

STATE OF NORTH CAROLINA

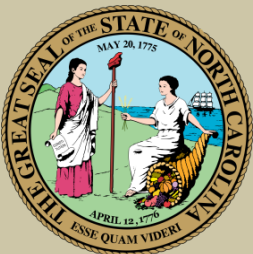
OFFICE OF THE STATE AUDITOR
BETH A. WOOD, CPA



TOWN OF HERTFORD

HERTFORD, NORTH CAROLINA

INVESTIGATIVE REPORT
AUGUST 2021



NC OSA
The Taxpayers' Watchdog

EXECUTIVE SUMMARY

PURPOSE

The Office of the State Auditor (OSA) received 10 allegations concerning the Town of Hertford (Town). OSA determined that a significant number of allegations questioned the appropriateness of operational and management decisions. OSA focused its investigation on fraud, waste, and abuse allegations.

BACKGROUND

The Town is North Carolina's seventh oldest town and the county seat of Perquimans County. The Town operates as a Council-Manager form of government. The Town Council, which consists of four Council members and the Mayor, is responsible for creating policies for the Town.

Each year, the Town Council chooses one of its members as Vice-Chairman, who acts as Mayor Pro Tem. In the absence of the Mayor, the Mayor Pro Tem shall preside at meetings of the Town Council and perform all others duties of the Mayor, but shall still have a right to vote on all matters.

The Town Council appoints a Town Manager who is responsible for the day-to-day operations and supervises the Town's employees.¹

KEY FINDINGS

- The Town Council awarded a contract to the highest bidder for its street light fixture project resulting in the Town overpaying by as much as \$25,749.
- The former Town Mayor Pro Tem incurred \$11,671 in questionable expenses.²
- The former Town Mayor Pro Tem did not forfeit his office after pleading guilty to an assault charge.

KEY RECOMMENDATIONS

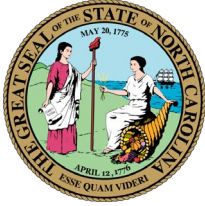
- The Town Council should comply with State law and its attorney's advice when awarding all future contracts.
- The Town Council should seek reimbursement from the former Mayor Pro Tem for the questionable expenses.
- The Town Council should enforce its Charter by removing the former Mayor Pro Tem from office.

Key findings and recommendations are not inclusive of all findings and recommendations in this report.

¹ www.townofhertfordnc.com

² These expenses either lacked an itemized receipt, lacked documentation to support a valid Town purpose, or violated a Town policy.

STATE OF NORTH CAROLINA
Office of the State Auditor



Beth A. Wood, CPA
State Auditor

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AUDITOR'S TRANSMITTAL

The Honorable Roy Cooper, Governor
Members of the North Carolina General Assembly
Earnell Brown, Mayor, Town of Herford

Ladies and Gentlemen:

Pursuant to *North Carolina General Statutes §147-64.6(c)(16)* and *§147-64.6B*, we have completed an investigation of allegations concerning the Town of Hertford. The results of our investigation, along with recommendations for corrective action, are contained in this report.

Copies of this report have been provided to the Governor, the Attorney General, and other appropriate officials in accordance with *G.S. §147-64.6(c)(12)*. We appreciate the cooperation received from the management and employees of the Town of Hertford during our investigation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Beth A. Wood".

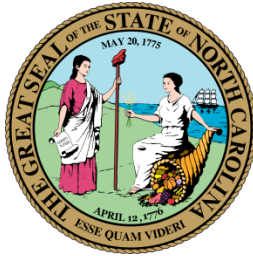
Beth A. Wood, CPA
State Auditor



Beth A. Wood, CPA
State Auditor

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BACKGROUND

The Office of the State Auditor (OSA) received 10 allegations concerning the Town of Hertford (Town). OSA determined that a significant number of allegations questioned the appropriateness of operational and management decisions. OSA focused its investigation on fraud, waste, and abuse allegations.

Our investigation of this allegation included the following procedures:

- Review of *North Carolina General Statutes*, Town Council meeting minutes, the Town Charter, and Town Policies
- Examination and analysis of available documentation including request for proposals, vendors' proposals, credit card statements, and Town officials' emails
- Interviews with the Town's former and current personnel and Town Council members

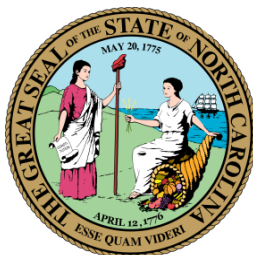
This report presents the results of the investigation. The investigation was conducted pursuant to *North Carolina General Statutes* § 147-64.6(c)(16) and §147-64.6B.

The Town is North Carolina's seventh oldest town and the county seat of Perquimans County. The Town operates as a Council-Manager form of government. The Town Council, which consists of four Council members and the Mayor, is responsible for creating policies for the Town.

Each year, the Town Council chooses one of its members as Vice-Chairman, who acts as Mayor Pro Tem. In the absence of the Mayor, the Mayor Pro Tem shall preside at meetings of the Town Council and perform all others duties of the Mayor, but shall still have a right to vote on all matters.

The Town Council appoints the Town Manager who is responsible for the day-to-day operations and supervises the Town's employees.³

³ www.townofhertfordnc.com



FINDINGS AND RECOMMENDATIONS

1. TOWN COUNCIL AWARDED A CONTRACT TO THE HIGHEST BIDDER FOR ITS STREET LIGHT FIXTURE PROJECT RESULTING IN THE TOWN OVERPAYING BY AS MUCH AS \$25,749

The Town of Hertford's (Town) Council awarded a contract for its street light fixture project to the **highest bidder**. As a result, the Town may have overpaid by as much as \$25,749 for the project. Although aware of State law regarding contract bidding, the Town Council disregarded the law and its attorney's advice by awarding the contract to the **highest bidder**. State law required that the Town award the contract to the **lowest responsible, responsive bidder** that met the bid requirements.

Project Awarded to Highest Bidder

The Town Council awarded a contract for its downtown street light fixture project to the **highest bidder**.

On March 20, 2019, the Town issued a Request for Bids and Proposals (RFP) for 400 LED street lights for its downtown area. The Town received 12 bids from five vendors⁴ ranging in project cost from \$61,786 to \$87,535.

According to the minutes of the April 8, 2019 meeting, the Town Council discussed the lowest bidder's (\$61,786) withdrawal due to its inability to comply with the contract specifications.

However, there was no discussion or consideration of the other bids reflected in any of the meeting minutes.

Further, according to meeting minutes, the Town Attorney "cautioned the [Town] council that their responsibility for accepting any bid is to the **lowest responsible, responsive bid** [*Emphasis Added*]. [The attorney] stated that council cannot pick and choose which ones they want to select without consideration to the lowest responsible responsive bid."

However, the Town Council proceeded with its vote and awarded the contract to the **highest bidder** for the project.

Resulted in Potential Overpayment up to \$25,749

As of result of the Town awarding the contract to the **highest bidder**, the Town may have overpaid by as much as \$25,749 for its downtown street light fixture project. Those additional funds could have been used for other Town projects or services.

Caused by Disregard of State Law and Attorney's Advice

The Town Council disregarded State law and its attorney's advice in its award of the contract to the **highest bidder**.

According to the Town Manager's emails, prior to the Town issuing the RFP, the Town Council learned it had to conduct an informal bid process due to the amount of the contract. Also according to the Town Manager's emails, on multiple occasions, Town officials sought ways

⁴ Four of the five vendors submitted multiple bids with differences in the type of lights and the project costs among each vendor's bids.

to avoid the informal bid process and award the contract directly to the acting Mayor Pro Tem's preferred vendor.

According to the Town Council's minutes for its meeting on March 18, 2019 (prior to the issuance of the RFP and the Town Council's vote), the acting Mayor Pro Tem stated that his preferred vendor would "get the business."

State Law Required Award to the Lowest Responsible, Responsive Bidder

North Carolina General Statutes §143-131 required the Town to award its contract for the downtown street light project to the **lowest responsible, responsive bidder**. Specifically, the law stated:

All contracts...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 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. *[Emphasis Added]*

RECOMMENDATION

The Town Council should comply with State law and its attorney's advice when awarding all future contracts.

2. FORMER TOWN MAYOR PRO TEM INCURRED \$11,671 IN QUESTIONABLE EXPENSES

The former Mayor Pro Tem for the Town of Hertford (Town) incurred questionable expenses totaling \$11,671. As a result, the Town spent funds that could have been used for valid Town purposes. These questionable expenses were not detected because of inadequate oversight by both the Town Council and Town Manager. Further, the Town had inadequate policies for credit cards and vehicle use.

Questionable Expenses

From January 2018 to June 2020, the Mayor Pro Tem incurred questionable expenses totaling \$11,671. Specifically, the Mayor Pro Tem:

- Improperly used his credit card (\$6,113)
- Violated the Town's travel policy (\$4,845)⁵
- Potentially misused the Town's vehicle (\$1,721)
- Received a benefit reserved for full-time employees (\$1,000)

⁵ \$2,008 of this amount is also included in the \$6,113 for the improper use of his credit card.

Improper Use of Credit Card

The Mayor Pro Tem used his credit card to make 81 questionable purchases totaling \$6,113. Specifically:

- 78 purchases (96%) totaling \$5,900 lacked an itemized receipt and therefore lacked adequate documentation to support a valid Town purpose
- 3 purchases (4%) totaling \$213 had an itemized receipt but lacked adequate documentation to support a valid Town purpose

The Mayor Pro Tem did not obtain approval by Town Council or the Town Manager for these credit card purchases.

Violation of Travel Policy

The Mayor Pro Tem took 13 trips⁶ totaling at least \$4,845⁷ without obtaining required pre-approvals. These trips included the following:

- 5 out-of-state trips totaling \$3,528 (73%)
- 3 unknown trips⁸ totaling \$797 (16%)
- 5 in-state trips totaling \$520 (11%)

Potential Misuse of the Town's Vehicle

The Mayor Pro Tem made 37 fuel purchases totaling \$1,721 while using the Town's vehicle without providing documentation to support a valid Town purpose. He claimed that all his vehicle use was "Town related...every bit [of his travel] is written down." According to the Mayor Pro Tem, he maintained "notes" for his vehicle use to document the mileage driven, purpose of trip, destination, and persons traveling with him.

However, he never provided these "notes" to investigators, despite several requests for this information.

Receipt of Employee Benefit

Although not a Town employee, the Mayor Pro Tem requested and received reimbursement of \$1,000 from the Town for tuition relating to courses he took at Fayetteville Technical Community College.⁹ According to the Mayor Pro Tem, he was pursuing a law degree.

Resulted in Excess Expenses

As of result of the Mayor Pro Tem's questionable expenses, the Town incurred at least \$11,671 that could have been used for valid Town purposes.

⁶ See Appendix for a list of the Mayor Pro Tem's trips that were not pre-approved.

⁷ \$2,008 of this amount is also included in the \$6,113 for the improper use of his credit card.

⁸ The Town could not provide documentation to show the destination for these trips.

⁹ According to the Mayor Pro Tem's student statements, the courses he took included Criminology, Juvenile Justice, Interviews/Interrogations, Criminal Law, Court Procedure and Evidence, and Victimology.

In addition, the Mayor Pro Tem's incurring questionable expenses fostered an environment where such violations are acceptable.

Caused by Lack of Oversight

The Mayor Pro Tem's questionable expenses were not detected because the Town Council and Town Manager failed to provide adequate oversight.

Specifically, the Town Manager did not require employees to provide receipts. Also, she did not require adequate documentation to support a valid Town purpose.

In addition, the Town Council and Town Manager failed to enforce the travel policy by not approving the Mayor Pro Tem's travel prior to the trips. Although the Mayor Pro Tem submitted some travel authorization forms for payment **after** his travel, the Town Manager stated that she approved the travel when it was submitted to her. She did not question the Mayor Pro Tem when he did not submit travel forms for prior approval, despite knowing he was traveling.

Further, the Town Manager approved the tuition reimbursement for the Mayor Pro Tem despite her knowledge that he was not a Town employee.

Also Caused by Inadequate Policies

The Town did not have adequate written policies in place regarding **credit card purchases** and **vehicle use**.

The purchasing policy only required an approved purchase order prior to initiating a **credit card purchase** of more than \$3,000. The Town did not adopt an official purchasing policy with requirements for all **credit card purchases** until April 2020.

The Town's vehicle policy lacked adequate guidelines for documenting **vehicle use**. According to the Town Manager, there was no need for tracking **vehicle use**. She stated, "we don't have a tracking method [for vehicle use]. When vehicles are being used for conferences and school or regular town business, no method of tracking is done or had been needed."

Violation of Multiple Policies

The Mayor Pro Tem's questionable expenses were in violation of multiple Town policies and internal control best practices.

Improper Use of Credit Card

The Town did not have a policy for credit card purchases. However, best practices identified by the Government Accountability Office (GAO) required management to ensure transactions were documented. Specifically, the GAO states:

Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination.¹⁰

¹⁰ United States Government Accountability Office, Standards for Internal Control in the Federal Government, September 2014

Requiring receipts for credit card purchases along with a written valid Town purpose would be examples of appropriate documentation.

Violation of Travel Policy

The Town's *Travel Policy for Council Members* stated:

A travel advance request form must be submitted to the Town Manager or their designee for approval before the trip.

Travel by the Mayor and the Commissioners must be approved by the Town Council.

Potential Misuse of the Town's Vehicle

The Town did not have a policy regarding use of vehicles.¹¹ However, best practices identified by the GAO required management to establish physical controls over vulnerable assets. Specifically, GAO states:

Management establishes physical control to secure and safeguard vulnerable assets. Examples include security for and limited access to assets such as cash, securities, inventories, and equipment that might be vulnerable to risk of loss or unauthorized use. Management periodically counts and compares such assets to control records.¹²

Vehicles are inherently vulnerable to misuse.

Receipt of Employee Benefit

The Town's *Personnel Policy* stated the following for its tuition assistance program:

Full-time employees who have completed initial probation may apply for tuition reimbursement for courses... which will improve their skills for their current job or prepare them for promotional opportunities within the Town service....Employees may be reimbursed for eligible expenses up to a total of five hundred dollars (\$500) per fiscal year. *[Emphasis Added]*

The Mayor Pro Tem is not an employee of the Town.

RECOMMENDATIONS

The Town Council should seek reimbursement from the former Mayor Pro Tem for the tuition assistance and credit card purchases that lacked receipts or adequate documentation to support a valid Town purpose.

The Town Council and Town Manager should review and adhere to the Town's policies and procedures relating to its responsibility for reviewing and approving Town Council members' expenses.

¹¹ Although the Town has a *Driving/Vehicle Policy*, this policy only refers to vehicle safety and maintenance.

¹² United States Government Accountability Office, Standards for Internal Control in the Federal Government, September 2014

The Town Council should implement adequate policies and procedures for credit card purchases and vehicle use.

3. FORMER TOWN MAYOR PRO TEM DID NOT FORFEIT HIS OFFICE AFTER PLEADING GUILTY TO AN ASSAULT CHARGE

The former Mayor Pro Tem for the Town of Hertford (Town) did not forfeit his office after he was convicted of a crime. As a result, he continued to participate in the Town's operations and decision-making. Further, the Town incurred \$3,000 related to the Mayor Pro Tem's legal fees. The Town Council did not enforce the Town Charter which required a Town Council member convicted of a crime to immediately forfeit their office.

Remained Town Council Member After Conviction

The Mayor Pro Tem did not forfeit his Town Council position after pleading guilty to an assault charge.

In October 2018, the Mayor Pro Tem was charged with assault on another Town Council member during a Town Council meeting. The Mayor Pro Tem pled guilty to simple assault in December 2019.¹³ Following the conviction, the Mayor Pro Tem remained on the Town Council.

Resulted in Participation in the Town's Business and Additional Expenses

As a result of the Mayor Pro Tem not forfeiting his position on Town Council after pleading guilty to assault charges, he continued to participate in the Town's operations, and voted on the Town's business.

Further, the Town paid \$3,000 of the Mayor Pro Tem's legal fees relating to the assault charge.

Caused by the Town Council's Lack of Enforcement

The Town Council did not require the Mayor Pro Tem to forfeit his office following his guilty plea.

Town Charter Required Forfeiture of Office Due to Conviction of a Crime

Although, the North Carolina Constitution¹⁴ states that an elected or appointed official will be disqualified from holding office if they are not qualified to vote because of a felony conviction, the Town Charter states, "The mayor or a member of the board of commissioners...convicted of crime while in office, shall immediately forfeit his office."

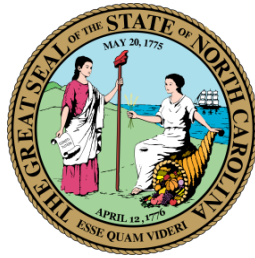
RECOMMENDATIONS

The Town Council should enforce its Charter by removing the former Mayor Pro Tem from office.

The Town Council should consider revising its Charter to comply with the North Carolina Constitution.

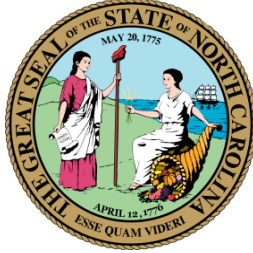
¹³ In North Carolina, a defendant is considered to be convicted after the entry of his guilty plea as if a jury had found him guilty. See, for example, *State v. Oakley*, 75 N.C. App. 99, 103, 330 S.E.2d 59, 62 (1985) (citations omitted).

¹⁴ <https://www.ncleg.gov/Laws/Constitution/Article6>



APPENDIX

Mayor Pro Tem's Travel Not Pre-Approved			
Travel Dates	Destination	Purpose	Amount
1/24/18 - 1/26/18	Chapel Hill, NC	Training	\$ 187.62
4/19/18	Raleigh, NC	Meeting	166.77
2/1/19 - 2/2/19	Greensboro, NC	Gala	24.00
3/11/19 - 3/14/19	Washington, DC	Conference	783.23
4/24/19 - 4/27/19	Unknown	Unknown	109.00
6/24/19 - 6/27/19	Indianapolis, IN	Meeting	199.92
7/16/19 - 7/21/19	Jackson, MS	Conference	947.69
10/25/19 - 10/27/19	Columbia, SC	Conference	115.00
11/19/19 - 11/24/19	San Antonio, TX	Conference	1,482.66
1/24/20 - 1/25/20	Greensboro, NC	Conference	26.00
Unknown	Nashville, NC	Training	115.54
Unknown	Unknown	Unknown	487.34
Unknown	Unknown	Unknown	200.62
Total			<u><u>\$ 4,845.39</u></u>



RESPONSE FROM THE TOWN OF HERTFORD

EARNELL BROWN
MAYOR

PAMELA W. HURDLE
TOWN MANAGER

SHONIQUE POWELL
TOWN CLERK

BENJAMIN M. GALLOP
TOWN ATTORNEY



TOWN COUNCIL:

ASHLEY HODGES
MAYOR PRO TEM

QUENTIN JACKSON

FRANK NORMAN

JERRY MIMLITSCH

July 14, 2021

Honorable Beth A. Wood, CPA
North Carolina Status Auditor
20601 Mail Service Center
Raleigh, NC 27699-0600

Dear Auditor Wood,

This letter is in response to the Office of the State Auditor's Investigative Report (henceforth, "The Report") concerning the Town of Hertford. The Town takes the State Auditor's findings seriously and is actively working to identify the root causes of the identified issues and determine the most appropriate corrective action(s). Our response is divided into three parts:

- A. Additional background information to help the State Auditor's office and general public understand how the activities detailed in The Report were possible.
- B. Detailed responses to each of the findings, including any corrective action(s) already in place or under consideration to prevent these kinds of abuses moving forward.
- C. Summary including opportunities and limitations as they relate to broader actions the Town might consider in addressing the State Auditor's concerns.

In addition, we have also included a number of attachments to demonstrate the Current Town Council's commitment to ethical and responsible management of public funds. We appreciate the State Auditor's diligence in performing this investigation and willingness to provide the Town extra time to prepare this response. We are open to any further feedback your office may have moving forward.

