.13%	58.33%	14.20%
Building & Zoning	\$ 84,519.00	\$ 7,301.65	\$ 80.16	\$ 7,381.81	\$ 46,215.00	\$ 77,137.19	8.73%	58.33%	49.60%
Public Works	\$ 130,219.00	\$ 93,466.08	\$ 2,472.42	\$ 95,938.50	\$ 45,199.12	\$ 34,280.50	73.67%	58.33%	-15.34%
Streets	\$ 465,013.00	\$ 323,582.08	\$ 28,890.51	\$ 352,472.59	\$ 130,447.01	\$ 112,540.41	75.80%	58.33%	-17.47%
Powell Bill	\$ -	\$ -		\$ -	\$ -	\$ -	0.00%	58.33%	0.00%
Sanitation	\$ 100,037.00	\$ 51,623.14	\$ 6,327.30	\$ 57,950.44	\$ 57,186.77	\$ 42,086.56	57.93%	58.33%	0.40%
Env/Cons/Rec	\$ 7,000.00	\$ 9,339.97	\$ 10.95	\$ 9,350.92	\$ 6,147.87	\$ (2,350.92)	133.58%	58.33%	-75.25%
Total expenditures	2,007,970.00	\$ 883,214.47	\$ 92,926.03	\$ 976,140.50	\$ 772,696.79	\$ 1,031,829.50	48.61%	58.33%	9.72%
Revenues over expenditures	(127,718.00)	\$ 119,117.26	\$ 137,988.93	\$ 257,106.19	\$ 347,780.26	\$ (384,824.19)			
Other financing sources (uses):									
Transfer to/from Water Fund		\$ -	\$ -	\$ -	\$ -	\$ -			
Fund Balance Appropriated:	\$ 127,718.00	\$ -	\$ -	\$ -	\$ -	\$ 127,718.00			
Total other financing sources	\$ 127,718.00	\$ -	\$ -	\$ -	\$ -	\$ 127,718.00			
Revenues and other sources over expenditures and other uses	\$ -	\$ 119,117.26	\$ 137,988.93	\$ 257,106.19	\$ 347,780.26	\$ (257,106.19)			
Expenditure Recap:									
Salaries & Benefits	\$ 922,544.21	\$ 432,909.40	\$ 56,097.35	\$ 489,006.75	\$ 566,143.90	\$ 433,537.46			
Other Operating	\$ 411,525.79	\$ 198,588.96	\$ 33,363.98	\$ 231,952.94	\$ 185,285.77	\$ 179,572.85			
CIP/Grant Projects	\$ 673,900.00	\$ 251,716.11	\$ 3,464.70	\$ 255,180.81	\$ 21,267.12	\$ 418,719.19			
Total Expenditures	\$ 2,007,970.00	\$ 883,214.47	\$ 92,926.03	\$ 976,140.50	\$ 772,696.79	\$ 1,031,829.50			

Water Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances
For the Period Ended January 31, 2018

	FYE 2018 Budgeted	Previously Reported	Current Month	FYE 2018 YTD Actual	FYE 17 Comparison YTD Actual	FYE 2018 Remaining Budget	Actual to Budget Percent	Statement Period 7	Variance
Revenues:									
Ad valorem taxes			\$ -			\$ -			
Other taxes and licenses		\$ -	\$ -	\$ -	\$ 27,357.55	\$ -			
MRA Comm Svc Fee	\$ -		\$ -			\$ -			
Permits and Fees			\$ -			\$ -			
Sales and Services	\$ 315,700.00	\$ 257,000.73	\$ (64,101.82)	\$ 192,898.91	\$ 177,686.14	\$ 122,801.09			
Investment earnings	\$ 193.00	\$ 140.16	\$ 11.84	\$ 152.00	\$ 139.35	\$ 41.00			
Other revenues	\$ 52,710.00	\$ 25,614.50	\$ 10,540.72	\$ 36,155.22	\$ 8,141.46	\$ 16,554.78			
Subtotal - Normal Operating	\$ 368,603.00	\$ 282,755.39	\$ (53,549.26)	\$ 229,206.13	\$ 213,324.50	\$ 139,396.87			
<i>Restricted intergovernmental</i>			\$ -		\$ -	\$ -			
Total revenues	\$ 368,603.00	\$ 282,755.39	\$ (53,549.26)	\$ 229,206.13	\$ 213,324.50	\$ 139,396.87	62.18%	58.33%	3.85%
Expenditures:									
Water Department	\$ 368,603.00	\$ 55,640.02	\$ 8,409.71	\$ 64,049.73	\$ 94,778.87	\$ 304,553.27	17.38%	58.33%	40.96%
Total expenditures	\$ 368,603.00	\$ 55,640.02	\$ 8,409.71	\$ 64,049.73	\$ 94,778.87	\$ 304,553.27	17.38%	58.33%	40.96%
Revenues over expenditures	\$ -	\$ 227,115.37	\$ (61,958.97)	\$ 165,156.40	\$ 118,545.63	\$ (165,156.40)			
Other financing sources (uses):									
Transfers to/from General Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
Fund Balance Appropriated:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
Total other financing sources (uses)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
Revenues and other sources over expenditures and other uses	\$ -	\$ 227,115.37	\$ (61,958.97)	\$ 165,156.40	\$ 118,545.63	\$ (165,156.40)			
Expenditure Recap:									
Salaries & Benefits	\$ -	\$ -		\$ -	\$ -	\$ -			
Other Operating	\$ 288,603.00	\$ 53,821.32	\$ 8,409.71	\$ 62,231.03	\$ 73,806.98	\$ 226,371.97			
<i>CIP/Grant Projects</i>	\$ 80,000.00	\$ 1,818.70	\$ -	\$ 1,818.70	\$ 20,971.59	\$ 78,181.30			
Total Expenditures	\$ 368,603.00	\$ 55,640.02	\$ 8,409.71	\$ 64,049.73	\$ 94,778.57	\$ 304,553.27			

Town of Montreat
January 2018 Zoning & Building Inspections Report

Zoning/Building Permit Applications:

<u>Last Name</u>	<u>First Name</u>	<u>Montreat Address</u>	<u>Zoning Compliance Date</u>	<u>Permit #</u>	<u>Permit Date</u>	<u>Description</u>
Steedley	Josh	340 Texas Road	N/A	5338	1/4/2018	Gas Furnace
Welker	Brian and April	152 Virginia Avenue	1/5/2018	5339	1/8/2018	Bathroom Remodel
Welker	Brian and April	152 Virginia Avenue	N/A	5339A	1/5/2018	New Heat Pump System
Montreat College		Yale Road	12/28/2017	5340	1/12/2018	Storage Shed at Baseball Field
Deibert	Donald	536 Calvin Trail	N/A	5342	1/12/2018	Replace Heat Pump
Deibert	Donald	536 Calvin Trail	1/9/2018	5343	1/23/2018	Addition to House/Retaining Wall
Cumming	Bob	399 West Virginia Terrace	N/A	5344	1/30/2018	Exterior Gas Line
Eckerd	Robert and Carol	556 Covenant Lane	N/A	5347	1/30/2018	Grading - Removing Trees

ZONING ACTIVITY

Zoning Permit Applications: 5
Variance/Interpretation Requests: None
Conditional Use Requests: None
Permit Extensions Requested: None
Sign Permit Applications: None
Violations Reported: None

BUILDING INSPECTIONS

Building Permit Applications: 0
Building Inspections: 15
Fire Inspections Requested/Required: 1
Fire Permit Applications: None

Totals

Approved Zoning Permits: 2
Denied Zoning Permits: None
Pending Zoning Permits: 3
Variance/Interpretation Granted: None
Conditional Use Permits Granted: None
Permit Extensions Granted: None
Sign Permits Issued: None
Notice of Violation (NOV): None

Totals

Building Permits Issued: 7
Pending Building Permits: None
Building Inspections Performed: 15
***Stop Work Order Issued:** None
****Defective Building Posted:** None
Denied Building Permits None
Fire Inspections Performed: None
Fire Re-Inspections Performed: 1
Fire Permits Issued: None



TOWN OF MONTREAT

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Montreat, NC 28757
Tel: (828)669-8002 Fax: (828)669-3810
www.townofmontreat.org

ADMINISTRATIVE REPORTS: POLICE

Police report for the period beginning on January 28, 2018 and ending February 25, 2018. The remaining days will be reflected in next month's report.

Monthly Statistics

<u>MONTHLY POLICE STATISTICS REPORT</u>					
February	2018	2017	2016	2015	2014
Mileage	2253	3359	3094	2580	2206
Dispatched Calls	92	118	110	58	119
Officer-Initiated Calls	509	302	184	182	211
Fire/EMS Assistance Calls	4F/1E	5F/4E	12F/3E	4F/2E	14F/1E
Motorist/Other Assistance Calls	95	66	59	60	83
Traffic Stops	17	26	25	33	37
Parking Issues	11	6	3	2	5
Burglar/Fire Alarm Responses	2F/1B	0	4B/5F	2B	4B/2F
Residential/Building Checks	228	280	261	232	101
Ordinance violations	13	10	7	10	10
LE Agency Assistance Calls	24	11	14	7	30
Animal Calls	0	1	1	1	4
Larcenies	0	0	0	0	0
B&E Calls	0	0	1	0	0
Suspicious Person/Vehicle Investigations	2P/8V	5P/14V	19P/8V	8P/7V	5P/23V
Disturbance Calls	19	5	2	4	1
Accident Responses	1	0	6	3	1
Auxiliary Hours Worked	40R/76T	40R	32R	32R/16T	32R/24T
Truck turns at gate	5	0	1	2	2

Comments

- Town service: 427
- MRA service: 155

- College service: 12
- Fuel Cost: \$481.99

The month of February has seen some significant activity for the department. Starting with the recently replaced/added signage for parking issues; the department has been increasing enforcement in these areas. This attention to these areas will continue in order to retain accessibility for traffic and emergency vehicles.

Additionally, we have seen some acts of vandalism. A residence here has been the target of deliberate damage on multiple occasions recently. The department is working in conjunction with the owners to bring about a resolution to this activity. We do ask that anyone with information please contact us.

On the 24th, Montreat saw the annual Mount Mitchell Challenge Run pass through. This year approximately 500 runners participated with no notably injuries or incidents.

Obviously, the most impactful event of the month was the passing away of an icon. The Reverend Billy Graham passed away at his home on the 21st. This of course set into motion a lot of elements. Press coverage at the gate and around town began very quickly. I would like to express my appreciation to all the MPD Officers for their quick action and dedication. And also to all the Town Staff who helped in managing the ensuing activity. A thank you is also expressed to both BMPD and BCSO for their support and engagement. Myself and the department extend our deepest condolences to the family and loved ones of Reverend Graham.



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ADMINISTRATIVE REPORTS: Water and Public Works

Water and Public Works report for the period beginning on February 1, 2018 and ending February 28, 2018.

Monthly Statistics

Gallons of Water Produced	4,773,400
Calls for Service	24
Water Leaks Repaired	3
New Water Lines Installed	0
Meters Read	674
Meter Replacements	0
FTE Staff Hours	299.75

Comments

- Staff discovered and repaired a significant water leak this month, which caused water production to be higher than normal.

Staff Communications

- We have demolished the old well house at the Well 4 site for the new Public Works facility. The well pump is scheduled to be removed and the well officially abandoned the week of February 26.
- The yearly Hydrant maintenance is almost complete.
- We are still flushing hydrants to relieve air pockets .This will take sometime to accomplish. Thank you for your patience.



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ADMINISTRATIVE REPORTS: SANITATION

Sanitation report for the period beginning January 1, 2018 and ending January 31, 2018.

Monthly Statistics

Curbside Trash Collected (tons)	13.11
Curbside Recycling Collected (tons)	3.66
Diversion Rate	21.8%
Pay-As-You-Throw Trash Collected (bags)	30
Pay-As-You-Throw Recycling Collected (bags)	2
Unique Curbside Stops	1,438
Bagged Leaf Pickup (bags)	124
Brush Pickup (cubic yards)	49.78
Hauling Fees (dollars)	\$897.58
Tipping Fees (dollars)	\$604.58
Dumpster Rental Fees(dollars)	\$200.72
FTE Staff Hours: Regular/Comp. Time Earned	94
Contracted Employee Staff Hours	78
Fuel (dollars)	\$145.20

Events and Schedule Changes

- The next bulky Item Pickup is July 10, 2018.

Comments

- In addition to regular brush pickup, 38 Christmas trees were collected by Sanitation in January.

Staff Communications

- N/A



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ADMINISTRATIVE REPORTS: STREETS

Streets report for the period beginning on February 1, 2018 and end February 28, 2018.

Monthly Statistics

Roads Maintained	15.12
New Roads Added	0
Sand Applied	0
Ice Melt Applied	0
FTE Staff Hours	272.75
Contracted Employee Staff Hours	21
Fuel	\$615.80

Comments

- N/A

Staff Communications

- Leaf removal is complete for the year. 54 dump truck loads of leaves were removed from the streets and ditch lines of the Town.
- We have started site clean up and building demolition for the Public Works facility.
- If you know anyone that needs leaf mulch for their garden please let them know the Town has plenty available for free.
- Road shoulder repair is almost complete on Mecklenburg Circle.

Town of Montreat
Board of Commissioners
Rules of Procedure
(Adopted 11/14/2002)
(Revised 2/13/2003); (Revised 9/11/2003); (Revised 1/8/2004)
(Revised 8/14/2008); (Revised 2/12/2015)

Rule 1. Regular Meetings

The Board shall hold a regular meeting on the second Thursday of each month and said meeting shall begin at 7:00 p.m. During months when a Public Hearing is scheduled, the regular meeting will begin with the Public Hearing.

Rule 2. Special, Emergency and Recessed (or Adjourned) Meetings

- A. Special Meetings.** The Mayor, Mayor Pro Tem, or any two members of the Board may at any time call a special meeting of the Board of Commissioners by signing a written notice stating the time and place of the meeting and the subject(s) to be considered. At least 48 hours before a special meeting is call in this manner, written notice of the meeting shall be (1) delivered to the Mayor and each Board member or left at his or her usual dwelling place; (2) posted on the Board's principal bulletin board in the Town Services Office and for information on the bulletin board in the Post Office; and (3) mailed or delivered to each newspaper, wire service, radio station, television station and person who has filed a written request for notice with the Town Clerk. Only those items of business specified in the notice may be transacted at a special meeting called in this manner, unless all members are present or those who are not present have signed a written waiver. Even in such a case, the Board shall only discuss or transact items not specified in the notice if it determines in good faith at the meeting that it essential to discuss or act on the item immediately.

A special meeting may also be called or scheduled by vote of the Board in open session during another duly-called meeting. The motion or resolution calling or scheduling the special meeting shall specify its time, place and purpose. At least 48 hours before a special meeting called in this manner, notice of the time, place and purpose of the meeting shall be (1) posted on the Board's principal bulletin board in the Town Services Office and for information on the bulletin board in the Post Office; and (2) mailed or delivered to each newspaper, wire service, radio station, television station and person who has filed a written request for notice with the Town Clerk. Such notice shall also be mailed or delivered at least 48 hours before the meeting to each Board member not present at the meeting at which the special meeting was called or scheduled, and to the Mayor if he or she was not present at that meeting. Only those items of business specified in the notice may be transacted at a special meeting called in this manner, unless all members are present or those who are not present have signed a written waiver. Even in such a case, the Board shall only discuss or transact items not specified in the notice if it determines in good faith at the meeting that it essential to discuss or act on the item immediately.

- B. Emergency Meetings.** Emergency meetings of the Board of Commissioners may be called only because of generally unexpected circumstances that require immediate consideration by the Board. Only business connected with the emergency may be considered at an emergency meeting. Once of the following two procedures must be followed to call an emergency meeting of the Board:
1. The Mayor, Mayor Pro Tem, or any two members of the Board may at any time call an emergency meeting by signing a written notice stating the time and place of the meeting and the subject(s) to be considered. The notice shall be delivered to the Mayor and each Board member or left at their usual dwelling place at least six hours before the meeting.
 2. An emergency meeting may be held at any time when the Mayor and all members of the Board are present and consent thereto, or when those not present have signed a written waiver of notice provisions. Notice of an emergency meeting under (1) or (2) shall be given to each local newspaper, local radio station and local television station that has filed a written emergency meeting notice request including their telephone number(s) with the Town Clerk. This notice shall be given either by telephone or by the same method used to notify the Mayor and Board members and shall be given at the expense of the party notified.
- C. Recessed or Adjourned Meetings.** A properly called regular, special or emergency meeting may be recessed or adjourned to a time and place certain by a procedural motion made and adopted in open session during the regular, special or emergency meeting. The motion shall state the time and place where the meeting will reconvene. No further notice need be given of a recessed or adjourned session of a properly called regular, special or emergency meeting.

Rule 3. Organizational Meeting

On the second Thursday in December following a general election in which municipal officials are elected, the Board shall meet for the newly elected members to subscribe to the oath of Office as the first item of New Business. As the second item of New Business, the Board shall elect a Mayor Pro Tem from among its members. The organizational meeting shall not be held before the municipal election results are officially determined, certified and published in accordance with Subchapter IX of Chapter 163 of the North Carolina General Statutes.

Rule 4. Agenda

I. ~~Agenda and~~ Regular Meetings

- A. The Town Clerk shall prepare a proposed agenda for each meeting. A request to have an item of business placed on the agenda for an ~~an agenda or~~ regular meeting must be received in writing by the Town Clerk no later than the Friday before the first Thursday of each month.
- B. The Deputy Town Clerk shall perform the duties of clerk when the Town Clerk is absent.
- C. Any Board member, by a timely request, may have an item placed on the proposed agenda.
- D. The Town Clerk shall prepare the agenda packet to the Board. The packet shall include, for each item of business placed on it, as much background information on the subject as is available and feasible to reproduce. A copy of all the proposed ordinances shall be attached to the agenda. Each Commissioner shall receive a copy of the agenda packet by the Tuesday morning preceding the **Agenda** Meeting of the Board. ~~Supporting background information for items on the agenda may be added after the Friday prior to the Agenda Meeting. The Board may elect to discuss or defer discussion until the following meeting.~~ The agenda packet shall also be available for public inspection and distribution or copying when it is distributed to the Board members. The cost for copying shall be in accordance with the current Fee Schedule.
- ~~E. The Board shall hold an Agenda Meeting on the Thursday before the regular monthly meeting to ask questions and thoroughly explore the proposals that must be voted on at the regular meeting. Additions to the regular monthly meeting agenda shall not be allowed unless an unexpected and pressing matter arises. This restriction avoids surprise and is consistent with the spirit of the Open Meetings Law, although neither is actually part of the law. As the first item of business at the Agenda Meeting, the Board shall discuss and adopt the agenda for the meeting.~~
 - ~~1. The Board may, by majority vote, add an item that requires immediate action that is not on the agenda. Written copies of particular documents connected with the item(s) shall be made available at the meeting to all Board members.~~

- ~~2. The Board may, by majority vote, add items to or subtract items from the proposed agenda, except that (a) the Board may not subtract items stated in the notice of a special meeting called by the Mayor, Mayor Pro Tem or two Board members, unless those calling the meeting consent to the deletion; (b) the Board may not add items to the proposed agenda stated in the notice of special meeting called by the Mayor, Mayor Pro Tem or two Board members, unless all members are present, or those who are absent sign a written waiver of notice; and (c) only business connected with the emergency may be considered at an emergency meeting.~~
 3. The Board may add items to the proposed agenda of a special meeting only if it determines in good faith at the meeting that it is essential to discuss or act on the item immediately.
 4. The Board may designate certain agenda items “for discussion and possible action.” Such designation means that the Board intends to discuss the general subject area of that agenda item before making any motion concerning that item.
- F. **Consent Agenda.** ~~During the Agenda Meeting or~~ prior to approval of the Consent Agenda, any Commissioner may have an item moved from the Consent Agenda to New Business for discussion. Prior to the approval of the Consent Agenda, the Mayor will ask if any member of the public has questions regarding items on the Consent Agenda; however, items can only be moved from the Consent Agenda at the request of the Mayor or a Commissioner.
- G. The Town Clerk will maintain a mailing list of interested parties who wish to receive a copy of the agenda regularly, and will mail or e-mail a copy of the agenda to those individuals on the mailing list but will not mail copies of the accompanying materials.
- H. **Open Meetings Requirement.** The Board may not deliberate, vote or otherwise take action on any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for person attending a meeting of the Board to understand what is being deliberated, voted, or acted on.
- I. Resolutions, ordinances, motions and prepared statements must be in written form. Copies shall be provided for each Commissioner, the Mayor, the Town Administrator, the Town Clerk, the media packet and the public packet.
- J. Any attachment to the minutes shall be approved by a vote of the Commissioners.

- K. In the event of a divided vote, each side may furnish a signed explanation of its position within seven days of no greater than 100 words in length. This document may be attached as an appendix if approved at the next regularly scheduled meeting of the Board.

II. Special, Emergency and Workshop Meetings

- A. The Town Clerk shall prepare a proposed agenda for each meeting.
- B. The Town Clerk shall prepare the agenda packet to the Board. The packet shall include, for each item of business placed on it, as much background information on the subject as is available and feasible to reproduce. Each Board member shall receive a copy of the agenda packet. The agenda packet shall also be available for public inspection and distribution of copying when it is distributed to the Board members. The cost of copying shall be determined in accordance with the current Fee Schedule.
 - 1. Items may be added to the agenda in the following ways. The Board may, by majority vote, add an item that requires immediate action that is not on the agenda. Written copies of particular documents connected with the items shall be made available at the meeting to all Board members.
 - 2. The Board may, by majority vote, add items to or subtract items from the proposed agenda, except that (a) the Board may not subtract items stated in the notice of a special meeting called by the Mayor, Mayor Pro Tem or two Board members, unless those calling the meeting consent to the deletion; (b) the Board may not add items to the proposed agenda stated in the notice of special meeting called by the Mayor, Mayor Pro Tem or two Board members, unless all members are present, or those who are absent sign a written waiver of notice; and (c) only business connected with the emergency may be considered at an emergency meeting.
 - 3. The Board may add items to the proposed agenda of a special meeting only if it determines in good faith at the meeting that it is essential to discuss or act on the item immediately.
- C. The Board may designate certain agenda items “for discussion and possible action.” Such designation means that the Board intends to discuss the general subject area of that agenda item before making any motion concerning that item.

