Board of Commissioners
Agenda Packet

December 6, 2021

6:00 PM Call to Order

A) Invocation & Pledge of Allegiance

B) Approval of Agenda

Election of Board Chair

Election of Board Vice-Chair

Public Comment

Please limit comments to matters other than those appearing on this agenda as a Public Hearing. Public comments are limited to 3 minutes.

Commissioner's Report

County Manager/County Attorney Reports

Administrative Reports

A) **Amended Item- Resolution of Appreciation to Ted Fox**

B) **State Representative Bobby Hanig, Discussion Regarding State Efforts to Resolve Eagle Creek Wastewater Issues.**

C) **Televate presentation of the County Public Safety Radio System Analysis and Recommendations.**

Public Hearings

A) **PB 90-07 Pine Island Phase 5B:** Request for Amended Preliminary Plat/Special Use Permit to approve an additional unit of density in the form of an upper story dwelling unit over the cabana amenity and to designate a small commercial area within Pine Island PUD.

New Business

A) **Consideration of the Guaranteed Maximum Price for Moyock Elementary School Addition and Renovation Project.**

B) **Discussion Regarding Albemarle Regional Health Services Vaccination Requirements for Employees and Impact to Currituck County.**

C) **Consideration of National Opioid Settlement Agreement and Authorize Interim County Manager/County Attorney to Execute Settlement Agreements.**

D) **Amended Item- Discussion Regarding Employee Holiday Wages**

E) **Consent Agenda**

1. Consideration of Lease Agreement with the North Carolina Department of Agriculture and Consumer Services for Forest Service Office.

2. Second Amendment to License Agreement for Placement of the Communications Facility on Currituck County-Owned Tower.
3. Resolution in support of Individual Freedom Over Personal Vaccinations Status
4. Resolution Requesting Appropriation of Additional State Funds to Reduce Impacts of COVID-19 Related to Family Violence Expenses
5. Resolution Opposing Proposed Shrimp Fishery Management Plan Amendment 2
6. Contract to Audit Accounts-Amended
7. Project Ordinance- Historic Corolla Park Playground
8. Budget Amendments
9. Approval of Minutes-11/15/21 & SM 11/29/21

Special Meeting of theTourism Development Authority

Budget Amendment- TDA

Adjourn TDA and Reconvene Regular Meeting

Closed Session

Closed Session under G. S. 143-318.11(a)(3) to receive from and discuss with the County Attorney privileged and confidential legal matters and to consult with the County Attorney regarding the case entitled Marc Sisino, d/b/a Complete Auto Credit v. Currituck County.

Adjourn

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3301)

Agenda Item Title: Amended Item- Resolution of Appreciation to Ted Fox

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Information

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute? No

Manager Recommendation:

RESOLUTION OF THE CURRITUCK COUNTY BOARD OF COMMISSIONERS IN APPRECIATION FOR THE SERVICE OF CURRITUCK RESIDENT, TED FOX TO THE CITIZENS OF CURRITUCK COUNTY, NORTH CAROLINA

WHEREAS, on August 4, 2021, Currituck County Resident, Ted Fox, responded to a residential structure fire in Moyock, North Carolina, where he found one occupant of the house confined in life threatening circumstances; and

WHEREAS, Ted Fox extract the person to safety through a window before First Reponder personnel arrived; and

WHEREAS, Ted Fox immediate and selfless lifesaving actions to another is a credit to him for which the citizens of Currituck County are grateful.

NOW, THEREFORE, BE IT RESOLVED, by the Currituck County Board of Commissioners, that on behalf of the citizens of Currituck County, the Board of Commissioners acknowledges the lifesaving action of Ted Fox and extends its appreciation for his dedicated public service.

ADOPTED this 6th day of December, 2021.

_____
Michael Payment, Chairman
Board of Commissioners

_____
Samantha M. Evans
Deputy Clerk to the Board

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3293)

Agenda Item Title: State Representative Bobby Hanig, Discussion Regarding State Efforts to Resolve Eagle Creek Wastewater Issues.

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Discussion

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3285)

Agenda Item Title: Televate presentation of the County Public Safety Radio System Analysis and Recommendations.