A. Background Information

Clarification of Persons Referenced in the State Auditor's Report and Town Response

The tables below map position titles to names and time periods to eliminate any confusion the reader might have as to whom is meant by a particular reference in either document. This is necessary as the Town experienced transitions in nearly every position referenced in The Report during the investigated period (January 2018 – June 2020).

Position Title in The Report	Individual(s)	Title Held
Former Mayor Pro Tem / Mayor Pro Tem	Quentin Jackson	1/14/19 – 12/9/19
Town Manager	Pamela Hurdle	7/8/18 – Present
Town Council (referred to as “Former Town Council” in the Response)	Mayor Horace Reid	12/14/15 – 12/9/19
	Archie Aples	12/14/15 – 12/10/18
	Quentin Jackson	12/11/17 – Present
	Frank Norman	12/11/17 – Present
	Sid Eley	12/14/15 – 12/9/19
	Gracie Felton*	1/14/19 – 12/9/19
	* Appointed when Aples resigned	

Position Title in Response	Individual(s)	Title Held
Current Town Council	Mayor Earnell Brown	12/9/19 – Present
	Ashley Hodges	12/9/19 – Present
	Jerry Mimlitsch	12/9/19 – Present
	Quentin Jackson	12/11/17 – Present
	Frank Norman	12/11/17 – Present

Background and Contributing Factors

The Town of Hertford operated for many years under what might best be termed as a “family business” approach. Policies and procedures governing operations and expenditures were often vague, antiquated, or informal in nature. Decision making authority rested with a small number of individuals, many of whom held multiple positions simultaneously – a situation the Local Government Commission consistently deemed a material weakness in the Town’s internal controls during its annual audit reviews. Control of the Town’s liquid assets was similarly lax – at the time the Current Town Council took office more than a half dozen individuals had signatory authority on the Town’s bank accounts, some of whom no longer held office or were employed by the Town. In effect the Town depended on the reliability of strong personalities in key positions, rather than on strict procedural controls and accountability, to ensure responsible use of public funds.

This response does not assert, and should not be interpreted to suggest, that any staff member took improper actions. Such issues are beyond the scope of The Report or this Response.

In 2019 the Town elected a new Mayor and two new Town Councilmen. The Current Town Council took immediate steps to regain positive control of the Town’s finances while also putting into place updated policies and procedures based on best practices from the UNC School of Government and NC League of Municipalities. Section B maps these actions to The Report’s specific findings.

B. Detailed Responses

Finding #1: *Town Council Awarded a Contract to the Highest Bidder for Its Street Light Fixture Project Resulting in the Town Overpaying by as Much as \$25,749*

Based on The Report's findings, a majority of the Current Town Council agrees Town officials sought ways to avoid the informal bid process and award the street light fixtures contract directly to the Former Mayor Pro Tem's preferred vendor; that the Former Town Council disregarded both the law and the Town Attorney's advice; that the decision did not meet the bar for "lowest responsible, responsive bid"; and that as a result the Town overpaid by as much as \$25,749. The majority of the Current Town Council disagrees with the Former Town Council's decision and actions, and in fact the Current Mayor Pro Tem delivered a letter (see Attachment A) to the Former Town Council at the time of the decision stating as such. In addition, the Current Town Council was made aware of a video posted to YouTube (link to be provided upon request) in which the owner of the selected vendor explicitly stated he "got them elected" so he would "get the contract the next day." A majority of the Current Town Council views this as textbook graft on the part of the Former Mayor Pro Tem.

As stated above, it is the Current Town Council's objective to correct the Town's financial operations and internal control deficiencies, and as a result we have taken several actions to prevent this behavior in the future:

1. Updated and ratified Section 9, "Competitive Bids" in the Town of Hertford's Purchasing Policy (see Appendix B) on April 6, 2020 to meet or exceed the requirements of N.C.G.S. §143-131.
2. Budgeted funds for newly elected Town Council members to attend the UNC School of Government Local Elected Officials Ethics Training course.

The Town will comply with State law and its Attorney's advice when awarding all future contracts.

Finding #2: Former Mayor Pro Tem Incurred \$11,671 in Questionable Expenses

Based on The Report's findings, the majority of the Current Town Council agrees with The Report's assertion that inadequate oversight by the Town Council and staff, combined with inadequate policies for credit card and vehicle use, led to a permissive environment of waste and abuse of public resources by the Former Mayor Pro Tem. Upon taking office in December 2019, the Current Town Council took immediate action to "stop the bleeding" until formal policy and procedure updates could be formulated and approved. These initial measures including blocking Council access to the Town Council vehicle without the Mayor's approval; freezing all Town Council credit cards; and striking all signatories other than the Mayor, Mayor Pro Tem, Town Manager, Finance Director, and Utilities Director from the Town's bank accounts. The Current Town Council implemented a new Town Council Travel Policy (see Appendix C) in January 2020 that formalized the approval and purchase processes for travel, in addition to providing specific criteria governing the use of Town owned vehicles by Town Council members. In April 2020, the Current Town Council approved a completely revised Purchasing Policy (see Appendix B) which included explicit policies for credit card use by both Town staff and elected officials. For the first time these policies also included provisions for the recovery of unauthorized expenses through collection action, thereby providing the Town a mechanism by which to recover misused funds. The majority of the Current Town Council believes these actions appropriately address The Report's recommendation to implement adequate policies and procedures for credit card purchases and vehicle use. These policies and procedures were reviewed by Town Council as part of the approval process, and the Council committed to abide by its rules in its response to the Local Government Commission Material Weakness Letter received February 17, 2020 (see Appendix D).

It is the Current Town Council's intention to pursue recovery of the costs incurred by the Former Mayor Pro Tem and will discuss options for collection with the Town's Attorney in the coming days. We thank

you for the records the State Auditor's office used in developing its findings that were provided by the Town as most (if not all) of these documents are already subject to public records request requirements.

We were able to research the community college tuition reimbursement issue cited in The Report, and the majority of the Current Town Council agrees with The Report's finding that the Former Mayor Pro Tem is not an employee of the Town and therefore cannot take advantage of the tuition reimbursement benefit provided to employees. It intends to pursue reimbursement of Town funds provided to the Former Mayor Pro Tem for his classes and will discuss options with the Town's Attorney in coming days.

N.C.G.S. §160A-148 outlines the powers and duties of the Town Manager, which includes seeing that "all laws of the State, the city charter, and the ordinances, resolutions, and regulations of the council are faithfully executed within the city." The Town Manager clearly has a duty to ensure policies adopted by the Council are accurately and consistently followed by all staff. Unfortunately, based on The Report, it appears that Town policy may not have been followed at all times, particularly when reimbursement was approved without requiring receipts or adequate documentation to support a valid Town purpose. *The Report* indicates the Town Manager knew the Former Mayor Pro Tem was traveling without prior approval. "She did not question the Mayor Pro Tem when he did not submit travel forms for prior approval, despite knowing he was traveling ... she approved the travel when it was submitted to her." Travel forms were approved after the fact when the Former Mayor Pro Tem submitted them for payment. Approval of the tuition reimbursement for the Former Mayor Pro Tem was also improper because it was undisputed that he was not a Town employee. The majority of the Current Town Council agrees with The Report's finding that proper reimbursement policies were not followed. It should be noted that the Current Town Council's options to address some of these issues with some staff are limited by an employment agreement. Despite these limitations the Current Town Council will still discuss all options with the Town Attorney to determine the appropriate action(s).

Finding #3: Former Mayor Pro Tem Did Not Forfeit Office After Pleading Guilty to an Assault Charge; Town Incurred \$3,000 Related to the Former Mayor Pro Tem's Legal Fees

The Town was and still is shocked by this incident; the Former Mayor Pro Tem's physical assault on a fellow elected official after a Council meeting is the very antithesis of democracy. Although the majority of the Current Town Council is resolute in its condemnation of this behavior, the Current Town Council is advised by its Attorney that the Town Charter's provision for immediate forfeiture of office is unenforceable as it runs counter to the forfeiture requirements stated in the North Carolina Constitution. Per the Town Attorney, the North Carolina Constitution surpasses all other state and local legislation (including the Town's Charter) in legal precedence. The Current Town Council will therefore consider revising its Charter to comply with the North Carolina Constitution.

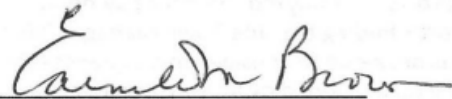
Although the newly elected members of the Current Town Council were aware of this assault, none were aware the Previous Town Council authorized payment of the Former Mayor Pro Tem's legal fees; neither the Town Manager nor the remaining Previous Town Council members (including the Former Mayor Pro Tem) ever mentioned this action in our discussions about the court case. Although N.C.G.S. §160A-167 authorizes governing boards to provide for the defense of current and former members against civil or criminal defense claims based on acts or omissions allegedly within the scope of their duties, the majority of the Current Town Council finds the use of this provision to fund the Former Mayor Pro Tem's defense for assaulting a fellow Councilman to be a grotesque perversion of the law's intent. Upon investigation we discovered the Previous Town Council made the decision to pay for the Former Mayor Pro Tem's defense in a Closed Session without the Town Attorney and the victim of the

crime present, even though the latter was still an active Town Councilman. In addition, the Town Attorney indicated he was not aware of the meeting at the time and would have advised the Previous Town Council **not** to authorize this action if he had been afforded the opportunity to attend. The Current Town Council will discuss methods for reimbursement of this expense with the Town Attorney in an upcoming Council meeting.

C. Summary

The Current Town Council appreciates the State Auditor's diligence in thoroughly investigating the considerable number of issues identified in The Report and takes seriously its obligation to decisively address them moving forward. As outlined above, the Current Town Council has already taken several steps to eliminate weaknesses in our governance and policy structures and is actively considering other actions we might take to further ensure these abuses do not occur again. Although the Town is limited by both its own resources and actions taken by the Previous Town Council, we intend to make every effort to protect our community from this type of waste, fraud, and abuse in the future.

Sincerely,



Earnell Brown, Mayor of Hertford

CC: Ashley Hodge, Mayor Pro Tem
 Quentin Jackson, Councilman
 Jerry Mimlitsch, Councilman
 Frank Norman, Councilman
 Pam Hurdle, Town Manager

Appendix A

Current Mayor Pro Tem's Letter to
Former Hertford Town Council
Regarding Lighting Contract
Dated 15 April 2019

Ashley Hodges
106 N Front St
Hertford, NC 27944
15 April 2019

Town of Hertford
P.O. Box 32
Hertford, NC 27944

Commissioners / Manager Hurdle:

I attended the April 8th Board of Commissioners meeting during which the Town's LED lighting project was discussed and ultimately awarded to Greener By LED, LLC. Although I applaud the Board's effort to award the contract to a local minority-owned small business I left the meeting concerned that the required evaluation process had not taken place, thereby exposing the Town to the risk of protest and/or litigation from non-selected vendors. If such an action were to take place the Town could be forced to defend itself in court which would be costly and potentially undermine the Town's ability to fund other important initiatives. I know other citizens share these concerns, with some of them prepared to call for an external audit or make accusations in the next public meeting. I don't view any of these eventualities as productive for the Town or its citizens, so I decided to research the RFP process myself in order to provide the Board with an assessment of where we are and suggestions for how we might move forward from here (with Greener by LED or any other vendor).

First a word on my perspective and approach... I have worked in the federal government sector for all 18 years of my professional career; four (4) as a government civilian and 14 as a contractor bidding on government contracts. I helped write requirements and evaluate proposals as a civilian, and as a contractor I write technical proposals, develop pricing data, review terms and conditions, negotiate with government contracting officers, and even "red review" proposals for compliance and competitiveness prior to submission to the government. I am very familiar with the conditions under which protests can occur, as well as the process by which the government can legally justify award of a contract to a specific vendor. Based on this background I spent the morning analyzing the Town's Request for Proposal (RFP) document, its development and approval process, and the compliance and competitiveness of the winning proposal to determine if any of the non-selected vendors might have a basis for challenging the Town's award. For full disclosure I did not perform a technical evaluation of the proposals as I am not experienced with this industry, nor did I evaluate the other 11 bids for their compliance and competitiveness. However this would be consistent with the analysis undertaken by any of the non-selected vendors as they would not have insight into the other bids.

Town of Hertford
15 April 2019
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Areas of Concern

- 1) The Formal RFP is different than the Informal RFP presented to the Board of Commissioners by the Public Works Manager and was not approved by the Board prior to delivery to the vendors. In addition to a number of formatting differences between the two documents, the Formal RFP upgrades the required warranty period from 5 years to 10 years. In discussions with Manager Hurdle it appears that a consistent process for development and approval of RFP packages was not followed.
- 2) The Town failed to follow the technical evaluation processes stipulated in the RFP as follows:
"Prior to Bid Award, the Bidder shall conduct a face to face meeting with the Town of Hertford's Public Works Director and provide a sample of the LED Street Light Fixture quoted along with the manufacturer's technical specifications that demonstrates the LED Light Fixture meets or exceeds the Minimum Specifications outlined above." (Note: This process is consistent between the Informal and Formal RFP documents.)
In discussions with Manager Hurdle only the lowest bidder (Wesco) was afforded the opportunity to meet with the Public Works Director to demonstrate their product, thereby making it impossible to know if any of the other vendors' offerings were of superior quality or performance prior to the Board's decision.
- 3) The proposal submitted by Greener by LED, LLC does not appear to meet 2 of the 3 criteria of the Standard of Award outlined in the Town's RFP and defined further in the "Basic Legal Requirements for Construction Contracting with North Carolina Local Governments" article from the UNC School of Government (Houston, Norman, September 2013). (I am not qualified to judge the 3rd criteria, "Responsible Bidder," though my sense is this standard would have been met by Greener by LED's bid.) The suspect criteria are:
 - a) Lowest cost – Greener by LED's bid is \$87,535 including NC sales tax, which is the highest price amongst all bidders and ~21.3% higher than the median bid (after removing the \$61,786.90 bid deemed non-responsive by the Public Works Director).
 - b) Responsive Bid – The UNC School of Government article defines this criteria as "Bid documents conform to bid specifications and meet all applicable legal requirements." The Town's RFP stipulates the following two requirements, neither of which is met by the Greener by LED, LLC bid:
 1. *"Bidder should furnish information including descriptive literature and complete manufacturer specifications covering the LED Light Fixture offered."*

Greener by LED's bid only includes an invoice-type document which repeats the Town's requirement without providing any specific information about the product to be

Town of Hertford
15 April 2019
Page 4

delivered. Without this critically missing piece of information it is impossible for the Town to determine whether Greener by LED's product justifies its highest-in-competition price.

1. *"The LED Light Fixture manufacturer's warranty should cover the entire fixture to include the LED's driver, luminary housing, wiring, connections, etc. All fixtures should have a minimum of a ten year manufacturer's warranty."*
Greener by LED's bid explicitly states that the product will carry a five (5) year warranty.

Suggestions

As stated in the opening paragraph of this letter, I support the Board's attempt to increase the Town's business with local minority-owned businesses. However I would caution the Board that the award decision reached in the April 8th meeting is highly likely to be overturned on protest should any of the other bidders choose to pursue this option. In light of this fact I would urge the Board to consider the following actions:

- 1) Immediately cancel the current award to avoid any possibility of legal impact to the Town
- 2) Develop a new RFP expressly approved by the Board of Commissioners
- 3) Consider adding evaluation criteria consistent with the Board's priorities relative to supporting local minority-owned small businesses. These criteria could include physical proximity to the Town, HUB Zone status, or establishment of this procurement as a small-business set aside. The current RFP makes no explicit mention of these criteria which inherently disadvantages smaller companies due to economies of scale. The Town's attorney should be able to assist the Board in writing effective and legally-defensible criteria.

There is one additional possibility if the Board wishes to move forward under the existing RFP. The RFP includes the following language under the "Nonconforming Terms and Conditions" section:

"A bid response that includes terms and conditions that do not conform to the terms and conditions in this bid document is subject to rejection as nonresponsive. The Town of Hertford reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by the Town of Hertford of non-responsiveness."

This language seems to indicate the Board could notify Greener by LED, LLC of its nonconformance and request an updated bid which would provide the company with an opportunity to both correct the warranty discrepancy and provide additional technical information to justify its higher price. This is purely my speculation however, and I would encourage you to discuss it with the Town's legal counsel prior to taking this course of action.

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Thank you for taking the time to read this letter and if there is anything I can do to assist the Board in this effort (or any other) please let me know.

Sincerely,

Ashley Hodges

Appendix B

Town of Hertford Purchasing Policy
Last Updated and Ratified April 6, 2020

See included file "TOH Purchasing Policy FINAL"

TOWN OF HERTFORD PURCHASING



POLICY

TOWN OF HERTFORD

PURCHASING POLICY

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TOWN OF HERTFORD

PURCHASING POLICY

GLOSSARY

Bid: A multi-step process required of the Town by North Carolina General Statutes. Quotes from three separate vendors are generally required whenever possible.

Informal Bid: A bid on items over \$3,000.00 and up to the policy threshold for formal bidding. Requests for quotes are not required to be advertised to the public. Purchases in this category do not need to be approved by Town Council.

Formal Bid: A bid on items or services over \$90,000.00 or on construction and repair over \$300,000.00. Public advertisement of the request for quote and bid process must be made and bids must be opened in public.

Quote: A price provided by a vendor on a provided good or service.

Requisition: Formally requesting a service or item using a purchase requisition form by a department prior to a purchase, which generates a purchase order by the Finance Department when applicable.

Purchase Order (PO): Authorization for the purchase of goods by the Finance Department to a department to send to a vendor prior to the purchase.

Blanket Purchase Order (BPO): A Blanket Purchase Order is an agreement arranged between the Town and a supplier to deliver goods or services at a predetermined price on a recurring basis for a specified time period.

Request for Written Quotation (RFQ): A request sent to a vendor for a written quote on a certain good or service.

Encumbering: To commit a given amount of money to the payment of an order.

Professional Services: Services such as architects, engineers, doctors, lawyers, etc. where the provider is required to have obtained a license from a licensing board, before qualifying to provide such service.

Request for Qualifications (RFQ): A step sometimes used in the process of procuring a product or service. An RFQ is typically used as a screening step to establish a pool of vendors that are qualified, and thus eligible to submit responses to a request for proposals (RFP).

Request for Proposal (RFP): A document that solicits proposals from qualified vendors of a product or service when the Town is seeking services or commodities that require technical expertise, specialized capabilities, or where the product or service being requested does not yet exist.

Purchasing / Credit: Interchangeable; how the Town obtains needed goods and services.

Standard Services: General services provided by a vendor or an individual that are not specialized or generally considered a professional skill. Examples of standard services are landscaping, janitorial, or maintenance services.

"Piggyback" Exception: Refers to statutory exception that allows for the competitive bid process to be waived in certain circumstances. This exception is only applicable to Apparatus, Supply, Material, and Equipment purchases in the Formal Bid range and must have been competitively bid within the previous twelve (12) months.

Department Head: The individual authorized to make purchasing decisions on behalf of his / her department.

Vendor: Provider of a good or service.

TOWN OF HERTFORD

PURCHASING POLICY

1. FORWARD

This Purchasing Policy is intended for use as a guide to the Town of Hertford's purchasing methods and practices. When used properly, the policies and procedures established herein will enable the Town to obtain needed materials, equipment, supplies and services efficiently and economically.

The understanding and cooperation of all employees is essential if the Town is to obtain the maximum value for each tax and utility dollar spent. While this policy does not answer all questions related to purchasing, it does provide the foundation for a sound purchasing system.

The basic goals of the Town's purchasing program are:

1. To comply with the legal requirements of public purchasing and credit.
2. To assure vendors that impartial and equal treatment is afforded to all who wish to do business with the Town.
3. To receive maximum value for each dollar spent by awarding purchase orders to the lowest responsible responsive bidder, taking into consideration quality, performance, technical support, delivery schedule, past performance and other relevant factors.
4. To provide Town departments the required goods, equipment, and services at the time and place needed and in the proper quantity and quality.
5. To professionally administer the search for sources of supplies, the development of new sources, the selection of suppliers.
6. To promote good and effective vendor relations, cultivated by informed and fair credit practices and strict maintenance of ethical standards.