- D. The Town Clerk will maintain a mailing list of interested parties who wish to receive a copy of the agenda regularly, and will mail or e-mail a copy of the agenda to those individuals on the mailing list but will not mail copies of the accompanying materials.
- E. **Open Meetings Requirement.** The Board may not deliberate, vote or otherwise take action on any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for person attending a meeting of the Board to understand what is being deliberated, voted, or acted on.
- F. Resolutions, ordinances, motions and prepared statements must be in written form. Copies shall be provided for each Commissioner, the Mayor, the Town Administrator, the Town Clerk, the media packet and the public packet.
- G. Any attachment to the minutes shall be approved by a vote of the Commissioners.
- H. In the event of a divided vote, each side may furnish a signed explanation of its position within seven days of no greater than 100 words in length. This document may be attached as an appendix if approved at the next regularly scheduled meeting of the Board.

Rule 5. Public Address to the Board

- A. Any individual or group who wishes to have an item of business placed on the agenda for the agenda or regular meeting of the Board shall make a written request to the Town Clerk. The Board shall determine at the meeting whether it will hear the individual or group. The time limit for any individual or representative of a group addressing the Board shall be three minutes, unless a majority of the Board agrees to additional time. Public comments will be heard at the end of the meeting for items not on the agenda.
- B. Commissioners are not expected to comment on matters brought to the Board during this time, but to delay action or comment until the Town staff has had an opportunity to research the subject matter and report any necessary and relevant information to all Board members.

Rule 6. Public Comments

- A. Public comments will be heard at the beginning of the meeting for items on the agenda. Any individual speaking during the public comment period shall address the entire Board and any polling of the Commissioners is inappropriate for public comment.
- B. The time limit for any individual or representative of a group addressing the Board shall be three minutes, unless a majority of the Board agrees to additional time.
- C. Commissioners are not expected to comment on matters brought to the Board during this time, but to delay action or comment until the Town staff has had an opportunity to research the subject matter and report any necessary and relevant information to all Board members.

Rule 7. Order of Business

~~I. Agenda Meeting~~

- ~~A. Items shall be placed in the agenda according to the "Order of Business." The purpose of the agenda meeting is to ask questions and thoroughly explore proposals that must be voted on at the regular meeting.~~
- ~~B. The Commissioners usually agree to discuss items and normally take action at the regular monthly meeting.~~
- ~~C. The Commissioner placing an item on the agenda should present that item. Questions or comments from the other Commissioners will then be heard. The Commissioner will make it known if the proposed item will be placed on the agenda for a vote, considered for further discussion, delegated to staff or other boards or deleted.~~
- ~~D. The meeting shall generally be limited to one and one-half hours.~~

II. Regular Meeting

- A. Items shall be placed on the agenda according to the "Order of Business." The Order of Business for each regular meeting shall be as follows:

- Welcome
- Pledge of Allegiance and Invocation
- Discussion and Adoption of Agenda
- Public Hearings (as needed or required by law)
- Presentations to Council (as needed)
- Mayor's Communications
- Consent Agenda
- Town Administrator's Communications
- Administrative Reports
- Public Comment for items on Agenda
- Old Business
- New Business
- Public Comment for items not on Agenda
- Commissioner Communications
- Closed Session (as permitted by law) – optional
- Return to open session and adjourn or continue

- B. However, by general consent of the Board, items may be considered out of this order. No item during the Town Administrator's report shall be given that requires a vote at that time, unless the Board has added said item to the agenda.
- C. Board approval to follow the meeting agenda automatically approves the Consent Agenda and approval of the minutes.
- D. Any attachment to the minutes must be approved by a vote of the Commissioners.
- E. The meeting shall generally be limited to one and one-half hours.

Rule 8. Office of the Mayor

- A. The Mayor shall preside at the meetings of the Board. A member must be recognized by the Mayor in order to address the Board. The Mayor shall have the following powers:

1. To rule any motions in or out of order, including the right to rule out of order any motion patently offered for obstructive or dilatory purposes;
 2. To determine whether a speaker has gone beyond reasonable standards of courtesy in his remarks and to entertain and rule on objections from other members on this ground;
 3. To call a brief recess at any time;
 4. To adjourn in an emergency;
 5. To vote to break a tie vote of the Commissioners.
- B. The Town Attorney, Town Clerk or Deputy Town Clerk or his or her designee shall act as parliamentarian.

Rule 9. Office of the Mayor Pro Tem

The Mayor Pro Tem shall be entitled to vote on all matters and shall be considered a Board member for all purposes, including the determination of a quorum. In the Mayor's absence, the Board may confer on the Mayor Pro Tem any of the Mayor's powers and duties. If the Mayor should become physically or mentally unable to perform the duties of his or her office, the Board may by unanimous vote declare that the Mayor is incapacitated and confer any of the Mayor's powers and duties on the Mayor Pro Tem. When the Mayor declares that he or she is no longer incapacitated and a majority of the Board concurs, the Mayor shall resume the exercise of his or her powers and duties. If both the Mayor and Mayor Pro Tem are absent from the meeting, the Board may elect from among its members a temporary Chair to preside at the meeting.

Rule 10. When the Presiding Officer is in Active Debate

If the Mayor or other presiding officer becomes actively engaged in debate on a particular proposal, he or she shall designate another Board member to preside over the debate. The Mayor or other presiding officer shall resume presiding as soon as action on the matter is concluded.

Rule 11. Action by the Board

- A. The Board shall proceed by motion. Any member may make a motion.
- B. All motions require a second.
- C. A member may make only one motion at a time.

- D. A substantive motion is out of order while another substantive motion is pending.
- E. A motion shall be adopted by a majority of the votes cast, a quorum being present, unless otherwise required by these rules or the laws of North Carolina.
- F. The Mayor shall state the motion and then open the floor to debate on it. The Mayor shall preside over the debate according to these general principles:
 - 1. The member who makes the motion is entitled to speak first;
 - 2. A member who has not spoken on the issues shall be recognized before someone who has already spoken;
 - 3. To the extent possible, the debate shall alternate between opponents and proponents of the measure.

Rule 12. One Motion at a Time

A member may make only one motion at a time.

Rule 13. Substantive Motions

A substantive motion is out of order while another substantive motion is pending.

Rule 14. Adoption by Majority Vote

A motion shall be adopted by a majority of the votes cast, a quorum being present, unless otherwise required by these rules or the laws of North Carolina. A majority is more than half.

Rule 15. Voting by Written Ballot

The Board may choose by majority vote to use written ballots in voting on a motion. Such ballots shall be signed, and the minutes of the Board shall show the vote of each member voting. The ballots shall be available for public inspection in the Town Clerk's office immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

Rule 16. Debate

The Mayor shall state the motion and then open the floor to debate on it. The Mayor shall preside over the debate according to the following general principles:

- A. The maker of the motion is entitled to speak first;
- B. A member who has not spoken on the issues shall be recognized before someone who has already spoken;
- C. To the extent possible, the debate shall alternate between opponents and proponents of the measure.

Rule 17. Ratification of Actions

To the extent permitted by law, the Board may ratify actions taken on its behalf but without its prior approval. A motion to ratify is a substantive motion.

Rule 18. Procedural Motions

In addition to substantive proposals, the following procedural motions, and no others, shall be in order. All motions require a second before the motion can be discussed. Unless otherwise noted, each motion is debatable, may be amended and requires a majority vote for adoption.

In order of priority (if applicable), the procedural motions are:

Motion 1. To Appeal a Procedural Ruling of the Presiding Officer. A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks, or entertaining and answering a question or parliamentary law or procedure may be appealed to the Board, as specified in Rule 8. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

Motion 2. To Adjourn. The motion may be made at any time by a member of the Board and requires a majority vote.

Motion 3. To Take a Brief Recess.

Motion 4. Call to Follow the Agenda. The motion must be made at the first reasonable opportunity or it is waived.

Motion 5. To Suspend the Rules. The Board may not suspend provisions of the rules that state requirements imposed by law on the Board. For adoption, the motion requires a vote equal to two-thirds of the actual membership of the Board, excluding the Mayor, unless he or she may vote in all cases, and any vacant seats.

Motion 6. To Go Into Closed Session. The Board may go into closed session for one or more of the permissible purposes listed in N.C.G.S. §143-318.11(a). The motion to go into closed session shall cite one or more of these purposes and shall be adopted at an open meeting. A motion based on N.C.G.S. §143-318.11(a) shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on N.C.G.S. §143-318.11(a) shall identify the parties in each existing lawsuit concerning which the Board expects to receive advice during the closed session, if in fact such advice is to be received.

Motion 7. To Leave Closed Session.

Motion 8. To Divide a Complex Motion and Consider It By Paragraph. This motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

Motion 9. To Defer Consideration. The Board may defer a substantive motion for later consideration at an unspecified time. A substantive motion whose consideration has been deferred expires 100 days thereafter unless a motion to revive consideration is adopted. If consideration of a motion has been deferred, a new motion with the same effect cannot be introduced while the deferred motion remained pending (has not expired). A member who wishes to revisit the matter during that time must take action to revive consideration of the original motion, or else move to suspend the rules.

Motion 10. Call of the Previous Question. The motion is not in order until there have been at least 20 minutes of debate, and every member of the Board has had at least once opportunity to speak.

Motion 11. To Postpone to a Certain Time or Day. In consideration of a motion that has been postponed, a new motion with the same effect cannot be introduced while the postponed matter remains pending. A person who wishes to revisit the matter must either wait until the specified time or move to suspend the rules.

Motion 12. To Refer to a Committee or Board. The Board of Commissioners may vote to refer a substantive motion to a committee for its study and recommendations. Sixty days after a motion has been referred to a committee or board, the introducer of the substantive motion may compel consideration of the measure by the Board of Commissioners, whether or not the committee has reported the matter back to the Board.

Motion 13. To Amend. An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment would have the same effect as rejection of the original motion. A proposal to substitute

completely different wording for a motion or amendment shall be treated as a motion to amend. A motion may be amended, and that amendment may be amended but no further amendments may be made until the last-offered amendment is disposed of by vote. Any amendment to a proposed ordinance, policy, resolution or order shall be reduced to writing.

Motion 14. To Revive Consideration. The motion is in order at any time within 100 days after a vote to defer consideration of it. A substantive motion on which consideration had been deferred expires 100 days after the deferral, unless a motion to revive consideration is adopted.

Motion 15. To Reconsider. The motion to reconsider must be made by a member who voted with the prevailing side (the majority side except in the case of a tie, in which case the “noes” prevail) and at the meeting during which the original vote was taken, including an continuation of that meeting through recess or adjournment to a time and place certain. The motion cannot interrupt deliberation of a pending matter, but is in order at any time before final adjournment of the meeting.

Motion 16. To Rescind or Repeal. The Board may vote to rescind actions it has previously taken or repeal item it has previously adopted. The motion is not in order if rescission or repeal of an item is forbidden by law.

Motion 17. To Prevent Reconsideration for Six Months. The motion shall be in order immediately following the defeat of a substantive motion and at no other time. For approval, the motion requires a vote equal to two-thirds of the actual membership of the Board excluding the Mayor, unless he or she may vote in all cases, and vacant seats. If adopted, the restriction imposed by the motion remains in effect for six months or until the next organizational meeting of the Board, whichever occurs first.

Rule 19. Renewal of a Motion

A motion that is defeated may be renewed at any subsequent meeting unless a motion to prevent reconsideration has been adopted.

Rule 20. Withdrawal of a Motion

A motion may be withdrawn by the introducer at any time before a vote.

Rule 21. Duty to Vote

Every member must vote unless excused by the remaining members according to law. A member who wishes to be excused from voting shall so inform the presiding officer, who shall take a vote of the remaining members. No member shall be excused from voting except upon

matters involving the consideration of his or her own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the meeting room or who has withdrawn without being excused by a majority vote of the remaining members present shall be recorded as an affirmative vote.

Rule 22. Introduction of Ordinances

A proposed ordinance shall be deemed introduced on the date the subject matter is first voted on by the Board. N.C.G.S. §160A-75 provides that an ordinance may not be finally adopted at the meeting at which is introduced except by at least a two-thirds vote of the actual membership of Board, excluding vacant seats and not including the Mayor unless he or she has the right to vote on all questions before the Board.

Rule 23. Adoption of Ordinances and Approval of Contracts

- A. An affirmative vote equal to a majority of all the members of the Board not excused from voting on the question at issue (including the Mayor's vote in case of an equal division) shall be required to adopt an ordinance, to take any action that has the effect of an ordinance, or to make, ratify or authorize any contract on behalf to the Town. **Authority to execute contracts and change orders valued at \$5000 or less shall be delegated to the Town Administrator.** In addition, no ordinance or action that has the effect of an ordinance may be finally adopted on the date of its introduction except by an affirmative vote of at least two-thirds of the actual membership of the Board, excluding vacant seats and not including the Mayor. No ordinance shall be adopted unless it has been reduced to writing before a vote on its adoption is taken.
- B. An affirmative vote equal to three-fourths of all the members of the Board of Commissioners shall be required for an ordinance making a change in a zoning regulation, restriction or boundary to become effective, if a valid protest petition is received in accordance with the requirements set out in N.C.G.S. §160A-385(a) and N.C.G.S. §160A-386. This rule shall not apply in those cases excepted by N.C.G.S. §160A-385(a).

Rule 24. Adoption of the Budget Ordinance

- A. Notwithstanding the provisions of any general law or local act:
 - 1. Any action taken with respect to the adoption of the Budget Ordinance may be taken at any regular, recessed or special meeting of the Board by a simple majority of those present and voting, a quorum being present.

2. No action taken with respect to the adoption or amendment of the Budget Ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinance or resolutions by the Board other than those requires by North Carolina General Statues.
3. The adoption and amendment of the Budget ordinance and the levy of taxes in the Budget ordinance are not subject to the provisions of any Town Charter or local act concerning initiative or referendum.

Rule 25. Closed Sessions

The Board may hold Closed Sessions as provided by law. The Board shall only commence a Closed Session after a motion to go into Closed Session has been made and adopted during an open meeting. The motion shall state the purpose of the Closed Session and must be approved by a majority vote of those Board members present and voting. The Board shall terminate the Closed Session by a majority vote. Only those actions authorized by statute may be taken in Closed Session. A motion to adjourn or recess shall not be in order during a Closed Session.

Rule 26. Quorum

A majority of the membership of the Board shall constitute a quorum. The number required for a quorum shall not be affected by vacancies. A majority is more than half. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

Rule 27. Public Hearings

Public hearings required by law, or deemed advisable by the Board, shall be organized by a special order and adopted by a majority vote setting forth the subject, date, place and time of the hearing as well as any rules regarding the length of time allotted for each speaker and any other pertinent matters. The special order is adopted by majority vote. Its specifications may include, but are not limited to, rules fixing the maximum time allotted to each speaker; providing for the determination of spokespersons for groups or persons supporting or opposing the same positions; providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall (so long as arrangements are made, in the case of hearings subject to the Open Meetings Law, for those excluded from the hall to listen to the hearing); and providing for the maintenance of order and decorum in the conduct of the hearing.

All notice and other requirements of the Open Meetings law applicable to board meetings shall also apply to public hearings at which a majority of the Board is present; such a hearing is considered to be part of a regular or special meeting of the Board. These requirements also apply to hearings conducted by appointed committees of board members, if a majority of the committee is present. A public hearing for which any required notices have been given may be continued to a time and place certain without further advertisement. The requirements of Rule 2(C) shall be followed in continuing a hearing at which a majority of the Board, or of a board committee (as applicable) is present.

At the appointed time, the Mayor or presiding officer shall call the hearing to order and then preside over it. When the allotted time expires or when no one who has not yet spoken wishes to do so, the Mayor or presiding officer shall declare the hearing closed.

The regular meeting begins with a public hearing during those months when a public hearing is scheduled as announced during the prior month's meeting.

During those months when a public hearing is scheduled as announced during the prior month's meeting, the Board's regular meeting will begin with that public hearing. The moderator may restrict or elect not to hear comments of a repetitious nature or place a time limit on individual remarks. The Second Reading and Third Reading will not usually take place during the same meeting as the public hearing.

Rule 28. Quorum of Public Hearings

A quorum of the Board shall be required at all public hearings required by State law. If a quorum is not present at such a hearing, the hearing shall be continued until the next regular meeting without further advertisement.

Rule 29. Minutes

- A. Full and accurate minutes of Board proceedings, including Closed Sessions, shall be kept. The Board shall also keep a general account of any Closed Session so that a person not in attendance would have a reasonable understanding of what transpired. These minutes and general accounts shall be open to inspection by the public, except as otherwise provided in this rule. The exact wording of each motion and the results of each vote shall be recorded in these minutes, and on the request of any Board member, the "ayes" and "noes" upon any question shall be taken. Members' and other persons' comments may be included in the minutes if the Board approves.

- B. Closed Session minutes will be kept as required by law. Minutes of Closed Sessions shall be sealed and withheld from public inspection so long as public inspection would frustrate the purpose of the Closed Session. The minutes may be unsealed either by Board action or by action of an agent of the Board such as the Town Attorney, if and when the Closed Session's purpose would no longer be frustrated by making these records public.

Rule 30. Appointments

- A. The Board may consider and make appointments to other bodies, including its own committees, if any, only in open session. The Board may not consider or fill a vacancy among its own membership except in open session.
- B. Rather than proceeding by motion, the Board shall use the following procedure to make appointments to various other boards and offices:
- The Mayor shall open the floor for nominations, whereupon the names of possible appointees may be put forward by Board members.
 - The names submitted shall be debated.
 - When the debate ends, the Mayor shall call the roll of the Board members, and each member shall cast his or her vote.

If more than one appointee is to be selected, then each Board member shall have as many votes as there are slots to be filled. The votes from a majority of the Board members voting shall be required for appointment. A Board member may cast all of his or her votes or fewer than all of them, but he or she shall not cast more than one vote for a single candidate.

Rule 31. Committees and Boards

- A. **Establishment and Appointment.** The Board may establish and appoint members for such temporary and standing Town committees and boards as are needed to help carry out the work of Town government. Any specific provisions of law relating to the particular committees and boards shall be followed.
- B. **Open Meetings Law.** The requirements of the Open Meetings Law shall apply to all elected or appointed authorities, boards, commissions, councils or other bodies of the Town that are composed of two or more members and that exercise or are authorized to exercise legislative, policy-making, quasi-judicial,

administrative or advisory functions. However, the Law's requirements shall not apply solely to a meeting of the Town's professional staff.

Rule 32. Amendment of the Rules

These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment(s) of the Rules as one of the stated purposes of the meeting, so long as the amendment is consistent with the Town Charter, general law, and generally accepted principles of parliamentary procedure. Adoption of an amendment shall require an affirmative vote equal or greater than two-thirds of all the actual membership of the Board, excluding any vacant seats and not including the Mayor.

Rule 33. References

- A. Suggested Rules of Procedure for a City Council, third edition by A. Fleming Bell, II is the source for these rules of procedure.
- B. To the extent not provided for in these rules and to the extent that the reference does not conflict with the spirit of these rules, the Board shall refer to Robert's Rules of Order for unresolved procedural questions.

Effective Date

This document shall become effective upon its adoption.



TOWN OF MONTREAT

P. O. Box 423
Montreat, NC 28757
Tel: (828)669-8002 Fax: (828)669-3810
www.townofmontreat.org

ADVISORY BOARD/COMMITTEE MEMBERSHIP APPLICATION

Full Legal Name: Widmer Kathleen Mary
(Last) (First) (Middle)

Physical Address: 218 Tennessee Road

Mailing Address: P.O. Box 1004

Home Phone: 828-357-5247 Alternate Phone: 804-647-1640

Email Contact Information: katwid@icloud.com

On which Board or Committee do you wish to serve?

- ☐ Board of Adjustment ☐ Open Space Conservation Committee
- ☐ Comprehensive Plan Steering Committee ☐ Planning and Zoning Commission
- ☒ Montreat Landcare Committee

Please explain why you want to be a member of this board/committee:

I have been attending the landcare Committee meetings for over a year, as an interested community member. With the resignation of John Johnson, I would be honored to fill his unexpired term.

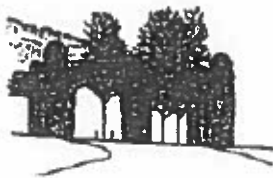
Briefly explain what you believe are the three most important issues facing our community at this time and how you believe serving on the selected board/committee can play a role in addressing each issue:

1. Uniting the community to share a common vision of cooperation as we seek the continued beautification of Montreat.
2. Caring for every aspect of our environment so it may continue as a welcoming respite for both visitors and residents.
3. Development of new and creative strategies to improve our beautiful town.

I believe landcare can play a part in each one of these three issues.
List any abilities, skills, specialized training or interest you have which are applicable to this board/committee:

I am excited to see Montreat flourish in every way. I want to become a part of a team that can contribute in creating an environment that is both beautiful and welcoming as well as user friendly. I think my enthusiasm and desire to help may be my best contribution.
Have you ever attended a regularly scheduled meeting of the selected board/committee? Yes

How much time are you able to devote to fulfill this obligation? Monthly meetings & committee assignments. I will give whatever time is needed to fulfill my responsibilities.



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ADVISORY BOARD/COMMITTEE MEMBERSHIP APPLICATION

Full Legal Name: Spence, Mark David
(Last) (First) (Middle)

Physical Address: 533 Magill Drive Montreat, NC 28757

Mailing Address: Box 338 Montreat, NC 28757

Home Phone: 828-669-5965 **Alternate Phone:** 808-779-5096

Email Contact Information: mark@wxops.com

On which Board or Committee do you wish to serve?

- ☒ Board of Adjustment ☐ Open Space Conservation Committee
- ☐ Comprehensive Plan Steering Committee ☐ Planning and Zoning Commission
- ☐ Montreat Landcare Committee

Please explain why you want to be a member of this board/committee:

To participate in the continued development and oversight of standards and principals for maintaining
a growing, thriving and welcoming community for years to come.