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Information

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

Currituck County, NC Public Safety Radio System Analysis and Recommendations

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August 2021

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EXECUTIVE SUMMARY

Introduction

Currituck County ("County") is a coastal county of roughly 527 square miles located in the northeastern corner of North Carolina. The County's current public safety land mobile radio (LMR) communications system consists of a four (4) channel, five (5) site, conventional digital 800 MHz simulcast P25 radio system with a Motorola K-Core master site. All sites are connected by a point-to-point redundant microwave ring configuration. VHF paging is utilized for Currituck County Fire-EMS and five (5) volunteer fire departments. The infrastructure of the existing system was installed in 2013.

The County engaged Televate, LLC to conduct a comprehensive assessment of their existing public safety communications system and operations, including but not limited to, system infrastructure, user needs, communications sites, coverage, subscriber units, connectivity, and interoperability. The goal of this project is to provide recommendations and cost estimates for improvements to the existing system, evaluating future system needs, and providing recommendations and cost estimates for equipment replacement and system upgrades. This report documents the findings, estimates, and recommendations following that assessment.

Analysis

To perform the comprehensive assessment, Televate developed a project plan which included the following tasks:

- Review existing system capabilities and inventory
- Interview current system users and stakeholders
- Perform a coverage and capacity assessment
- Measure signal levels of the existing County system and the North Carolina State VIPER system throughout the County, and
- Develop recommendations and cost estimates to address the key findings and system shortcomings.

Key Findings

Following performance of the tasks described above and an analysis of the results, Televate identified the following key items affecting Currituck system users:

- Microwave connectivity and reliability and other LMR performance issues, results in the disconnection of communications between the County's dispatch center and County LMR network end users
- Lack of sufficient repeated channels for incident support, coordination and interoperability
- Radio coverage problems and apparent degradation in certain areas of the County, as well as some recent paging coverage issues
- Outdated core infrastructure hardware and software and lack of software agreement, and
- Lack of indication when the user goes out of range of the network.

Additional discussion and details regarding these issues is contained in the body of the report.

Recommended Actions and Enhancement Options

Below, Televate outlines a number of recommended actions and enhancement options for Currituck County to consider. Specifically, Televate has outlined three Recommended Short-Term Actions that the

County must take as soon as possible to address key issues that are currently being experienced by County users. These actions include:

- **Action One:** Correct Microwave Connection, RF Performance and Reliability Issues
- **Action Two:** Further Address Coverage Issues (Short-Term), and
- **Action Three:** Incorporate Additional Conventional Channels into the Current Simulcast System.

Additionally, beyond, or possibly in place of Action Three, which could be replaced/integrated into one of the suggested options, Televate has identified several enhancement options for the County to consider to further improve communications capabilities and to position the County for future improvements and/or expansion. These enhancement options include:

- **Option One:** Utilize VIPER or Other System Talkgroups for Communications Between Currituck and Neighboring and Outside County Responders
- **Option Two:** Utilize 800 MHz TAC Channels in Repeated Mode for Communications Between Currituck and Outside County Responders
- **Option Three:** Transition to Trunking Operation and Add Additional Channels
- **Option Four:** Transition to the VIPER System for Everyday Use, and
- **Option Five:** Address Any Remaining Coverage Issues (Long-Term).

A brief description of each action and option is provided in the table below, along with any interdependencies that may exist. Complete descriptions of these actions and options are included in the body of the report, along with details of the components included in the cost estimate. Televate has provided cost estimates based on the assumptions for each action/option and on our previous experience. Some cost estimates also include multiple options due to the different potential approaches available.

Recommended Action/Enhancement Option	Overview	Interdependencies	Estimated Cost
Recommended Actions			
Action One: Correct RF Performance and Microwave (MW) Connection and Reliability Issues	Replace the Corolla to Fox Knoll MW link; Update link from Currituck911 to High Cotton and plan for new location; Perform RF performance assessment, microwave path studies and equipment review; Spares inventory. An alternative approach to the MW issues is a complete MW system replacement.	Partially dependent on Currituck911 facility relocation	$326,700 (without new tower at New Currituck911); $717,200 (with new tower included): $1,405,200 Microwave replace and RF fix (no tower)
Action Two: Further Address Coverage Issues (Short-Term)	Perform thorough system preventative maintenance and simulcast timing analysis and update as necessary; Incorporate procedures to take	Microwave connectivity issues must be resolved prior to timing analysis	$77,000