If the procedures and guidelines established in this policy are followed, each department can efficiently manage, control and plan its available resources to meet present and future departmental needs and help the Town to meet these goals.

North Carolina General Statute §133-32 Gifts and Favors Regulated, is applicable to the Town of Hertford's Credit and contracting process.

Clerical or minor revisions to this policy for clarity, statutory threshold updates, procedural adjustments, etc., shall be approved by the Town's Governing Body.

TOWN OF HERTFORD

PURCHASING POLICY

2. CREDIT WHEN UTILIZING FEDERAL OR STATE FUNDS

When procuring commodities and services involving the expenditure of Federal or State grant funds, credit shall be conducted in accordance with Federal and State requirements including, but not limited to, the credit requirements outlined in the United States Office of Management and Budget's (OMB) Uniform Guidance. Before proceeding with the credit process of obtaining goods or services related to Federal or State grant programs, make sure you comply with ALL credit requirements as outlined below to the Credit Section of the OMB Uniform Guidance publication.

Departments should be aware OMB Uniform Guidance requirements must be stringently adhered to for the Credit of goods, services, or any combination thereof, whenever Federal or State funding is being utilized. See Appendix A for additional guidance. Should you have any questions, please contact the Finance Department for discussion.

3. CONTRACT REQUIREMENTS AND EXECUTION AUTHORITY

1. Only the Governing Body and Town Manager has execution authority to obligate Town funds, services, etc., via contract and review by the Town Attorney before they may be executed. Departments should be aware this applies to all agreements, including Memorandums of Understanding, Municipal Inter-local Agreements, Revenue Agreements, etc., even when no Town funds are being utilized. In order to ensure appropriate review and execution procedures are followed, departments should always submit agreements to the Town Manager's Office before submitting to management for signature and execution.
2. In many instances a purchase order in lieu of a contract is a more appropriate and efficient manner for expenditure agreements, and departments are encouraged to utilize this process whenever possible. Purchase Orders are addressed in Section 7 below. If you have questions about the most efficient or appropriate manner in which to submit a contract, please contact the Finance Department.

NOTE — Any department utilizing Federal, State, or other funds for the credit of goods or services must adhere to the additional stipulations and requirements related to those funds. See Section 2 for guidance regarding federal and state grants.

3. Governing Body / Manager Authority for all contracts for services or other matters that do not concern either construction or repair shall not exceed the monetary amount at which formal bidding procedures would be required under G.S. §143-129 for apparatus, supplies, materials or equipment contracts (currently \$90,000).
4. Governing Body / Manager Authority for Construction & Repair contracts shall not exceed monetary amount of formal bidding requirements of G.S. §143-129 (currently \$500,000).
5. Bid Process and Execution Authority thresholds are applicable to the aggregate / overall costs of each contract or agreement. Overall costs of the materials and/or services required for a specific project or acquisition should determine the method of Bid Process and Execution Authority. Intentionally "splitting" or manipulating the scope of an order or contract, in an attempt to circumvent the Bid Process or Execution Authority levels, is prohibited.

TOWN OF HERTFORD

PURCHASING POLICY

Bid Process and Execution Authority by Contract Type

Apparatus, Supplies, Materials & Equipment		
Amount	Bid Process	Authority
\$3,000 - \$89,999	Informal	Town Manager/Council
\$90,000 & Above	Formal	Council
Standard Services		
Amount	Bid Process	Authority
\$3,000 - \$89,999	Informal	Town Manager/Council
\$90,000 & Above	Formal	Council
Professional Services		
Amount	Bid Process	Authority
\$3,000 - \$89,999	QBS	Town Manager/Council
\$90,000 & Above	QBS	Council
Construction & Repair		
Amount	Bid Process	Authority
\$3,000 - \$299,999**	Informal	Town Manager/Council
\$300,000 - \$500,000	Formal	Town Manager/Council
> \$500,000	Formal	Council

**Contract required for Construction & Repair >\$100,000

4. GENERAL GUIDELINES FOR PURCHASING SUPPLIES AND MATERIALS

4.1 Local Buying:

It is the desire of the Town to purchase from vendors located within the Town of Hertford and Perquimans County whenever possible. This can be accomplished by ensuring that local vendors who have goods or services available which are needed by the Town are included in the competitive purchasing process. However, the Town has a legal responsibility to its residents to ensure that maximum value is obtained for each public dollar spent. The Town cannot and will not make purchasing decisions solely on the basis of vendor residence or place of business. Rather, the Town will endeavor to encourage local vendors and suppliers to compete for all Town business.

4.2 Competitive Bidding:

Competitive bidding is required under certain circumstances set forth in the General Statutes. It is further the policy of the Town that some bidding is required in addition to the statutory requirements for the purposes of:

- Credit of goods and services as efficiently and cost effectively as possible.
- Seeking competitive offers from qualified and responsible sources of supply even where not required by state law.
- Provision of an open and fair environment for competition.

Reservation of Rights:

- The Town reserves the right to reject all bids.
- The Town reserves the right to waive any minor irregularities in any bid.

TOWN OF HERTFORD

PURCHASING POLICY

4.3 Department Responsibilities:

Quality and service are as important as price. It is the duty of the requisitioning department to secure the best and most economical quality that will meet but not exceed the requirements for which the goods or services are intended. In some instances, the lowest price does not necessarily mean the lowest cost.

As a service department for the Town, it is the desire of the Finance Department to establish and maintain a close working relationship with each department. An attitude of mutual cooperation and understanding is essential. The following guidelines will promote mutual assistance:

- Monitor supply levels of inventory and reorder points for future needs.
- Forecast any future purchasing requirements.
- Requisition well in advance of needs whenever possible.
- Eliminate all unnecessary emergencies or rush purchasing.
- Examine items received for quality, quantity, etc.
- Submit by written memorandum complaints against vendors.
- Convey to Finance Department the exact needs to be met when equipment or special orders requiring written specifications are involved.

Any unauthorized purchases shall be classified as a personal expense and will be paid for by the employee.

4.4 Conflict of Interest:

No employee shall participate in selection or award of a contract if a conflict of interest, real or apparent, is involved. Such a conflict would arise when an employee, employee's immediate family member, employee's partner or an organization which employs, or is about to employ any of the above, has a financial or other interest in the firm about to be selected for award. Any violation of this policy will be subject to the officer, employee, or agent to disciplinary action up to and including dismissal from employment and may also subject the offender to criminal prosecution and/or civil penalties under North Carolina State Law and Federal law.

TOWN OF HERTFORD

PURCHASING POLICY

BIDDING PROCESS GUIDELINES

INFORMAL BID

- Step 1 - Obtain Quote(s) (written, email, or fax)
- Step 2 - Submit Quote(s) with Purchase Requisition
- Step 3 - Purchase Order and/or Contract Issued

ITEMS	AMOUNTS	QUOTES	CONTRACT
Standard Services, Apparatus, Supplies, Materials, Equipment & Construction or Repair Work	Less Than \$3,000	Not Necessary	Not Required
Services - Non-Professional	\$3,000 - \$89,999*	Required -Three When Possible	Not Required
Apparatus, Supplies, Materials & Equipment	\$3,000 - \$89,999	Required -Three When Possible	Not Required
Construction or Repair Work	\$3,000-\$299,999	Required -Three When Possible	Not Required < \$100,000 Required > \$100,000

* For Professional Services see Section 6.2b — Qualifications Based Selection

FORMAL BID

- Step 1 - Advertisement
- Step 2 - Pre-Bid Meetings (If Necessary)
- Step 3 - Public Opening Sealed Bids
- Step 4 - Bid Deposit / Bid Bond
- Step 5 - Bids Recorded in Minutes
- Step 6 - Contract in Writing
- Step 7 - Award & Execution by Appropriate Authorized Official

ITEMS	AMOUNTS	QUOTES	CONTRACT
Standard Services, Apparatus, Supplies, Materials & Equipment	Greater Than \$90,000	Required	Required
Professional Services	Greater Than \$90,000	QBS*	Required
Construction or Repair Work	Greater Than \$300,000	Three Required	Required

* See Section 6.2b Qualifications Based Selection

Purchases CANNOT be divided to avoid formal bidding requirements.

North Carolina General Statute §133-32 Gifts and Favors Regulated, is applicable to the Town of Hertford's credit and contracting process.

TOWN OF HERTFORD

PURCHASING POLICY

5. PROCEDURES FOR REQUISITIONS AND NO PURCHASE ORDER PURCHASES

This section outlines the Town's purchasing procedure. The procedure outlined is designed to take full advantage of a de-centralized purchasing system.

5.1 Requisition:

The Requisition initiates the credit cycle. The receipt of the requisition with the required information and appropriate approvals gives the Finance Director the authority to issue a purchase order to the most suitable vendor. The Department Head or their designee must approve all requisitions within the department.

5.2 Completing the Requisition:

A requisition form (see Exhibit H) must be completed in its entirety, signed by the purchaser and / or Department Head authorizing the request for purchases. The completed requisition form is to be forwarded to the Finance Department for processing and they will perform the pre-audit procedures to assure sufficient appropriation is available for purchase. The requisition must include the Finance Department, Department Head, and Town Manager's signatures indicating approval to make each purchase. The Finance Department will have three (3) business days to return the form acknowledging approval or denial of the requested items for purchase. If there is insufficient appropriation available for the purchase, the requisition will be returned and the Department Head will be informed that a budget amendment is required before the purchase can be made. The Town Manager is the only person authorized to submit budget amendments. The Department Head (or the assigned designee) is responsible for making all purchases once approval has been granted by the Finance Department.

See Section 8a: Emergency Purchases and Confirming Purchase Orders in the event of an emergency.

Reference Exhibit E: Purchasing Operation Procedures adopted July 22, 2019.

6. VENDOR SELECTION

6.1 Selection Policy:

When a department wants to do business with a vendor the Town does not have an established relationship with, it is the responsibility of the Requisitioner to obtain a Form W-9 (Exhibit E) from the vendor. Incomplete forms will be returned as all information requested is necessary for vendor screening and proper system set up.

Vendors will be selected on a competitive basis. Formal bids and informal bids will be solicited by the requesting department. Bid awards, purchase orders and / or contracts will be issued to the lowest, responsive, responsible bidder. The Town of Hertford will not use vendors who have been debarred by Federal, State, or Local governments.

6.2 Selection Procedures:

For the credit of supplies, materials and /or equipment and for construction or repair, the Finance Director will observe the following procedures:

- a. North Carolina General Statute §143-129, Invitation for Formal Bids, will be used for purchases of \$90,000 and greater (\$300,000 and greater for construction and repairs). This will include

TOWN OF HERTFORD

PURCHASING POLICY

- b. advertising in the local newspaper and / or other advertising media as deemed appropriate and receiving sealed bids.
- c. North Carolina General Statute §143-131, Requisition for Written Quotation (RFQ), may be used for purchases of \$3,000 to \$89,999 with or without advertising. Town policy requires obtaining documented quotes for purchases of more than \$3,000. All quotes should be attached to the Requisition before the purchase order is issued.

6.3 Gifts and Gratuities

Town employees are prohibited from soliciting or accepting any rebate, money, costly entertainment, gift, or gratuity (with the exception of mementos and novelties of nominal value) from any person, company, firm or corporation to which any purchase order or contract is or might be awarded. The Town will not tolerate circumstances that produce, or reasonably appear to produce, conflicts between the personal interests of an employee and the interests of the Town. Accordingly, the Town may terminate, at no charge to the Town, any purchase order contract if it is found that substantial gifts or gratuities were offered to a Town employee. The Town may also take disciplinary action, including dismissal, against a Town employee who solicits or accepts gifts or gratuities of any value whatsoever.

Note — See Appendix B (Page 31) for liability insurance requirements for vendors & contractors.

7. **PURCHASE ORDERS**

To be valid, a Town purchase order request must have been submitted and approved within appropriate requisition approval procedures and include signature of the Finance Department, Department Head, and Town Manager.

7.1 The Purchase Order Process:

A purchase order is a contract between the Town and a vendor. The placement of orders by unauthorized Town employees or officials will not be recognized by the Town and payment of these obligations will not be approved. Obtaining supplies, materials, equipment or services without a purchase order, when required by policy, is an unauthorized purchase except in emergency situations as outlined in Section 8.3 or when utilizing a Town credit card as outlined in Section 8.9. Unauthorized purchases are classified as a personal expense and will be paid for by the employee.

All purchases in excess of \$500 and a credit card purchase in excess of \$3,000 require a purchase order accompanied by an approved requisition prior to initiating the purchase. The Department Head (or the assigned designee) is responsible for making all purchases once approval has been granted by the Finance Department.

In order to properly process the vendor's invoice(s) for payment, the packing slips or other documentation of delivery will be signed and dated by the person receiving the goods as confirmation of the items. The document of receipt should be forwarded to the Finance Department immediately after inspection of items and goods.

See Section 8a: Emergency Purchases and Confirming Purchase Orders in the event of an emergency.

Reference Exhibit F: Purchasing Operation Procedures adopted July 22, 2019.

TOWN OF HERTFORD

PURCHASING POLICY

7.1 Items That Do No Require a Purchase Order:

1. Legal Ads
2. Non-individual organizational dues such as to the League of Municipalities
3. Claim or refund payments (citizens filings for damages / reimbursement)
4. Insurance
5. Medical Examinations
6. Postage
7. Refunds
8. Building Rentals
9. Debt Service Payments
10. Equipment Lease Payments
11. Utilities
12. State required permits

8. SPECIAL CREDIT PROCEDURES

8.1 Blanket Purchase Order (BPO):

Finance Department will issue blanket purchase orders to selected vendors for the credit of large volume, low cost items. Blanket purchase orders can also be utilized for ongoing, reoccurring charges that Town departments incur throughout the year. An appropriate Receiving Document shall be processed before submitting department approved invoices to the Finance Department. Any orders with an aggregate cost of \$3000 or more, require three (3) documented quotes before the order may be submitted.

Requisitions for blanket purchase orders must, in addition to the required information, indicate the following: items covered by the blanket purchase order, a Not to Exceed (NTE) amount in the appropriate column. It is the responsibility of the individual authorized to purchase under a blanket purchase order to ensure that an unspent balance remains to cover the purchase to be made.

Any purchases made by personnel that are not authorized by the blanket purchase order requisition will be classified as a personal expense and will be paid by the employee.

8.2 Service Contracts:

a. Standard Service Contracts

All service contracts, for which the contractor will perform work while on Town property, must be accompanied by a standard contract form. The contract must follow all signature procedures and contain all necessary insurance and payment options. The completed and signed contract must be reviewed by the Town Attorney, signed by the Town Manager or Mayor, pre-audited by the Finance Director, and be filed in the office of the Finance Director. The executed contract should be referenced by an executed contract number in the department requisition that is forwarded to the Finance Department.

All Service Contracts, not professional service oriented, shall be subject to the same bidding requirements as Apparatus, Supplies, Materials, & Equipment.

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In certain cases, it may be determined that it is in the Town's best interest to waive the competitive bidding process and/or execution authority and negotiate for services with a specific vendor.

b. Professional Service Contracts

Normal competitive procedures cannot be utilized in securing professional services such as attorneys, planners, and other professional people who, in keeping with the standards of their discipline, will not enter into a competitive bidding process.

Reference Section 20: Professional Services Definition - N.C.G.S. §55B-2(6) for examples of recognized professional service fields.

As per N.C.G.S. § 143-64.31 Qualifications-Based Selection (QBS) is required for procuring services meeting these criteria. The Town must use this process when selecting an architect, engineer, surveyor, construction manager at risk, design-builder, or private developer for a public-private partnership development contract. When it has been determined that the Town requires services of this nature, Requests for Qualifications (RFQ) shall be distributed to the identified professional service providers in the respected field of services sought. An announcement stating all requirements for the project shall be made. The requesting Department should identify and define the evaluation criteria required for the project and then utilize this criteria, in order to evaluate all responses and recognize the provider that is found to show the most demonstrated competence and qualification(s) for the type of professional services rendered.

c. Professional Service Contract Exemption

The Town may choose to exempt itself from utilizing the QBS process, as allowed by N.C.G.S. § 143-64.32 provided the estimated professional fee is in an amount less than fifty thousand dollars (\$50,000). This exemption may only be applied to any one specific project. This exemption shall be at the discretion of the Town Council and shall be submitted in the form of a memorandum to council stating the specific project to be exempted and the estimated fee.

Should you have any questions regarding contracts, please contact Purchasing for discussion.

8.3 Emergency Purchases and Confirming Purchase Orders:

a. Emergency Purchases

In cases of emergencies, the Department Head or their designee may purchase directly from any vendor; supplies or services whose immediate credit is essential to prevent delays in work which may affect the life, health, or safety of the Town of Hertford employees or citizens.

The Department Head shall exercise good judgment and use established vendors when making emergency purchases. Always obtain the best possible price and limit purchases to those items' emergency related. Not anticipating needs does not constitute an emergency situation. First, determine if a true emergency does exist. Second, anticipate needs and avoid emergency situations whenever possible. Emergency orders are always costly. Vendors usually charge premium prices if supplies or services must be obtained on an emergency basis.

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During Working Hours the Following Procedure Should Be Used for Emergency Purchases:

Contact the Town Manager and Finance Department and give all pertinent information to obtain a purchase order. The information needed will include vendor name, item(s) to be purchased with quantities, expenditure account to which the item(s) will be charged and the reason for the emergency purchase. After verifying available funds, a purchase order number will be issued for the expenditure and a confirming purchase order will be mailed to the vendor. Should the purchase over-encumber the account balance, a Budget Adjustment or Budget Amendment will be needed to be completed as soon as possible.

After Working Hours the Following Procedure Should Be Used for Emergency Purchases:

The packing slip or invoice received should be coded with the general ledger account number(s) to be charged and signed. Please attach a brief explanation of the nature of the emergency, verify funds are available and forward to the Finance Department the next available business day. Emergency purchases, although sometimes necessary, are costly both in time and money. The use of emergency procedures should be limited and will be monitored for abuse.

b. Confirming Purchase Orders

Confirming purchase orders will be used for emergency situations and unforeseen purchases that arise unexpectedly, for which time does not allow for routine processing. They are not designed to be used for convenience.

8.4 Sole Source of Supply:

In the event there is only one vendor capable of providing a particular good or service, the competitive pricing procedures outlined in this manual may be waived. "Sole Source" exceptions must be approved by Council as per G.S. 143-129. As this exception allows for no distinction between formal and informal Credit procedures, every effort should therefore be made to solicit bids from multiple sources and/or find another provider for these goods or services. Whenever a Department Head determines to purchase goods or services from a "sole source", a Sole Source Justification Form (Exhibit E) shall be filled out documenting why only one company or individual is capable of providing the goods or services required and submitted for Council Approval. Once approved, Finance Director shall attach this form with the Vendor Record. This will allow the "sole source" exception to be utilized for all future orders, until such time as another provider is identified, company merger / vendor buy-out, etc. Sole source exceptions shall be reviewed every three (3) years to determine whether other potential suppliers for these goods and / or services are available.

Conditions to be met for "Sole Source" purchases:

- Performance or price competition for a product not available.
- A needed product is available from only one source of supply; or
- Standardization or compatibility is the overriding consideration.

8.5 State of North Carolina, GSA & Other Federal Purchase Contracts:

The Finance Director may utilize the State of North Carolina Department of Administration Purchase and Contract Division, General Services Administration, and other Federal purchase contracts whenever

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possible for Credit of capital and non-capital items. These sources expedite the purchase of goods, offer pricing compatible with quotes received from formal and informal bids, and satisfy North Carolina General

Statutes. Examples of goods on these contracts are: law enforcement vehicles, office furniture, copiers, janitorial supplies, copier paper, and light bulbs. When utilizing this process, the normal contract approval requirements apply. Contact the Finance Director with questions about which goods are on State, GSA and other Federal contracts.