Briefly explain what you believe are the three most important issues facing our community at this time and how you believe serving on the selected board/committee can play a role in addressing each issue:

Defining a clear community brand and strategic plan for growth.

Developing a collaborative community spirit through cooperative communication and consensus building.

Producing a strategic plan to use best of breed principals for building and infrastructure development

List any abilities, skills, specialized training or interest you have which are applicable to this board/committee:

Have built several houses including upgrading a 1910 property in the designated Historic District of Georgetown SC.

Served as President of the Georgetown County Chamber of Commerce

Served on boards with sunshine laws in the past including the Hawaii Aerospace Advisory Commission.

Have you ever attended a regularly scheduled meeting of the selected board/committee? No

How much time are you able to devote to fulfill this obligation? With notice, as required



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ADVISORY BOARD/COMMITTEE MEMBERSHIP APPLICATION

Full Legal Name:

BLAKE

(Last)

R.

(First)

Mason

(Middle)

Physical Address:

419 APPALACHIAN WAY

Mailing Address:

P.O. Box 757, MONTREAT 28757

Home Phone:

321-720-8989

Alternate Phone:

Email Contact Information:

masonblake@gmail.com

On which Board or Committee do you wish to serve?

☐

Board of Adjustment

☐

Open Space Conservation Committee

☐

Comprehensive Plan Steering Committee

☒

Planning and Zoning Commission

☐

Montreat Landcare Committee

Please explain why you want to be a member of this board/committee:

TO SERVE THE TOWN IN A CAPACITY WHERE I HAVE EXPERIENCE.

Briefly explain what you believe are the three most important issues facing our community at this time and how you believe serving on the selected board/committee can play a role in addressing each issue:

1. COMPLETING PLANS FOR AND CONSTRUCTION OF TOWN HALL - MAY NEED TO OCCUR ^{SOME ZONING ACTION} ^{FOR PARKING} ^{PARCELS}
ON CLOSING THE DIVISIONS CREATED BY TOWN HALL / PAST ELECTION
CONTROVERSY - I BELIEVE I CAN HELP ACHIEVE THIS BY MY SERVICE
2. CONSERVATION / PRESERVATION OF MONTREAT'S UNIQUE NATURAL
BEAUTY AND RESOURCES - PLANNING : ZONING BOARD CAN PLAY
A ROLE IN THIS PROCESS

List any abilities, skills, specialized training or interest you have which are applicable to this board/committee:

PRACTISED REAL ESTATE LAW FOR 35 YEARS - EXTENSIVE EXPERIENCE
IN LAND USE AND ZONING LAW. PAST MEMBER AND CHAIRMAN OF
ORANGE COUNTY, FLORIDA PLANNING AND ZONING BOARD

Have you ever attended a regularly scheduled meeting of the selected board/committee?

NO

How much time are you able to devote to fulfill this obligation?

SUFFICIENT



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www.townofmontreat.org

ADVISORY BOARD/COMMITTEE MEMBERSHIP APPLICATION

Full Legal Name: Schen, William Edward
(Last) (First) (Middle)

Physical Address: 146 Eastminster Terrace

Mailing Address: P.O. Box 696

Home Phone: 828-669-2891 Alternate Phone: (C) 904-673-1720

Email Contact Information: wschen@rtlaw.com

On which Board or Committee do you wish to serve?

- ☐ Board of Adjustment ☒ Open Space Conservation Committee
- ☐ Comprehensive Plan Steering Committee ☐ Planning and Zoning Commission
- ☐ Montreat Landcare Committee

Please explain why you want to be a member of this board/committee:

I believe I can help solicit gifts of land for the environmental easements. I also understand development issues because of my experience as a lawyer.

Briefly explain what you believe are the three most important issues facing our community at this time and how you believe serving on the selected board/committee can play a role in addressing each issue:

continuing to encourage listening to the community by members of Town Council and committees
complete the construction of new town hall
regulatory reform

List any abilities, skills, specialized training or interest you have which are applicable to this board/committee:

real estate lawyer for 45 years; Experience on boards of many non profits; participation in community problem solving on many levels

Have you ever attended a regularly scheduled meeting of the selected board/committee? no

How much time are you able to devote to fulfill this obligation? as much as necessary



TOWN OF MONTREAT

P. O. Box 423
Montreat, NC 28757
Tel: (828)669-8002 Fax: (828)669-3810
www.townofmontreat.org

ADVISORY BOARD/COMMITTEE MEMBERSHIP APPLICATION

Full Legal Name: Somerville Walter Gray
(Last) (First) (Middle)

Physical Address: 135 Kanawha Dr.

Mailing Address: PO Box 382, Montreat, NC 28757

Home Phone: 828-669-6981 **Alternate Phone:** _____

Email Contact Information: stomer@bellsouth.net

On which Board or Committee do you wish to serve?

- ☐ Board of Adjustment ☐ Open Space Conservation Committee
- ☐ Comprehensive Plan Steering Committee ☐ Planning and Zoning Commission
- ☐ Montreat Landcare Committee

Please explain why you want to be a member of this board/committee:

Bridge Committee

I am happy to contribute to my community.

Briefly explain what you believe are the three most important issues facing our community at this time and how you believe serving on the selected board/committee can play a role in addressing each issue:

1. Unity - we need to do something positive with the bridge to move on from the past
2. Communication - we need to do a better job listening to one another. Hopefully this committee can show one way to do that
3. Relationships - we all need to get to know one another better. Committees offer a small way to do that.

List any abilities, skills, specialized training or interest you have which are applicable to this board/committee:

Have you ever attended a regularly scheduled meeting of the selected board/committee? No

How much time are you able to devote to fulfill this obligation? whatever it takes



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ADVISORY BOARD/COMMITTEE MEMBERSHIP APPLICATION

Full Legal Name: MELVIN ROBIN STACY
(Last) (First) (Middle)
Physical Address: 246 Texas Rd Spar Montreat NC 28757
Mailing Address: P.O. 866 Montreat NC 28757
Home Phone: 803-622-9490 Alternate Phone: _____
Email Contact Information: rsmelvin2@gmail.com

On which Board or Committee do you wish to serve?

- ☐ Board of Adjustment ☐ Open Space Conservation Committee
☐ Comprehensive Plan Steering Committee ☐ Planning and Zoning Commission
☐ Montreat Landcare Committee Bridge Committee

Please explain why you want to be a member of this board/committee:

Beautification of a special recreation part of Montreat

Briefly explain what you believe are the three most important issues facing our community at this time and how you believe serving on the selected board/committee can play a role in addressing each issue:

- 1) Healing the Community Through teamwork
- 2) Open Mindedness of other voices of community
- 3) TAKE ACTION ON ISSUES DECIDED by Town Council

List any abilities, skills, specialized training or interest you have which are applicable to this board/committee:

Relationships Built in the Community
Ability to discern the overall vision
Involvement in many real estate projects and processes

Have you ever attended a regularly scheduled meeting of the selected board/committee? No

How much time are you able to devote to fulfill this obligation? As much as necessary

Robin S. Melvin

From: **Katheryn Fouche** kkfouche@charter.net
Subject: applications needed
Date: March 1, 2018 at 11:12 PM
To: masonblake@gmail.com, randicollie@gmail.com, rsmelvin2@gmail.com, mbwynne@aol.com

KF

Hey, Guys. Tim will be appointing the Committee next week and we need for you to get your applications tomorrow. It does not have to be elaborate, just the basics. Let me know if I can help. I can pick it up or even fill it out and have you sign it! I'll attach it again if you need it. You can send it via email. by going to this site.

<http://townofmontreat.org/documents/Advisory Board Committee Application Rev. 03122015.pdf>



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Montreat, NC 28757
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www.townofmontreat.org

ADVISORY BOARD/COMMITTEE MEMBERSHIP APPLICATION

Full Legal Name: BLAKE ROBERT MASON
(Last) (First) (Middle)
Physical Address: 428 APPALACHIAN WAY
Mailing Address: P.O. BOX 757, MONTREAT 28757
Home Phone: 321-720-8989 Alternate Phone: _____
Email Contact Information: MASONBLAKE@EMAIL.COM

On which Board or Committee do you wish to serve?

- ☒ Board of Adjustment ☒ BRIDGE COMMITTEE
☐ Open Space Conservation Committee
☐ Comprehensive Plan Steering Committee ☐ Planning and Zoning Commission
☐ Montreat Landcare Committee

Please explain why you want to be a member of this board/committee:

TO ASSIST THE COMMUNITY IN TRANSITIONING THE
BRIDGE TO A PEDESTRIAN WALKWAY.

Briefly explain what you believe are the three most important issues facing our community at this time and how you believe serving on the selected board/committee can play a role in addressing each issue:

SEE P. 2 APPLICATION

List any abilities, skills, specialized training or interest you have which are applicable to this board/committee: 30 YEARS

EXPERIENCE WITH THE DEVELOPMENT OF MASTER
PLANNED COMMUNITIES

Have you ever attended a regularly scheduled meeting of the selected board/committee? No

How much time are you able to devote to fulfill this obligation? AS MUCH AS NEEDED



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www.townofmontreat.org

BOARD OF COMMISSIONERS & ADVISORY BOARD/COMMITTEE MEMBERSHIP APPLICATION

Full Legal Name: Ingersoll, Shannon B.
(Last) (First) (Middle)

Physical Address: 124 Eastminster Terrace

Mailing Address: P.O. Box 73
Montreat, NC 28757

Home Phone: 828-669-4749 **Alternate Phone:** 828-335-4333

Email Contact Information: Sbi1@aol.com

On which Board or Committee do you wish to serve?

☐ Board of Adjustment ☐ Planning and Zoning Commission
☐ Comprehensive Plan Steering Committee ☐ Board of Commissioners
☐ Montreat Landcare Committee ☐ Tree Board
☐ Open Space Conservation Committee **Bridge Committee**

Please explain why you want to be a member of this board/committee:

I am a lifelong Montreater and enjoy "giving back" to this community.

Briefly explain what you believe are the three most important issues facing our community at this time and how you believe serving on the selected board/committee can play a role in addressing each issue:

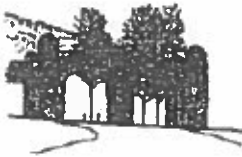
Maintaining and continually improving citizen interaction and cohesion

List any abilities, skills, specialized training or interest you have which are applicable to this board/committee:

Communication skills and experience

Have you ever attended a regularly scheduled meeting of the selected board/committee? n/a

How much time are you able to devote to fulfill this obligation? as needed



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ADVISORY BOARD/COMMITTEE MEMBERSHIP APPLICATION

Full Legal Name: Collie Randi Murphy
(Last) (First) (Middle)
Physical Address: 344 Oklahoma Rd Montreat, NC 28757
Mailing Address: P.O. Box 602 " " "
Home Phone: 664-8427 Alternate Phone: 712-1718
Email Contact Information: RandiCollie@gmail.com

On which Board or Committee do you wish to serve?

- ☐ Board of Adjustment ☐ Open Space Conservation Committee
☐ Comprehensive Plan Steering Committee ☐ Planning and Zoning Commission
☐ Montreat Landcare Committee Bridge Committee

Please explain why you want to be a member of this board/committee:

I would like to be a part of a committee that replaces the bridge with one that fits the architecture of Montreat both in style + materials

Briefly explain what you believe are the three most important issues facing our community at this time and how you believe serving on the selected board/committee can play a role in addressing each issue:

I believe we as a town should provide a safe + attractive bridge for access to Welch field + surrounding properties. I think it is important for citizens to have a voice + bring those ideas together for a solid bridge recommendation. I feel my design background, leadership abilities + desire for unity in our community could play a significant role in this committee.

List any abilities, skills, specialized training or interest you have which are applicable to this board/committee:

I owned a drapery business for 9 years + helped clients choose appropriate fabrics, linings etc for their specific needs + home decor.

Have you ever attended a regularly scheduled meeting of the selected board/committee? No

How much time are you able to devote to fulfill this obligation? 2-6 hrs / wk



Mr. Carmichael,

Thank you again for taking time to discuss your needs for the Town of Montreat. I added the notes taken from our meeting along with updated records. Bette has noted in Basecamp that she provided the reference of Nancy Lane with Cherokee. Please let me know if you need more recommendations.

Project Specific Needs:

- **REMNANT OF WEBSITE THAT REQUIRES REMOVAL.**

This is a "deep link" that needs to be deleted.

- <http://townofmontreat.org/TownofMontreatHomepage.htm>

- **DASHBOARD: Performance Metric - Arrests, recycling, waterline breaks... Currently In Excel (CSV Data points)**

- I demonstrated a drag-and-drop method of adding interactive percentage and numeric-based visuals. I recommend we...
 - Use this method for a quick visual (included *Part 1* of proposal)
 - Link to data details we import from CSV files. (CSV file import and design is in *Part 2-5 option*.)

- **Scrolling Photos**

- Our system includes numerous ways to add slideshows and galleries via a drag-and-drop

- **Blog Posts**

- Our system includes a drag-and-drop method of adding blog articles. You can also breakout blog articles according to different "tagging" methodologies.

- **Floating Toolbar absolute path on left with certain items**

- We can achieve this using CSS (basic programming language). We will need to define what links/icons are needed.

- **Scrolling Icons**

- Our system includes an in-depth set of icons that can be used.

- **Project Page**

- This can be achieved by adding content using our easy-to-use editor OR we can develop a custom area (*Part 2-5 option*)

- **Meetings & Events - See all events - Current events at the top.**

- Included in your system is a current events calendar. Your team can also use our system to design an area for upcoming events.

- **Dashboard monthly statistics - at a glance kcmo.org**
 - Included is Google Analytics for informational purposes.
- **All Financial reports - stored on the website - search**
 - This can be achieved in a basic format by adding them manually to a private page as needed OR, if you have them digitized, we can create a methodology for uploading PDF's via a CSV. Your organization would create a CSV, provide a bank of PDF's and we will upload them via a CSV import (*Part 2-5 Option*)
- **Events scheduler**
 - Included in the system is an event scheduler. You can specify users, availability slots and preset how individuals can schedule online.
- **GIS Portal - connect to property information - Need to look at integration options.**
 - This portion will need to be analyzed. It can be a very easy methodology. I recommend this portion be included if the integration is basic and hourly if complex.
- **Social Media Auto-Posting**
 - The system includes a connection to Facebook, Twitter and several other services. When content is added to the site, it can be distributed to your social profiles.
- **Announcement with Post Expirator**
 - Our system includes a method for posting messages in three codes (red, yellow, and green - in terms of urgency) and place them where desired.
- **Code Red investigate if it can post to website.**
 - This portion will need to be analyzed. It can be a very easy methodology. I recommend this portion be included if the integration is basic and hourly if complex.

Why Our Solution?

- We use a powerful dedicated server solution at Rackspace. This resource is a preferred choice in many instances.
- Our system includes regular updates, security, patches and third-party licensing.
- We can support your long-term efforts by providing professional graphics at a reduced rate as needed.
- We maintain partnerships with Google, Constant Contact, and have been certified by Adobe Systems while maintaining a membership with trusted resources, such as SEMPO.

WELCOME TO MAXWEBGEAR - WEBSITE DEVELOPMENT YOUR WAY



A DESIGNED APPROACH TO WEB DEVELOPMENT

Revisions and redesign are two of the most costly aspects of design. We have seen that some clients trust us to do a good job while others want to embrace more involvement in the design process. Our plans are based around your specific level of desired involvement. **All packages include the exact same features and hosting. The only difference in our packages are how you want to approach the design process.**

STEP 1 - CHOOSE YOUR WEB DESIGN PACKAGE

	FAST TRACK	COLLABORATION	ENGAGEMENT
From Beginning to Going Live	14 Workdays	21 Workdays	Client-Driven
Total Number of Predesign Pages by our team	Up to 8 Pages (Client can also add unlimited pages)	Up to 12 Pages (Client can also add unlimited pages)	Client-Driven (Client can also add unlimited pages)
Design Strategy	Website Built Using Client Direction Form (provided after sign-up)	One Interactive Live, Online Design Session	Interactive Live, Online Design Sessions
Number Of Design Revisions	1 Up to total of 1.5 hours	2 Up to total of 3 hours	Client-Driven
Website Content * we also have stock content	Client provides text and other desired material*	Client provides text and other desired material*	Client-Driven
Live Design Session Hours Included	0	2.5	Client-Driven (Minimum of 12 hours)
Payment Schedule	50% Deposit 50% Final Approval	50% initial 25% Design Approval 25% At Launch	\$450 Initial \$75/hr (hourly is billed weekly)
Total Cost	\$1600 One Time \$60 Per Month	\$2250 One Time \$60 Per Month	All Work Billed Hourly @ \$75/hr
Web Features	All Websites Have the Exact Same Features and Use The Same Designers. The only difference is your design preference. All work USA based.		

WEBSITE FEATURES

- Hosting (Dedicated)
- Domain Management (if desired)
- GearBuild Power Editor - Our Easy To Use Website Editor. Management all your content: Photos, Videos, Text, Icons, and much more - NO PROGRAMMING NEEDED.
- Galleries
- Slideshows
- Call-To-Action Boxes
- Contact Form Builder
- Auto-Posting To Social Media (actual setup additional fees, but you can do this yourself)
- Website Caching
- Security (IP Blocking, Brute Attack Protection, and Two Step Authentication)
- Regular Core Updates (not changing actual content - this is the process of regularly updating the actual website's software)
- FAQ
- Accordion Content
- Menu Management
- Live Online Training
- Tons of Icons
- Responsive to modern computers, tablets and smartphones
- Social Media buttons
- Google* Fonts
- eCommerce with Paypal, Authorize.net and Stripe Options* (based on package)
- Ability to grow! We can add custom features as you grow on a cost-per-project basis.
- Auto Blog -Automatic BLOG

REQUIRED

CHOOSE ONE WEB PACKAGE

ENGAGEMENT - \$450 + \$75/HRLY + \$60 PER MONTH ☐

COLLABORATION - \$2250 + \$60 PER MONTH ☐

FAST TRACK - \$1600 + \$60 PER MONTH ☐

VISUAL PACKAGE FLOW CHART

PROJECT RECEIVED WITH PAYMENT AND INFORMATION

WEEK 1

Evaluate Website
& Collateral

"SEO" VIABLE

NOT "SEO" VIABLE

PRIMARY TLD MUST BE RENEWED FOR MAXIMUM LENGTH - IF DOMAINS ARE MANAGED BY OUR TEAM, WE CAN ADMIN DOMAIN RENEWALS

WEEK 2-3

HOSTING INCLUDES:
30 DAY BACKUPS
MANAGED SERVICES
SSL CERTIFICATE
CDN (500GB/BANDWIDTH
PER MONTH)
DOMAIN MANAGEMENT
CLEAN IP

WEEK 2-3

*INCLUDES ALL FEATURES OF CUSTOM
COLLABORATION PACKAGE (SEE PACKAGES).
ADDITIONAL CONTENT BILLED HOURLY.

OPTIONS (DEPENDS ON CURRENT SITE STATUS)
MIGRATE TO QUALITY HOSTING
DESIGN RE-DEVELOPED TO SEO FRIENDLY FRAMEWORK*
(NOTE: WEBSITES ARE NOT REDESIGNED)

OPTIONS (DEPENDS ON CURRENT SITE STATUS)
MIGRATE TO QUALITY HOSTING

SSL ADDED

SSL ADDED

WEEK 4

ADWORDS SETUP
BING/YAHOO SETUP
SEO META DATA - 5 MAIN KEYWORD FOCUS
BUSINESS LISTING OPTIMIZATION
IN 40+ DIRECTORIES
GOOGLE MY BUSINESS OPTIMIZATION
YOUTUBE ADVERTISING

PAID AD MANAGEMENT
INCLUDES:
- KEYWORD ANALYSIS
- GEO TARGETING
- NEGATIVE KEYWORDS
- UP TO 10 ACTIVE ADS
- VIDEO ADS
- BANNER ADS



ANALYTICS INSTALLED

RECURRING SERVICES

SEARCH ENGINE
OPTIMIZATION

PAID ADS
MANAGEMENT

HOSTING/CMS
MANAGEMENT

MONTHLY
REPORT

Prices & Parts

Part 1 - Core system.

I recommend our Collaboration Package. *See details on the following page.*

The total cost is \$2250 / \$60 Per month

Part 2- 5.

After reviewing the needs. We can bundle the import of all remaining modules. Below is what is included:

- **Each import can have up to 10 fields.** This means up to 10 columns for each import. We prefer to keep the initial load to about 1,000 records, but you are able to upload additional as needed. Additional fields are billed hourly.
- The final detail page will be placed in a table and will be searchable based on any field within the CSV.
- Each CSV must be completed and submitted prior to build. This optimizes the workflow and allows us to build efficiently.

\$750 One time / Monthly is included in Part 1 Bundle

Graphic Design

Client indicated a possible recurring need for design elements. When Part 1 is purchased, client is eligible for our discounted design rate of \$65/hr for all needs.

GET STARTED

- ☐ Recommended Part 1 - \$2250 one time / \$60 per month
- ☐ Part 2 - \$750 one time (this can be purchased at a later time.

CLIENT NAME: _____ BUSINESS NAME: _____

CLIENT PHONE: _____ PREFERRED NUMBER: _____ ADDITIONAL PHONE: _____

EMAIL ADDRESS: _____

BILLING ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

PLEASE CIRCLE MEANS OF PAYMENT: ☐ VISA ☐ DISCOVER ☐ AMEX ☐ CHECK

CREDIT CARD NUMBER: _____ CVC CODE: _____ NAME ON CARD: _____ EXPIRATION DATE: _____

☐ I AGREE TO ALLOW MAXWEBGEAR TO MARKET MY BUSINESS ONLINE AND MAKE CHANGES TO MY WEBSITE.

☐ I AM AUTHORIZED TO MAKE THIS PURCHASE AND UNDERSTAND ALL CHARGES ARE NON-REFUNDABLE. I UNDERSTAND THAT THIS AGREEMENT IS FOR 6 MONTHS.