	advantage of neighboring coverage		
Action Three: Incorporate Additional Conventional Channels into the Current Simulcast System	Incorporate two additional conventional channels into simulcast system and update all radios	Options One and Two (see below) are less expensive, but less desirable solutions. Options Three and Four are more expensive but more robust solutions.	$578,300
Recommended Options for Consideration			
Option One: Utilize VIPER or Other System Talkgroups for Communications Between Currituck and Outside County Responders	Develop detailed regional communications plan and make use of neighboring systems for coordinated response	Less expensive, but less desirable alternative to Action Three	$82,500
Option Two: Utilize 800 MHz TAC Channels in Repeated Mode for Communications Between Currituck and Outside County Responders	Incorporate one 800 MHz TAC repeater at each of three County sites	Less expensive, but less desirable alternative to Action Three	$111,800 or $162,900 with console integration
Option Three: Transition to Trunking Operation and Add Additional Channels	Add two additional channels to all Currituck sites and upgrade to trunking operation	More expensive, but more feature rich alternative to Action Three	$1,756,600
Option Four: Transition to the VIPER System for Everyday Use	Add four additional channels to all Currituck sites: upgrade to trunking operation; and integrate with VIPER	More expensive, but more feature rich alternative to Action Three	$3,481,000
Option Five: Address Any Remaining Coverage Issues (Long-Term)	Replace High Cotton site with taller tower; Add tower in Carova Beach; Utilize vehicular repeaters	Actions One and Two to be done first; Moyock tower not necessary if Option Four; Other components only considered if necessary	Moyock tower: $450,000 Carova Beach tower: $688,000 Vehicular Repeaters: $243,650

Suggested Course of Action/Next Steps

Televate recommends the County review the Recommended Actions and Enhancement Options described in this report and seek additional clarification from Televate and Motorola as necessary in

order to determine the best course of action to meet the County's needs and available funding. At a minimum, Televate strongly recommends the County implement Recommended Short-Term Actions One and Two as soon as possible. The apparent degraded coverage and frequent microwave reliability issues are causing serious service disruptions and should be addressed immediately. Televate also recommends the County develop a plan to implement either Recommended Short-Term Action Three or one of its alternatives (Options One, Two, Three or Four) based on available funding and the County's preferred long-term strategy.

The proposed corrective actions and options are in additional to the relocation of the existing Currituck911 tower site, which must be relocated due to the County's relocation of the 9-1-1 center. The total cost to construct a new tower and equipment shelter, to redesign and upgrade the Currituck911 microwave, and to relocate the LMR equipment to the new facility, must also be considered within the overall LMR network enhancement project.

While Action Three is presented as the recommended action due to budget and timing considerations, it is important to clarify that Options Three and Four are more robust upgrades that will place the County on a path for long-term system enhancements and sustainability, and although they do require substantially more funding to implement, should be seriously considered.

EXISTING SYSTEM BACKGROUND

County System

The County's current public safety LMR communications system consists of a four (4) channel, five (5) site, conventional digital 800 MHz simulcast P25 radio system. The simulcast network was originally implemented in 2013 and is currently operating at Motorola's infrastructure software version 7.16, which is not up to the current revision. The network consists of the following sites:

Site Name	Site Address	Transmit Antenna Height (ft)	Output Power (W)	ERP (W)
Barco	4263A Caratoke Hwy, Barco	394	100	350
High Cotton	1187 Caratoke Hwy	171	100	350
Corolla	734 Ocean Trail	256	100	350
Fox Knoll	201 Fox Knoll Dr	171	100	350
Knotts Island	286 Knotts Island Rd	200	100	350

All sites are connected by a point-to-point redundant microwave ring configuration. The ring also includes the Currituck911 dispatch location. Currituck911 is the "Master Site" for the system and the Barco site serves as the "Prime Site" for simulcast control. The locations of these sites, along with the microwave ring are shown in Figure 1.