8.6 Previously Bid Contracts Exception (Piggyback)

As allowed by N.C.G.S § 143-129(g), the Town may waive the formal, competitive bidding requirements for purchases of apparatus, supplies, materials, or equipment. This exception is commonly referred to as the "piggyback" exception. Specific criteria regarding the structure of the contract, advertising, and Council approval, are only a few of the requirements that must be met in order for the Town to utilize this exception. In the event that a Department believes the Town would benefit by utilizing this exception, they should consult with Purchasing to ensure all criteria are met to allow for this exception, as well as formulating a schedule and checklist to meet all additional requirements and obligations.

8.7 Vehicle and Equipment Repair - Outsourcing of Service:

Procedures for outsourcing vehicle and equipment repairs, such as body repair, engine rebuilding, or any other service shall be handled by Equipment Services. Written estimates showing separate labor, material(s), and towing costs shall be submitted to the Finance Director with the completed requisition and appropriate signatures for purchase order processing. To provide the necessary cost and repair history of a vehicle for budgeting use, this should be handled and recorded on the vehicle's fleet maintenance record.

8.8 Purchases of Information Technology Goods and Service

Given the complex and innovative nature of Information Technology goods and services, the Town may utilize the procedures as allowed per N.C.G.S 143-129.8 for contracts that include combinations of purchase of goods, design, installation, training, operation, maintenance, and related services. The Town may choose to utilize this process in addition to or instead of any other procedure available under North Carolina law. When utilizing this process, the normal contract approval requirements and authorities shall apply.

8.9 Credit Cards

The use of credit cards has been proven to be a cost-effective method of obtaining low cost supply and service items for the Town. The purpose of this purchasing policy is to provide an alternative purchasing method.

A requisition form must be completed in its entirety, signed by the purchaser and / or Department Head authorizing the request for purchases. For the purposes of this policy the Mayor shall serve as the Department Head for the Town Council. The completed requisition form is to be forwarded to the Finance Department for processing and they will perform the pre-audit procedures to assure sufficient appropriation is available for purchase. The requisition must include the Finance Department, Department Head, and Town Manager's signatures indicating approval to make each purchase. The Finance Department will have three (3) business days to return the form acknowledging approval or denial of the requested items for purchase. If

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there is insufficient appropriation available for the purchase, the requisition will be returned and the Department Head will be informed that a budget amendment is required before the purchase can be made. The Town Manager is the only person authorized to submit budget amendments. The Department Head (or the assigned designee) is responsible for making all purchases once approval has been granted by the Finance Department via credit card. For the Mayor and Town Council all purchases should be made by the Clerk if possible; use of credit cards by the Governing Body should be limited to emergencies or when the Clerk is not available to make the purchase.

See Section 8.3: Emergency Purchases and Confirming Purchase Orders in the event of an emergency.

Reference Exhibit E: Purchasing Operation Procedures adopted July 22, 2019.

No credit card purchase over \$3,000 shall be made without an approved purchase order, prior to initiating the purchase. Available funds for all transactions under \$3,000 shall be pre-audited by Department Head before purchases may occur.

Receipts for non-reoccurring transaction should be and returned to the Finance Department as soon as possible.

The limitations on the Credit cards are as follows:

- A. Cardholders shall adhere to all purchasing policies and procedures.
- B. No personal purchases.
- C. No cash advances.
- D. No fuel for Town of Hertford vehicles except with approval by the Town Manager.
- E. No Cardholder shall allocate their own transactions.
- F. No purchases that violate Town policy.
- G. No splitting purchases into two or more transactions, or with another employee, to circumvent the limit assigned to the card.
- H. No sharing cards. Only the person whose name is on the card is authorized to use the card. Sharing cards with other employees with result in revocation of the card.
- I. All charge card monthly statements must have receipts for the charges. If receipts are not available for the charge on the statement, the charge card assignee is responsible for the charges.
- J. The credit limits established for each card shall be as follows:
 - i. Mayor and Town Council: \$1,000
 - ii. Clerk: \$5,000
 - iii. Town Manager: \$10,000
 - iv. Town Manager Executive Assistant: \$5,000
 - v. Department Head: \$5,000

Cardholder Eligibility

Criteria to receive a credit card is as follows:

- A. Applicant must be an employee or current elected official of the Town of Hertford.
- B. Credit cards will be issued, with the Town Manager's approval, to those who make official Town purchases from a vendor. To obtain a credit card, an enrollment form must be filled out and signed by the Department Head, Finance Director and Town Manager or their designee. (See Exhibit A.)

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- C. Each individual Cardholder must sign a Cardholder Agreement (Exhibit B). By signing this agreement, you indicate that you understand the intent of the program and will comply with all guidelines in the Town of Hertford's Policies and Procedures relating to the expenditure of Town funds.

Key Cardholder Responsibilities

The Credit card may be used for expenses as determined by Town policy. An employee guilty of misuse of the card will be subject to disciplinary action up to and including termination and will be subject to legal action. Elected officials guilty of misuse of the card shall repay the Town for the illegitimate expenses, either through direct payment or via garnishment of their monthly salary until the expense is repaid in full. If repayment is unable to be completed prior to the end of their term in office, the Town shall pursue collection and the former official will be responsible for any collection costs in addition to the original illegitimate expense amount. It is the Cardholder's responsibility to ensure that the card is used within stated guidelines of this policy. Failure to comply with program guidelines may result in permanent revocation of the card, notification of the situation to management, and disciplinary action in accordance with Town Policies and Procedures.

The Cardholder must:

- A. Ensure the credit card is used for legitimate Town business purposes only.
- B. Maintain the credit card in a secure location at all times and ensure it is carefully guarded.
- C. Obtain copy of charge slip, itemized sales receipt and/or packing slips for all purchase transactions.
- D. Retain all charge slips, itemized sales receipts, and/or packing slips and submit to their respective allocator for reconciliation through the Bank's software system.
- E. Attempt to resolve disputes or billing errors directly with the vendor and notify Credit Card Administrator if the dispute or billing error is not satisfactorily resolved.
- F. Immediately report a LOST OR STOLEN card to the Bank (24 hours a day, 365 days a year). As soon as possible, during normal business hours, notify the Town Manager.
- G. Report rejected transactions and emergency transaction needs to the Town Manager.
- H. Not exceed the credit limit established above.
- I. Return the credit card to the Town Manager upon terminating employment with the Town.

Credit Card Maintenance and Closure

All contact with the Town's Bank for card set up, maintenance, and closure (except for reporting lost or stolen cards) will be handled by the Town Manager. The Town Manager is required to close an account if a Cardholder:

- A. Transfers to a different department or position in which a credit card is no longer required
- B. Terminates employment
- C. For any violations to credit card or Town Policy.

Employees should return the plastic card for the credit card account being closed to the Finance Department immediately.

The Town Manager and Finance Director shall be responsible for ensuring the credit card balances are paid in full at the end of the month. Payments may be made more often if the credit limit is reached and additional purchases need to be made prior to the end of the month.

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Rejected Transactions

There may be certain situations when a vendor receives a decline message (rejected transaction) when processing your Credit card transaction. If you do not know the reason for the decline, contact the Town Manager for an explanation. If purchase is being made outside of normal business hours, the employee must find an alternate payment method, or terminate the purchase, and contact the Town Manager during normal hours. The Town may require that certain types of vendors be blocked from Credit card use. These transactions will be blocked at the point-of-sale level.

Credits

The vendor should issue a credit to your card account for any item they have agreed to accept for return. This credit will appear on a subsequent statement. Under no circumstances should you accept cash or store credit (including gift cards) in lieu of a credit to the Credit card account.

Transaction Reconciliation

For the Credit card process to operate efficiently and effectively, a timely response to all elements and procedures is required from all in order to ensure General Ledger inquiries are as accurate as possible. Credit card transactions should be allocated within the credit card system on a daily basis. Employee absences should be anticipated, and contingency plans put in place so that the process flow will not be delayed.

Training

The Finance Director shall be responsible to develop a Purchasing Policy training program to ensure all employees and elected officials in possession of a credit card fully understand their responsibilities under this policy. Initial training shall be provided prior to receipt of the credit card and refresher training shall be provided annually or whenever changes are made to the Purchasing Policy.

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9. COMPETITIVE BIDS**9.1 Informal Bids-Supplies and Materials (\$3,000 - \$89,999):**

The ordering department shall utilize the informal bidding process for purchases of \$3,000 to \$89,999. The informal bidding process for items above \$3,000 requires that competitive pricing be obtained in a written manner using a Request for Quotation (RFQ). These RFQ's are sent to several sources who can supply the product(s) desired. Once received, and the quote deemed in the best interest of the Towns determined, the department will submit a requisition to the Finance Director, and a purchase order shall be generated and sent to the successful bidder(s). Quotes must be in document form and may be submitted via U.S. Mail, email, fax, etc.

Every effort to obtain 3 quotes should be exercised.

9.2 Informal Bids-Supplies and Materials (\$90,000 and Greater):

When purchasing supplies, apparatus, materials and equipment with an expenditure of \$90,000 or more, the Department Head or their designee, in conjunction with the Town Manager and Finance Director, shall develop and prepare specifications for bidding. The Town Manager and Department Head shall be responsible for ensuring that all North Carolina General Statutes are satisfied, including, but not limited to, newspaper advertisement and receipt of sealed bids.

After receipt of a bid, the Town Manager, with the Department Head or their designee, shall review all bid responses to determine the bid deemed in the best interest of the Town. The Department Head or their designee shall make a formal recommendation of award, with supporting documentation to the Town Manager, and the Town Council. Upon Town Council approval of the recommendation, the Finance Director shall initiate the purchase order and contract to the successful bidder(s).

Exception to the formal bid process made under the exception clauses of G.S.143-129(e), shall be awarded under the same authority levels as indicated within Purchasing Policy.

9.3 Informal Construction or Repair Contracts (Less than \$300,000):

Construction, renovation or repair work of less than \$300,000 shall be the responsibility of the Department Head, the contracted engineer, and other Town officials as deemed necessary. The bid award will be made to the lowest responsive responsible bidder deemed in the best interest of the Town. Upon approval by the Town Manager and execution of the contract, the Department Head or their designee shall initiate a Requisition so that a purchase order can be generated to encumber the expenditure accounts and contact the successful bidder(s).

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Every effort to obtain 3 quotes should be exercised.

9.4 Formal Construction or Repair Contracts (\$300,000 to \$499,999):

Construction contracts within this range shall be the responsibility of the Department Head and the Engineer and other Town officials as deemed necessary. These officials are responsible for specification development. Projects and contracts within this range shall utilize the formal bidding process. After the formal bidding process is completed, the Department Head or their designee shall recommend to the Town Manager the lowest responsive responsible bidder deemed in the best interest of the Town. Upon award by the Town Council and execution of the contract, the Department Head shall initiate a Requisition form so that a purchase order can be generated to encumber the expenditure account.

9.5 Formal Construction or Repair Contracts (\$500,000 and greater):

Construction contracts within this range shall be the responsibility of the Department Head and the Engineer and other Town officials as deemed necessary. These officials are responsible for specification development. After the formal bidding process is completed, the Department Head or their designee shall recommend to the Town Council the lowest responsive responsible bidder deemed in the best interest of the Town. Upon award by the Town Council and execution of the contract, the Department Head shall initiate a Requisition form so that a purchase order can be generated to encumber the expenditure account.

10. SPECIFICATIONS

When goods or services are procured under the formal or informal bidding process, specifications must be prepared. All specifications, should do at least four things:

- a. Identify minimum requirements
- b. Encourage competitive bids
- c. Be capable of objective review
- d. Provide for an equitable award at the lowest possible cost.

Specifications shall be as simple as possible while maintaining the degree of exactness required to prevent bidders from avoiding supplying the goods or services required or otherwise taking advantage of their competitors.

All specifications utilizing a name brand must include the term "or approved equal" to avoid being restrictive and eliminating fair competition from the bidding process.

Different methods of structuring specifications include:

- a. Qualified products on acceptable vendor list
- b. Specification by blueprint or dimension sheet
- c. Specification by chemical analysis or physical properties
- d. Specification by performance, purpose or use
- e. Specification by identification with industry standards
- f. Specification by samples

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11. DELIVERY AND PERFORMANCE

A completed and accepted purchase order by the parties concerned must produce the intended results or objectives before it can be considered a successful or completed purchase. The terms and conditions must clearly define the delivery and performance requirements of the services, supplies or equipment.

The importance of the delivery schedule will be emphasized to the vendor. Delivery requirements will be clearly written and fully understood by all vendors. If several items are required by the purchase order, there may be a different delivery schedule for each item. It is necessary to clearly indicate the delivery location on the Requisition form.

11.1 Partial Deliveries:

Some purchase orders may list several items. It is possible the vendor may complete timely delivery on some items, which are referred to as "partial deliveries". Upon receipt of a partial delivery, attach a copy of the signed delivery receipt, with respective invoice and forward to the Accounting Division.

11.2 Non-performance:

If a vendor fails to meet any requirement(s) of the specifications or terms and conditions of the contract or purchase order, the vendor can be cited for non-performance. The seriousness of non-performance will be evaluated based upon the circumstances of each violation.

12. INSPECTION AND TESTING

Life and safety as well as successful operation of expensive equipment and supplies may depend upon how well a purchased item meets the design and performance specifications.

Goods and materials should be checked at the time of receipt for damage or defects. The inspection shall include assuring goods comply with the specifications. If damage is found or the goods fail to comply with the specifications, the item(s) shall be rejected as outlined below.

12.1 Rejection:

In order to protect the Town's rights in the event of rejection, for whatever reason, the vendor shall be informed immediately. Reasons for the rejection must be documented in memo form, attached to a copy of the purchase order and forwarded to the Finance Director in a timely manner. Purchasing will notify the vendor of the reason for the rejection.

12.2 Damaged Goods:

One of the major reasons for immediately inspecting the goods or materials upon receipt is to detect any visible damage. When it is apparent that the extent of the damage causes the goods to be worthless, they will not be accepted. It is necessary that all damage including evidence of concealed damage shall be documented by memo, attached to a copy of the purchase order and forwarded to the Finance Director so the Finance Department can inform the vendor of the damaged goods.

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12.3 Latent Defects:

Latent defects may be the result of damage in transit or failure of the manufacturer to conform to specifications. Consequently, it is often difficult to fix responsibility for the defective material. If specific liability for the defect cannot be determined between the carrier, the vendor, or the manufacturer, the Town may file a claim against all parties. A memo attached to a photocopy of the purchase order must be forwarded to the Finance Director so all parties involved can be properly informed.

13. VENDOR RELATIONS

Good vendor relations are valuable business assets established through mutual confidence and satisfactory business relationships between buyer and seller. An important contribution toward promoting and preserving these relations is a clear understanding of the method of contract between buyer and seller.

The Finance Director or designee must maintain a vendor file for recording the performance of vendors the Town engages in business. Should a department experience difficulty with or have a complaint with a particular vendor, document your concerns on a Vendor Performance Evaluation form provided in Exhibit (C). A memo to the Finance Director with your concerns will also suffice. Be as specific as possible, detailing the circumstances, dates, personnel involved (including titles) and phone numbers. This information will be helpful in determining if the vendor shall remain on the vendor list.

If it is determined that a certain vendor should be commended for its efforts, document the circumstances on the Vendor Evaluation Form and forward to the Finance Director.

Departments do not have the authorization to commit in writing, or verbally, future Town business to vendors or contractors. If a department wishes to add a specific vendor or contractor to the bid list, the Town Manager and Finance Director shall be contacted.

14. AFTER THE ORDER

The credit function is not accomplished by simply placing an order with a supplier. Satisfactory delivery must also be made. To ensure delivery will be made when required, follow-up is necessary.

Follow-up or expediting delivery of an order is part of the purchasing process and can be more efficiently handled by the purchasing party. For example: Purchases initiated by the Purchaser — the Purchaser would expedite follow-up.

Purchases initiated by the credit card process - follow-up will be by the purchaser.

15. SURPLUS PROPERTY

The Department Head is authorized to recommend to the Town Manager and Council any surplus personal property owned by the Town whenever he or she determines, in his or her discretion that:

- The item or group of items has a fair market value of less than \$30,000;

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- The property is no longer necessary for the conduct of public business; and,
- Sound property management principles and financial considerations indicate that the interests of the Town would best be served by disposing of the property.

The Department Head may seek bids for an item that it is valued to be less than \$30,000, or the original price was less than \$30,000 and the department has declared it surplus.

The Town Manager can approve selling the item to the highest bidder without the Town Council's approval. (G.S. 160A-266(c)). This will be done through a resolution signed by Town Manager.

The Town Manager may dispose of any such surplus personal property by any means which he or she judges reasonable to yield highest attainable sale price in money or other consideration. Sales may be public or private and with or without notice and minimum waiting period.

Any item valued at more than \$30,000 can only be declared surplus by the Town Council. This is done through a resolution passed by the Council. No surplus property may be donated to any individual or organization except by resolution of Council.

All Town of Hertford official(s) or employee(s) who is/(are) involved in the decision-making process to determine whether or not an item or items should be declared surplus is(are) barred from bidding on that item or item(s).

When disposing of property that is logged into the fixed asset system, you must write a memo to the Financial Director stating the:

- fixed asset number (if possible, please attach the fixed asset tag)
- serial number
- description of item
- where item is located
- weight and dimensions of item
- if item is to be transferred to another department

When disposing of property that is not logged into the fixed asset system you must write a memo to the Town Manager stating the:

- serial number
- description of item
- where the item is located
- weight and dimensions of the item

Items that have been declared surplus are disposed of by a licensed North Carolina Auctioneer as required by the North Carolina Auction Law Chapter 85B of the General Statutes.

Online Auctions shall also be utilized.

This policy approved by Town Council and is effective the ____ day of _____, 20____

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7. EXHIBITS

Exhibit A. New Cardholder Enrollment Form

Exhibit B. Cardholder's Agreement Form

Exhibit C. Sole Source Justification Form

Exhibit D. Purchasing Operating Procedures

Exhibit E. Form W-9

Exhibit F. Requisition Form

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EXHIBIT A

TOWN OF HERTFORD CREDIT CARD
NEW CARDHOLDER ENROLLMENT FORM

I. EMPLOYEE/CARDHOLDER INFORMATION

Name (for Card Imprint) _____
Cardholder's Employee ID: _____
Department: _____
Division (Budget Code): _____

II. STANDARD CARD LIMITS (Select one)

☐ Daily \$1,000 Transaction \$1,000 Monthly \$5,000

☐ _____

III. APPROVALS:

Dept. Head: _____ Date: _____
Finance: _____ Date: _____
Town Manager _____ Date: _____

IV. COMMENTS:

SUBMIT TO: FINANCE DIRECTOR

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EXHIBIT B

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CREDIT CARD CARDHOLDER AGREEMENT

- I will be expected to use the Town of Hertford Credit card issued to me as directed by the Town Manager under the provisions of the Cardholder Manual and Town Purchasing Policy.
- I will not permit another person to use the Town of Hertford Credit card issued to me. Any such purchases made with my card will be considered to have been made by me and will be my responsibility.
- I will be responsible for the safe keeping of the Town of Hertford Credit card issued to me. If the card becomes lost or stolen, I will report its loss immediately to the Town Manager.
- I understand that my personal credit will not be affected by any use of the Town of Hertford Credit card.
- The use of a Town of Hertford Credit card to procure goods and services for other than the official use of the Town of Hertford is fraudulent use. An employee guilty of fraudulent use will be subject to disciplinary action up to and including termination and will be subject to legal action.

I have read, understand and agree to the conditions above:

Sign: _____

Date: _____

CARD RECEIPT: _____

Card Account Number: _____

Date Issued to Cardholder: _____

Single Purchase Limit: _____

Monthly Purchase Limit: _____

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EXHIBIT C

Sole Source Justification Form

Statutory Reference N.C.G.S. 143-129(e)(6)

Council Meeting Date: _____ Agenda Item: _____

Vendor Name _____

Town Vendor Number _____

Item(s)

Estimated expenditure for item(s) listed above: _____

Please select all entries below that apply to the proposed purchase of item(s): (A memo containing justification may be attached)

- ☐ Performance or price competition for a product are not available.
- ☐ A needed product is available from only one source of supply.
- ☐ Standardization or compatibility is the overriding consideration.