☐ I AGREE TO ALL TERMS AND CONDITIONS AT [HTTP://MAXWEBGEAR.COM/TERMS-CONDITIONS](http://maxwebgear.com/terms-conditions)

I WANT RECURRING TO BE CHARGED: ☐ ON THE 1ST OF THE MONTH ☐ 15TH OF THE MONTH ☐ NO PREFERENCE

CLIENT AGREES TO ALL TERMS (SIGNATURE): _____

CONVENIENT CLIENT CENTER - 24/7

Once your order is processed, we will create an online account with your own user name and password. This area will give you 24/7 access to invoices, billing and much more. Your login will be sent from the MaxWebGear Accounting Department once your order has been processed.

Thank you for allowing us the opportunity to earn your business.



<http://maxwebgear.com> | <http://integrisedesign.com>
800-785-0403



Town of Montreat

P.O. Box 423, Montreat, North Carolina 28757

Phone: (828) 669-8002 • Fax: (828) 669-3810

MEMORANDUM: POTENTIAL ESTABLISHMENT OF A BOOKKEEPER POSITION

TO: MONTREAT BOARD OF COMMISSIONERS
FROM: ALEX CARMICHAEL, TOWN ADMINISTRATOR
SUBJECT: POTENTIAL ESTABLISHMENT OF BOOKKEEPER POSITION
DATE: FEBRUARY 23, 2018

Background: In the fall of 2017 the Town hired an Interim Finance Officer to work between 20 and 30 hours a week. This position was created to temporarily fulfill the duties of the Finance Officer position. Though many of the Finance Officer duties transitioned to the Town Clerk when the former position was vacated, most of these have remained with the Town Clerk as the Interim Finance Officer has worked to investigate past accounting practices and create better, more transparent, and reliable systems. This has left both the Interim Finance Officer and the Town Clerk with more duties than they have the time capacity to complete.

The Town Commission has asked for information on creating a term limited part-time position that would focus on the bookkeeping functions currently being completed by the Town Clerk and the Interim Finance Officer.

Financial/Administrative Processes by Function:

There are a number of financial and administrative procedures that can be reassigned to a new part-time position assuming a qualified candidate is secured. Many of the specific functions within these procedures are required by state statutes, regulatory guidelines, or GFOA standards to be performed by separate individuals in order to catch mistakes, prevent or detect fraud, and increase public confidence in the Town's administration of public funds.

Staff considered the following procedures for the potential new position:

- Payroll
- Permit Coordination
- Water Billing
- Purchase Orders and Accounts Payables
- Bank Reconciliations
- Journal Entries
- Cash Payments
- Credit Card Postings

Each process requires multiple steps and is explained below. The time commitment and the recommended staff assignment are included in the explanation.

Payroll: 2 Hours a week (2 weeks per month)

Payroll was formerly processed by the Finance Officer, but has been assigned to the Town Clerk since September. Timesheets are completed by each employee and approved by their supervisor and the Town Administrator. The Town Clerk manually enters approved timesheets into the Payroll module, which automatically generates a Journal Entry. Once the Journal Entry (J.E.) is approved, the transaction is posted to the General Ledger (G.L.).

If a bookkeeper position was created, staff would recommend continuing the administration of the payroll process by the Town Clerk.

Permit Coordination: 4 Hours per week

After the departure of the Building Inspector/Zoning Administrator in July, the Town reorganized those functions by contracting out building inspections, and contracting with the Land of Sky to hire a part-time Zoning Administrator/Code Enforcement Officer. Having these functions performed by separate outside parties, each working with the Town on a part-time basis, necessitates coordination by the Town staff in order to schedule inspections and permits, collect fees, and shepherd applications between the zoning approval and building permitting procedures. Since July, that function has been performed by the Town Clerk.

If a bookkeeper position was created, staff would recommend continuing permit coordination by the Town Clerk.

Water Billing: 5 Hours per week (1 week per month) / 3 hours per week (ongoing)
Water billing was formerly performed by the Finance Officer, but has been assigned to the Town Clerk since September. Each month, blank water account reports are provided to the Water Department staff for remote reading. The Water Department reads meters with a remote device, populates the account report, and provides read meter reports back to administrative staff. High, low, and no-read reports are run to identify outlier usage. Once outlier accounts are identified, the Water Department staff manually re-read suspect meters and provide updated reads back to administrative staff. Administrative staff manually enter new reads into the utility billing module, run final reports, and then print and mail the water bills. The Town Clerk currently devotes approximately 5 hours to this process, one week per month.

Administrative staff then collect and post payment to each customer account. Staff run utility billing module payment reports, automatically generating Journal Entries. The Finance Officer then posts the J.E.s to the General Ledger. Staff prepare deposit slips, physically make deposits, and then prepare summary reports for reconciliation with backup documents.

Throughout the cycle customers request changes to their accounts. These could be requests for new taps, account transfers, or termination of accounts. Sometimes customers challenge the validity of their water bills, often resulting in account adjustments. The Town Clerk devotes approximately 3 hours per week, each week to managing these changes.

If a bookkeeper position is created, staff would recommend transiting the water bill generating process (5 hours/month) to the bookkeeper and keeping the account adjustment process (3 hours per week) with the Town Clerk.

Purchase Orders and Accounts Payables: 7 hours per week

Purchase Orders (P.O.s) and Accounts Payables (A.P.) were previously performed by the Finance Officer, with final signature authorization performed by the Town Administrator and the Mayor (the Town Clerk and the Mayor Pro Tem are respectively authorized as alternates.) When a P.O. is requested by a department, it must first be entered in the P.O. Module. If the purchase is not immediate, the funds can be encumbered until an invoice is received. Once an invoice is

received it is entered into the A.P. module and pre-audited. Then checks are generated by first entering and posting General Ledger adjustments, then printing the checks, obtaining signatures by the Town Administrator and the Mayor, and finally placing the checks in the mail.

If a bookkeeper position were established, staff would recommend separating these duties through the following work flow:

- P.O. entry – Bookkeeper – 3 hours per week
- Pre-audit/ A.P. entry/ invoice entry – Bookkeeper – 3 hours per week
- Running Checks – Town Clerk – 1 hour per week
- Signature 1 – Town Administrator
- Signature 2 - Mayor

Bank Reconciliations: 10 hours per week

The Town currently has 9 separate bank accounts across multiple institutions. The following steps are repeated for each account monthly. When the Town receives account statements each month staff first compares the bank statements against the Town's General Ledger. Staff must download the current status of accounts in the G.L., confirm items that appear on both the bank statements and the G.L., create Journal Entries for those items that appear on the bank statements but not the G.L., then identify the discrepancies that remain. Staff then investigates discrepancies, such as potential deposits in transit, outstanding checks in the A.P. module, and utility billing errors.

This entire process is currently being done by the Interim Finance Officer. If a bookkeeper position were established, staff would recommend transitioning primary Bank Reconciliation duties to the bookkeeper, with each reconciliation approved by the Interim Finance Officer.

Journal Entries: 16 hours per week

Journal Entries are the process by which changes are made to the General Ledger. The generation and entry of J.E.s were previously performed by the Finance Officer. Though J.E. steps are fairly simple, a separate J.E. must be completed for every transaction the Town conducts. First the J.E. is generated, then entered, then approved before any changes are made to the G.L. Entry and approval must be conducted by separate individuals to maintain adequate separation of duties.

If a bookkeeper position were established, staff would recommend separating the J.E. duties through the following work flow:

- J.E. creation – Bookkeeper – 5 hours per week
- J.E. entry – Interim Finance Officer – 10 hours per week
- J.E. approval – Town Administrator - 1 hour per week

Cash Payments: 1 hour per week

The Town often collects cash payments for things such as water bills and various permits. Cash handling requires detailed separation of duties. First, a payment is taken and physically secured. Then a J.E. must be generated, entered, and approved. If the payment is for a water bill a deposit must be generated in the utility billing module. A physical deposit slip must be created and taken to the bank with the payment. Finally, cash must be reconciled and approved.

If a bookkeeper position were established, staff would recommend separating the cash payment duties through the following work flow:

- Receive cash – Town Clerk – 10 minutes per week

- Prepare J.E. – Bookkeeper – time included in the J.E. process described above
- Enter J.E. – Interim Finance Officer - time included in the J.E. process described above
- Approve J.E. – Town Administrator - time included in the J.E. process described above
- Utility billing deposit – Bookkeeper – 10 minutes per week
- Bank deposit – Town administrator – 25 minutes per week
- Reconciliation – Bookkeeper – 15 minutes per week
- Reconciliation approval – Interim Finance Officer – 10 minutes per week

Credit Card Postings: 15 minutes per week

Credit card payments were previously administered by the Finance Officer. Each week a report must be generated through the online credit card payment system. Water bill payments are then hand keyed into the utility billing module, a Journal Entry is created, entered, and approved, and the General Ledger is updated. For permits or other payments the process is the same except the utility billing module is omitted.

If a bookkeeper position were established, staff would recommend separating the Credit Card Posting duties through the following work flow:

- Report generation – Bookkeeper – 5 minutes per week
- Water billing entry – Bookkeeper – 10 minutes per week
- J.E. creation – Bookkeeper – time included in the J.E. process described above
- J.E. entry – Interim Finance Officer – time included in the J.E. process described above
- J.E. Approval – Town Administrator – time included in the J.E. process described above

Considerations:

Separation of duties:

As previously mentioned, steps in each of these procedures are required to be performed by multiple, separate individuals. The Town has historically failed to set up adequate separation of duties, which has been flagged in reoccurring audit findings. Not only does this present legal questions, but it negatively impacts our ability to borrow money at a low cost. The separation of duties mapped here should alleviate the audit finding.

Time needs:

The following table summarizes duties for the potential bookkeeper position following the segregation of duties described above:

Bookkeeper Duties

Water bill generation	5 hour/ week	1 week per month
P.O. entry	3 hours/ week	Every week
Pre-audit/ A.P./ invoice entry	3 hours/ week	Every week
J.E. creation	5 hours/ week	Every week
Bank reconciliations	10 hours/ week	Every week
Cash reconciliation	15 minutes/ week	Every week
Credit Card reports and module entry	15 minutes/ week	Every Week

The duties listed above equal 26:30 per week most weeks, and 31:30 per week on water billing weeks. The position could be created for 25-29 hours per week. Other administration staff can assist the bookkeeper with duties that are not required to be segregated during water billing weeks. Staff would recommend that this position be created as a temporary/seasonal position until the Interim Finance Officer can complete the “catch up” process underway.

Funding Source:

The General Fund, Governing Body Department has \$15,000 in available funds for salary contingency in the current, FY 17/18 Operating Budget. Account number 10-00-410 0-332.

JAC



TOWN OF MONTREAT

P. O. Box 423
Montreat, NC 28757
Tel: (828)669-8002 Fax: (828)669-3810
www.townofmontreat.org

RESOLUTION #18-03-001 DECLARING CERTAIN ITEMS SURPLUS AND AUTHORIZING DISPOSAL BY PRIVATE NEGOTIATION AND SALE

WHEREAS, North Carolina General Statute 160A-266 and 160A-267 allows for a city to dispose of personal property belonging to the city by private negotiation and sale valued at less than thirty thousand dollars (\$30,000) for any one item or group of similar items; and

WHEREAS, the Town of Montreat Board of Commissioners have determined that the following property is surplus property and desire to sell or dispose of same:

1996 F-250 4WD VIN 1FTHF26HXTEB24388 mileage 129,769
1984 Chevrolet Blazer VIN 1G8ED18J1EF172484 mileage 70,436
1970s Rolemole Asphalt Packer VIN unknown mileage unknown
Loading Ramp
Gabio
n Baskets Quantity:3
Enorossi PTO Driven Mower for Tractor VIN unknown

NOW, THEREFORE, BE IT RESOLVED by the Town of Montreat Board of Commissioners the following:

- (1) That the items listed above are declared surplus property; and
- (2) That the Board of Commissioners wishes to dispose of the property by private negotiation and sale; and
- (3) That the Town Administrator is authorized to dispose of the property by private negotiation and sale; and
- (4) That a report detailing the final negotiated price for the property be presented to the Board of Commissioners upon final sale; and
- (5) The clerk to the Board of Commissioners shall publish a notice summarizing this resolution, and no sale may be executed pursuant to this resolution until at least 10 days after the day the notice is published.

READ, APPROVED, AND ADOPTED, this the 8th day of March, 2018.

Tim Helms, Mayor

Alex Carmichael, Town Administrator

ATTEST:

I, hereby certify this is a true and correct copy of this Resolution, duly adopted by the Town of Montreat on the 8th day of March, 2018, as it appears of record in the official minutes.

Angie Murphy, Town Clerk

Customer Agreement

FP Mailing Solutions
140 N. Mitchell Ct, Ste 200
Addison, IL 60101-5629
Tel: (800) 341-6052
www.fp-usa.com

CUSTOMER INFORMATION

Billing Address	
Customer: TOWN OF MONTREAT	
Department:	
Street: PO BOX 423	
City: MONTREAT	County:
State: NC	Zip: 28757
Tel: 828-669-8002	Fax: 828-669-3810
E-mail: amurphy@townofmontreat.org	
Contact Name: ANGELA MURPHY	
Deliver To: <input checked="" type="checkbox"/> Dealer <input type="checkbox"/> Customer <input type="checkbox"/> Fulfilled from Dealer Inventory	
<input type="checkbox"/> Existing Customers Only: check box if Billing Address has changed.	

Shipping & Installation Address (if different than Billing)	
Customer: TOWN OF MONTREAT	
Department:	
Street: 96 RAINBOW TERRACE	
City: BLACK MOUNTAIN	County:
State: NC	Zip: 28711
Tel:	Fax:
E-mail:	
Contact Name:	
Mailing Address: <input type="checkbox"/> Same as Billing	
<input type="checkbox"/> Existing Customers Only: check box if Shipping & Install Address has changed.	

RENTAL INFORMATION

Quantity	Item #	Item Description	Monthly Rate	Rental Billing Delivery (select one)
1	P100C/PBASE	PostBase 30 Meter/Base	included	<input type="checkbox"/> Electronic Billing
1	POSTBASE30A	PostBase 30 Attribute Package	included	<input checked="" type="checkbox"/> Paper Billing
1	PCOLORBSLV (SILVER) <input checked="" type="checkbox"/>	PostBase Color	included	Rental Billing Frequency (select one)
1	UNL	Unlimited Resets	included	<input type="checkbox"/> Annual Billing
1	RGPOST	PostBase RateGuard	included	<input type="checkbox"/> Semi-Annual
				<input checked="" type="checkbox"/> Quarterly Billing
Term of Contract: 36 months			Total Monthly Payment	\$52.00
Note: If a payment option is not selected, FP will default to Quarterly Paper Billing.				

Terms and Conditions: By signing below, I hereby acknowledge and agree that FP's standard shipping rates and the additional terms and conditions available on the FP website at www.fp-usa.com/terms-conditions are applicable to, and incorporated by reference into, this agreement. (If you do not have access to the internet, please contact FP directly at 800.341.6052 and we will provide you with a copy for your records.)

CUSTOMER ACCEPTANCE (please complete all fields)

Customer Acceptance of Terms		Dealer Information	
Print Name of Authorized Representative:		Dealer Name: FIRST CLASS MAILING SOLUTIONS Dealer #: 2730	
Tel: 828-669-8002		Address: 333 MAIN AVE NE, HICKORY NC 28601	
Tax ID: 56-0949173	State: NC	Tel: 828-324-4040	Fax: 828-324-4050
Authorized Signature: X		Sales Representative Name: MICHAEL WOLD	
Date:		Sales Representative: X	Date:

DEALER & INTERNAL USE ONLY

<input type="checkbox"/> New Customer <input type="checkbox"/> Existing Customer Name Change <input checked="" type="checkbox"/> Upgrade From: O30 <input type="checkbox"/> Renewal (no change of equipment) <input type="checkbox"/> Change of Ownership Existing Account No.: 500010842	<input type="checkbox"/> Lease Company: _____ <input type="checkbox"/> Major Account: _____ <input type="checkbox"/> GSA Contract No.: _____ <input type="checkbox"/> State Contract No.: _____ Master Billing Acct. No.: _____ Master Postage Acct. No.: _____	Promo Code: _____ Package Code: P30A <input type="checkbox"/> Price or Terms Exception Approval (attach copy) Navision No.: _____ <input type="checkbox"/> USPS® Location: (letter must be attached) <input type="checkbox"/> Tax-Exempt Certificate Attached
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Public Works Building – Phase I

Site Selection

Hazardous
Material Insp.

WNCAQB
Demo Permit

TOM Demo
Permit

Rezoning

Phase II

Phase III

Abandon Well

Relocate Outdoor
Inventory

Demolish Building

Relocate Building
Contents

Remove Power
and Water Lines

Notice Bid
Opportunity

MSD
Application

Complete Site
Prep

Move
Dumpsters

Phase III cont.

Award Contract

Contract Approval
by Commission

Evaluate and
Select

Open Bids

Phase IV

Concrete/Plumbing

Construct Outer
Building

Stormwater
Retention

Internal Framing/
Electrical

Move In

**TOWN OF MONTREAT BOARD OF COMMISSIONERS
REQUEST FOR BOARD ACTION**

Meeting Date: March 8, 2018

SUBJECT: Bid and Contract Process for the Public Works Building

AGENDA INFORMATION:

Agenda Location: New Business
Item Number: M
Department: Administration
Contact: Alex Carmichael
Presenter: Alex Carmichael

BRIEF SUMMARY:

NC statutes regulate the means and features of municipal contracting for construction, repair, or purchasing. G.S.143—131 details procedural requirements for contracts valued between \$30,000 and \$500,000, in the “informal bidding” range. The Public Works building project will require an element of both construction contracting and purchase contracting if we proceed with the “butler building” plans. Staff has reached out to the School of Government to advise on the form of contract for the bid, and anticipates being ready to publish a bid during the month of March.

General Statutes and local ordinances require Commission approval to select the bid, and to award and execute the contract. The Commission is not required to approve the bid or form of contract before the bid is published, though this is a common practice.

The Town has three options with varying effects on the balance between expediency and precedence.

1. Staff can prepare a recommended bid and seek advanced authorization at the April meeting to advertise the bid;
2. Staff can select a contract method, prepare and advertise the bid in advance of the April meeting, still allowing the Commission to maintain oversight at the point where bids are received, selected, and the contract is awarded;
3. Or, The Commission can call a special meeting once a recommended bid is prepared and exercise oversight at that point.

RECOMMENDED MOTION AND REQUESTED ACTIONS:

Move to direct staff to select a contract method, prepare and advertise a bid for the building of a Public Works facility as soon as possible.

FUNDING SOURCE:

N/A

ATTACHMENTS:

1. Public Works Building Project Graphic
2. Chapter 143 – Article 8

ADMINISTRATOR’S COMMENTS AND RECOMMENDATIONS:

All three options described above are legal and appropriate under NC law. The decision that must be weighed is between time and additional Commission involvement. If no action is taken staff will proceed with selecting a contract method based on feedback from the School of Government, preparing for and advertising the bid.

Article 8.

Public Contracts.

§ 143-128. Requirements for certain building contracts.

(a) Preparation of specifications. - Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county, municipality, or other public body, shall have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

- (1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system), refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all related work.
- (2) Plumbing and gas fittings and accessories, and all related work.
- (3) Electrical wiring and installations, and all related work.
- (4) General work not included in subdivisions (1), (2), and (3) of this subsection relating to the erection, construction, alteration, or repair of any building.

Specifications for contracts that will be bid under the separate-prime system or dual bidding system shall be drawn as to permit separate and independent bidding upon each of the subdivisions of work enumerated in this subsection. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission or commissions from preparing additional separate specifications for any other category of work.

(a1) Construction methods. - The State, a county, municipality, or other public body shall award contracts to erect, construct, alter, or repair buildings pursuant to any of the following methods:

- (1) Separate-prime bidding.
- (2) Single-prime bidding.
- (3) Dual bidding pursuant to subsection (d1) of this section.
- (4) Construction management at risk contracts pursuant to G.S. 143-128.1.
- (5) Alternative contracting methods authorized pursuant to G.S. 143-135.26(9).
- (6) Design-build contracts pursuant to G.S. 143-128.1A.
- (7) Design-build bridging contracts pursuant to G.S. 143-128.1B.
- (8) Public-private partnership construction contracts pursuant to G.S. 143-128.1C.

(a2) Repealed by Session Laws 2012-142, s. 9.4(g), effective July 1, 2012.

(b) Separate-prime contracts. - When the State, county, municipality, or other public body uses the separate-prime contract system, it shall accept bids for each subdivision of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch for which separate bids are required by this subsection is less than twenty-five thousand dollars (\$25,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost. The contracts shall be awarded to the lowest responsible, responsive bidders, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county, municipality, or other public body and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, "separate contractor" means any person, firm or corporation who shall enter into a contract with the State, or with any county, municipality, or other public entity to erect, construct, alter or repair any building or buildings, or parts of any building or buildings.

(c) Repealed by Session Laws 2001-496, s. 3, effective January 1, 2001.

(d) Single-prime contracts. - All bidders in a single-prime project shall identify on their bid the contractors they have selected for the subdivisions or branches of work for:

- (1) Heating, ventilating, and air conditioning;

- (2) Plumbing;
- (3) Electrical; and
- (4) General.

The contract shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later determined by the contractor to be nonresponsible or nonresponsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or (ii) with the approval of the awarding authority for good cause shown by the contractor. The terms, conditions, and requirements of each contract between the contractor and a subcontractor performing work under a subdivision or branch of work listed in this subsection shall incorporate by reference the terms, conditions, and requirements of the contract between the contractor and the State, county, municipality, or other public body.

When contracts are awarded pursuant to this section, the public body shall make available to subcontractors the dispute resolution process as provided for in subsection (f1) of this section.

(d1) Dual bidding. - The State, a county, municipality, or other public entity may accept bids to erect, construct, alter, or repair a building under both the single-prime and separate-prime contracting systems and shall award the contract to the lowest responsible, responsive bidder under the single-prime system or to the lowest responsible, responsive bidder under the separate-prime system, taking into consideration quality, performance, compliance with G.S. 143-128.2, and time specified in the bids to perform the contract. In determining the system under which the contract will be awarded to the lowest responsible, responsive bidder, the public entity may consider cost of construction oversight, time for completion, and other factors it considers appropriate. The bids received as separate-prime bids shall be received, but not opened, one hour prior to the deadline for the submission of single-prime bids. The amount of a bid submitted by a subcontractor to the general contractor under the single-prime system shall not exceed the amount bid, if any, for the same work by that subcontractor to the public entity under the separate-prime system. The provisions of subsection (b) of this section shall apply to separate-prime contracts awarded pursuant to this section and the provisions of subsection (d) of this section shall apply to single-prime contracts awarded pursuant to this section.