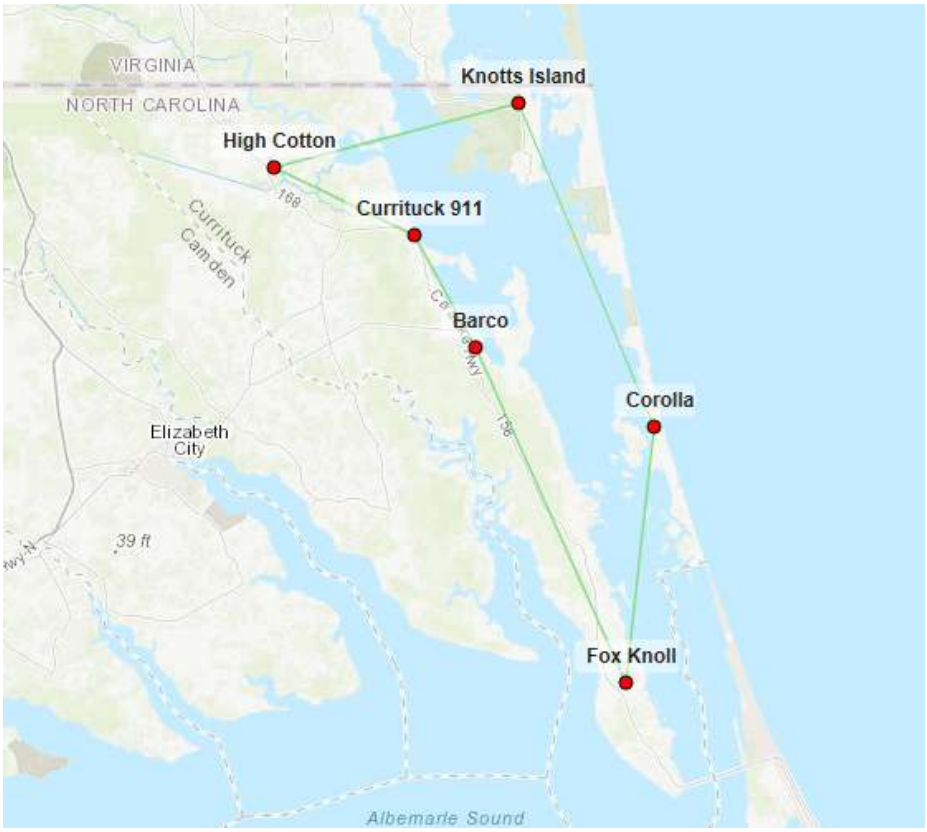


Figure 1: Current Site Locations and Microwave Links

Televate notes that the location of the High Cotton site appears to be incorrect in the FCC database. The location is identified as 36-30-45.9 N, 076-09-53.5 W, while Televate believes the actual location of the water tank is 36-29-41.9 N, 076-07-59.6 W. The latter location was used for the propagation studies and analysis. The location should be confirmed, and the FCC licenses updated if necessary.

The LMR system supports law enforcement personnel with the Currituck County Sheriff's Office, and Fire/EMS personnel with the Currituck County Emergency Medical Services Department, as well as the five volunteer fire departments in the County: Carova Beach, Corolla, Crawford Township, Lower Currituck, and Moyock.

Of the system's four channels, two are used for law enforcement communications (a primary and a secondary channel), and two are used for fire communications (a primary and a secondary channel). The County also uses several non-repeated (talk-around) simplex channels for on scene operations and operates a VHF simulcast paging network at the same five LMR sites.

VIPER System

In addition to the simulcast system operated by Currituck County, County users have access to the statewide VIPER system as well. VIPER is a 700/800 MHz trunked radio system operated by the North Carolina State Patrol. VIPER includes a site in Currituck County at the Barco location, as well as several sites in surrounding counties. The nearby sites are listed in the table below and illustrated on the map in Figure 2.

Site Name	Site Address	Transmit Antenna Height (ft)	Output Power (W)	ERP (W)
Barco	4263A Caratoke Hwy, Barco	380	100	180
Kitty Hawk	HP-1145, 4371 The Woods Rd Kitty Hawk	310	100	200
South Mills	HP-1260, 175 McPherson Rd South Mills	470	100	120
Elizabeth City	HP-1080, 913 Wellfield Rd Elizabeth City	520	100	120

In the map, Currituck sites are shown in blue and VIPER sites in red, where the Barco site is used for both systems. Each of the VIPER sites in Currituck and surrounding Counties are deployed as separate frequency "multi-cast" (or ASR) sites.