Justification

The Undersigned requests that competitive Credit be waived and that the vendor identified as the supplier of the material or service described in this sole source justification be authorized as a sole source for the material or service.

Signed: _____ Date: _____

Approved by Council the _____ day of _____, 20____

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EXHIBIT D



**TOWN OF HERTFORD
PURCHASING OPERATING PROCEDURES**
This Procedures becomes Effective Monday, July 22, 2019

All purchases for the Town of Hertford must follow the written procedures outlined as specified in the Town's Purchasing and Operating Procedures.

A. REQUISITION

A requisition refers to the process of formally requesting a service or item, typically using a purchase requisition form. The requisition process is a standardized way of keeping track of and accounting for all requisitions made within a business or entity.

1. A requisition form must be completed in its entirety, signed by the purchaser and / or the Department Head authorizing the request for purchase. All requests are due to the Finance Department by 4:00 PM each Thursday.
2. The completed requisition form is to be forwarded to the Finance Department located in the Municipal Building.
3. Each request should include supporting documentation detailing items for purchase, the total purchase amount to include shipping and sales tax. For all new vendors it is the responsibility of the Requisitioner to obtain a form W-9 from the vendor.
4. The Finance Department will perform the preaudit procedures to assure sufficient appropriation is available for purchase. The Finance Department will have three (3) business days to return the form acknowledging approval or denial of the requested items for purchase.
5. The requisition must include the Finance Department, Department Head, and Town Manager's signatures indicating approval to make each purchase. The general ledger accounting codes for each purchase must be provided on the form by the Department Head and approved by the Town Manager.
6. If preaudit procedures indicate there is insufficient appropriation available for the purchase, the Finance Department will inform the Department Head before the request for purchase can be processed. A budget amendment is required, if deemed necessary, before the purchase can be made. The Town Manager is the only person authorized to submit budget amendments.

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B. PURCHASE ORDER

1. All purchases in excess of \$500 require purchase order.
2. No credit card purchase over \$3,000 shall be made without an approved purchase order, prior to initiating the purchase.
3. Purchase orders will be prepared by the Finance Department and returned to the Department Head during the requisition process.
4. The Department Head (or the assigned designee) is responsible for making all purchases.
5. All stated amounts in excess of 5% of the original approved request should be returned to the Finance Department of approval.

C. RECEIPT OF PURCHASES

1. When goods are received, the packing slip or other documentation of delivery will be signed and dated by the person receiving the goods as confirmation of the items. The documentation of receipt should be forwarded to the Finance Department.
2. If a packing slip or other documentation of delivery is not received by the time the Finance Department receives the invoice, a copy of the invoice will be forwarded to the Department Head or assigned designee to validate receipt of goods or services as invoiced.
3. The Department Head or assigned designee must verify that services listed on the invoice (e.g. vehicle maintenance and repairs) were completed. Your signature and date on the invoice validate the services were completed.
4. The Department Head is responsible for retaining gas card receipts (e.g. WEX) from all employees when a purchase is made. The receipt must include the vehicle number and signature from the user. Receipts should be submitted to the Finance Department at the end of every month.

PURCHASES MADE WITHOUT PROPER AUTHORIZATION WILL BE THE RESPONSIBILITY OF THE PURCHASER.

Town of Hertford Purchasing Operating Procedures

Revised 1/8/2020

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APPENDIX A

Credit Guidelines for OMB Uniform Guidance

Below is a summary of the required methods of Credit as of the date of this document; however, it does not include all the Credit requirements surrounding Federal and state grant programs. Please make sure you familiarize yourself with the entire Uniform Guidance requirements as detailed at the link below.

[OMB Uniform Guidance Credit Requirements](#)

Departments should be aware that the OMB thresholds included below are subject to changes and adjustments, based on inflation rates. Additionally, whenever there is a variance in OMB requirements and local policy, the more restrictive requirements should be followed in order to be compliant. Refer to the charts below for aid in how to proceed. While the charts below will be amended with current thresholds and steps as timely as possible, departments should always be sure to review and confirm that the most current processes are being utilized.

The Office of Management & Budget (OMB) Uniform Guidance requires the grantee to use one of the following methods of Credit:

- Micro-purchase: Purchases where the aggregate dollar amount does not exceed \$3,500 (or \$2,000 if the Credit is construction). When practical, the entity should distribute micro-purchases equitably among qualified suppliers. No competitive quotes are required if management determines that the price is reasonable.
- Small purchase: Includes purchases up to the Simplified Acquisition threshold, which is currently \$150,000. Informal purchasing procedures are acceptable, but price or rate quotes must be obtained from an adequate number of sources.
- Sealed bids: Used for purchases over the Simplified Acquisition Threshold, which is currently \$150,000. Under this purchase method, formal solicitation is required, and the fixed price (lump sum or unit price) is awarded to the responsible bidder who conformed to all material terms and is the lowest in price. This method is the most common Credit method for construction contracts.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, and realistic specification or description is available;
- (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (iii) The Credit lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, and the invitation for bids must be publicly advertised;
- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and the bids must be opened publicly;

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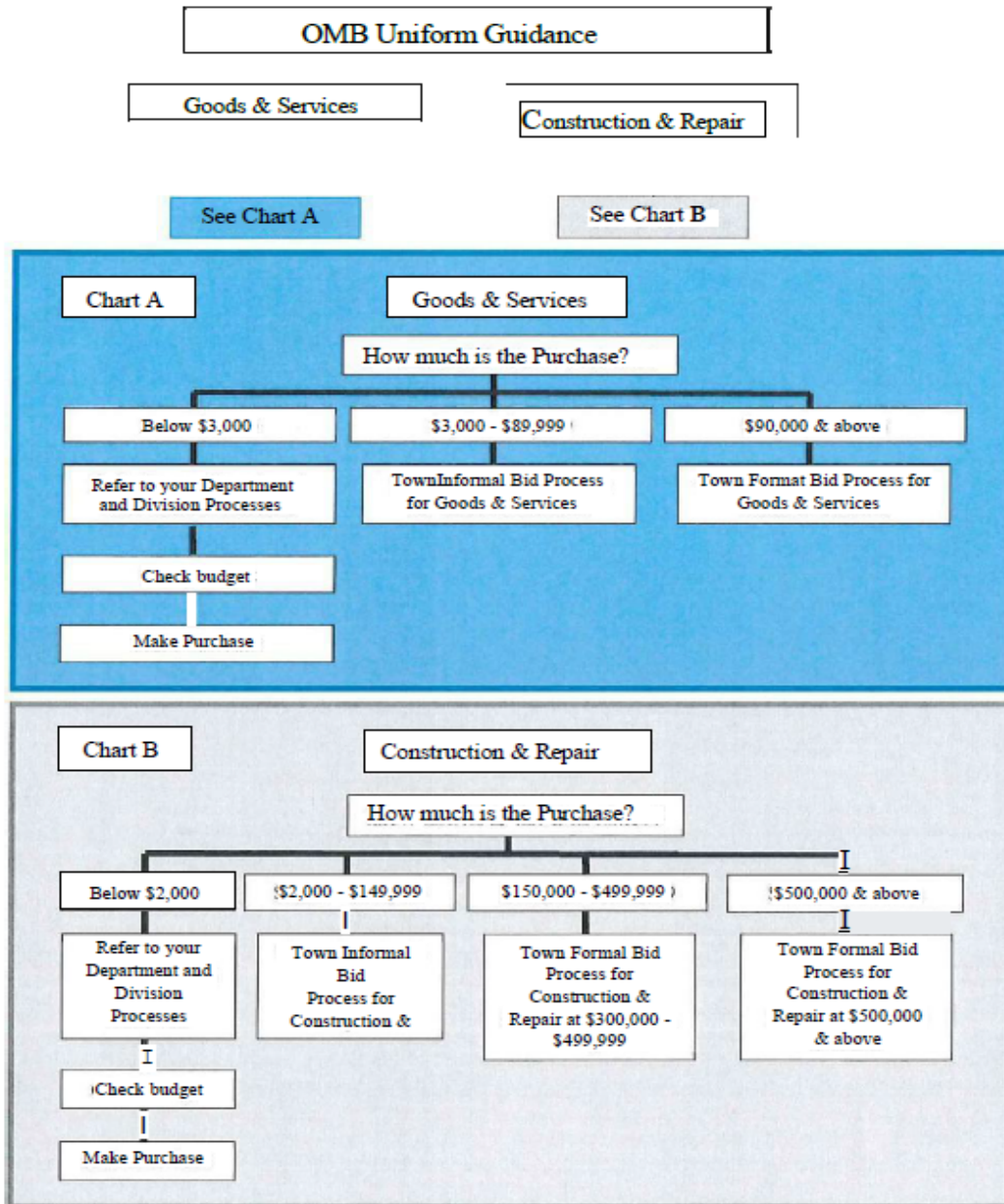
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- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (v) Any or all bids may be rejected if there is a sound documented reason.
- Competitive proposals: Used for purchases over the Simplified Acquisition Threshold, which is currently \$150,000. This Credit method requires formal solicitation, fixed-price or cost-reimbursement contracts, and is used when sealed bids are not appropriate. The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, with price being one of the various factors.
 - (i) Competitive proposals: Used for purchases over the Simplified Acquisition Threshold, which is currently \$150,000. This Credit method requires formal solicitation, fixed-price or cost-reimbursement contracts, and is used when sealed bids are not appropriate. The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, with price being one of the various factors.
 - (ii) Proposals must be solicited from an adequate number of qualified sources;
 - (iii) There must be a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - (iv) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the grant program, with price and other factors considered; and
 - (v) Competitive proposal procedures may be used for qualified-based Credit of architectural / engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in the Credit of architectural / engineering professional services. It cannot be used to purchase other types of services through architectural / engineering firms as a potential source to perform the proposed effort.
- Non-competitive proposals: Also known as sole-source Credit, this may be appropriate only when specific criteria are met. Examples include when an item is available only from one source, when a public emergency does not allow for the time of the competitive proposal process, when the Federal awarding agency authorizes, or after a number of attempts at a competitive process, the competition is deemed inadequate.

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OMB Uniform Guidance FLOW CHART



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Note — Differences in the thresholds of these charts from the defined thresholds cited in the Credit Methods paragraphs above, are due to OMB requirements that the most restrictive guidelines are to be utilized in order to be deemed compliant.

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APPENDIX B

TOWN OF HERTFORD
SUMMARY OF LIABILITY INSURANCE REQUIREMENTS FOR
VENDORS, CONTRACTORS, AND ORGANIZATIONS SPONSORING SPECIAL EVENTS

1) VENDORS

- A) **SIDEWALK VENDORS / RESIDENTIAL CURB-CUT VENDORS** - The insurance certificate must include:
- i. Commercial general liability insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence.
 - ii. The Town must be named as additionally insured on the insurance certificate.
 - iii. In addition, the vendor must indemnify and save harmless the Town of Hertford, its officers, agents, and employees from any claims arising out of any work performed for the Town or on Town property.
- B) **SKILLED TRADES AND SMALL BUSINESSES WORKING FOR THE TOWN OR CONDUCTING THEIR BUSINESS ON TOWNPROPERTY** - Skilled trades include such professions as electricians, plumbers, carpenters, roofers, heating/air conditioning technicians, carpet installers, fence installers, concrete and masonry contractors, and mowing contractors. Small businesses, other than sidewalk vendors and residential curb cut vendors, performing work on behalf of the Town or on Town property are also included in this group. The insurance certificate for this group must include:
- i. Commercial general liability insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence, and at least \$1,000,000 aggregate; or the equivalents utilizing excess or umbrella coverage.
 - ii. If the skilled trade or business has (3) or more employees, including the owner, the certificate must also include employer's liability insurance (workers compensation) in accordance with statutory requirements with limits of not less than \$100,000 for each accident.
 - iii. In addition, projects requiring employees of the skilled trade or small business to drive onto Town property, or transport Town employees or clients, or to use its vehicles on Town property will require auto liability insurance, which must cover bodily injury and property damage liability on all owned, non-owned, and hired vehicles for a limit of at least \$1,000,000 per occurrence, or the equivalent utilizing excess or umbrella coverage.
 - iv. The Town must be named as additionally insured on the insurance certificate for all coverage, except professional liability.
 - v. In addition, the skilled trade or small business must indemnify and save harmless the Town of Hertford, its officers, agents, and employees from any claims arising out of any work performed for the Town or on Town property.

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II) CONTRACTORS

- A) PROJECTS UP TO \$1,000,000- Contractors with projects up to \$1,000,000 are included in this category. The insurance certificate for this group must include:
- i. Projects requiring the contractor to provide consulting services from architects, engineers, or other technical areas of expertise will require professional liability insurance of at least \$1,000,000 for each claim.
 - ii. The certificate must also include commercial general liability insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence, and at least \$1,000,000 aggregate; or the equivalents utilizing excess or umbrella coverage.
 - iii. If the contractor has (3) or more employees, including the owner, the certificate must also include employer's liability insurance (workers compensation) in accordance with statutory requirements with limits of not less than \$100,000 for each accident.
 - iv. In addition, projects requiring the contractor to drive onto Town property, or transport Town employees or clients, or to use the contractor's vehicles on Town property will require auto liability insurance, which must cover bodily injury and property damage liability on all owned, non-owned, and hired vehicles for a limit of at least \$1,000,000 per occurrence, or the equivalent utilizing excess or umbrella coverage.
 - v. Also the contractor must furnish a performance bond and builder's risk policy in an amount at least equal to the contract price as security for the faithful performance and payment of all contractors' obligations under the contract.
 - vi. When the contractor and/or his employees have access to monies or properties of the Town, the contractor will provide a fidelity bond at a limit of not less than \$50,000 (depending on where the contractor will be working).
 - vii. The Town must be named as additionally insured on the insurance certificate for all coverage, except professional liability.
 - viii. In addition, the contractor must indemnify and save harmless the Town of Hertford, its officers, agents, and employees from any claims arising out of any work performed for the Town or on Town property.
- B) TRADES WITH SPECIAL RISKS / PROJECTS GREATER THAN \$ 1,000,000 BUT LESS THAN \$2,000,000 - Trades with special risks include technicians who repair and maintain rolling stock vehicles, construction equipment, elevators, cranes, airplanes, or individuals who spread chemicals, demolish buildings, supervise and conduct blasting, remove asbestos, or conduct carnival rides. Contractors involved in projects greater than \$1,000,000 but less than \$2,000,000 are also included in this category. The insurance certificate for this group must include..

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- i. Projects requiring the contractor to provide consulting services from architects, engineers, or other technical areas of expertise will require professional liability insurance of at least \$1,000,000 for each claim.
- ii. The certificate must also include commercial general liability insurance covering bodily injury and property damage with limits of not less than \$2,000,000 per occurrence, and at least \$2,000,000 aggregate; or the equivalents utilizing excess or umbrella coverage.
- iii. In addition, the certificate must include employer's liability insurance (workers compensation) in accordance with statutory requirements with limits of not less than \$100,000 for each accident.
- iv. Further, projects requiring the contractor to drive onto Town property, or transport Town employees or clients, or to use the contractor's vehicles on Town property will require auto liability insurance, which must cover bodily injury and property damage liability on all owned, non-owned, and hired vehicles for a limit of not less than \$2,000,000 per occurrence, or the equivalent utilizing excess or umbrella coverage.
- v. Also building and construction contractors must furnish a performance bond and builder's risk policy in an amount at least equal to the contract price as security for the faithful performance and payment of all contractors' obligations under the contract.
- vi. When the contractor and/or his employees have access to monies or properties of the Town, the contractor will provide a fidelity bond at a limit of not less than \$50,000 (depending on where the contractor will be working).
- vii. The Town must be named as additionally insured on the insurance certificate for all coverage, except professional liability.
- viii. In addition, the contractor must indemnify and save harmless the Town of Hertford, its officers, agents, and employees from any claims arising out of any work performed for the Town or on Town property.

C) PROJECTS GREATER THAN \$2,000,000 BUT LESS THAN \$3,000,000 AND ORGANIZATIONS RELOCATING BUILDINGS IN TOWN LIMITS - Contractors involved with projects greater than \$2,000,000 but less than \$3,000,000 AND organizations that are relocating buildings within the Town limits are included in this category. The insurance certificate for this group must include:

- i. Projects requiring the contractor to provide consulting services from architects, engineers or other technical areas of expertise will require professional liability insurance of at least \$1,000,000 for each claim. The certificate must also include commercial general liability insurance covering bodily injury and property damage with limits of not less than \$3,000,000 per occurrence, and at least \$3,000,000 aggregate; or the equivalents utilizing excess or umbrella coverage.
- ii. In addition, the certificate must include employer's liability insurance (workers compensation) in accordance with statutory requirements with limits of not less than \$100,000 for each accident.

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- iii. Further, projects requiring the contractor to drive onto Town property, or transport Town employees or clients, or to use the contractor's vehicles on Town property will require auto liability insurance, which must cover bodily injury and property damage liability on all owned, non-owned, and hired vehicles for a limit of not less than \$3,000,000 per occurrence, or the equivalent utilizing excess or umbrella coverage.
- v. Also the contractor must furnish a performance bond and builder's risk policy in an amount at least equal to the contract price as security for the faithful performance and payment of all of the contractor's obligations under the contract.
- vi. When the contractor and/or his employees have access to monies or properties of the Town, the contractor will provide a fidelity bond at a limit of not less than \$50,000 (depending on where the contractor will be working).
- vii. The Town must be named as additionally insured on the insurance certificate for all coverage, except professional liability.
- viii. In addition, the contractor must indemnify and save harmless the Town of Hertford, its officers, agents, and employees from any claims arising out of any work performed for the Town or on Town property.

D) PROJECTS GREATER THAN \$3,000,000 - Department personnel must consult with the Town Manager prior to bidding such projects to determine the type and amount of coverage needed.

III) SPECIAL EVENTS SPONSORED BY ORGANIZATIONS

A) FOR-PROFIT ORGANIZATIONS SPONSORING SPECIAL EVENTS ON TOWN PROPERTY INVOLVING UP TO 1,000 INDIVIDUALS - The insurance certificate must include:

- i. Commercial general liability insurance covering bodily injury and property damage with limits of not less than \$ 1,000,000 per occurrence, and at least \$1,000,000 aggregate; or the equivalents utilizing excess or umbrella coverage.
- ii. Events requiring volunteers or agents of the organization to drive onto Town property, or transport Town employees or clients, or to use the volunteer's or agent's vehicles on Town property will require auto liability insurance, which must cover bodily injury and property damage liability on all owned, non-owned, and hired vehicles for a limit of not less than \$1,000,000 per occurrence, or the equivalent utilizing excess or umbrella coverage.
- iii. If an organization will be serving alcoholic beverages for the Town or will be serving alcoholic beverages in conjunction with its conducting business on Town

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property, the insurance certificate must include liquor liability coverage in an amount not less than \$1,000,000 per occurrence.

- iv. The Town must be named as additionally insured on the insurance certificate for all coverage.
- v. In addition, the organization must indemnify and save harmless the Town of Hertford, its officers, agents, and employees from any claims arising out of any activity performed for the Town or on Town property.