(e) Project expediter; scheduling; public body to resolve project disputes. - The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on a project to a single responsible and reliable person, firm or corporation, which may be a prime contractor. In executing this responsibility, the designated project expediter may recommend to the State, county, municipality, or other public body whether payment to a contractor should be approved. The project expediter, if required by the contract documents, shall be responsible for preparing the project schedule and shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule. Whenever separate contracts are awarded and separate contractors engaged for a project pursuant to this section, the public body may provide in the contract documents for resolution of project disputes through alternative dispute resolution processes as provided for in subsection (f1) of this section.

(f) Repealed by Session Laws 2001-496, s. 3, effective January 1, 2001.

(f1) Dispute resolution. - A public entity shall use the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11), or shall adopt another dispute resolution process, which shall include mediation, to be used as an alternative to the dispute resolution process adopted by the State Building Commission. This dispute resolution process will be available to all the parties involved in the public entity's construction project including the public entity, the architect, the construction manager, the contractors, and the first-tier and lower-tier subcontractors and shall be available for any issues arising out of the contract or construction process. The public entity may set a reasonable threshold, not to exceed fifteen thousand dollars (\$15,000), concerning the amount in controversy that must be at issue before a party may require other parties to participate in the dispute resolution process. The public entity may require that the costs of the process be divided between the parties to the dispute with at least one-third of the cost to be paid by the public entity, if the public entity is a party to the dispute. The public entity may require in its contracts that a party participate in mediation concerning a dispute as a precondition to initiating litigation concerning the dispute.

(g) Exceptions. - This section shall not apply to:

- (1) The purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site.
- (2) The erection, construction, alteration, or repair of a building when the cost thereof is three hundred thousand dollars (\$300,000) or less.
- (3) The erection, construction, alteration, or repair of a building by The University of North Carolina or its constituent institutions when the cost thereof is five hundred thousand dollars (\$500,000) or less.

Notwithstanding the other provisions of this subsection, subsection (f1) of this section shall apply to any erection, construction, alteration, or repair of a building by a public entity. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1; 1963, c. 406, ss. 2-7; 1967, c. 860; 1973, c. 1419; 1977, c. 620; 1987 (Reg. Sess., 1988), c. 1108, ss. 4, 5; 1989, c. 480, s. 1; 1995, c. 358, s. 4; c. 367, ss. 1, 4, 5; c. 509, s. 79; 1998-137, s. 1; 1998-193, s. 1; 2001-496, ss. 3, 13; 2002-159, s. 42; 2007-322, s. 3; 2012-142, s. 9.4(g); 2013-401, s. 3.)

§ 143-128.1. Construction management at risk contracts.

(a) For purposes of this section and G.S. 143-64.31:

- (1) "Construction management services" means services provided by a construction manager, which may include preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.
- (2) "Construction management at risk services" means services provided by a person, corporation, or entity that (i) provides construction management services for a project throughout the preconstruction and construction phases, (ii) who is licensed as a general contractor, and (iii) who guarantees the cost of the project.
- (3) "Construction manager at risk" means a person, corporation, or entity that provides construction management at risk services.
- (4) "First-tier subcontractor" means a subcontractor who contracts directly with the construction manager at risk.

(b) The construction manager at risk shall be selected in accordance with Article 3D of this Chapter. Design services for a project shall be performed by a licensed architect or engineer. The public owner shall contract directly with the architect or engineer. The public owner shall make a good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities when selecting a construction manager at risk.

(c) The construction manager at risk shall contract directly with the public entity for all construction; shall publicly advertise as prescribed in G.S. 143-129; and shall prequalify and accept bids from first-tier subcontractors for all construction work under this section. The construction manager at risk shall use the prequalification process determined by the public entity in accordance with G.S. 143-135.8, provided that public entity and the construction manager at risk shall jointly develop the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project. The public entity shall require the construction manager at risk to submit its plan for compliance with G.S. 143-128.2 for approval by the public entity prior to soliciting bids for the project's first-tier subcontractors. A construction manager at risk and first-tier subcontractors shall make a good faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. A construction manager at risk may perform a portion of the work only if (i) bidding produces no responsible, responsive bidder for that portion of the work, the lowest responsible, responsive bidder will not execute a contract for the bid portion of the work, or the subcontractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (ii) the public entity approves of the construction manager at risk's performance of the work. All bids shall be opened publicly, and once they are opened, shall be public records under Chapter 132 of the General Statutes. The construction manager at risk shall act as the fiduciary of the public entity in handling and opening bids. The construction manager at risk shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and other factors deemed appropriate by the public entity and advertised as part of the bid solicitation. The public entity may require the selection of a different first-tier subcontractor for any portion of the work, consistent with this section, provided that the construction manager at risk is compensated for any additional cost incurred.

When contracts are awarded pursuant to this section, the public entity shall provide for a dispute resolution procedure as provided in G.S. 143-128(f1).

(d) The construction manager at risk shall provide a performance and payment bond to the public entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes.

(e) Construction management at risk services may be used by the public entity only after the public entity has concluded that construction management at risk services is in the best interest of the project, and the public entity has compared the advantages and disadvantages of using the construction management at risk method for a given project in lieu of the delivery methods identified in G.S. 143-128(a1)(1) through G.S. 143-128(a1)(3). The public entity may not delegate this determination. (2001-496, s. 2; 2013-401, s. 5; 2014-42, s. 2.)

§ 143-128.1A. Design-build contracts.

(a) Definitions for purposes of this section:

- (1) Design-builder. - As defined in G.S. 143-128.1B.
- (2) Governmental entity. - As defined in G.S. 143-128.1B.

(b) A governmental entity shall establish in writing the criteria used for determining the circumstances under which the design-build method is appropriate for a project, and such criteria shall, at a minimum, address all of the following:

- (1) The extent to which the governmental entity can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications for a design-builder.
- (2) The time constraints for the delivery of the project.
- (3) The ability to ensure that a quality project can be delivered.
- (4) The capability of the governmental entity to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.
- (5) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. The governmental entity shall not limit or otherwise preclude any respondent from submitting a response so long as the respondent, itself or through its proposed team, is properly licensed and qualified to perform the work defined by the public notice issued under subsection (c) of this section.
- (6) The criteria utilized by the governmental entity, including a comparison of the advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1).

(c) A governmental entity shall issue a public notice of the request for qualifications that includes, at a minimum, general information on each of the following:

- (1) The project site.
- (2) The project scope.
- (3) The anticipated project budget.
- (4) The project schedule.
- (5) The criteria to be considered for selection and the weighting of the qualifications criteria.
- (6) Notice of any rules, ordinances, or goals established by the governmental entity, including goals for minority- and women-owned business participation and small business participation.
- (7) Other information provided by the owner to potential design-builders in submitting qualifications for the project.
- (8) A statement providing that each design-builder shall submit in its response to the request for qualifications an explanation of its project team selection, which shall consist of either of the following:
 - a. A list of the licensed contractors, licensed subcontractors, and licensed design professionals whom the design-builder proposes to use for the project's design and construction.
 - b. An outline of the strategy the design-builder plans to use for open contractor and subcontractor selection based upon the provisions of Article 8 of Chapter 143 of the General Statutes.

(d) Following evaluation of the qualifications of the design-builders, the three most highly qualified design-builders shall be ranked. If after the solicitation for design-builders not as many as three responses have been received from qualified design-builders, the governmental entity shall again solicit for design-builders. If as a result of such second solicitation not as many as three responses are received, the governmental entity may then begin negotiations with the highest-ranked design-builder under G.S. 143-64.31 even though fewer than three responses were received. If the governmental entity deems it appropriate, the governmental entity may invite some or all responders to interview with the governmental entity.

(e) The design-builder shall be selected in accordance with Article 3D of this Chapter. Each design-builder shall certify to the governmental entity that each licensed design professional who is a member of the design-build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by G.S. 143-64.31.

(f) The design-builder shall provide a performance and payment bond to the governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. The design-builder shall obtain written approval from the governmental entity prior to changing key personnel as listed in subdivision (c)(8)a. of this section after the contract has been awarded. (2013-401, s. 4; 2014-42, s. 7.)

§ 143-128.1B. Design-build bridging contracts.

(a) Definitions for purposes of this section:

- (1) Design-build bridging. - A design and construction delivery process whereby a governmental entity contracts for design criteria services under a separate agreement from the construction phase services of the design-builder.
- (2) Design-builder. - An appropriately licensed person, corporation, or entity that, under a single contract, offers to provide or provides design services and general contracting services where services within the scope of the practice of professional engineering or architecture are performed respectively by a licensed engineer or licensed architect and where services within the scope of the practice of general contracting are performed by a licensed general contractor.
- (3) Design criteria. - The requirements for a public project expressed in drawings and specifications sufficient to allow the design-builder to make a responsive bid proposal.
- (4) Design professional. - Any professional licensed under Chapters 83A, 89A, or 89C of the General Statutes.
- (5) First-tier subcontractor. - A subcontractor who contracts directly with the design-builder, excluding design professionals.
- (6) Governmental entity. - Every officer, board, department, commission, or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration, or repair of any buildings for the State or for any county, municipality, or other public body.

(b) A governmental entity shall establish in writing the criteria used for determining the circumstances under which engaging a design criteria design professional is appropriate for a project, and such criteria shall, at a minimum, address all of the following:

- (1) The extent to which the governmental entity can adequately and thoroughly define the project requirements prior to the issuance of the request for proposals for a design-builder.
- (2) The time constraints for the delivery of the project.
- (3) The ability to ensure that a quality project can be delivered.
- (4) The capability of the governmental entity to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.
- (5) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. The governmental entity shall not limit or otherwise preclude any respondent from submitting a response so long as the respondent, itself or through its proposed team, is properly licensed and qualified to perform the work defined by the public notice issued under subsection (d) of this section.
- (6) The criteria utilized by the governmental entity, including a comparison of the advantages and disadvantages of using the design-build delivery method for a given project in lieu of the

delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1).

(c) On or before entering into a contract for design-build services under this section, the governmental entity shall select or designate a staff design professional, or a design professional who is independent of the design-builder, to act as its design criteria design professional as its representative for the procurement process and for the duration of the design and construction. If the design professional is not a full-time employee of the governmental entity, the governmental entity shall select the design professional on the basis of demonstrated competence and qualifications as provided by G.S. 143-64.31. The design criteria design professional shall develop design criteria in consultation with the governmental entity. The design criteria design professional shall not be eligible to submit a response to the request for proposals nor provide design input to a design-build response to the request for proposals. The design criteria design professional shall prepare a design criteria package equal to thirty-five percent (35%) of the completed design documentation for the entire construction project. The design criteria package shall include all of the following:

- (1) Programmatic needs, interior space requirements, intended space utilization, and other capacity requirements.
- (2) Information on the physical characteristics of the site, such as a topographic survey.
- (3) Material quality standards or performance criteria.
- (4) Special material requirements.
- (5) Provisions for utilities.
- (6) Parking requirements.
- (7) The type, size, and location of adjacent structures.
- (8) Preliminary or conceptual drawings and specifications sufficient in detail to allow the design-builder to make a proposal which is responsive to the request for proposals.
- (9) Notice of any ordinances, rules, or goals adopted by the governmental entity.

(d) A governmental entity shall issue a public notice of the request for proposals that includes, at a minimum, general information on each of the following:

- (1) The project site.
- (2) The project scope.
- (3) The anticipated project budget.
- (4) The project schedule.
- (5) The criteria to be considered for selection and the weighting of the selection criteria.
- (6) Notice of any rules, ordinances, or goals established by the governmental entity, including goals for minority- and women-owned business participation and small business entities.
- (7) The thirty-five percent (35%) design criteria package prepared by the design criteria design professional.
- (8) Other information provided by the owner to design-builders in submitting responses to the request for proposals for the project.
- (9) A statement providing that each design-builder shall submit in its request for proposal response an explanation of its project team selection, which shall consist of a list of the licensed contractor and licensed design professionals whom the design-builder proposes to use for the project's design and construction.
- (10) A statement providing that each design-builder shall submit in its request for proposal a sealed envelope with all of the following:
 - a. The design-builder's price for providing the general conditions of the contract.
 - b. The design-builder's proposed fee for general construction services.
 - c. The design-builder's fee for design services.

(e) Following evaluation of the qualifications of the design-builders, the governmental entity shall rank the design-builders who have provided responses, grouping the top three without ordinal ranking. If after the solicitation for design-builders not as many as three responses have been received from qualified design-builders, the governmental entity shall again solicit for design-builders. If as a result of such second solicitation not as many as three responses are received, the governmental entity may then make its selection. From the grouping of the top three design-builders, the governmental entity shall select the design-builder who is the lowest responsive, responsible bidder based on the cumulative amount of fees provided in accordance with subdivision (d)(10) of this section and taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract. Each design-builder shall certify to the governmental entity

that each licensed design professional who is a member of the design-build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by G.S. 143-64.31.

(f) The design-builder shall accept bids based upon the provisions of this Article from first-tier subcontractors for all construction work under this section.

(g) The design-builder shall provide a performance and payment bond to the governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. The design-builder shall obtain written approval from the governmental entity prior to changing key personnel, as listed under subdivision (d)(9) of this section, after the contract has been awarded. (2013-401, s. 4; 2014-42, s. 6.)

§ 143-128.1C. Public-private partnership construction contracts.

(a) Definitions for purposes of this section:

- (1) Construction contract. - Any contract entered into between a private developer and a contractor for the design, construction, reconstruction, alteration, or repair of any building or other work or improvement required for a private developer to satisfy its obligations under a development contract.
- (2) Contractor. - Any person who has entered into a construction contract with a private developer under this section.
- (3) Design-builder. - Defined in G.S. 143-128.1B.
- (4) Development contract. - Any contract between a governmental entity and a private developer under this section and, as part of the contract, the private developer is required to provide at least fifty percent (50%) of the financing for the total cost necessary to deliver the capital improvement project, whether through lease or ownership, for the governmental entity. For purposes of determining whether the private developer is providing the minimum percentage of the total financing costs, the calculation shall not include any payment made by a public entity or proceeds of financing arrangements by a private entity where the source of repayment is a public entity.
- (5) Governmental entity. - Defined in G.S. 143-128.1B.
- (6) Labor or materials. - Includes all materials furnished or labor performed in the performance of the work required by a construction contract whether or not the labor or materials enter into or become a component part of the improvement and shall include gas, power, light, heat, oil, gasoline, telephone services, and rental of equipment or the reasonable value of the use of equipment directly utilized in the performance of the work required by a construction contract.
- (7) Private developer. - Any person who has entered into a development contract with a governmental entity under this section.
- (8) Public-private project. - A capital improvement project undertaken for the benefit of a governmental entity and a private developer pursuant to a development contract that includes construction of a public facility or other improvements, including paving, grading, utilities, infrastructure, reconstruction, or repair, and may include both public and private facilities.
- (9) State entity. - The State and every agency, authority, institution, board, commission, bureau, council, department, division, officer, or employee of the State. The term does not include a unit of local government as defined in G.S. 159-7.
- (10) State-supported financing arrangement. - Any installment financing arrangement, lease-purchase arrangement, arrangement under which funds are to be paid in the future based upon the availability of an asset or funds for payment, or any similar arrangement in the nature of a financing, under which a State entity agrees to make payments to acquire or obtain ownership or beneficial use of a capital asset for the State entity or any other State entity for a term, including renewal options, of greater than one year. Any arrangement that results in the identification of a portion of a lease payment, installment payment, or similar scheduled payment thereunder by a State entity as "interest" for purposes of federal income taxation shall automatically be a State-supported financing arrangement for purposes of this section. A true operating lease is not a State-supported financing arrangement.
- (11) Subcontractor. - Any person who has contracted to furnish labor, services, or materials to, or who has performed labor or services for, a contractor or another subcontractor in connection

with a development contract.

(b) If the governmental entity determines in writing that it has a critical need for a capital improvement project, the governmental entity may acquire, construct, own, lease as lessor or lessee, and operate or participate in the acquisition, construction, ownership, leasing, and operation of a public-private project, or of specific facilities within such a project, including the making of loans and grants from funds available to the governmental entity for these purposes. If the governmental entity is a public body under Article 33C of this Chapter, the determination shall occur during an open meeting of that public body. The governmental entity may enter into development contracts with private developers with respect to acquiring, constructing, owning, leasing, or operating a project under this section. The development contract shall specify the following:

- (1) The property interest of the governmental entity and all other participants in the development of the project.
- (2) The responsibilities of the governmental entity and all other participants in the development of the project.
- (3) The responsibilities of the governmental entity and all other participants with respect to financing of the project.
- (4) The responsibilities to put forth a good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.

(c) The development contract may provide that the private developer shall be responsible for any or all of the following:

- (1) Construction of the entire public-private project.
- (2) Reconstruction or repair of the public-private project or any part thereof subsequent to construction of the project.
- (3) Construction of any addition to the public-private project.
- (4) Renovation of the public-private project or any part thereof.
- (5) Purchase of apparatus, supplies, materials, or equipment for the public-private project whether during or subsequent to the initial equipping of the project.
- (6) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.

(d) The development contract may also provide that the governmental entity and private developer shall use the same contractor or contractors in constructing a portion of or the entire public-private project. If the development contract provides that the governmental entity and private developer shall use the same contractor, the development contract shall include provisions deemed appropriate by the governmental entity to assure that the public facility or facilities included in or added to the public-private project are constructed, reconstructed, repaired, or renovated at a reasonable price and that the apparatus, supplies, materials, and equipment purchased for the public facility or facilities included in the public-private project are purchased at a reasonable price. For public-private partnerships using the design-build project delivery method, the provisions of G.S. 143-128.1A shall apply.

(e) A private developer and its contractors shall make a good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.

(f) A private developer may perform a portion of the construction or design work only if both of the following criteria apply:

- (1) A previously engaged contractor defaults, and a qualified replacement cannot be obtained after a good-faith effort has been made in a timely manner.
- (2) The governmental entity approves the private developer to perform the work.

(g) The following bonding provisions apply to any development contract entered into under this section:

- (1) A payment bond shall be required for any development contract as follows: A payment bond in the amount of one hundred percent (100%) of the total anticipated amount of the construction contracts to be entered into between the private developer and the contractors to design or construct the improvements required by the development contract. The payment bond shall be conditioned upon the prompt payment for all labor or materials for which the private developer or one or more of its contractors or those contractors' subcontractors are liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor or services for which the private developer or its contractors or subcontractors are liable. The total anticipated amount of the construction contracts shall be

stated in the development contract and certified by the private developer as being a good-faith projection of its total costs for designing and constructing the improvements required by the development contract. The payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the development contract. The development contract may provide for the requirement of a performance bond.

- (2)
 - a. Subject to the provisions of this subsection, any claimant who has performed labor or furnished materials in the prosecution of the work required by any contract for which a payment bond has been given pursuant to the provisions of this subsection, and who has not been paid in full therefor before the expiration of 90 days after the day on which the claimant performed the last labor or furnished the last materials for which that claimant claims payment, may bring an action on the payment bond in that claimant's own name to recover any amount due to that claimant for the labor or materials and may prosecute the action to final judgment and have execution on the judgment.
 - b. Any claimant who has a direct contractual relationship with any contractor or any subcontractor but has no contractual relationship, express or implied, with the private developer may bring an action on the payment bond only if that claimant has given written notice of claim on the payment bond to the private developer within 120 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which that claimant claims payment, in which that claimant states with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished.
 - c. The notice required by sub-subdivision b. of this subdivision shall be served by certified mail or by signature confirmation as provided by the United States Postal Service, postage prepaid, in an envelope addressed to the private developer at any place where that private developer's office is regularly maintained for the transaction of business or in any manner provided by law for the service of summons. The claimants' service of a claim of lien on real property or a claim of lien on funds as funds as allowed by Article 2 of Chapter 44A of the General Statutes on the private developer shall be deemed, nonexclusively, as adequate notice under this section.
 - (3) Every action on a payment bond as provided in this subsection shall be brought in a court of appropriate jurisdiction in a county where the development contract or any part thereof is to be or has been performed. Except as provided in G.S. 44A-16(c), no action on a payment bond shall be commenced after one year from the day on which the last of the labor was performed or material was furnished by the claimant.
 - (4) No surety shall be liable under a payment bond for a total amount greater than the face amount of the payment bond. A judgment against any surety may be reduced or set aside upon motion by the surety and a showing that the total amount of claims paid and judgments previously rendered under the payment bond, together with the amount of the judgment to be reduced or set aside, exceeds the face amount of the bond.
 - (5) No act of or agreement between the governmental entity, a private developer, or a surety shall reduce the period of time for giving notice under sub-subdivision (2)b. of this subsection or commencing action under subdivision (3) of this subsection or otherwise reduce or limit the liability of the private developer or surety as prescribed in this subsection. Every bond given by a private developer pursuant to this subsection shall be conclusively presumed to have been given in accordance with the provisions of this subsection, whether or not the bond is drawn as to conform to this subsection. The provisions of this subsection shall be conclusively presumed to have been written into every bond given pursuant to this subsection.
 - (6) Any person entitled to bring an action or any defendant in an action on a payment bond shall have a right to require the governmental entity or the private developer to certify and furnish a copy of the payment bond, the development contract, and any construction contracts covered by the bond. It shall be the duty of the private developer or the governmental entity to give any such person a certified copy of the payment bond and the construction contract upon not

less than 10 days' notice and request. The governmental entity or private developer may require a reasonable payment for the actual cost of furnishing the certified copy. A copy of any payment bond, development contract, and any construction contracts covered by the bond certified by the governmental entity or private developer shall constitute prima facie evidence of the contents, execution, and delivery of the bond, development contract, and construction contracts.