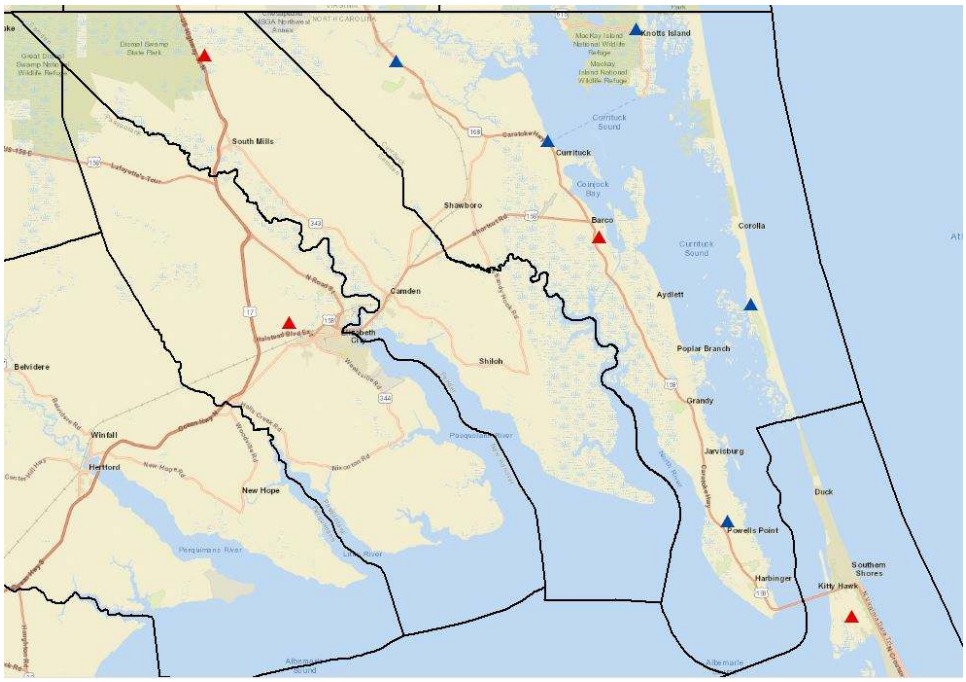


Figure 2: VIPER Sites in and around Currituck County

SYSTEM FEEDBACK FROM USERS

As part of the assessment, Televate met with a number of representatives from the public safety community to understand how the radio system is operating and supporting their needs, and to determine what shortcomings, if any, existed. During the needs assessment portion of the project, Televate met with members of law enforcement, fire/EMS, dispatch, as well as representatives of the system manufacturer (Motorola), and radio service shop (Mobile Communications America (MCA)).

In general, Televate found that the system has worked well in the past but has suffered from reliability issues and inconsistent performance in recent years. Many of these problems appear to be related to the microwave network, as instances have occurred where dispatch has lost connectivity to the simulcast network. Additionally, failure of a microwave component resulted in one site being inoperable for a number of weeks and additional problems were being experienced when Televate recently performed site visits.

Coverage was generally classified as good, except for the northwest portion of the County west of Moyock, as well as in the Carova Beach area. Stakeholders indicated that the system coverage was initially very good and has degraded over time. Similarly, stakeholders referred to paging coverage as generally good, although recent issues have been experienced in the Carova Beach area. Communications inside buildings was identified as adequate by those that were interviewed, with the exception of two grocery stores (a Food Lion in Grandy and a Food Lion in Corolla – the latter being only 2,000 feet from the Corolla site) that exhibit difficulties. Televate's site visits confirmed that coverage in the Grandy area is primarily "street level" coverage and it is likely that communications inside buildings of moderate to substantial construction would be difficult. Conversely, coverage in the Corolla area was confirmed to be strong during Televate's site visits and adequate signal and communications was confirmed in the Food Lion and Harris Teeter in Corolla (see Appendix B: In-Building System Signal Measurements).

Since coverage issues appear to have developed recently, it is likely that some degradation has occurred with the system RF components, including antennas, transmission lines, connectors, etc. Signal testing in the Carova Beach area (described below) further suggests degradation has occurred due to low signal levels seen in this area, given user's reports that coverage in this area was previously acceptable, and considering that the propagation prediction indicates good coverage due primarily to the proximity to the Knotts Island site. While the County does maintain an infrastructure maintenance agreement, it is not clear when a complete RF assessment including line and antenna sweeps was performed. LMR system preventative maintenance, including transmission system sweeps and assessments, must be conducted on a reoccurring periodic basis to gauge component level performance, while equipment repair and replacement must be conducted real time to achieve mission critical grade service.