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B) FOR-PROFIT ORGANIZATIONS SPONSORING SPECIAL EVENTS ON TOWN PROPERTY INVOLVING MORE THAN 1,000 INDIVIDUALS - The insurance certificate must include:

- i. Commercial general liability insurance covering bodily injury and property damage with limits of not less than \$2,000,000 per occurrence, at least \$2,000,000 aggregate; or the equivalents utilizing excess or umbrella coverage.
- ii. Events requiring volunteers or agents of the organization to drive onto Town property, or transport Town employees or clients, or to use the volunteer's or agent's vehicles on Town property will require auto liability insurance, which must cover bodily injury and property damage liability on all owned, non-owned, and hired vehicles for a limit of not less than \$1,000,000 per occurrence, or the equivalent utilizing excess or umbrella coverage.
- iii. If an organization will be serving alcoholic beverages for the Town or will be serving alcoholic beverages in conjunction with its conducting business on Town property, the insurance certificate must include liquor liability coverage in an amount not less than \$1,000,000 per occurrence.
- iv. The Town must be named as additionally insured on the insurance certificate for all coverage.
- v. In addition, the organization must indemnify and save harmless the Town of Hertford, its officers, agents, and employees from any claims arising out of any activity performed for the Town or on Town property.

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C) FOR-PROFIT ORGANIZATIONS SPONSORING SPECIAL EVENTS ON TOWN PROPERTY INVOLVING HAZARDOUS ACTIVITIES - This category includes events with fireworks, air show activities, or major construction events utilizing volunteers. The insurance certificate for this group must include:

- i. Commercial general liability insurance covering bodily injury and property damage with limits of not less than \$5,000,000 per occurrence, at least \$5,000,000 aggregate; or the equivalents utilizing excess or umbrella coverage.
- ii. Events requiring volunteers or agents of the organization to drive onto Town property, or transport Town employees or clients, or to use the volunteer's or agent's vehicles on Town property will require auto liability insurance, which must cover bodily injury and property damage liability on all owned, non-owned, and hired vehicles for a limit of not less than \$1,000,000 per occurrence, or the equivalent utilizing excess or umbrella coverage.

If an organization will be serving alcoholic beverages for the Town or will be serving alcoholic beverages in conjunction with its conducting business on Town property, the insurance certificate must include liquor liability coverage in an amount not less than \$1,000,000 per occurrence.

- iv. The Town must be named as additionally insured on the insurance certificate for all
- v. In addition, the organization must indemnify and save harmless the Town of Hertford, its officers, agents, and employees from any claims arising out of any activity performed for the Town or on Town property.

IV) SPECIAL EVENTS SPONSORED BY NON-PROFIT ORGANIZATIONS AND INDIVIDUALS

A) NON-PROFIT ORGANIZATIONS AND INDIVIDUALS SPONSORING SPECIAL EVENTS ON TOWN PROPERTY INVOLVING UP TO 1,000 INDIVIDUALS AND NO ALCOHOL BEING SERVED -

- i. Insurance is not required
- ii. The organization must indemnify and save harmless the Town of Hertford, its officers, agents, and employees from any claims arising out of any activity performed for the Town or on Town property.

B) NON-PROFIT ORGANIZATIONS AND INDIVIDUALS SPONSORING SPECIAL EVENTS ON TOWN PROPERTY INVOLVING UP TO 1,000 INDIVIDUALS AND SERVING ALCOHOL The insurance certificate for this group must include:

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- i. Commercial general liability insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence, at least \$1,000,000 aggregate; or the equivalents utilizing excess or umbrella coverage.
- ii. Events requiring volunteers or agents of the organization to drive onto Town property, or transport Town employees or clients, or to use the volunteer's or agent's vehicles on Town property will require auto liability insurance, which must cover bodily injury and property damage liability on all owned, non-owned, and hired vehicles for a limit of not less than \$1,000,000 per occurrence, or the equivalent utilizing excess or umbrella coverage.
- iii. If an organization will be serving alcoholic beverages for the Town or will be serving alcoholic beverages in conjunction with its conducting business on Town property, the insurance certificate must include liquor liability coverage in an amount not less than \$1,000,000 per occurrence.
- iv. The Town must be named as additionally insured on the insurance certificate for all coverage.
- v. In addition, the organization must indemnify and save harmless the Town of Hertford, its officers, agents, and employees from any claims arising out of any activity performed for the Town or on Town property.

C) NON-PROFIT ORGANIZATIONS AND INDIVIDUALS SPONSORING SPECIAL EVENTS ON TOWN PROPERTY INVOLVING MORE THAN 1,000 INDIVIDUALS

- i. Commercial general liability insurance covering bodily injury and property damage with limits of not less than \$2,000,000 per occurrence, at least \$1,000,000 aggregate; or the equivalents utilizing excess or umbrella coverage.
- ii. Events requiring volunteers or agents of the organization to drive onto Town property, or transport Town employees or clients, or to use the volunteer's or agent's vehicles on Town property will require auto liability insurance, which must cover bodily injury and property damage liability on all owned, non-owned, and hired vehicles for a limit of not less than \$1,000,000 per occurrence, or the equivalent utilizing excess or umbrella coverage.
- iii. If an organization will be serving alcoholic beverages for the Town or will be serving alcoholic beverages in conjunction with its conducting business on Town property, the insurance certificate must include liquor liability coverage in an amount not less than \$1,000,000 per occurrence.
- iv. The Town must be named as additionally insured on the insurance certificate for all coverage.
- v. In addition, the organization must indemnify and save harmless the Town of Hertford, its officers, agents, and employees from any claims arising out of any activity performed for the Town or on Town property.

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D) NON-PROFIT ORGANIZATIONS AND INDIVIDUALS SPONSORING SPECIAL EVENTS ON TOWN PROPERTY INVOLVING HAZARDOUS ACTIVITIES - This category includes events with fireworks, air show activities, or major construction events utilizing volunteers. The insurance certificate for this group must include:

- i. Commercial general liability insurance covering bodily injury and property damage with limits of not less than \$5,000,000 per occurrence, at least \$5,000,000 aggregate; or the equivalents utilizing excess or umbrella coverage.
- ii. Events requiring volunteers or agents of the organization to drive onto Town property, or transport Town employees or clients, or to use the volunteer's or agent's vehicles on Town property will require auto liability insurance, which must cover bodily injury and property damage liability on all owned, non-owned, and hired vehicles for a limit of not less than \$1,000,000 per occurrence, or the equivalent utilizing excess or umbrella coverage.
- iii. If an organization will be serving alcoholic beverages for the Town or will be serving alcoholic beverages in conjunction with its conducting business on Town property, the insurance certificate must include liquor liability coverage in an amount not less than \$1,000,000 per occurrence.
- iv. The Town must be named as additionally insured on the insurance certificate for all coverage.
- v. In addition, the organization must indemnify and save harmless the Town of Hertford, its officers, agents, and employees from any claims arising out of any activity performed for the Town or on Town property.

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APPENDIX C

North Carolina General Statutes

§ 55B-2. Definitions.

As used in this Chapter, the following words shall, unless the context requires otherwise, have the following meanings:

- (1) "Disqualified person" means a licensed person who for any reason becomes legally disqualified to render the same professional services which are or were being rendered by the professional corporation of which such person is an officer, director, shareholder or employee.
- (2) "Licensee" means any natural person who is duly licensed by the appropriate licensing board to render the same professional services which will be rendered by the professional corporation of which he is, or intends to become, an officer, director, shareholder or employee.
- (3) "Licensing board" means a board which is charged with the licensing and regulating of the profession or practice in this State in which the professional corporation is organized to engage.
- (4) The term "licensing board," as the same applies to attorneys at law, shall mean the Council of the North Carolina State Bar, and it shall include the North Carolina State Board of Law Examiners only to the extent that the North Carolina Board of Law Examiners is authorized to issue licenses for the practice of law under the supervision of the Council of the North Carolina State Bar.
- (5) "Professional corporation" means a corporation which is engaged in rendering the professional services as herein specified and defined, pursuant to a certificate of registration issued by the Licensing Board regulating the profession or practice, and which has as its shareholders only those individuals permitted by G.S. 55B-6 of this Chapter to be shareholders and which designates itself as may be required by this statute, and which is organized under the provisions of this Chapter and of Chapter 55, the North Carolina Business Corporation Act.
- (6) The term "professional service" means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83A, "Architects"; Chapter 84, "Attorneys-at-Law"; Chapter 93, "Public Accountants"; and the following Articles in Chapter 90: Article 1, "Practice of Medicine," Article 2, "Dentistry," Article 6, "Optometry," Article 7, "Osteopathy," Article 8, "Chiropractic," Article 9A, "Nursing Practice Act," with regard to registered nurses, Article 11, "Veterinarians," Article 12A, "Podiatrists," Article 18A, "Practicing Psychologists," Article 18C, "Marriage and Family Therapy Licensure," Article 18D, "Occupational Therapy," Article 22, "Licensure Act for Speech and Language Pathologists and Audiologists," and Article 24, "Licensed Professional Counselors"; Chapter 89C, "Engineering and Land Surveying"; Chapter 89A, "Landscape Architects"; Chapter 90B, "Social Worker Certification and Licensure Act" with regard to Licensed Clinical Social Workers as defined by G.S. 90B-3; Chapter 89E, "Geologists"; Chapter 89B, "Foresters"; and Chapter 89F, "North Carolina Soil Scientist Licensing Act". (1969, c. 718, s. 2; 1971, c. 196, s. 1; 1977, c. 53; c. 855, s. 1; 1979, c. 460; 1989 (Reg. Sess., 1990), c. 1024, s. 3; 1991, c. 205, s. 1; 1995, c. 382, s. 2; 1997-421, s. 2; 2000-115, s. 4; 2001-487, s. 40(d); 2003-117, s. 3; 2004-199, s. 19; 2004-203, s. 4.)

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§ 133-32. Gifts and favors regulated.

(a) It shall be unlawful for any contractor, subcontractor, or supplier who:

- (1) Has a contract with a governmental agency; or
- (2) Has performed under such a contract within the past year; or
- (3) Anticipates bidding on such a contract in the future

to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contract; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contracts; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction

willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a Class 1 misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent a gift a public servant would be permitted to accept under G.S. 138A-32, or the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift. (1981, c. 764, s. 1; 1987, c. 399, s. 1; 1993, c. 539, s. 970; 1994, Ex. Sess., c. 24, s. 14(c); 2007-348, s. 18.)

§ 143-64.31. Declaration of public policy.

(a) It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, surveying, construction management at risk services, design-build services, and public-private partnership construction services to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm. Selection of a firm under this Article shall include the use of good faith efforts by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity.

(a1) A resident firm providing architectural, engineering, surveying, construction management at risk services, design-build services, or public-private partnership construction services shall be granted a preference over a nonresident firm, in the same manner, on the same basis, and to the extent that a preference is granted in awarding contracts for these services by the other state to its resident firms over firms resident

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in the State of North Carolina. For purposes of this section, a resident firm is a firm that has paid unemployment taxes or income taxes in North Carolina and whose principal place of business is located in this State.

(b) Recodified as G.S. 143-133.1(a) by Session Laws 2014-42, s. 3, effective October 1, 2014, and applicable to contracts awarded on or after that date.

(c) Recodified as G.S. 143-133.1(b) by Session Laws 2014-42, s. 3, effective October 1, 2014, and applicable to contracts awarded on or after that date.

(d) Recodified as G.S. 143-133.1(c) by Session Laws 2014-42, s. 3, effective October 1, 2014, and applicable to contracts awarded on or after that date.

(e) For purposes of this Article, the definition in G.S. 143-128.1B and G.S. 143-128.1C shall apply.

(f) Except as provided in this subsection, no work product or design may be solicited, submitted, or considered as part of the selection process under this Article; and no costs or fees, other than unit price information, may be solicited, submitted, or considered as part of the selection process under this Article. Examples of prior completed work may be solicited, submitted, and considered when determining demonstrated competence and qualification of professional services; and discussion of concepts or approaches to the project, including impact on project schedules, is encouraged. (1987, c. 102, s. 1; 1989, c. 230, s. 2; 2001-496, s. 1; 2006-210, s. 1; 2013-401, s. 1; 2014-42, ss. 3, 4.)

§ 143-64.32. Written exemption of particular contracts.

Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars (\$50,000). (1987, c. 102, s. 2; 2013-401, s. 2.)

§ 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

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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 ~~Page 44~~ of 49

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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.

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- (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.

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- (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).)

§ 143-129.8. 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:

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- (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).)

§ 143-131. 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.)

§ 160A-266. Methods of sale; limitation.

(a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of real or personal property belonging to the city by:

- (1) Private negotiation and sale;
- (2) Advertisement for sealed bids;
- (3) Negotiated offer, advertisement, and upset bid;
- (4) Public auction; or
- (5) Exchange.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than thirty thousand dollars (\$30,000) for any one item or group of similar items. Real property, of any value, and personal property valued at thirty thousand dollars (\$30,000) or more for any one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or may be sold by any method permitted in this Article other than private negotiation and sale, except as permitted in G.S. 160A-277 and G.S. 160A-279.

Provided, however, a city may dispose of real property of any value and personal property valued at thirty thousand dollars (\$30,000) or more for any one item or group of similar items by private negotiation

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and sale where (i) said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than thirty thousand dollars (\$30,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than thirty thousand dollars (\$30,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.

(d) A city may discard any personal property that: (i) is determined to have no value; (ii) remains unsold or unclaimed after the city has exhausted efforts to sell the property using any applicable procedure under this Article; or (iii) poses a potential threat to the public health or safety. (1971, c. 698, s. 1; 1973, c. 426, s. 42.1; 1983, c. 130, s. 1; c. 456; 1987, c. 692, s. 2; 1987 (Reg. Sess., 1988), c. 1108, s. 9; 1997-174, s. 6; 2001-328, s. 4; 2005-227, s. 3.)

Appendix C

Town of Hertford
Town Council Travel Policy
Adopted January 13, 2020

TRAVEL POLICY FOR TOWN COUNCIL AND ASSOCIATED BOARDS

It is the policy of the Town of Hertford to pre-pay or reimburse all legitimate expenses related to officially authorized travel for Town Council and its subordinate advisory or special board members (henceforth "Council Members"). Individuals traveling on official business are expected to exercise care in incurring expenses to minimize the cost to the Town. A Town Council member traveling on official business is expected to exercise the same care in incurring expenses that a practical person would exercise if traveling on personal business and expending personal funds. Excess costs, indirect routes, luxury accommodations and services unnecessary or unjustified in the performance of official business are not acceptable under this standard. Council Members shall be responsible for unauthorized costs and any additional expenses incurred for personal preference or convenience.

Applicability

This policy shall be in effect for any Council Member travel activity reasonably expected to incur cost to the Town regardless of duration, distance, or purpose.

Travel Proposal Development

Town Council shall approve as much of its travel as possible during the annual budgeting process to facilitate more predictable spending throughout the year and minimize ad hoc requests and the budget reserve required to support them. Travel proposed during the annual budgeting process shall be accompanied by a description of the event, estimated cost, and justification and be approved in similar fashion to any other budget line item.

The following process applies to trips pre-approved during the annual budgeting process:

1. The Council Member shall develop a travel itinerary and cost estimate based on the Travel Planning and Payment Guidelines section of this policy and provide it to the Clerk for routing through the approval process outlined in Steps 2-6 below.
2. If use of a Town Owned Vehicle (TOV) is chosen as the method of conveyance (based on the criteria in Travel Planning and Payment Guidelines Para. 4 Transportation) the Clerk shall provide a copy of the travel proposal to the Town Manager who shall verify whether a TOV is available for the dates in question.
3. The Town Manager shall provide a vehicle availability memo including the following information to the Clerk within three (3) business days of the request:
 - a. Availability or unavailability of a TOV for the requested dates
 - b. Make/model/license plate number of the TOV if one is available
 - c. Vehicle Check-In/Check-Out form to be completed at pick-up and drop-off
4. If the estimated cost of travel is less than or equal to the amount allocated for the trip in the annual budget, no further approvals shall be required. If the estimated cost of travel is more than the amount allocated for the trip in the annual budget, the Council Member shall

request re-approval of the travel at the new estimated cost prior to departing at the next open session of Town Council.

5. If a travel advance is needed, the request must be made to the Finance Department no later than ten (10) days prior to commencement of travel to permit the processing of the request through its routine check issuing procedures. Advances shall only be paid for those items which cannot be pre-paid by the Town before the trip begins.
6. The Town Manager or their designee shall be responsible for arranging payment for all pre-payable items on the travel itinerary approved by Town Council. Council Members shall not make their own pre-payments.

The following process applies to all trips which were not pre-approved during the annual budgeting process:

1. The Council Member shall develop a travel proposal containing a description of the event, estimated cost, amount of advance funds requested (if any), mode of transportation, travel itinerary, and justification for the expenditure. Travel shall be planned, and cost estimates generated, based on the Travel Planning and Payment Guidelines section of this policy. This information shall be provided to the Clerk for routing through the approval process outlined in Steps 2-8 below
2. If use of a Town Owned Vehicle (TOV) is chosen as the method of conveyance (based on the criteria in Travel Planning and Payment Guidelines Para. 4 Transportation) the Clerk shall provide a copy of the travel proposal to the Town Manager who shall verify whether a TOV is available for the dates in question.
3. The Town Manager shall provide a vehicle availability memo including the following information to the Clerk within three (3) business days of the request:
 - a. Availability or unavailability of a TOV for the requested dates
 - b. Make/model/license plate number of the TOV if one is available
 - c. Vehicle Check-In/Check-Out form to be completed at pick-up and drop-off
4. The Clerk shall provide the travel proposal to the Finance Director who shall verify whether funds remain in the Council Travel budget to support the proposed trip.
5. The Finance Director shall provide a funds verification memo including the following information to the Clerk within three (3) business days of the request:
 - a. Original Town Council travel budget for the year
 - b. Actual Town Council travel expenditures to-date
 - c. Anticipated remaining Town Council travel expenditures based on the trips authorized during the annual budget development process
 - d. Anticipated Town Council travel budget balance at the end of the fiscal year if the request is approved
6. The travel proposal, TOV memo, and funds verification memo (henceforth Travel Authorization Request) shall be presented to Town Council in an open session for approval prior to departing.
7. If a travel advance is needed, the request must be made to the Finance Department no later

than ten (10) days prior to commencement of travel to permit the processing of the request through its routine check issuing procedures. Advances shall only be paid for those items which cannot be pre-paid by the Town before the trip begins.

8. The Town Manager or their designee shall be responsible for arranging payment for all pre-payable items on the travel itinerary developed by the Clerk and Council Member and approved by Town Council. Council Members shall not make their own pre-payments.

Travel Proposal Approval

Travel by the Mayor and Council Members must be approved by the Town Council. Authorization shall be by majority vote in an open session and all approved travel proposals shall be signed by either the Mayor or Mayor Pro-Tempore with a note indicating the date of approval by Town Council.

Unforeseen Travel

On occasion it may be necessary for Council Members to travel on a timeline not compatible with the proposal and approval process outlined above. In these cases, the following process shall apply:

1. The Council Member shall request use of a Town Owned Vehicle (TOV) from the Town Manager who shall verify whether a TOV is available for the dates in question.
2. If a TOV is not available, the Council Member shall calculate the estimated cost of using a Personally Owned Vehicle (POV) based on the criteria set forth in the Travel Planning and Payment Guidelines Paragraph 4 Transportation section of this policy.
3. The Council Member shall estimate all other costs likely to be incurred according to the criteria set forth in the Travel Planning and Payment Guidelines section of this policy.
4. The Council Member shall provide the information collected in steps 1-3 of this process to the Town Council in written or electronic (e.g., email or text message) form.
5. Each Council Member shall respond individually to the requesting Council Member, Manager, and Clerk with their approval or disapproval. A simple majority approval from a minimum of three (3) responding Council Members shall constitute approval for the trip.
6. The Council Member shall present the same information delivered to Town Council via written or electronic form in the next open session for formal retroactive approval.

All post-travel reporting and repayment terms in this policy shall be applicable to both pre-planned and unforeseen travel.

Travel Planning and Payment Guidelines

1) Lodging

The Town shall reimburse the actual cost for nightly lodging expenses when traveling away from Town on official Town business, up to the maximum current lodging per

diem rate established by the US General Services Administration (GSA) for the travel location plus applicable taxes. (For example, if a locality's GSA per diem rate is \$100 per night and its tax rate is 10%, the Town shall reimburse up to \$110 per night for lodging.) Exceptions (such as staying on-premise for a conference at a hotel priced over per diem) shall be approved by Town Council during its travel proposal approval deliberations.