- (7) A payment bond form containing the following provisions shall comply with this subsection:
- a. The date the bond is executed.
 - b. The name of the principal.
 - c. The name of the surety.
 - d. The governmental entity.
 - e. The development contract number.
 - f. All of the following:
 1. "KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above named [governmental entity], hereinafter called [governmental entity], in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents."
 2. "THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain development contract with [governmental entity], numbered as shown above and hereto attached."
 3. "NOW THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the construction or design work provided for in the development contract, and any and all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue."
 4. "IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body." Appropriate places for execution by the surety and principal shall be provided.
- (8) In any suit brought or defended under the provisions of this subsection, the presiding judge may allow reasonable attorneys' fees to the attorney representing the prevailing party. Attorneys' fees under this subdivision are to be taxed as part of the court costs and shall be payable by the losing party upon a finding that there was an unreasonable refusal by the losing party to fully resolve the matter which constituted the basis of the suit or the basis of the defense. For purposes of this subdivision, the term "prevailing party" means a party plaintiff or third-party plaintiff who obtains a judgment of at least fifty percent (50%) of the monetary amount sought in a claim or a party defendant or third-party defendant against whom a claim is asserted which results in a judgment of less than fifty percent (50%) of the amount sought in the claim defended. Notwithstanding the provisions of this subdivision, if an offer of judgment is served in accordance with G.S. 1A-1, Rule 68, a "prevailing party" is an offeree who obtains judgment in an amount more favorable than the last offer or is an offeror against whom judgment is rendered in an amount less favorable than the last offer.
- (9) The obligations and lien rights set forth in Article 2 of Chapter 44A of the General Statutes shall apply to a project awarded under this section to the extent of any property interests held by the private developer in the project. For purposes of applying the provisions of Article 2 of Chapter 44A of the General Statutes, the private developer shall be deemed the owner to the extent of that private developer's ownership interest. This subdivision shall not be construed as making the provisions of Article 2 of Chapter 44A of the General Statutes apply to

governmental entities or public buildings to the extent of any property interest held by the governmental entity in the building.

(h) The governmental entity shall determine its programming requirements for facilities to be constructed under this section and shall determine the form in which private developers may submit their qualifications. The governmental entity shall advertise a notice for interested private developers to submit qualifications in a newspaper having general circulation within the county in which the governmental entity is located. Prior to the submission of qualifications, the governmental entity shall make available, in whatever form it deems appropriate, the programming requirements for facilities included in the public-private project. Any private developer submitting qualifications shall include the following:

- (1) Evidence of financial stability. However, "trade secrets" as that term is defined in G.S. 66-152(3) shall be exempt from disclosure under Chapter 132 of the General Statutes.
- (2) Experience with similar projects.
- (3) Explanation of project team selection by either listing of licensed contractors, licensed subcontractors, and licensed design professionals whom the private developer proposes to use for the project's design and construction or a statement outlining a strategy for open contractor and subcontractor selection based upon the provisions of this Article.
- (4) Statement of availability to undertake the public-private project and projected time line for project completion.
- (5) Any other information required by the governmental entity.

(i) Based upon the qualifications package submitted by the private developers and any other information required by the governmental entity, the governmental entity may select one or more private developers with whom to negotiate the terms and conditions of a contract to perform the public-private project. The governmental entity shall advertise the terms of the proposed contract to be entered into by the governmental entity in a newspaper having general circulation within the county in which the governmental entity is located at least 30 days prior to entering into the development contract. If the governmental entity is a public body under Article 33C of this Chapter, the development contract shall be considered in an open meeting of that public body following a public hearing on the proposed development contract. Notice of the public hearing shall be published in the same notice as the advertisement of the terms under this subsection.

(j) The governmental entity shall make available a summary of the development contract terms which shall include a statement of how to obtain a copy of the complete development contract.

(k) Leases and other agreements entered into under this section are subject to approval as follows:

- (1) If a capital lease or operating lease is entered into by a unit of local government as defined in G.S. 159-7, that capital lease or operating lease is subject to approval by the local government commission under Article 8 of Chapter 159 of the General Statutes if it meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), 159-148(a)(4) or 159-153. For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five hundred thousand dollar (\$500,000) threshold applies.
- (2) If a capital lease or other agreement entered into by a State entity constitutes a State-supported financing arrangement and requires payments thereunder that are payable, whether directly or indirectly, and whether or not subject to the appropriation of funds for such payment, by payments from the General Fund of the State or other funds and accounts of the State that are funded from the general revenues and other taxes and fees of the State or State entities, not including taxes and fees that are required to be deposited to the Highway Fund or Highway Trust Fund to be used to make payments under capital leases or other agreements for projects covered under Article 14B of Chapter 136 of the General Statutes, that capital lease or other agreement shall be subject to the approval procedures required for special indebtedness by G.S. 142-83 and G.S. 142-84. This requirement shall not apply to any arrangement where bonds or other obligations are issued or incurred by a State entity to carry out a financing program authorized by the General Assembly under which such bonds or other obligations are payable from monies derived from specified, limited, nontax sources, so long as the payments under that arrangement by a State entity are limited to the sources authorized by the General Assembly.

(l) A capital lease or operating lease entered into under this section may not contain any provision with respect to the assignment of specific students or students from a specific area to any specific school.

(m) This section shall not apply to any contract or other agreement between or among The University of North Carolina or one of its constituent institutions, a private, nonprofit corporation established under Part 2B of Article 1 of Chapter 116 of the General Statutes, or any private foundation, private association, or private club created for the primary purpose of financial support to The University of North Carolina or one of its constituent institutions. (2013-401, s. 4; 2015-241, s. 31.11(a).)

§ 143-128.2. Minority business participation goals.

(a) The State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each State building project, including building projects done by a private entity on a facility to be leased or purchased by the State. A local government unit or other public or private entity that receives State appropriations for a building project or other State grant funds for a building project, including a building project done by a private entity on a facility to be leased or purchased by the local government unit, where the project cost is one hundred thousand dollars (\$100,000) or more, shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of the work; provided, however, a local government unit may apply a different verifiable goal that was adopted prior to December 1, 2001, if the local government unit had and continues to have a sufficiently strong basis in evidence to justify the use of that goal. On State building projects and building projects subject to the State goal requirement, the Secretary shall identify the appropriate percentage goal, based on adequate data, for each category of minority business as defined in G.S. 143-128.2(g)(1) based on the specific contract type.

Except as otherwise provided for in this subsection, each city, county, or other local public entity shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for building projects.

Each entity required to have verifiable percentage goals under this subsection shall make a good faith effort to recruit minority participation in accordance with this section or G.S. 143-131(b), as applicable.

(b) A public entity shall establish prior to solicitation of bids the good faith efforts that it will take to make it feasible for minority businesses to submit successful bids or proposals for the contracts for building projects. Public entities shall make good faith efforts as set forth in subsection (e) of this section. Public entities shall require contractors to make good faith efforts pursuant to subsection (f) of this section. Each first-tier subcontractor on a construction management at risk project shall comply with the requirements applicable to contractors under this subsection.

(c) Each bidder, which shall mean first-tier subcontractor for construction manager at risk projects for purposes of this subsection, on a project bid under any of the methods authorized under G.S. 143-128(a1) shall identify on its bid the minority businesses that it will use on the project and an affidavit listing the good faith efforts it has made pursuant to subsection (f) of this section and the total dollar value of the bid that will be performed by the minority businesses. A contractor, including a first-tier subcontractor on a construction manager at risk project, that performs all of the work under a contract with its own workforce may submit an affidavit to that effect in lieu of the affidavit otherwise required under this subsection. The apparent lowest responsible, responsive bidder shall also file the following:

- (1) Within the time specified in the bid documents, either:
 - a. An affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal. An affidavit under this sub-subdivision shall give rise to a presumption that the bidder has made the required good faith or effort; or
 - b. Documentation of its good faith effort to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.
- (2) Within 30 days after award of the contract, a list of all identified subcontractors that the contractor will use on the project.

Failure to file a required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the bid.

(d) No subcontractor who is identified and listed pursuant to subsection (c) of this section may be replaced with a different subcontractor except:

- (1) If the subcontractor's bid is later determined by the contractor or construction manager at risk to be nonresponsible or nonresponsive, or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or
- (2) With the approval of the public entity for good cause.

Good faith efforts as set forth in G.S. 143-131(b) shall apply to the selection of a substitute subcontractor. Prior to substituting a subcontractor, the contractor shall identify the substitute subcontractor and inform the public entity of its good faith efforts pursuant to G.S. 143-131(b).

(e) Before awarding a contract, a public entity shall do the following:

- (1) Develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and nonminority businesses.
- (2) Attend the scheduled prebid conference.
- (3) At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
 - a. A description of the work for which the bid is being solicited.
 - b. The date, time, and location where bids are to be submitted.
 - c. The name of the individual within the public entity who will be available to answer questions about the project.
 - d. Where bid documents may be reviewed.
 - e. Any special requirements that may exist.
- (4) Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.

(f) A public entity shall require bidders to undertake the following good faith efforts to the extent required by the Secretary on projects subject to this section. The Secretary shall adopt rules establishing points to be awarded for taking each effort and the minimum number of points required, depending on project size, cost, type, and other factors considered relevant by the Secretary. In establishing the point system, the Secretary may not require a contractor to earn more than fifty (50) points, and the Secretary must assign each of the efforts listed in subdivisions (1) through (10) of this subsection at least 10 points. The public entity may require that additional good faith efforts be taken, as indicated in its bid specifications. Good faith efforts include:

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.
- (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due.
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
- (4) Working with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- (5) Attending any prebid meetings scheduled by the public owner.
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
- (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining

the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.

- (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

(g) As used in this section:

- (1) The term "minority business" means a business:
 - a. In which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
- (2) The term "minority person" means a person who is a citizen or lawful permanent resident of the United States and who is:
 - a. Black, that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;
 - d. American Indian, that is, a person having origins in any of the original Indian peoples of North America; or
 - e. Female.
- (3) The term "socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637.

(h) The State, counties, municipalities, and all other public bodies shall award public building contracts, including those awarded under G.S. 143-128.1, 143-129, and 143-131, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

(i) Notwithstanding G.S. 132-3 and G.S. 121-5, all public records created pursuant to this section shall be maintained by the public entity for a period of not less than three years from the date of the completion of the building project.

(j) Except as provided in subsections (a), (g), (h) and (i) of this section, this section shall only apply to building projects costing three hundred thousand dollars (\$300,000) or more. This section shall not apply to the purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site. (2001-496, s. 3.1.)

§ 143-128.3. Minority business participation administration.

(a) All public entities subject to G.S. 143-128.2 shall report to the Department of Administration, Office of Historically Underutilized Business, the following with respect to each building project:

- (1) The verifiable percentage goal.
- (2) The type and total dollar value of the project, minority business utilization by minority business category, trade, total dollar value of contracts awarded to each minority group for each project, the applicable good faith effort guidelines or rules used to recruit minority business participation, and good faith documentation accepted by the public entity from the successful bidder.
- (3) The utilization of minority businesses under the various construction methods under G.S. 143-128(a1).

The reports shall be in the format and contain the data prescribed by the Secretary of Administration. The University of North Carolina and the State Board of Community Colleges shall report quarterly and all other public entities shall report semiannually. The Secretary of the Department of Administration shall make reports every six months to the Joint Legislative Committee on Governmental Operations on information reported pursuant to this subsection.

(b) A public entity that has been notified by the Secretary of its failure to comply with G.S. 143-128.2 on a project shall develop a plan of compliance that addresses the deficiencies identified by the Secretary. The corrective plan shall apply to the current project or to subsequent projects under G.S. 143-128, as appropriate, provided that the plan must be implemented, at a minimum, on the current project to the extent feasible. If the public entity, after notification from the Secretary, fails to file a corrective plan, or if the public entity does not implement the corrective plan in accordance with its terms, the Secretary shall require one or both of the following:

- (1) That the public entity consult with the Department of Administration, Office of Historically Underutilized Businesses on the development of a new corrective plan, subject to the approval of the Department and the Attorney General. The public entity may designate a representative to appear on its behalf, provided that the representative has managerial responsibility for the construction project.
- (2) That the public entity not bid another contract under G.S. 143-128 without prior review by the Department and the Attorney General of a good faith compliance plan developed pursuant to subdivision (1) of this subsection. The public entity shall be subject to the review and approval of its good faith compliance plan under this subdivision with respect to any projects bid pursuant to G.S. 143-128 during a period of time determined by the Secretary, not to exceed one year.

A public entity aggrieved by the decision of the Secretary may file a contested case proceeding under Chapter 150B of the General Statutes.

(c) The Secretary shall study and recommend to the General Assembly and other State agencies ways to improve the effectiveness and efficiency of the State capital facilities development, minority business participation program and good faith efforts in utilizing minority businesses as set forth in G.S. 143-128.2, and other appropriate good faith efforts that may result in the increased utilization of minority businesses.

(d) The Secretary shall appoint an advisory board to develop recommendations to improve the recruitment and utilization of minority businesses. The Secretary, with the input of its advisory board, shall review the State's programs for promoting the recruitment and utilization of minority businesses involved in State capital projects and shall recommend to the General Assembly, the State Construction Office, The University of North Carolina, and the community colleges system changes in the terms and conditions of State laws, rules, and policies that will enhance opportunities for utilization of minority businesses on these projects. The Secretary shall provide guidance to these agencies on identifying types of projects likely to attract increased participation by minority businesses and breaking down or combining elements of work into economically feasible units to facilitate minority business participation.

(e) The Secretary shall adopt rules for State entities, The University of North Carolina, and community colleges and shall adopt guidelines for local government units to implement the provisions of G.S. 143-128.2.

(e1) Repealed by Session Laws 2007-392, s. 3, effective October 1, 2007.

(f) The Secretary shall provide the following information to the Attorney General:

- (1) Failure by a public entity to report data to the Secretary in accordance with this section.
- (2) Upon the request of the Attorney General, any data or other information collected under this section.
- (3) False statements knowingly provided in any affidavit or documentation under G.S. 143-128.2 to the State or other public entity. Public entities shall provide to the Secretary information concerning any false information knowingly provided to the public entity pursuant to G.S. 143-128.2.

(g) The Secretary shall report findings and recommendations as required under this section to the Joint Legislative Committee on Governmental Operations annually on or before June 1, beginning June 1, 2002. (2001-496, s. 3.6; 2005-270, s. 2; 2007-392, s. 3.)

§ 143-128.4. Historically underutilized business defined; statewide uniform certification.

(a) As used in this Chapter, the term "historically underutilized business" means a business that meets all of the following conditions:

- (1) At least fifty-one percent (51%) of the business is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section, or in the case of a corporation, at least fifty-one percent (51%) of the stock is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section.
- (2) The management and daily business operations are controlled by one or more owners of the business who are members of at least one of the groups set forth in subsection (b) of this section.

(a1) As used in this Chapter, the term "minority business" means a historically underutilized business.

(b) To qualify as a historically underutilized business under this section, a business must be owned and controlled as set forth in subsection (a) of this section by one or more citizens or lawful permanent residents of the United States who are members of one or more of the following groups:

- (1) Black. - A person having origins in any of the black racial groups of Africa.
- (2) Hispanic. - A person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race.
- (3) Asian American. - A person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands.
- (4) American Indian. - A person having origins in any of the original Indian peoples of North America.
- (5) Female.
- (6) Disabled. - A person with a disability as defined in G.S. 168-1 or G.S. 168A-3.
- (7) Disadvantaged. - A person who is socially and economically disadvantaged as defined in 15 U.S.C. § 637.

(c) In addition to the powers and duties provided in G.S. 143-49, the Secretary of Administration shall have the power, authority, and duty to:

- (1) Develop and administer a statewide uniform program for: (i) the certification of a historically underutilized business, as defined in this section, for use by State departments, agencies, and institutions, and political subdivisions of the State; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses.
- (2) Adopt rules and procedures for the statewide uniform certification of historically underutilized businesses.
- (3) Provide for the certification of all businesses designated as historically underutilized businesses to be used by State departments, agencies, and institutions, and political subdivisions of the State.

(d) The Secretary of Administration shall seek input from State departments, agencies, and institutions, political subdivisions of the State, and any other entity deemed appropriate to determine the qualifications and criteria for statewide uniform certification of historically underutilized businesses.

(e) Only businesses certified in accordance with this section shall be considered by State departments, agencies, and institutions, and political subdivisions of the State as historically underutilized businesses for minority business participation purposes under this Chapter. (2005-270, s. 3; 2007-392, s. 4; 2009-243, s. 3.)

§ 143-129. Procedure for letting of public contracts.

(a) Bidding Required. - No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than five hundred thousand dollars (\$500,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars (\$90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with; provided that The University of North Carolina and its constituent institutions may award contracts for construction or repair work that requires an estimated expenditure of less than five hundred thousand dollars (\$500,000) without complying with the provisions of this section.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager, school superintendent, chief purchasing official, or other employee the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

(b) Advertisement and Letting of Contracts. - Where the contract is to be let by a board or governing body of the State government or of a State institution, proposals shall be invited by advertisement in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board.

The advertisements for bidders required by this section shall appear at a time where at least seven full days shall lapse between the date on which the notice appears and the date of the opening of bids. The advertisement shall: (i) state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials, or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii) reserve to the board or governing body the right to reject any or all proposals.

Proposals may be rejected for any reason determined by the board or governing body to be in the best interest of the unit. However, the proposal shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or political subdivision thereof may assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and the board or governing body shall award the contract to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

In the event the lowest responsible bids are in excess of the funds available for the project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work or provide the apparatus, supplies, materials, or equipment at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal for construction or repair work may be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

(c) Contract Execution and Security. - All contracts to which this section applies shall be executed in writing. The board or governing body shall require the person to whom the award of a contract for construction or repair work is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of

the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and the contract shall not be altered except by written agreement of the contractor and the board or governing body. The surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, the board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

(d) Use of Unemployment Relief Labor. - Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

(e) Exceptions. - The requirements of this Article do not apply to:

- (1) The purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment from: (i) the United States of America or any agency thereof; or (ii) any other government unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may designate any officer or employee of the State or political subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by: (i) the United States of America or any agency thereof; or (ii) any other governmental unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may authorize the officer or employee to make any partial or down payment or payment in full that may be required by regulations of the governmental unit or agency disposing of the property.
- (2) Cases of special emergency involving the health and safety of the people or their property.
- (3) Purchases made through a competitive bidding group purchasing program, which is a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies.
- (4) Construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section.
- (5) Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or natural gas. These purchases are subject to G.S. 143-131.
- (6) Purchases of apparatus, supplies, materials, or equipment when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract.

In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when: (i) a particular medical item or prosthetic appliance is needed; (ii) a particular product is ordered by an attending physician for his patients; (iii) additional products are needed to complete an ongoing job or task; (iv) products are purchased for "over-the-counter" resale; (v) a particular product is needed or desired for experimental, developmental, or research work; or (vi) equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital shall keep a record of all purchases made pursuant to this subdivision. These records are subject to public inspection.

- (7) Purchases of information technology through contracts established by the Department of Information Technology as provided in Article 15 of Chapter 143B of the General Statutes.

- (8) Guaranteed energy savings contracts, which are governed by Article 3B of Chapter 143 of the General Statutes.
- (9) Purchases from contracts established by the State or any agency of the State, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the State contract.
- (9a) Purchases of apparatus, supplies, materials, or equipment from contracts established by the United States of America or any federal agency, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the federal contract.
- (10) Purchase of used apparatus, supplies, materials, or equipment. For purposes of this subdivision, remanufactured, refabricated or demo apparatus, supplies, materials, or equipment are not included in the exception. A demo item is one that is used for demonstration and is sold by the manufacturer or retailer at a discount.
- (11) Contracts by a public entity with a construction manager at risk executed pursuant to G.S. 143-128.1.
- (12) Repealed by Session Laws 2006-232, s. 2, effective July 1, 2015.

(f) Repealed by Session Laws 2001-328, s. 1, effective August 2, 2001.

(g) **Waiver of Bidding for Previously Bid Contracts.** - When the governing board of any political subdivision of the State, or the person to whom authority has been delegated under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

- (1) The United States of America or any federal agency;
- (2) The State of North Carolina or any agency or political subdivision of the State; or
- (3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts.

(h) **Transportation Authority Purchases.** - Notwithstanding any other provision of this section, any board or governing body of any regional public transportation authority, hereafter referred to as a "RPTA," created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority, hereafter referred to as a "RTA," created pursuant to Article 27 of Chapter 160A of the General Statutes, may approve the entering into of any contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without competitive bidding and without meeting the requirements of subsection (b) of this section if the following procurement by competitive proposal (Request for Proposal) method is followed.

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, all of the following requirements apply:

- (1) Requests for proposals shall be publicized. All evaluation factors shall be identified along with their relative importance.
- (2) Proposals shall be solicited from an adequate number of qualified sources.
- (3) RPTAs or RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and

competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.

- (4) The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal may not be disclosed to other offerors during any period of negotiation or discussion.
- (5) The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered.

The contents of the proposals shall not be public records until 14 days before the award of the contract.

The board or governing body of the RPTA or the RTA shall, at the regularly scheduled meeting, by formal motion make findings of fact that the procurement by competitive proposal (Request for Proposals) method of procuring the particular apparatus, supplies, materials, or equipment is the most appropriate acquisition method prior to the issuance of the requests for proposals and shall by formal motion certify that the requirements of this subsection have been followed before approving the contract.

Nothing in this subsection subjects a procurement by competitive proposal under this subsection to G.S. 143-49, 143-52, or 143-53.

RPTAs and RTAs may adopt regulations to implement this subsection.

(i) Procedure for Letting of Public Contracts. - The Department of Transportation ("DOT"), The University of North Carolina and its constituent institutions ("UNC"), and the Department of Administration ("DOA") shall monitor all projects in those agencies and institutions that are let without a performance or payment bond to determine the number of defaults on those projects, the cost to complete each defaulted project, and each project's contract price. Beginning March 1, 2011, and annually thereafter, DOT, UNC, and DOA shall report this information to the Joint Legislative Committee on Governmental Operations.