Some respondents indicated that one of their major issues to be resolved is the need for additional repeated channels. The respondents indicated that when mutual aid occurs and responders from outside the County are needed, such as from Virginia Beach, Chesapeake, or Dare County, these outside responders are not able to talk with other responders on scene until they get within range of the incident to be able to utilize the tactical or fireground channel. Having additional repeated channels to use for this purpose would permit improved coordination between responders on scene and those en route to the incident.

Another issue that was raised by one of the interviewees is that the conventional operation of the LMR channels makes it difficult for responders to know if they are in coverage of the system and if they can be heard by dispatch. This capability is lacking because a conventional channel does not have any feature that alerts a user when they are out of range. As a result of this issue, users tend to switch away from the repeated channel and move to a "talk-around" non-repeated channel, when they feel that they are outside of system coverage. This type of operation limits the range of the communications and does not give dispatch the capability to monitor the first responder communications activity.

Existing System Signal Testing

In addition to interviews with County stakeholders, LMR network signal level measurements were taken to confirm existing system performance, as well as to provide input into the radio propagation tool in support of coverage simulations. On 4/19/21 and 4/20/21, and again on 8/2/21, a signal measurement device was used to gather existing system signal measurements. A Berkeley Varitronics Systems Coyote™ (shown in Figure 3) unit was used to measure the signal level and correlate it to GPS position.

The unit was programmed to receive and measure the following frequencies:

- Currituck County Secondary LE Channel (Primary channel for recording Signal Level):
  854.3875 MHz
- Currituck County Primary LE Channel:
  854.1375 MHz
- Currituck County Primary Fire Channel:
  859.1625 MHz
- Currituck County Secondary Fire Channel:
  859.6875 MHz
- VIPER Elizabeth City site control channel:
  853.5625 MHz
- VIPER Barco Site control channel:
  853.3375 MHz
- VIPER Kitty Hawk site control channel:
  853.4375 MHz
- VIPER South Mills Site control channel:
  853.6750 MHz
- VA Beach System control channel:
  859.5625 MHz
- Dare County System control channel: 859.9875 MHz.

Figure 3: Signal Measurement Device

The testing was performed initially in a rental SUV, and also while riding in a County-supplied four-wheel drive vehicle while driving throughout the County. The unit was positioned in the front seat in a vertical position such that the antennas were pointing upwards. Since the Currituck system is conventional, the channels are only active when a call is in process. However, to record data throughout the drive route, the LE Secondary channel was placed into constant carrier mode during the testing. While this kept the channel active for longer periods of time, it was determined that the channel would occasionally "time-out" or reset at certain times and therefore would not be active continuously. In order to avoid long gaps without signal, a technician from Currituck's communications provider was able to re-enable the carrier mode periodically. While this made it possible to record signal level during most of the driving, there were intermittent periods where the signal was not present. The areas where the radio signal could not be measured were filtered during the data processing, in order to avoid skewing of the data. Data from the other systems, including VIPER, Dare County, Virginia Beach and Chesapeake was recorded by monitoring the control channels of these systems, which are always active.

Currituck System Signal Measurements:

The signal level readings for the Currituck channel are shown below in Figure 4, where Green dots indicate good signal level (two levels are shown), Yellow dots indicate acceptable signal level, and Red dots indicate a weak signal level which would generally only be suitable for communications with a mobile radio.