2) Meals

- a) For days where the Council Member is out of Town the entire day, they shall be paid at the current meals per diem rate established by GSA for the travel location
- b) For days where the Council Member has traveled to or from Town the per diem is 75% of the full day per diem rate as established by GSA for the travel location
- c) Council Members shall not be reimbursed per diem for any meals provided as a part of another expense (e.g., continental breakfast included with a hotel stay or meals provided by a conference host as part of the registration fee). When calculating reimbursement excluded meals shall have their applicable per diem rate (based on breakfast, lunch, or dinner) subtracted from the overall per diem rate established by GSA for the travel location.

3) Incidentals

The Town shall pay the current incidentals per diem rate established by GSA for the travel location for each day of travel. Internet usage, phone usage, any personal items such as tobacco products, alcohol and alcoholic beverages, movies, movies rental, laundry services and reimbursement for property owned by motel/hotel are not reimbursed by the Town. These items are the responsibility of the Council Member.

4) Transportation

Travel shall be conducted in the most efficient manner and at the lowest and most reasonable cost to the Town. When multiple modes of transportation or vendors are available Council Members shall provide a cost comparison and written justification in their Travel Authorization Request for any variance to the lowest and most reasonable cost requirement.

- a) Airfare – Tickets shall be purchased in advance by the Town Manager or their designee. Council Members shall fly coach on the lowest cost and most reasonable route that fits their required travel schedule. Reasonableness shall be determined by

the Town Council during its travel proposal approval deliberations.

- b) Rental Car – Council Members shall make use of State term contracts for short term rentals whenever available. Individual Council Members shall be authorized at the standard/mid-size rate. In the event multiple Council Members share a rental they shall be eligible for a larger vehicle rate.
- c) Town Owned Vehicle (TOV) – Council Members shall be authorized to operate TOVs in accordance with the c. Excessive “wear and tear,” evidence of smoking in the vehicle, or damage to the vehicle during use by a Council Member may result in suspension of future access to TOVs and other sanctions as determined by Town Council and allowed under law. Council Members are expected to take the same care they would with their own personal vehicle. Reimbursement for operating costs (gas, tolls, parking) is described in subparagraph (e) below.
- d) Personally Owned Vehicle (POV) – Travel by POV shall be paid at the published State of North Carolina rate per mile (generally the most recent Internal Revenue Service (IRS) mileage rate). POV mileage shall be determined at the usually shortest traveled route. Use of POVs shall be approved only when the estimated cost is less than that of a rental car and a TOV is either unavailable or more expensive to operate than the cost of a POV for the planned trip.
- e) Fuel/Tolls/Parking – Council Members should plan their travel to minimize fuel, toll, and parking expenses as feasible. Fuel should be purchased with a Town fuel card whenever possible. The actual cost of these expenses shall be reimbursed with a receipt and detailed explanation of the business purpose.
- f) Other (Public Transit, Taxi, etc.) – The actual cost of these expenses shall be reimbursed with a receipt and detailed explanation of the business purpose.

5) Other Expenses

- a) Officials of the Town shall be reimbursed for the actual cost for special expenses paid by their personal funds for such costs as airline baggage fees, parking fees, tolls, registration fees, tuition fees, special tours, convention banquets or similar events scheduled as a part of a convention or course attended. Reimbursement for these items shall be at actual cost and officials shall furnish with their travel claim an itemized receipt and a copy of the agenda or other proof to show that the special expenses claimed are legitimate. When securing registration to attend training or other meetings, upon approval of Town Council, the Town credit card or payment directly by the Town shall be made in lieu of advancing funds to the employee. All registrations must be handled in the administration office by designated personnel.

- b) When tickets for banquets are purchased, room reserved, or travel provided by the Town, reimbursements shall not be paid for private arrangements unless unavoidable and approved by the Town Council.

Reports

A final travel report must be submitted in writing to the Town Council and Town Manager and presented at the next Town Council open session. The report shall contain a description of the event, synopsis of the event(s) attended, original estimated cost, actual final cost, a list of any follow-up actions, and the expected return on investment (ROI) to the Town.

Appeal

Any employee or official may appeal to the Town Council for final determination of travel authorization, reimbursement, provisions not included in this policy, or for interpretation of any portion of this policy.

Repayment

Council Members who agree to attend functions requiring the Town to pay advance fees shall be responsible to make every reasonable effort to achieve a full refund of those fees should they be unable to attend. In the event a full refund is not possible, the Town Council shall determine in an open session whether to hold the Council Member responsible to repay all or a portion of the unrefunded amount.

Council Members must reimburse the Town for any expenses incurred in violation of this policy. The Finance Director shall be responsible to notify the Town Council in writing of any suspected violations of this policy. The Town Council shall review the issue in its next open session and decide whether to hold the Council Member responsible to repay all or a portion of the amount in question.

If any Council Member owing repayment to the Town (as determined by Town Council) does not repay the Town prior to the next pay day, the repayment amount shall be withheld from the Council Member's paycheck. If the amount exceeds the Council Member's pay amount for that pay day, subsequent withholdings shall be made until the debt is repaid. Other payment arrangements (e.g., smaller withholdings across a larger number of pay checks) shall be decided by Town Council in an open session.

Monthly Report

A report of travel expenses for the Mayor and Council Members shall be prepared and distributed monthly to each member of the Town Council and made available to Town residents upon request.

Appendix D

Local Government Commission (LGC)
Material Weakness Letter Response
Dated April, 7 2020

See included file "LGC Material Weakness Letter
Response 2019"

EARNELL BROWN
MAYOR

PAMELA W. HURDLE
TOWN MANAGER

SHONIQUE POWELL
TOWN CLERK

BENJAMIN M. GALLOP
TOWN ATTORNEY



COMMISSIONERS:

ASHLEY HODGES
MAYOR PRO TEM

QUENTIN JACKSON

FRANK NORMAN

JERRY MIMLITSCH

April 7, 2020

North Carolina Department of State Treasurer
Attn: Sharon Edmundson
3200 Atlantic Avenue
Raleigh, NC 27604

RE: 2019 Audit Findings

Dear Ms. Edmundson,

This letter is in response to the State and Local Government Finance Division and the Local Government Commission Material Weakness findings. It outlines the Town of Hertford (TOH)'s corrective plan of action to eliminate the operational deficiencies and material weaknesses as described in the letter from the Director, Fiscal Management Section, dated February 17, 2020 and Mr. Best's CPS P.L.L.C., audit findings, dated January 12, 2020. It is our objective to take all operations of the Town seriously and make every effort to correct the TOH's financial operations and internal controls deficiencies. In collaboration with our auditor, Jeff Best, CPA, the Town Manager, the Finance Department and appropriate staff the following corrective plan of action is provided:

1. The future audited financial statements shall be current and available to the public on the Hertford website, annually after Town Council approval. Audited financial statements were late because of a Certified Public Accountant contract amended and not submitted to Local Government Commission (LGC). Jeff Best's key accountant resigned his firm during the scheduled Town of Hertford's audit. Also, the TOH had software system crash, software upgrades, and Hurricane Dorian resulted in negative impacts.
2. The Electronic Transaction Resolution and TOH Purchasing Policy aid and protect the finance officer instituting the required pre-audit process for credit card transactions. It addresses how the "evidence of the pre-audit of the Town's obligations including charges being made to the Town's credit cards", as required by GS 159-28, will be met moving forward. The staff has read and signed the document to confirm their understanding of its contents and the signed document is included.

Town of Hertford • P.O. Box 32 • 114 West Grubb • Hertford, North Carolina 27944
Phone (252) 426-5311 • Fax (252) 426-7060

3. The TOH Purchasing Policy includes the Credit Card policy. It was updated and approved by Town Council, on April 6, 2020, to strengthen the internal control policies, operations and responsibilities. These updates to the policies will correct and monitor the material weaknesses identified in the State and Local Government Finance Division, the Local Government Commission and Jeff Best, CPA, P.L.L.C. audit and analysis of the TOH's financial statements and internal controls, for the fiscal year ended, June 30, 2019:

After careful review, the following enumerate the TOH's corrective actions as they pertain to each Material Weakness:

Material Weakness: There are a limited number of personnel for certain functions. There is a lack of segregation of duties among personnel in the cash receipts and governmental fund receipts, revenues, and receivables functions. The duties should be separated as much as possible and alternative controls should be used to compensate for the lack of separation.

Credit Card Policy 8.9 Pages 15-18

1. Describes the responsibilities of the Mayor, Town Council, Town Manager, Clerk, Finance Department, Department Heads and Credit Card Holders.
2. The Finance Department staff have been assigned specific tasks to ensure separation of duties for all financial transactions and stronger internal controls. The Finance Department consists of the Interim Finance Director and Finance Director Assistant. Cherry Bekaert, LLP will continue to provide support as needed.
3. The Finance Department attended several workshops and webinars this year to increased their knowledge of local government finance guidelines and statutes. The Finance Department has also collaborated with staff in other Administration offices to ensure tasks and procedures do not overlap.
4. Training is now required to understand the operations, responsibilities and internal controls outlined in the updated Purchasing Policy.

Material Weakness: Sixteen credit card bills were paid by the Town without receipts attached to the bills and check stubs.

1. Policy 8.9.I. Page: 16
All charge card monthly statements must have receipts for the charges. If receipts are not available for the charge on the statement, the charge card assignee is responsible for the charges.
2. Key Cardholder Responsibilities. Page: 17
The Cardholder must:
 - A. "Ensure the credit card is used for legitimate Town business purposes only," and
 - C. "Obtain copy on charge slip, itemized sales receipts, and/or packing slips for purchase transactions."

Material Weakness: Credit card balances were not paid in full at the end of the month in two instances. Policy 8.9 Page: 17

Credit Card Maintenance and Closure: The Town Manager and Finance Director shall be responsible for ensuring the credit card balances are paid in full at the end of the month.

Material Weakness: One credit card purchase was made in violation of the Town's policy.

1. Policy 8.9.F. Page 16

The limitations on the Credit cards are: No purchases that violate the Town policy.

2. Policy Training Page 18

The Finance Director shall be responsible to develop a Purchasing Policy training program, per Local Government Commission (LGC) requirements, to ensure all employees and elected officials in possession of a credit card fully understand their responsibilities under this policy. Initial training shall be provided prior to receipt of the credit card and refresher training shall be provided annually or whenever changes are made to the Purchasing Policy.

Material Weakness: Two instances when credit card purchases exceeded the limit, which caused the Town to incur unnecessary fees.

Policy 8.9.J. Page 16

1. The credit limits established for each card shall be as follows:

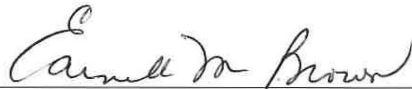
- I. Mayor and Town Council: \$1,000
- II. Clerk: \$5,000
- III. Town Manager: \$10,000
- IV. Department Head: \$5,000

2. The TOH has initiated an internal control agreement with the bank institution that they (bank) can no longer authorize charges that exceed the cardholder's credit card limit.


In conclusion, the TOH addressed each material weakness with policy that institutionalizes best practices in our financial operations. We wish to thank State and Local Government Finance Division, the Local Government Commission, and Jeff Best for your thorough analysis and recommendations that ensure TOH will create, implement and monitor its financial operational and internal controls in compliance with LGC requirements.

Sincerely,

Earnell Brown, Mayor of Hertford




Mayor Earnell Brown

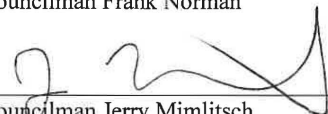


Mayor Pro Tem Ashley Hodges

Councilman Quentin Jackson



Councilman Frank Norman



Councilman Jerry Mimlitsch

ATTEST





Shoniqua Powell, Town Clerk

Town of Hertford • P.O. Box 32 • 114 West Grubb • Hertford, North Carolina 27944
Phone (252) 426-5311 • Fax (252) 426-7060



Resolution authorizing Town of Hertford to engage in electronic payments as defined by G.S. 159-28

WHEREAS, it is the desire of the Town Council that the Town of Hertford is authorized to engage in electronic payments as defined by G.S. 159-28;

WHEREAS, it is the responsibility of the Town Council to adopt a written policy outlining procedures for pre-auditing obligations that will be incurred by electronic payments as required by NC Administrative Code 20 NCAC 03 .0409;

WHEREAS, it is the responsibility of the Town Council to adopt a written policy outlining procedures for disbursing public funds by electronic transaction as required by NC Administrative Code 20 NCAC 03 .0410;

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of the Town of Hertford:

Section 1. Authorizes the Town of Hertford to engage in electronic payments as defined by G.S. 159-28;

Section 2. Adopts the attached "Town of Hertford Purchasing Policy" as its official written policy outlining procedures for pre-auditing obligations that will be incurred by electronic payments as required by NC Administrative Code 20 NCAC 03 .0409;

Section 3. Adopts the attached "Town of Hertford Purchasing Policy" as its official written policy outlining procedures for disbursing public funds by electronic transaction as required by NC Administrative Code 20 NCAC 03 .0410; and

Section 4. This resolution shall take effect immediately upon its passage. Upon motion of Mayor Pro Tem Hodges and seconded by Councilman Mimplitsch, the foregoing resolution was passed by the following vote:

Ayes: Earnell Brown, Mayor; Ashley Hodges, Mayor Pro Tem; Quentin Jackson, Councilman; Jerry Mimplitsch, Councilman; Frank Norman, Councilman;

Nays: None; Abstentions: None;

I, Shoniqua Powell, Clerk of the Town Council of the Town of Hertford, do hereby certify that the foregoing resolution is a true and exact copy of the "**Resolution authorizing the Town of Hertford to engage in electronic payments as defined by G.S. 159-28**" duly adopted by the Town Council of the Town of Hertford at the meeting thereof duly called and held on April 6th 2020, a quorum being present.

WITNESS my hand at Hertford, N.C., this 7th day of April, 2020.

Shoniqua Powell Clerk





Jeff Best, CPA, P.L.L.C.
Certified Public Accountants

March 31, 2020

Town of Hertford
P.O. Box 32
Hertford, N.C. 27944

To the Town of Hertford,

The June 30, 2019 Town of Hertford audit was delayed because the auditor in charge of the audit left before it had been completed to take a position with another firm.

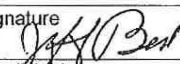
Sincerely,

Jeff Best, CPA

P.O. BOX 399, 382 PAMLICO STREET, BELHAVEN, NORTH CAROLINA 27810-0399, TELEPHONE 252-943-2723, FAX 252-943-2835

SIGNATURE PAGE

AUDIT FIRM

Audit Firm Jeff Best, CPA, PLLC	
Authorized Firm Representative (typed or printed) Jeff Best	Signature 
Date 4-7-2020	Email Address jbest@jeffbestcpa.com

GOVERNMENTAL UNIT

Governmental Unit Town of Hertford	
Date Primary Government Unit Governing Board Approved Audit Contract (Ref: G.S. 159-34(a) or G.S. 115C-447(a)) 06/13/19	
Mayor/Chairperson (typed or printed) Earnell Brown - Mayor	Signature
Date	Email Address mayor@townofhertfordnc.com

Chair of Audit Committee (typed or printed, or "NA") N/A	Signature
Date	Email Address

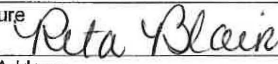
GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE

ONLY REQUIRED IF FEES ARE MODIFIED IN THE AMENDED CONTRACT

(Pre-audit certificate not required for charter schools or hospitals)

Required by G.S. 159-28(a1) or G.S. 115C-441(a1)

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

Primary Governmental Unit Finance Officer Reta Blair, Finance Officer Assistant	Signature 
Date of Pre-Audit Certificate 06/13/19	Email Address financeasst@townofhertfordnc.com

LGC-205 Amended AMENDMENT TO CONTRACT TO AUDIT ACCOUNTS

Rev. 10/2018

SIGNATURE PAGE – DPCU
(complete only if applicable)

DISCRETELY PRESENTED COMPONENT UNIT

DPCU N/A	
Date DPCU Governing Board Approved Audit Contract (Ref. G.S. 159-34(a) or G.S. 115C-447(a))	
DPCU Chairperson (typed or printed)	Signature
Date	Email Address

Chair of Audit Committee (typed or printed, or "N/A") N/A	Signature
Date	Email Address

DPCU – PRE-AUDIT CERTIFICATE
ONLY REQUIRED IF FEES ARE MODIFIED IN THE AMENDED CONTRACT
(Pre-audit certificate not required for charter schools or hospitals)

Required by G.S. 159-28(a1) or G.S. 115C-441(a1)

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

DPCU Finance Officer (typed or printed) N/A	Signature
Date of Pre-Audit Certificate	Email Address



Koonce, Wooten & Haywood, LLP
CERTIFIED PUBLIC ACCOUNTANTS

Report on the Firm's System of Quality Control

To the Owner of Jeff Best, CPA, P.L.L.C. and the
Peer Review Committee, North Carolina Association
Of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of Jeff Best, CPA, P.L.L.C. (the firm) in effect for the year ended November 30, 2018. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at www.aicpa.org/prsummary. The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

Required Selections and Considerations

Engagements selected for review included engagements performed under *Government Auditing Standards*, including a compliance audit under the Single Audit Act.

As part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

Opinion

In our opinion, the system of quality control for the accounting and auditing practice of Jeff Best, CPA, P.L.L.C. in effect for the year ended November 30, 2018, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Jeff Best, CPA, P.L.L.C. has received a peer review rating of *pass*.

Koonce, Wooten & Haywood, LLP

Koonce, Wooten & Haywood, LLP

May 8, 2019

Raleigh
4080 Barrett Drive
Post Office Box 17806
Raleigh, North Carolina 27619

919 782 9285
919 783 8937 FAX

Durham
3500 Westgate Drive
Suite 203
Durham, North Carolina 27707

919 354 2584
919 489 8183 FAX

Pittsboro
579 West Street
Post Office Box 1399
Pittsboro, North Carolina 27312

919 542 6000
919 542 5764 FAX



Town Manager's Office

TO: Finance Department
Reta Blair *R Blair*
Brian Lewis *B. L.*

FROM: Pam Hurdle
Town Manager

DATE: March 31, 2020

RE: DEPARTMENTAL ROUTING SLIP

DUE TODAY BY 12:00 PM

Please read the attached document regarding "Preauditing Electronic Transactions Just Got (A Little) Easier" by Coates' Canon Blog and provide an outline of the current process in place. Please initial and return this document when complete.

For additional questions, please see me.

Town of Hertford | P.O. Box 32 | 114 West Grubb Street | Hertford, North Carolina 27944
Phone (252) 426-5311 | Fax (252) 426-7060 | manager@townofhertfordnc.com



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received
3-31-2020

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NC Local Government Law
<https://canons.sog.unc.edu>

Coates' Canons Blog: Preauditing Electronic Transactions Just Got (A Little) Easier

By Kara Millonzi

Article: <https://canons.sog.unc.edu/preauditing-electronic-transactions-just-got-little-easier/>

This entry was posted on March 23, 2018 and is filed under Expenditure Control & Preaudit, Finance & Tax

The preaudit is a **statutory internal control** process to ensure that public funds are spent appropriately. If implemented properly the preaudit can be an effective tool in preventing and/or mitigating employee mistake, misappropriation, and even fraud. The problem with the preaudit process is that it is difficult to follow the strictures of the statute, particularly when conducting electronic transactions. **New rules**, promulgated by the State's Local Government Commission (LGC), will now make that process easier, or at least make it possible for local government entities to comply with the law. (The rules are part of the North Carolina Administrative Code (20 NCAC 03.0409 and 20 NCAC 03.0410).

This blog post reviews the requirements of the preaudit process and identifies when the process is triggered. It then discusses how the process can be carried out for certain electronic transactions, specifically purchase card (p-card), credit card, and fuel card transactions, under the new rules.

When is the preaudit process triggered?