(j) [Use of E-Verify Required. -] No contract subject to this section may be awarded by any board or governing body of the State, institution of State government, or any political subdivision of the State unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1; 1985, c. 145, ss. 1, 2; 1987, c. 590; 1987 (Reg. Sess., 1988), c. 1108, ss. 7, 8; 1989, c. 350; 1993, c. 539, s. 1007; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 367, s. 6; 1997-174, ss. 1-4; 1998-185, s. 1; 1998-217, s. 16; 2001-328, s. 1; 2001-487, s. 88; 2001-496, ss. 4, 5; 2005-227, s. 1; 2006-232, s. 2; 2007-94, s. 1; 2007-322, s. 4; 2007-446, s. 6; 2010-148, s. 1.2; 2011-234, s. 1; 2013-418, s. 2(c); 2015-241, s. 7A.4(s).)

§ 143-129.1. Withdrawal of bid.

A public agency may allow a bidder submitting a bid pursuant to G.S. 143-129 for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment to withdraw his bid from consideration after the bid opening without forfeiture of his bid security if the price bid was based upon a mistake, which constituted a substantial error, provided the bid was submitted in good faith, and the bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment error, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, apparatus, supplies, materials, equipment, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn. A request to withdraw a bid must be made in writing to the public agency which invited the proposals for the work prior to the award of the contract, but not later than 72 hours after the opening of bids, or for a longer period as may be specified in the instructions to bidders provided prior to the opening of bids.

If a request to withdraw a bid has been made in accordance with the provisions of this section, action on the remaining bids shall be considered, in accordance with North Carolina G.S. 143-129, as though said bid had not been received. Notwithstanding the foregoing, such bid shall be deemed to have been received for the purpose of

complying with the requirements of G.S. 143-132. If the work or purchase is relet for bids, under no circumstances may the bidder who has filed a request to withdraw be permitted to rebid the work or purchase.

If a bidder files a request to withdraw his bid, the agency shall promptly hold a hearing thereon. The agency shall give to the withdrawing bidder reasonable notice of the time and place of any such hearing. The bidder, either in person or through counsel, may appear at the hearing and present any additional facts and arguments in support of his request to withdraw his bid. The agency shall issue a written ruling allowing or denying the request to withdraw within five days after the hearing. If the agency finds that the price bid was based upon a mistake of the type described in the first paragraph of this section, then the agency shall issue a ruling permitting the bidder to withdraw without forfeiture of the bidder's security. If the agency finds that the price bid was based upon a mistake not of the type described in the first paragraph of this section, then the agency shall issue a ruling denying the request to withdraw and requiring the forfeiture of the bidder's security. A denial by the agency of the request to withdraw a bid shall have the same effect as if an award had been made to the bidder and a refusal by the bidder to accept had been made, or as if there had been a refusal to enter into the contract, and the bidder's bid deposit or bid bond shall be forfeited.

In the event said ruling denies the request to withdraw the bid, the bidder shall have the right, within 20 days after receipt of said ruling, to contest the matter by the filing of a civil action in any court of competent jurisdiction of the State of North Carolina. The procedure shall be the same as in all civil actions except all issues of law and fact and every other issue shall be tried de novo by the judge without jury; provided that the matter may be referred in the instances and in the manner provided for by North Carolina G.S. 1A-1, Rule 53, as amended. Notwithstanding the foregoing, if the public agency involved is the Department of Administration, it may follow its normal rules and regulations with respect to contested matters, as opposed to following the administrative procedures set forth herein. If it is finally determined that the bidder did not have the right to withdraw his bid pursuant to the provisions of this section, the bidder's security shall be forfeited. Every bid bond or bid deposit given by a bidder to a public agency pursuant to G.S. 143-129 shall be conclusively presumed to have been given in accordance with this section, whether or not it be so drawn as to conform to this section. This section shall be conclusively presumed to have been written into every bid bond given pursuant to G.S. 143-129.

Neither the agency nor any elected or appointed official, employee, representative or agent of such agency shall incur any liability or surcharge, in the absence of fraud or collusion, by permitting the withdrawal of a bid pursuant to the provisions of this section.

No withdrawal of the bid which would result in the award of the contract on another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which he has an interest shall be permitted. No bidder who is permitted to withdraw a bid shall supply any material or labor to, or perform any subcontract or work agreement for, any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted, without the prior written approval of the agency. Whoever violates the provisions of the foregoing sentence shall be guilty of a Class 1 misdemeanor. (1977, c. 617, s. 1; 1993, c. 539, s. 1008; 1994, Ex. Sess., c. 24, s. 14(c); 2001-328, s. 2.)

§ 143-129.2. Construction, design, and operation of solid waste management and sludge management facilities.

(a) All terms relating to solid waste management and disposal as used in this section shall be defined as set forth in G.S. 130A-290, except that the term "unit of local government" also includes a sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes, an authority created under Article 1 of Chapter 162A of the General Statutes, a metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes, and a county water and sewer district created under Article 6 of Chapter 162A of the General Statutes. As used in this section, the term "sludge management facility" means a facility that processes sludge that has been generated by a municipal wastewater treatment plant for final end use or disposal but does not include any component of a wastewater treatment process or facility that generates sludge.

(b) To acknowledge the highly complex and innovative nature of solid waste and sludge management technologies for processing mixed solid waste and sludge generated by water and wastewater treatment facilities, the relatively limited availability of existing and proven proprietary technology involving solid waste and sludge management facilities, the desirability of a single point of responsibility for the development of facilities and the economic and technical utility of contracts for solid waste and sludge management which include in their scope combinations of design, construction, operation, management and maintenance

responsibilities over prolonged periods of time and that in some instances it may be beneficial to a unit of local government to award a contract on the basis of factors other than cost alone, including but not limited to facility design, operational experience, system reliability, energy production efficiency, long-term operational costs, compatibility with source separation and other recycling systems, environmental impact and operational guarantees. Accordingly, and notwithstanding other provisions of this Article or any local law, a contract entered into between a unit of local government and any person pursuant to this section may be awarded in accordance with the following provisions for the award of a contract based upon an evaluation of proposals submitted in response to a request for proposals prepared by or for a unit of local government.

(c) The unit of local government shall require in its request for proposals that each proposal to be submitted shall include all of the following:

- (1) Information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract; the ability of the proposer to secure adequate financing; and proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed contract.
- (2) A proposal clearly identifying and specifying all elements of cost which would become charges to the unit of local government, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to, the cost of planning, design, construction, operation, management and/or maintenance of any facility; provided, that the unit of local government may prescribe the form and content of the proposal and that, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation of the proposal.
- (3) Any other information as the unit of local government may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

(d) Proposals received in response to a request for proposals may be evaluated on the basis of a technical analysis of facility design, operational experience of the technology to be utilized in the proposed facility, system reliability and availability, energy production balance and efficiency, environmental impact and protection, recovery of materials, required staffing level during operation, projection of anticipated revenues from the sale of energy and materials recovered by the facility, net cost to the unit of local government for operation and maintenance of the facility for the duration of time to be established in the request for proposals and upon any other factors and information that the unit of local government determined to have a material bearing on its ability to evaluate any proposal, which factors were set forth in said request for proposal.

(e) The unit of local government may make a contract award to any responsible proposer selected pursuant to this section based upon a determination that the selected proposal is more responsive to the request for proposals and may thereupon negotiate a contract with said proposer for the performance of the services set forth in the request for proposals and the response thereto, the determination shall be deemed to be conclusive. Notwithstanding other provisions of this Article or any local law, a contract may be negotiated and entered into between a unit of local government and any person selected as a responsible proposer hereunder which may provide for, but not be limited to, the following:

- (1) A contract, lease, rental, license, permit or other authorization to design, construct, operate and maintain a solid waste or sludge management facility upon such terms and conditions, for such consideration, and for such duration, not to exceed 40 years, as may be agreed upon by the unit of local government and the person.
- (2) Payment by the unit of local government of a fee or other charge to the person for acceptance, processing, recycling, management and disposal of solid waste or sludge.
- (3) An obligation on the part of a unit of local government to deliver or cause to be delivered to a solid waste or sludge management facility guaranteed quantities of solid wastes or sludge.
- (4) The sale, utilization or disposal of any form of energy, recovered material or residue resulting from the operation of any solid waste or sludge management facility.

(f) Except for authorities created pursuant to Article 22 of Chapter 153A of the General Statutes, the construction work for any facility or structure that is ancillary to a solid waste or sludge management facility and that does not involve storage and processing of solid waste or sludge or the separation, extraction, and recovery of useful or marketable forms of energy and materials from solid waste at a solid waste management facility shall be procured through competitive bidding procedures described by G.S. 143-128 through 143-129.1.

Ancillary facilities include but are not limited to roads, water and sewer lines to the facility limits, transfer stations, scale houses, administration buildings, and residue and bypass disposal sites. (1983, c. 795, ss. 4, 8.1; 2005-176, s. 1; 2007-131, s. 3.)

§ 143-129.3. Exemption of General Assembly from certain purchasing requirements.

(a) The Legislative Services Commission may provide that the provisions of G.S. 143-129 and Article 3 of this Chapter do not apply to purchases by the General Assembly of data processing and data communications equipment, supplies, and services. Such exemption may vary according to the type or amount of purchase, and may vary as to whether the exemption is from some or all of those statutory provisions.

(b) The Legislative Services Commission must give specific approval to any purchase in excess of five thousand dollars (\$5,000) made under an exemption provided by subsection (a) of this section. (1989, c. 82.)

§ 143-129.4. Guaranteed energy savings contracts.

The solicitation and evaluation of proposals for guaranteed energy savings contracts, as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals are not governed by this Article but instead are governed by the provisions of that Part; except that guaranteed energy savings contracts are subject to the requirements of G.S. 143-128.2 and G.S. 143-135.3. (1993 (Reg. Sess., 1994), c. 775, s. 4; 1995, c. 509, s. 135.2(k); 2001-496, s. 3.3; 2002-161, s. 11.)

§ 143-129.5. Purchases from nonprofit work centers for the blind and severely disabled.

Notwithstanding G.S. 143-129, a city, county, or other governmental entity subject to this Article may purchase goods and services directly from a nonprofit work center for the blind and severely disabled, as defined in G.S. 143-48.

The Department of Administration shall report annually to the Joint Legislative Commission on Governmental Operations on its administration of this program. (1995, c. 265, s. 4; 1999-20, s. 1.)

§ 143-129.6. Exemption for certain training projects of the North Carolina National Guard.

Expenditures, excluding design fees, for a capital project, construction, or repair work (i) that is for training purposes and for a single exercise or undertaking at a National Guard facility; (ii) that has a total cost that does not exceed applicable federal limits; and (iii) that will be funded entirely with federal funds, shall not be subject to this Article. (2014-100, s. 36.8(c).)

§ 143-129.7. Purchase with trade-in of apparatus, supplies, materials, and equipment.

Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes, municipalities, counties, and other political subdivisions of the State may include in specifications for the purchase of apparatus, supplies, materials, or equipment an opportunity for bidders to purchase as "trade-in" specified personal property owned by the municipality, county, or other political subdivision, and the awarding authority may award a contract for both the purchase of the apparatus, supplies, materials, or equipment and the sale of trade-in property, taking into consideration the amount offered on the trade-in when applying the criteria for award established in this Article. (1997-174, s. 7.)

§ 143-129.8. Purchase of information technology goods and services.

(a) In recognition of the complex and innovative nature of information technology goods and services and of the desirability of a single point of responsibility for contracts that include combinations of purchase of goods, design, installation, training, operation, maintenance, and related services, a political subdivision of the State may contract for information technology, as defined in G.S. 143B-1320, using the procedure set forth in this section, in addition to or instead of any other procedure available under North Carolina law.

(b) Contracts for information technology may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

- (1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(b).
- (2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.

(c) The awarding authority may use procurement methods set forth in G.S. 143-135.9 in developing and evaluating requests for proposals under this section. The awarding authority may negotiate with any proposer in order to obtain a final contract that best meets the needs of the awarding authority. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that: (i) deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and (ii) would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.

(d) Proposals submitted under this section shall not be subject to public inspection until a contract is awarded. (2001-328, s. 3; 2004-199, s. 36(b); 2004-203, s. 10; 2015-241, s. 7A.4(t).)

§ 143-129.8A. Purchase of certain goods and services for the North Carolina Zoological Park.

(a) Exemption. - The North Carolina Zoological Park is a State entity whose primary purpose is the attraction of, interaction with, and education of the public regarding issues of global conservation, ecological preservation, and scientific exploration, and that purpose presents unique challenges requiring greater flexibility and faster responsiveness in meeting the needs of and creating the attractions for the Park. Accordingly, the Department of Natural and Cultural Resources may use the procedure set forth in this section, in addition to or instead of any other procedure available under North Carolina law, to contract with a non-State entity on behalf of the Park for the acquisition of goods and services where: (i) the contract directly results in the generation of revenue for the State of North Carolina or (ii) the use of the acquired goods and services by the Park results in increased revenue or decreased expenditures for the State of North Carolina.

(b) Limitation. - Contracts executed pursuant to the exemption of subsection (a) of this section may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

- (1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(b).
- (2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.

(c) Procurement Methods. - The Department may use procurement methods set forth in G.S. 143-135.9 in developing and evaluating requests for proposals under this section. The Department may negotiate with any proposer in order to obtain a final contract that best meets the needs of the awarding authority. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that: (i) deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and (ii) would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.

(d) Promotional Rights. - Subject to the approval of the Department, a non-State entity awarded a contract that results in increased revenue or decreased expenditures for the Park may advertise, announce, or otherwise publicize the provision of services pursuant to award of the contract. (2009-329, s. 1.1; 2015-241, s. 14.30(yy).)

§ 143-129.9. Alternative competitive bidding methods.

(a) A political subdivision of the State may use any of the following methods to obtain competitive bids for the purchase of apparatus, supplies, materials, or equipment as an alternative to the otherwise applicable requirements in this Article:

- (1) Reverse auction. - For purposes of this section, "reverse auction" means a real-time purchasing process in which bidders compete to provide goods at the lowest selling price in an open and interactive environment. The bidders' prices may be revealed during the reverse auction. A reverse auction may be conducted by the political subdivision or by a third party under contract with the political subdivision. A political subdivision may also conduct a reverse auction through the State electronic procurement system, and compliance with the procedures and requirements of the State's reverse auction process satisfies the political subdivision's obligations under this Article.
- (2) Electronic bidding. - A political subdivision may receive bids electronically in addition to or instead of paper bids. Procedures for receipt of electronic bids for contracts that are subject to the requirements of G.S. 143-129 shall be designed to ensure the security, authenticity, and confidentiality of the bids to at least the same extent as is provided for with sealed paper bids.

(b) The requirements for advertisement of bidding opportunities, timeliness of the receipt of bids, the standard for the award of contracts, and all other requirements in this Article that are not inconsistent with the methods authorized in this section shall apply to contracts awarded under this section.

(c) Reverse auctions shall not be utilized for the purchase or acquisition of construction aggregates, including, but not limited to, crushed stone, sand, and gravel. (2002-107, s. 1.)

§ 143-130. Allowance for convict labor must be specified.

In cases where the board or governing body of a State agency or of any political subdivision of the State may furnish convict or other labor to the contractor, manufacturer, or others entering into contracts for the performance of construction work, installation of apparatus, supplies, materials or equipment, the specifications covering such projects shall carry full information as to what wages shall be paid for such labor or the amount of allowance for same. (1933, c. 400, s. 2; 1967, c. 860.)

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

(a) All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of thirty thousand dollars (\$30,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, local school administrative unit, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, local school administrative unit, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection until the contract has been awarded.

(b) All public entities shall solicit minority participation in contracts for the erection, construction, alteration or repair of any building awarded pursuant to this section. The public entity shall maintain a record of contractors solicited and shall document efforts to recruit minority business participation in those contracts. Nothing in this section shall be construed to require formal advertisement of bids. All data, including the type of project, total dollar value of the project, dollar value of minority business participation on each project, and documentation of efforts to recruit minority participation shall be reported to the Department of Administration, Office for Historically Underutilized Business, upon the completion of the project. (1931, c. 338, s. 2; 1957, c. 862, s. 5; 1959, c. 406; 1963, c. 172; 1967, c. 860; 1971, c. 593; 1981, c. 719, s. 1; 1987 (Reg. Sess., 1988), c. 1108, s. 6; 1997-174, s. 5; 2001-496, s. 5.1; 2005-227, s. 2.)

§ 143-131.1. Exception for contracts for the purchase of food and supplies for county detention facilities by the sheriffs of certain counties.

(a) A county sheriff's office may contract for the purchase of food and food services supplies for that county's detention facility without being subject to the requirements of G.S. 143-129 and G.S. 143-131(a).

(b) This section applies only to the following counties: Alamance, Anson, Beaufort, Caswell, Catawba, Cherokee, Chowan, Cleveland, Craven, Cumberland, Currituck, Dare, Davidson, Duplin, Gaston, Granville, Guilford, Haywood, Henderson, Iredell, Jones, Lincoln, Madison, Onslow, Orange, Pamlico, Pasquotank, Randolph, Rockingham, Sampson, Stanly, Transylvania, Wake, Washington, and Yancey. (2015-156, ss. 1, 2; 2015-157, ss. 1, 2; 2015-158, ss. 1, 2; 2016-20, s. 1; 2016-37, s. 1.)

§ 143-132. Minimum number of bids for public contracts.

(a) No contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received.

(b) For purposes of contracts bid in the alternative between the separate-prime and single-prime contracts, pursuant to G.S. 143-128(d1) each single-prime bid shall constitute a competitive bid in each of the four subdivisions or branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids shall constitute a competitive single-prime bid in meeting the requirements of subsection (a) of this section. If there are at least three single-prime bids but there is not at least one full set of separate-prime bids, no separate-prime bids shall be opened.

(c) The State Building Commission shall develop guidelines no later than January 1, 1991, governing the opening of bids pursuant to this Article. These guidelines shall be distributed to all public bodies subject to this Article. The guidelines shall not be subject to the provisions of Chapter 150B of the General Statutes. (1931, c. 291, s. 3; 1951, c. 1104, s. 3; 1959, c. 392, s. 2; 1963, c. 289; 1967, c. 860; 1977, c. 644; 1979, c. 182, s. 2; 1989, c. 480, s. 2; 1989 (Reg. Sess., 1990), c. 1051, s. 4; 1991 (Reg. Sess., 1992), c. 985, s. 1; 1995, c. 358, s. 4; c. 367, ss. 1, 7; 2001-496, s. 9.)

§ 143-133. No evasion permitted.

No bill or contract shall be divided for the purpose of evading the provisions of this Article. (1933, c. 400, s. 3; 1967, c. 860.)

§ 143-133.1. Reporting.

(a) Governmental entities that contract with a construction manager at risk, design-builder, or private developer under a public-private partnership shall report to the Secretary of Administration the following information on all projects where a construction manager at risk, design-builder, or private developer under a public-private partnership is utilized:

- (1) A detailed explanation of the reason why the particular construction manager at risk, design-builder, or private developer was selected.
- (2) The terms of the contract with the construction manager at risk, design-builder, or private developer.
- (3) A list of all other firms considered but not selected as the construction manager at risk, design-builder, or private developer.
- (4) A report on the form of bidding utilized by the construction manager at risk, design-builder, or private developer on the project.
- (5) A detailed explanation of why the particular delivery method was used in lieu of the delivery methods identified in G.S. 143-128(a1) subdivisions (1) through (3) and the anticipated benefits to the public entity from using the particular delivery method.

(b) The Secretary of Administration shall adopt rules to implement the provisions of this section, including the format and frequency of reporting.

(c) A governmental entity letting a contract pursuant to any of the delivery methods identified in subdivisions (a1)(4), (a1)(6), (a1)(7), or (a1)(8) of G.S. 143-128 shall submit the report required by this section no later than 12 months from the date the governmental entity takes beneficial occupancy of the project. In the event that the governmental entity fails to do so, the governmental entity shall be prohibited from utilizing subdivisions (a1)(4), (a1)(6), (a1)(7), or (a1)(8) of G.S. 143-128 until such time as the governmental entity completes the reporting requirement under this section. Contracts entered into in violation of this prohibition shall not be deemed ultra vires and shall remain valid and fully enforceable. Any person, corporation or entity, however, which has submitted a bid or response to a request for proposals on any construction project previously advertised by the governmental entity shall be entitled to obtain an injunction against the governmental entity compelling the governmental entity to comply with the reporting requirements of this section and from commencing or continuing a project let in violation of this subdivision until such time as the governmental entity has complied with the reporting requirements of this section. The plaintiff in such cases shall not be entitled to recover monetary damages caused by the governmental entity's failure to comply with this reporting requirements section, and neither the plaintiff nor the defendant shall be allowed to recover attorneys fees except as otherwise allowed by G.S. 1A-11 or G.S. 6-21.5. An action seeking the injunctive relief allowed by this subdivision must be filed within four years from the date that the governmental entity took beneficial occupancy of the project for which the report remains due.

(d) For purposes of this section, the term "governmental entity" shall have the same meaning as in G.S. 143-128.1B(a)(6). (2014-42, ss. 3, 5.)

§ 143-133.2: Reserved for future codification purposes.

§ 143-133.3. E-verify compliance.

(a) No board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, may enter into a contract unless the contractor, and the contractor's subcontractors under the contract, comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

(b) A board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, shall be deemed in compliance with this section if the contract includes a term requiring the contractor, and the contractor's subcontractors, to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

(c) This section shall not apply to any of the following:

- (1) Expenses related to travel, including transportation and lodging, for employees, officers, agents, or members of State or local boards, commissions, committees, or councils.
- (2) Contracts solely for the purchase of goods, apparatus, supplies, materials, or equipment.
- (3) Contracts let under G.S. 143-129(e)(1), (9), or (9a).
- (4) Contracts let under G.S. 143-129(g). (2015-294, s. 1(a).)

§ 143-133.4: Reserved for future codification purposes.

§ 143-133.5. Public contracts; labor organizations.

(a) It is the intent of the General Assembly that the provisions of this section will provide for more economical, nondiscriminatory, neutral, and efficient procurement of construction-related services by the State and political subdivisions of the State as market participants. The General Assembly finds that providing for fair and open competition best effectuates this intent.