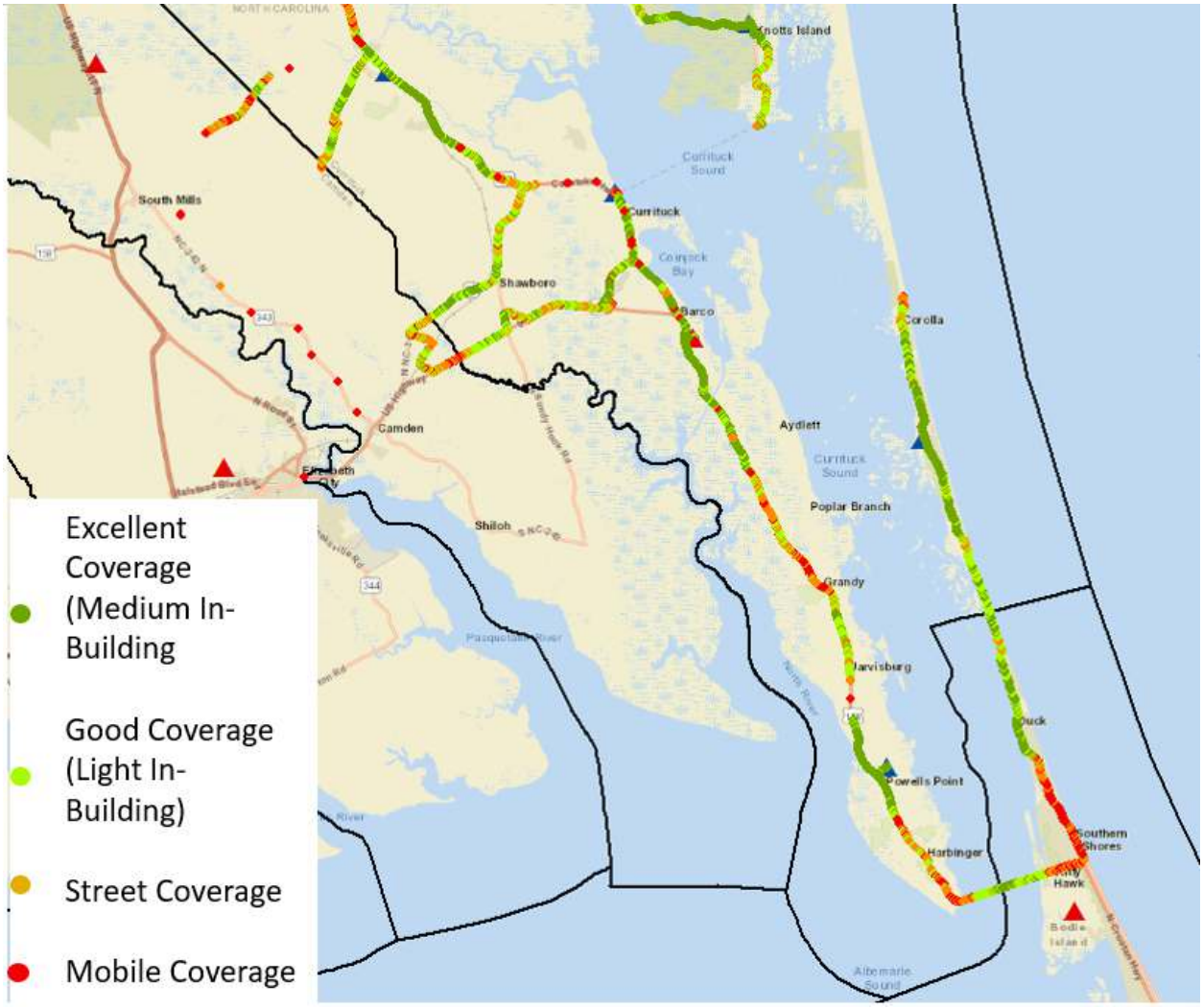


Figure 4: Currituck County Signal Level (April test)

It can be seen that coverage throughout much of the County is good showing light in-building and medium in-building coverage, except for the following areas:

- Northwest of Moyock
- In the Grandy area
- In the southern portion of the County near Harbinger.

Additional testing was performed in August, to confirm previous measurements, and also to record data along the northern beach areas near Carova Beach. These additional measurements are shown in Figure 5 below. Additional maps showing more detail of Grandy and Carova Beach are included in Appendix A: Other System Signal Measurements.