The preaudit process is one of two internal control processes mandated by **G.S. 159-28** (for counties, municipalities, and public authorities) and **G.S. 115C-441** (for school units). (I'll refer to these entities collectively as local units.) (Note that the a separate preaudit process applies to ABC boards. See **G.S. 18B-702**.) The other internal control process in those statutes is the disbursement process, which is discussed briefly below. The preaudit process is performed before a local government entity obligates itself to pay money through a contractual agreement or similar arrangement.

That financial obligation can occur in a number of different forms. The most common forms involve issuing a purchase order to a vendor or contractor, entering into a written contract, placing a phone or internet order, and using a p-card, credit card, or fuel card to procure goods or services.

The exact trigger for the preaudit process occurs when all of these criteria are met:

1. The local unit issues a PO to a vendor, enters into a contract or a similar arrangement, places a phone or internet order, or uses a p-card, credit card, or fuel card to complete a financial transaction; AND
2. By the terms of the transaction, the local unit is obligated to pay money to another; AND
3. The local unit expects to pay out at least some of the money in the current fiscal year.*

*Note that if the budget appropriation that authorizes the expenditure is in a project or grant ordinance, as opposed to the annual budget ordinance (or budget resolution for school units), the third criteria is not required to trigger the preaudit.

There is no minimum amount to trigger the preaudit. It applies even if the amount involved is a \$5 supply order from a local vendor, or a \$1000 service agreement, or a \$15 million dollar construction contract. The preaudit requirement, thus, has no relation to a unit's internal PO threshold. (For example, a unit's PO threshold may be \$500, but any contract or purchase below this threshold still must be preaudited if the above criteria are met.)

What about electronic payments, such as p-cards, credit cards, and fuel cards – does the preaudit process apply to these types of transactions? The answer is clearly yes. When a unit uses a p-card, credit card, or fuel card to procure goods or services, it is actually obligating itself to pay the issuing bank/company when the bill comes due. And, again, the amount of the transaction does not matter for purposes of the preaudit requirement. That effectively means that all p-card, credit



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card, and fuel card transactions must be preaudited on a transaction-by-transaction basis. This has proven very difficult, if not impossible, for local units to do in practice.

What is the preaudit process?

The preaudit process requires that all of the following be done **before** a financial obligation is made (*i.e.* before the goods are ordered or before the contract is executed):

1. The finance officer (or a deputy finance officer appointed by the governing board) checks to make sure there is a budget appropriation authorizing the transaction. Each finance officer/deputy finance officer must have a process that determines that there is an appropriation to the department, function code, or project, in which the transaction appropriately falls, depending on how the governing board budgets funds.
2. The finance officer (or a deputy finance officer appointed by the governing board) also checks to make sure that sufficient funds remain in the appropriation to pay out any amounts that are expected to come due this fiscal year. This step effectively requires a local unit to have some mechanism for tracking outstanding obligations.
3. If the contract or agreement is in writing (even electronically), it contains a preaudit certificate signed by the finance officer/deputy finance officer. The certificate language is: "This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

If the preaudit process is not performed, in full, the contract or agreement is void. It cannot be enforced by either party. Furthermore, the board, in its discretion, may hold any employee or official who either entered into the agreement or caused it to be entered into, personally liable for the amounts obligated. And it constitutes a Class 3 misdemeanor to violate the statutory requirements.

There are some statutory exceptions to the third (3.) process requirement (preaudit certificate). A writing evidencing a contract or agreement does not have to contain the preaudit certificate if the contract has been approved by the LGC; if the contract involves a payroll expenditure, including one related to employee benefits; or if the contract involves a p-card, credit card, or fuel card transaction, but only if the local government unit follows the LGC rules related to electronic transactions.

New LGC Rules for Electronic Transactions

The LGC has now adopted those rules. As detailed in Memorandum 2018-05, the rules require the following:

RESOLUTION. The unit's governing board must **adopt a resolution** authorizing the unit to engage in electronic transactions. (The LGC's **memo** provides a sample resolution as an addendum.) That resolution authorizes the unit's employees and officials to use p-cards, credit cards, and/or fuel cards, and it either incorporates (by reference) the unit's written policies related to the use of those cards or authorizes the finance officer to prepare those policies.

ENCUMBRANCE SYSTEM. State law requires that certain local units that meet certain population thresholds (municipalities with a population over 10,000 and counties with a population over 50,000) incorporate encumbrance systems into their accounting systems. In order to comply with the new LGC regulations, all units will need to implement encumbrance systems. For units under the population thresholds listed above, the encumbrance system does not have to be incorporated into the unit's accounting system. In fact, for small units, it can be as simple as tracking expenditures against budget appropriations in a spreadsheet, or even on index cards. To facilitate individual transactions, though, a unit might want to create a shared electronic document that can be accessed by anyone authorized to make purchases.

POLICIES & PROCEDURES. The governing board or finance officer must adopt written policies that outline the procedures for using p-cards, credit cards, and/or fuel cards. At a minimum, the policies need to provide a process to ensure that **before each transaction is made**, the individual making the transaction:



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1. ensures there is an appropriate budget ordinance or project/grant ordinance appropriation authorizing the obligation. (For school units, the reference should be to the budget resolution.)
2. ensures that sufficient monies remain in the appropriation to cover the amount that is expected to be paid out in the current fiscal year (if the expenditure is accounted for in the budget ordinance/resolution) or the entire amount (if the expenditure is accounted for in a project/grant ordinance).
3. records the amount of the transaction in the unit's encumbrance system, or reports the amount to another individual (either within the individual's department or within the finance department) to encumber. As stated above, in order to comply with this requirement, each unit must have an encumbrance system.

In addition to these requirements, a unit's p-card, credit card, and/or fuel card policies should address who has custody of the cards, who has access to the cards, what dollar limits are placed on the cards and individual transactions, what expenditure category limits are placed on the cards, and how transactions must be documented for reconciliation with the monthly bills. They should also state the consequences for failure to comply with the policies. The local unit's finance officer is responsible for overseeing all electronic payments and the policies should build in sufficient controls to allow the finance officer to carry out his/her duties.

TRAINING. Once the policies are enacted, the local unit must provide training to all personnel about the policies and procedures that are to be followed before using a p-card, credit card, or fuel card. Training should be repeated at regular intervals, and presented to all new employees and officials early in their tenures. And, the local unit's governing board needs to set an expectation of full compliance with the preaudit policies by all employees and officials.

QUARTERLY REPORTS. The local unit's staff must prepare and present to the governing board a budget to actual statement by fund at least quarterly. The statement needs to include budgeted accounts, actual payments made, amounts encumbered, and the amount of the budget that is unobligated. It is incumbent on the board to gain sufficient training on how to properly interpret these reports, in order to carry out the board's fiduciary responsibility to the unit.

Do units have to follow the new regulations?

The short answer is yes, if a local government unit uses p-cards, credit cards, and/or fuel cards it must follow the new regulations. The reason is that it is impossible to affix the signed, preaudit certificate to p-card, credit card, or fuel card transactions. It is not sufficient to perform the preaudit after the transaction is completed. (I describe the closest a unit could come to full compliance before the regulations were enacted in this **blog post**.) Because a transaction is void if the preaudit is not followed, a local unit will need to follow the new rules to come into legal compliance.

Adopting Resolutions & Policies

Conveniently, an addendum to the **LGC memo** contains a model resolution. Most local units should be able to fill in the blanks and proceed with board adoption of that resolution in short order. The more difficult process will be the formulation of the various policies and procedures related to the electronic payment transactions. These are going to vary significantly by unit and by type of transaction. The policies need to be detailed enough to inform individual employees and officials of the exact steps they must take (and how to take them) before initiating a p-card, credit card, or fuel card transaction. At the same time, they need to be flexible enough to allow local officials to carry out their day-to-day responsibilities effectively. Finance officers may be well-advised to consult with department heads and others in their units and formulate policies that track existing business practices as much as possible.

To help local units get started with that process, here are a few examples of common electronic payment transactions. These should give finance officers a sense of the variation in the types of transactions their policies need to address.

1. The city clerk purchases food from a local grocery store for a board meeting in August. She uses a city-issued credit card to pay for the food. The city's credit card policy needs to establish a process whereby the clerk estimates



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the amount of the purchase and checks to see that there is a budget appropriation authorizing the purchase, and sufficient funds remaining in that budget appropriation to cover that amount. The city could set up a digital system whereby the clerk checks this herself or could require the clerk to work through finance to perform this budget check. (It's up to each unit to set up a process that best works with its operations.) Shortly after the actual credit card transaction, the clerk will need to encumber the amount purchased. It is not sufficient to wait until the monthly credit card bill comes in to make this encumbrance. It has to be done as close in time as possible to the actual transaction. Again, it will be up to each unit to decide whether to set up a system whereby the clerk makes the encumbrance herself or one in which the clerk submits the purchase amount to another to encumber. The policy also will need to establish a process for the clerk to submit the grocery receipt to finance for reconciliation when the bill comes due.

2. A county deputy sheriff needs to refuel his vehicle. He uses a county-issued fuel card to pay for the purchase. The county policy needs to provide a mechanism for the deputy to first ensure that there is a budget appropriation and sufficient funds remaining in that appropriation to cover the fuel purchase. In this case, it is likely not feasible for the deputy to do this check once he is on patrol. Instead, this general check could be done once a week, or within some other reasonable time period, related to all expected fuel purchases for the deputy's vehicle, or even for all of the sheriff's office vehicles, during that time period. Assuming there is going to be sufficient unencumbered budget appropriation to cover the expected fuel expenditures for the designated period, the deputy can proceed to make fuel purchases as needed. The policy needs to prescribe a process for the deputy to either encumber the amount of the fuel purchase shortly after it occurs or submit the amount to another to encumber. The policy also should provide a process to submit the transaction receipt to finance for reconciliation when the fuel bill comes due.

3. The executive director of a water and sewer authority orders supplies from an internet supplier, and uses the authority's p-card to make the purchase. As with the other examples, the water and sewer authority p-card policy needs to provide a process for the executive director to first check that this is an authorized p-card purchase, and to ensure that there is a budget appropriation authorizing the expenditure and sufficient unencumbered funds remaining in that appropriation. The policy also needs to set forth a procedure for encumbering the amount of the supply order either before or shortly after the transaction occurs. And, finally, the policy should address the process for submitting documentation of the transaction to finance for reconciliation.

These are just a few examples. A unit's policies ultimately will need to address all the different ways in which p-card, credit card, or fuel card transactions may occur. As these examples illustrate, the new regulations do not supplant the preaudit process in its entirety. They merely provide a workable alternative to affixing the preaudit certificate to an electronic payment. And these processes, alone, may not provide sufficient internal controls. Finance officers are well advised to implement additional controls in areas where misappropriations are more likely to occur.

Disbursement Process

The new rules also address electronic disbursements—namely, electronic fund transfers. The disbursement process is performed after the goods arrive or the services are performed and the bill comes due. The impact of the new rules on the disbursement process will be discussed in a future post.

Links

- www.nctreasurer.com/slg/Memos/2018-05.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_159/GS_159-28.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_115C/GS_115C-441.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_18B/GS_18B-702.pdf

Rita Blain 3-31-2020
B. L. 03/31/2020

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Page

Appendix E

Current Town Manager's Contract
Dated 26 November 2019

NORTH CAROLINA

EMPLOYMENT CONTRACT

PERQUIMANS COUNTY

THIS AGREEMENT made and entered into this 25th day of November, 2019, by and between the TOWN OF HERTFORD, NORTH CAROLINA, a body corporate and politic existing pursuant to the laws of the State of North Carolina, (hereinafter called the "Town"), and PAMELA HURDLE, (hereinafter called "Employee"), both of whom understand as follows:

WITNESSETH

WHEREAS, the Town has employed Employee since June 14, 1999. Employee has served as Interim Town Manager since May 29, 2018 and Town Manager since September 10, 2018; and,

WHEREAS, the Town desires to continue to retain the services of Employee as Town Manager of the Town of Hertford; and,

WHEREAS, it is the desire of the Town's Council to enter this Agreement in order to (1) secure and retain the services of Employee and to provide inducement for her to remain in such employment, (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security, (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of the Employee, and (4) to provide a just means for terminating Employee's services at such time as she may be unable fully to discharge her duties due to age or disability or when Town may desire to otherwise terminate her employ; and,

WHEREAS, Employee desires to continue her employment as Town Manager of the Town.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. EMPLOYMENT

Employee shall serve as Town Manager of the Town to perform the functions and duties specified in the Town Charter, the General Statutes of the State of North Carolina, and the Town's personnel policies, and to perform such other legally permissible and proper duties and functions as the Council shall from time to time assign.

SECTION 2. TERM

A. This Agreement shall expire on November 30, 2023. This Agreement shall automatically renew annually unless either party gives written notice at least ninety (90) days before it expires that the party does not desire to renew the Agreement. The Employee's appointment and service as Town Manager is at the pleasure of the Town's Council and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of the Town's Council to terminate the appointment of Employee as Town Manager at any time with ninety (90) days notice.

B. In the event Employee voluntarily resigns as Town Manager then Employee shall give the Town's Council ninety (90) days advance notice unless the parties agree otherwise. In the event Employee voluntarily resigns her employment without the agreement of the Council and without the

notice required by this paragraph, she shall forfeit her right to compensation for any accrued and unused vacation leave.

C. No change in the compensation or benefits provided under this Agreement shall be deemed to extend, renew or terminate this Agreement.

SECTION 3. TERMINATION

A. For "Just Cause." In the event Employee is terminated as Town Manager for "just cause" then the Town's only obligation to Employee is to pay all compensation and benefits accrued but unpaid at the date of termination. "Just cause" is defined and hereby limited for the purposes of this Agreement to the following reasons: (1) willful violation of any of the policies, rules, regulations and ordinances adopted by Town's Council; (2) deliberate presentation of false information to Town's Council; (3) participation in any activity that represents a conflict of interest with the Town; (4) habitual use of intoxicants or drugs rendering the Employee unable to perform the duties of Town Manager; (5) conviction of a felony or crime involving moral turpitude.

B. Without "Just Cause." In the event Employee is terminated without just cause by Employer, then in that event Employer shall pay Employee, as compensation for past services rendered, a lump sum cash payment of a certain amount of Aggregate Salary as defined hereinbelow (hereinafter called "Final Earned Compensation"). "Aggregate Salary" shall include the cash value of salary and cash payments for the premiums for health, dental insurance and life insurance and cash payment for Employer retirement contributions and 401(k) contributions for the applicable period as such values as exist at the time of the termination. The Final Earned Compensation shall be based on the value of forty-eight (48) months of Aggregate Salary. The Final Earned Compensation shall be determined by the Employee's annualized salary as of the date of notice to terminate this Agreement.

C. For any period of notice given by the Town of termination without "just cause" as defined herein, such period shall not reduce the amount of Final Earned Compensation due Employee unless and only to the extent the Employee is relieved of performing any duties for the Town.

SECTION 4. DISABILITY

If Employee is permanently disabled or otherwise unable to perform her duties for a period of sixty (60) calendar days because of sickness, accident, injury, mental incapacity or health, the Town shall have the option to terminate this agreement. However, Employee shall be compensated for any accrued sick leave, vacation, holidays, compensatory time and other accrued benefits.

SECTION 5. COMPENSATION

The Town Council agrees to pay Employee for her services as Town Manager a base salary of \$73,899.00 payable in installments at the same time as other employees of the Town are paid. In addition, the Town Council agrees to increase said base salary and/or benefits of employee in such amounts and at such times as the Town Council may determine to be desirable.

Employee shall also be entitled to the same leave benefits, holidays, longevity pay and the same COLA afforded to other employees of the Town. Employee shall also be entitled to any additional benefits afforded to employees of the Town. In addition, the Town will contribute 3.75% of Employee's salary annually to a 401K for Employee.

SECTION 6. PERFORMANCE EVALUATION

A. The Council shall review and evaluate the performance of the Employee each year. Said review and evaluation shall be in accordance with goals and objectives developed jointly by the Council and the Employee. This shall not be construed to prevent the Council from evaluating Employee, nor from having Employee discuss her performance with the Board, at any other time.

B. Annually, the Council and Employee shall review such goals and objectives which they determine necessary for the proper operation of the Town and in the attainment of the Council's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing.

SECTION 7. HOURS OF WORK

Employee shall not receive payment for any compensatory time. It is recognized that Employee must devote a great deal of time outside the normal office hours to business of the Town, and to that end and with the approval of the Town's mayor, Employee will be allowed to take compensatory time off as she shall deem appropriate during said normal office hours.

SECTION 8. AUTOMOBILE

Employee shall have use of a Town supplied motor vehicle, cellular telephone and other equipment necessary for Employee's travel on Town business. Employee may, at her option, use her personal vehicle for travel in which case she will be reimbursed for vehicle use consistent with the Town's reimbursement policies. Employee shall obtain approval of all travel from the Mayor or Mayor Pro Tem and shall report details such as the date, destination, and purpose of all travel to the Town Council.

SECTION 9. VACATION, SICK, AND MILITARY LEAVE

Employee shall be entitled to receive the same vacation and sick leave accruals and usage as are afforded to department heads.

SECTION 10. DISABILITY, HEALTH, AND LIFE INSURANCE

The Town agrees to provide vision, dental, hospitalization and comprehensive medical insurance for Employee. The Town agrees to put into force and to make required premium payments for Employee for long term disability insurance.

The Town will provide retirement benefits as provided to all other Town employees.

SECTION 11. DUES AND SUBSCRIPTIONS

The Town agrees to budget and to pay for the professional dues and subscriptions of Employee necessary for her continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for her continued professional participation, growth, and advancement, and for the good of the Town.

SECTION 12. PROFESSIONAL DEVELOPMENT

A. The Town hereby agrees to budget and to pay for the travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the

professional development of Employee and to adequately pursue necessary official and other functions for Employer, including but not limited to the North Carolina League of Municipalities, and such other national, regional, state, and local governmental groups and committees thereof which Employee serves as member.

B. The Town also agrees to budget and to pay for the travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for her professional development and for the good of the Employer.

SECTION 13. INDEMNIFICATION

To the extent provided by law, the Town shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Town Manager. The Town will compromise and settle any such claim or suit or pay the amount of any settlement or judgment rendered by a court of law thereon.

SECTION 14. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Council, in consultation with the Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the Town Charter, or any other law.

B. All provisions of the Town Charter and Code, and regulations and rules of the Town relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereinafter may be amended, also shall apply to Employee as they would to other employees for Town, in addition to said benefits enumerated specifically for the benefit of Employee except as herein provided.

SECTION 15. GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties.

B. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee.

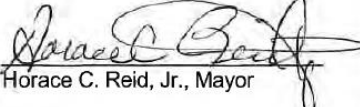
C. This agreement shall become effective on the date first set forth above and shall supercede and replace all prior agreements between the parties regarding the same subject matter.

D. This Agreement shall be governed by and construed in accordance with the law of the State of North Carolina.

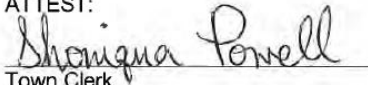
E. This Agreement may not be amended or modified except by a written instrument, signed by both parties.

F. If any provision, or any portion thereof, contained in this agreement is held unconstitutional, invalid, or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS HEREOF, the Town of Hertford has caused this agreement to be signed and executed in its behalf by its Mayor, and duly attested by its Town Clerk, and the Employee has signed and executed this agreement, both in duplicate, the day and year first above written.

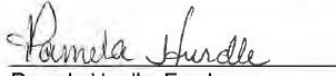

Horace C. Reid, Jr., Mayor

ATTEST:

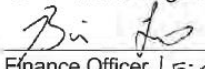

Town Clerk

(SEAL)




Pamela Hurdle, Employee

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


Finance Officer / Finance Assistant

ORDERING INFORMATION

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Office of the State Auditor
State of North Carolina
2 South Salisbury Street
20601 Mail Service Center
Raleigh, North Carolina 27699-0600

Telephone: 919-807-7500
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To report alleged incidents of fraud, waste or abuse in state government contact the
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Internet: <http://www.auditor.nc.gov/pub42/Hotline.aspx>

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