(b) Every officer, board, department, commission, or commissions charged with the responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration, or repair of any buildings for the State, or for any county, municipality, or other public body subject to this Article shall not in any bid specifications, project agreements, or other controlling documents:

- (1) Require or prohibit a bidder, offeror, contractor, or subcontractor from adhering to an agreement with one or more labor organizations in regard to that project or a related construction project.
- (2) Otherwise discriminate against a bidder, offeror, contractor, or subcontractor for becoming, remaining, refusing to become or remain a signatory to, or for adhering or refusing to adhere to an agreement with one or more labor organizations in regard to that project or a related construction project.

(c) No officer, board, department, commission, or commissions charged with the responsibility of awarding grants or tax incentives, or any county, municipality, or other public body in the award of grants or tax incentives, may award a grant or tax incentive that is conditioned upon a requirement that the awardee include a term described in subsection (b) of this section in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant or tax incentive.

(d) This section does not prohibit any officer, board, department, commission, or commissions or any county, municipality, or other public body from awarding a contract, grant, or tax incentive to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a labor organization if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, or tax incentive, and if the State agent, employee, or board or the political subdivision does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that contract, grant, or tax incentive based upon the person's status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.

(e) This section does not prohibit a contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract with the State or a political subdivision of the State or funded in whole or in part from a grant or tax incentive from the State or political subdivision.

(f) The State or the governing body of a political subdivision may exempt a particular project, contract, subcontract, grant, or tax incentive from the requirements of any or all of the provisions of subsection (b) or (c) of this section if the State or governing body of the political subdivision finds, after public notice and a hearing, that special circumstances require an exemption to avert a significant, documentable threat to public health or safety. A finding of special circumstances under this section shall not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

(g) This section does not do either of the following:

- (1) Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act, 29 U.S.C. §§ 151 to 169.
- (2) Interfere with labor relations of parties that are left unregulated under the National Labor Relations Act, 29 U.S.C. §§ 151 to 169. (2013-267, s. 1.)

§ 143-134. Applicable to Department of Transportation and Department of Public Safety; exceptions; all contracts subject to review by Attorney General and State Auditor.

(a) This Article applies to the Department of Transportation and the Department of Public Safety except in the construction of roads, bridges and their approaches; provided however, that whenever the Director of the Budget determines that the repair or construction of a building by the Department of Transportation or by the Department of Public Safety can be done more economically through use of employees of the Department of Transportation and/or prison inmates than by letting the repair or building construction to contract, the provisions of this Article shall not apply to the repair or construction.

(b) Notwithstanding subsection (a) of this section, the Department of Transportation and the Department of Public Safety shall: (i) submit all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be awarded by the Department of Transportation or the Department of Public Safety a standard clause providing that the State Auditor and internal auditors of the Department of Transportation or the Department of Public Safety may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees and performance. Neither the Department of Transportation nor the Department of Public Safety shall award a cost plus percentage of cost agreement or contract for any purpose. (1933, c. 400, s. 3-A; 1955, c. 572; 1957, c. 65, s. 11; 1967, c. 860; c. 996, s. 13; 1973, c. 507, s. 5; 1977, c. 464, s. 34; 2010-194, s. 24; 2011-145, s. 19.1(h); 2011-326, s. 15(y); 2012-83, s. 45; 2013-289, s. 1.)

§ 143-134.1. Interest on final payments due to prime contractors; payments to subcontractors.

(a) On all public construction contracts which are let by a board or governing body of the State government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to G.S. 136-28.1, the balance due prime contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever occurs first. However, when the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit.

No payment shall be delayed because of the failure of another prime contractor on the project to complete his contract. Should final payment to any prime contractor beyond the date the contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, the prime contractor shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on the unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due a prime contractor during construction shall be paid in accordance with the provisions of this section and the payment provisions of the contract documents that do not conflict with this section, or the prime contractor shall be paid interest on any unpaid amount at the rate stipulated above for

delayed final payments. The interest shall begin on the date the payment is due and continue until the date on which payment is made. The due date may be established by the terms of the contract. Funds for payment of the interest on state-owned projects shall be obtained from the current budget of the owning department, institution, or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of the conditions, interest on the reasonable sum shall not apply.

(b) Within seven days of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work completed or service provided under the subcontract. If any periodic or final payment to the subcontractor is delayed by more than seven days after receipt of periodic or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on the unpaid balance as may be due.

(b1) No retainage on periodic or final payments made by the owner or prime contractor shall be allowed on public construction contracts in which the total project costs are less than one hundred thousand dollars (\$100,000). Retainage on periodic or final payments on public construction contracts in which the total project costs are equal to or greater than one hundred thousand dollars (\$100,000) is allowed as follows:

- (1) The owner shall not retain more than five percent (5%) of any periodic payment due a prime contractor.
- (2) When the project is fifty percent (50%) complete, the owner, with written consent of the surety, shall not retain any further retainage from periodic payments due the contractor if the contractor continues to perform satisfactorily and any nonconforming work identified in writing prior to that time by the architect, engineer, or owner has been corrected by the contractor and accepted by the architect, engineer, or owner. If the owner determines the contractor's performance is unsatisfactory, the owner may reinstate retainage for each subsequent periodic payment application as authorized in this subsection up to the maximum amount of five percent (5%). The project shall be deemed fifty percent (50%) complete when the contractor's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the contract, except the value of materials stored on-site shall not exceed twenty percent (20%) of the contractor's gross project invoices for the purpose of determining whether the project is fifty percent (50%) complete.
- (3) A subcontract on a contract governed by this section may include a provision for the retainage on periodic payments made by the prime contractor to the subcontractor. However, the percentage of the payment retained: (i) shall be paid to the subcontractor under the same terms and conditions as provided in subdivision (2) of this subsection and (ii) subject to subsection (b3) of this section, shall not exceed the percentage of retainage on payments made by the owner to the prime contractor. Subject to subsection (b3) of this section, any percentage of retainage on payments made by the prime contractor to the subcontractor that exceeds the percentage of retainage on payments made by the owner to the prime contractor shall be subject to interest to be paid by the prime contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.
- (4) Within 60 days after the submission of a pay request and one of the following occurs, as specified in the contract documents, the owner with written consent of the surety shall release to the contractor all retainage on payments held by the owner: (i) the owner receives a certificate of substantial completion from the architect, engineer, or designer in charge of the project; or (ii) the owner receives beneficial occupancy or use of the project. However, the owner may retain sufficient funds to secure completion of the project or corrections on any work. If the owner retains funds, the amount retained shall not exceed two and one-half times the estimated value of the work to be completed or corrected. Any reduction in the amount of the retainage on payments shall be with the consent of the contractor's surety.
- (5) The existence of any third-party claims against the contractor or any additive change orders to the construction contract shall not be a basis for delaying the release of any retainage on payments.

(b2) Full payment, less authorized deductions, shall also be made for those trades that have reached one hundred percent (100%) completion of their contract by or before the project is fifty percent (50%) complete if the contractor has performed satisfactorily. However, payment to the early finishing trades is contingent upon the owner's receipt of an approval or certification from the architect of record or applicable engineer that the work

performed by the subcontractor is acceptable and in accordance with the contract documents. At that time, the owner shall reduce the retainage for such trades to five-tenths percent (0.5%) of the contract. Payments under this subsection shall be made no later than 60 days following receipt of the subcontractor's request or immediately upon receipt of the surety's consent, whichever occurs later. Early finishing trades under this subsection shall include structural steel, piling, caisson, and demolition. The early finishing trades for which line-item release of retained funds is required shall not be construed to prevent an owner or an owner's representative from identifying any other trades not listed in this subsection that are also allowed line-item release of retained funds. Should the owner or owner's representative identify any other trades to be afforded line-item release of retainage, the trade shall be listed in the original bid documents. Each bid document shall list the inspections required by the owner before accepting the work, and any financial information required by the owner to release payment to the trades, except the failure of the bid documents to contain this information shall not obligate the owner to release the retainage if it has not received the required certification from the architect of record or applicable engineer.

(b3) Notwithstanding subdivisions (2) and (3) of subsection (b1) of this section, and subsection (b2) of this section, following fifty percent (50%) completion of the project, the owner shall be authorized to withhold additional retainage from a subsequent periodic payment, not to exceed five percent (5%) as set forth in subdivision (1) of subsection (b1) of this section, in order to allow the owner to retain two and one-half percent (2.5%) total retainage through the completion of the project. In the event that the owner elects to withhold additional retainage on any periodic payment subsequent to release of retainage pursuant to subsection (b2) of this section, the general contractor may also withhold from the subcontractors remaining on the project sufficient retainage to offset the additional retainage held by the owner, notwithstanding the actual percentage of retainage withheld by the owner of the project as a whole.

(b4) Neither the owner's nor contractor's release of retainage on payments as part of a payment in full on a line-item of work under subsection (b2) of this section shall affect any applicable warranties on work done by the contractor or subcontractor, and the warranties shall not begin to run any earlier than either the owner's receipt of a certificate of substantial completion from the architect, engineer, or designer in charge of the project or the owner receives beneficial occupancy.

(b5) The State or any political subdivision of the State may allow contractors to bid on bonded projects with and without retainage on payments.

(b6) Nothing in subsections (b1), (b2), (b3), and (b4) of this section shall operate to prevent any agency or any political subdivision of the State from complying with the requirements of a federal contract or grant when the requirements of the federal contract or grant conflict with subsections (b1), (b2), (b3), or (b4) of this section. Each bid document must specify when federal preemption of this section shall apply.

(c) Repealed by Session Laws 2007-365, s. 1, effective January 1, 2008.

(d) Nothing in this section shall prevent the prime contractor at the time of application and certification to the owner from withholding application and certification to the owner for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to prime contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the owner.

(e) Nothing in this section shall prevent the owner from withholding payment to the contractor in addition to the amounts authorized by this section for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that a third-party claim will be filed. (1959, c. 1328; 1967, c. 860; 1979, c. 778; 1983, c. 804, ss. 1, 2; 2007-365, s. 1.)

§ 143-134.2. Actions by contractor on behalf of subcontractor.

(a) A contractor may, on behalf of a subcontractor of any tier under the contractor, file an action against an owner regarding a claim arising out of or relating to labor, materials, or services furnished by the subcontractor to the contractor pursuant to a contract between the subcontractor and the contractor for the same project that is the subject of the contract between the contractor and the owner.

(b) In any action filed by a contractor against an owner under subsection (a) of this section, it shall not be a defense that the costs and damages at issue were incurred by a subcontractor and that subcontractor has not been paid for these costs and damages. The owner shall not be required to pay the contractor for the costs and

damages incurred by a subcontractor, unless the subcontractor submits proof to the court that the contractor has paid these costs and damages to the subcontractor. (1997-489, s. 1.)

§ 143-134.3. No damage for delay clause.

No contractual language forbidding or limiting compensable damages for delays caused solely by the owner or its agent may be enforced in any construction contract let by any board or governing body of the State, or of any institution of State government, or of any county, city, town, or other political subdivision thereof. For purposes of this section, the phrase "owner or its agent" does not include prime contractors or their subcontractors. (1997-489, s. 1.)

§ 143-135. Limitation of application of Article.

(a) Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to any of the following:

- (1) Construction or repair work undertaken by the State (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed one hundred twenty-five thousand dollars (\$125,000) or the total cost of labor on the project does not exceed fifty thousand dollars (\$50,000).
- (2) Construction or repair work undertaken by a subdivision of the State (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed five hundred thousand dollars (\$500,000) or the total cost of labor on the project does not exceed two hundred thousand dollars (\$200,000).
- (3) Construction or repair work undertaken by The University of North Carolina and its constituent institutions (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the university and (ii) when either the total cost of the project, including, without limitation, all direct and indirect costs of labor, services, materials, supplies, and equipment, does not exceed two hundred thousand dollars (\$200,000) or the total cost of labor on the project does not exceed one hundred thousand dollars (\$100,000).

(b) The force account work undertaken pursuant to this section shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c. 1104, s. 6; 1967, c. 860; 1975, c. 292, ss. 1, 2; c. 879, s. 46; 1979, 2nd Sess., c. 1248; 1981, c. 860, s. 13; 1995, c. 274, s. 1; 2007-322, s. 5; 2015-276, s. 6.)

§ 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities.

(a) Buildings constructed by the State of North Carolina or by any agency or institution of the State in accordance with plans and specifications approved by the Department of Administration or by The University of North Carolina or one of its affiliated or constituent institutions pursuant to G.S. 116-31.11 shall not be subject to inspection by any county or municipal authorities and shall not be subject to county or municipal building codes and requirements.

(b) Inspection fees fixed by counties and municipalities shall not be applicable to such construction by the State of North Carolina. County and municipal authorities may inspect any plans or specifications upon their request to the Department of Administration or, with respect to projects under G.S. 116-31.11, The University of North Carolina, and any and all recommendations made by them shall be given consideration. Requests by county and municipal authorities to inspect plans and specifications for State projects shall be on the basis of a

specific project. Should any agency or institution of the State require the services of county or municipal authorities, notice shall be given for the need of such services, and appropriate fees for such services shall be paid to the county or municipality; provided, however, that the application for such services to be rendered by any county or municipality shall have prior written approval of the Department of Administration, or with respect to projects under G.S. 116-31.11, The University of North Carolina.

(c) Notwithstanding any law to the contrary, including any local act, no county or municipality may impose requirements that exceed the North Carolina State Building Code regarding the design or construction of buildings constructed by the State of North Carolina. (1951, c. 1104, s. 4; 1967, c. 860; 1971, c. 563; 1985, c. 757, s. 170(a); 1997-412, s. 10; 2001-496, s. 8(c); 2005-300, s. 1.)

§ 143-135.2. Contracts for restoration of historic buildings with private donations.

This Article shall not apply to building contracts let by a State agency for restoration of a historic building or structure where the funds for the restoration of such building or structure are provided entirely by funds donated from private sources. (1955, c. 27; 1967, c. 860.)

§ 143-135.3. Adjustment and resolution of State board construction contract claim.

(a) The word "board" as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State. "A contract for construction or repair work," as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting, and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration or The University of North Carolina enters into contracts.

"Contractor" as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work.

(b) A contractor who has not completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The Director may deny, allow, or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under Chapter 150B of the General Statutes.

(c) A contractor who has completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.

The Director shall investigate a submitted claim within 90 days of receiving the claim, or within any longer time period upon which the Director and the contractor agree. The contractor may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny, or compromise the claim, in whole or in part. The Director shall give the contractor a written statement of the Director's decision on the contractor's claim.

A contractor who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(c1) A contractor who is dissatisfied with the Director's decision on a claim submitted under subsection (c) of this section may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(d) As to any portion of a claim that is denied by the Director, the contractor may, in lieu of the procedures set forth in the preceding subsection of this section, within six months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any

county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(e) The provisions of this section are part of every contract for construction or repair work made by a board and a contractor. A provision in a contract that conflicts with this section is invalid. (1965, c. 1022; 1967, c. 860; 1969, c. 950, s. 1; 1973, c. 1423; 1975, c. 879, s. 46; 1981, c. 577; 1983, c. 761, s. 190; 1985, c. 746, s. 18; 1987, c. 847, s. 4; 1989, c. 40, s. 1; 1991, c. 103, s. 1; 1997-412, s. 7; 2001-496, s. 8(c); 2005-300, s. 1.)

§ 143-135.4. Authority of Department of Administration not repealed.

Nothing contained in this Article shall be construed as contravening or repealing any authorities given by statute to the Department of Administration. (1967, c. 860; 1975, c. 879, s. 46.)

§ 143-135.5. State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose.

(a) It is the policy of this State to encourage and promote the use of small, minority, physically handicapped and women contractors in State construction projects. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage and promote the use of small, minority, physically handicapped and women contractors in achieving the purpose of this Article, which is the effective and economical construction of public buildings.

(b) It is the policy of this State not to accept bids or proposals from, nor to engage in business with, any business that, within the last two years, has been finally found by a court or an administrative agency of competent jurisdiction to have unlawfully discriminated on the basis of race, gender, religion, national origin, age, physical disability, or any other unlawful basis in its solicitation, selection, hiring, or treatment of another business. (1983, c. 692, s. 1; 2001-496, s. 5.2.)

§ 143-135.6. Adjustment and resolution of community college board construction contract claim.

(a) A contractor who has not completed a contract with a board of a community college for construction or repair work and who has not received the amount he claims is due under the contract may follow the claims procedure in G.S. 143-135.3(b) that is available to a contractor who has contracted with a State board.

(b) A contractor who has completed a contract with a board of a community college for construction or repair work and who has not received the amount he claims is due under the contract may follow the same claims procedure in G.S. 143-135.3(c) that is available to a contractor who has contracted with a State board.

(c) A contractor who is dissatisfied with the Director's decision on any portion of a claim submitted pursuant to subsection (b) of this section may, within six months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury. A contractor may not commence an action under Chapter 150B of the General Statutes.

(d) The provisions of this section are part of every contract for construction or repair work made by a board of a community college and a contractor. A provision in a contract that conflicts with this section is invalid.

(e) For the purposes of this section, the following definitions shall apply, unless the context indicates otherwise:

- (1) "Community college" has the same meaning as in G.S. 115D-2(2).
- (2) "Contract for construction or repair work" has the same meaning as in G.S. 143-135.3(a).
- (3) "Contractor" means any person, firm, association, or corporation which has contracted for architectural, engineering, or other professional services in connection with construction or repair work, as well as those persons who have contracted to perform the construction or repair work.

(f) The provisions of this section are applicable only to community college buildings subject to G.S. 143-341(3). (1989, c. 40, s. 2.)

§ 143-135.7. Safety officers.

Each contract for a State capital improvement project, as defined in Article 8B of this Chapter, shall require the contractor to designate a responsible person as safety officer to inspect the project site for unsafe health and safety hazards, to report these hazards to the contractor for correction, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. (1991 (Reg. Sess., 1992), c. 893, s. 3.)

§ 143-135.8. Prequalification.

(a) Except as provided in this section, bidders may not be prequalified for any construction or repair work project.

(b) A governmental entity may prequalify bidders for a particular construction or repair work project when all of the following apply:

- (1) The governmental entity is using one of the construction methods authorized in G.S. 143-128(a1)(1) through G.S. 143-128(a1)(3).
- (2) The board or governing body of the governmental entity adopts an objective prequalification policy applicable to all construction or repair work prior to the advertisement of the contract for which the governmental entity intends to prequalify bidders.
- (3) The governmental entity has adopted the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project.

(c) The objective prequalification policy adopted by a governmental entity pursuant to subdivision (2) of subsection (b) of this section shall meet all of the following criteria:

- (1) Must be uniform, consistent, and transparent in its application to all bidders.
- (2) Must allow all bidders who meet the prequalification criteria to be prequalified to bid on the construction or repair work project.
- (3) Clearly state the prequalification criteria, which must comply with all of the following:
 - a. Be rationally related to construction or repair work.
 - b. Not require that the bidder has previously been awarded a construction or repair project by the governmental entity.
 - c. Permit bidders to submit history or experience with projects of similar size, scope, or complexity.
- (4) Clearly state the assessment process of the criteria to be used.
- (5) Establish a process for a denied bidder to protest to the governmental entity denial of prequalification, which process shall be completed prior to the opening of bids under G.S. 143-129(b) and which allows sufficient time for a bidder subsequently prequalified pursuant to a protest to submit a bid on the contract for which the bidder is subsequently prequalified.
- (6) Outline a process by which the basis for denial of prequalification will be communicated in writing, upon request, to a bidder who is denied prequalification.

(d) If the governmental entity opts to prequalify bidders, bids submitted by any bidder not prequalified shall be deemed nonresponsive. This subsection shall not apply to bidders initially denied prequalification that are subsequently prequalified pursuant to a protest under the governmental entity's prequalification policy.

(e) Prequalification may not be used for the selection of any qualification-based services under Article 3D of this Chapter, G.S. 143-128.1A, G.S. 143-128.1B, G.S. 143-128.1C, or the selection of the construction manager at risk under G.S. 143-128.1.

(f) For purposes of this section, the following definitions shall apply:

- (1) Governmental entity. - As defined in G.S. 143-128.1B(a)(6).
- (2) Prequalification. - A process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources, and ability necessary to the faithful performance of a contract for construction or repair work. (1995, c. 367, s. 8; 2014-42, s. 1.)

§ 143-135.9. Best Value procurements.

(a) Definitions. - The following definitions apply in this section:

- (1) Best Value procurement. - The selection of a contractor based on a determination of which proposal offers the best trade-off between price and performance, where quality is considered

an integral performance factor. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.

- (2) Government-Vendor partnership. - A mutually beneficial contractual relationship between State government and a contractor, wherein the two share risk and reward, and value is added to the procurement of needed goods or services.
- (3) Repealed by Session Laws 2013-188, s. 1, effective June 26, 2013.
- (4) Solution-Based solicitation. - A solicitation in which the requirements are stated in terms of how the product or service being purchased should accomplish the business objectives, rather than in terms of the technical design of the product or service.

(b) Intent. - The intent of Best Value procurement is to enable contractors to offer and the agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement.

(c) Information Technology. - The acquisition of information technology by the State of North Carolina shall be conducted using the Best Value procurement method. For purposes of this section, business process reengineering, system design, and technology implementation may be combined into a single solicitation. For acquisitions which the procuring agency and the Division of Purchase and Contracts or the Department of Information Technology, as applicable, deem to be highly complex or determine that the optimal solution to the business problem at hand is not known, the use of Solution-Based Solicitation and Government-Vendor Partnership is authorized and encouraged. Any county, city, town, or subdivision of the State may acquire information technology pursuant to this section.

(d) Repealed by Session Laws 2009-320, s. 1, effective July 24, 2009.

(e) North Carolina Zoological Park. - The acquisition of goods and services under a contract entered pursuant to the exemption of G.S. 143-129.8A(a) by the Department of Natural and Cultural Resources on behalf of the North Carolina Zoological Park may be conducted using the Best Value procurement method. For acquisitions which the procuring agency deems to be highly complex, the use of Government-Vendor partnership is authorized. (1998-189, s. 1; 1999-434, s. 15; 1999-456, s. 39; 2009-329, s. 1.2; 2013-188, s. 1; 2015-241, ss. 7A.4(u), 14.30(zz).)