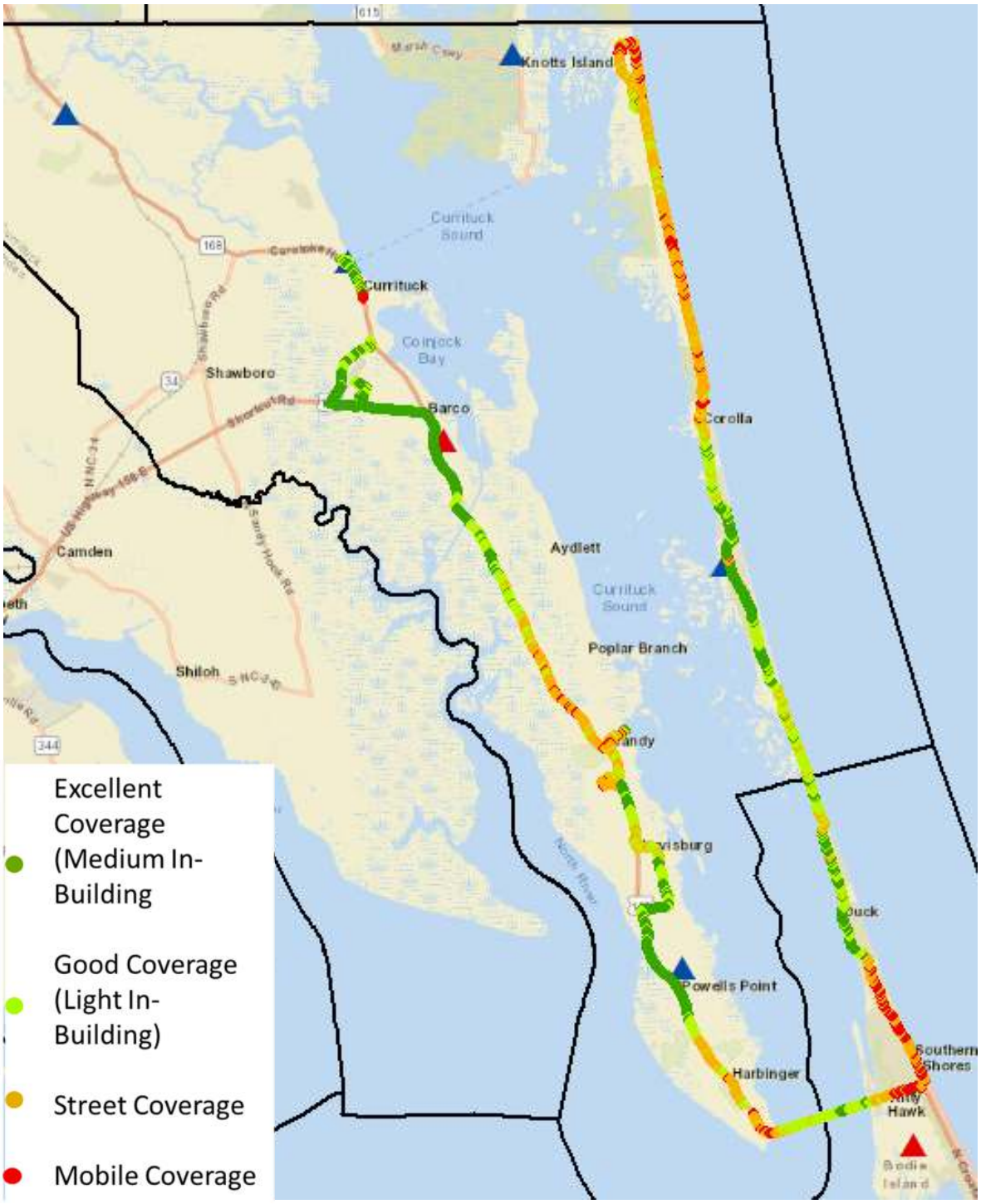


Figure 5: Currituck County Signal Level (August test)

The additional measurements confirm many of the original measurements, including some marginal coverage areas in and around Grandy and Harbinger, although performance in these areas during the August test was somewhat better than what it appeared in April. Televate concludes that this is due to a more consistent and accurate test performed in August due to very few occasions where the signal dropped due to a failure to maintain the constant carrier mode.

The additional testing performed in August also identified significant marginal coverage areas in and around Carova Beach. The marginal signal in these areas, especially in the most northern portion where the signal is strong enough only for mobile coverage (and portable coverage with good audio quality is unlikely), is surprising and concerning, given its proximity to the Knotts Island site, and predictions from the propagation simulation.

Other System Signal Measurements

In addition to the Currituck system, signal measurements were recorded and processed for other radio systems in the area as well, including the North Carolina VIPER system, and systems from Dare County, North Carolina and the Cities of Virginia Beach and Chesapeake in Virginia. Maps of these signal measurements are included in Appendix A: Other System Signal Measurements, and a more thorough analysis of the VIPER signal measurements is provided below.

VIPER Signal Measurements:

Signal level measurements for individual VIPER sites are shown in Appendix A: Other System Signal Measurements. A composite signal measurement map was created which depicts the best VIPER coverage from the various sites throughout the County. This composite map is shown below in Figure 6. Also in this map, Green dots indicate good signal level (two shades of Green are shown) where some varying level of in-building coverage is available, Yellow dots indicate acceptable signal level where on-street or in-vehicle portable (handheld radio) coverage is available, and Red dots indicate a weak signal level where only coverage with a mobile radio would be expected.

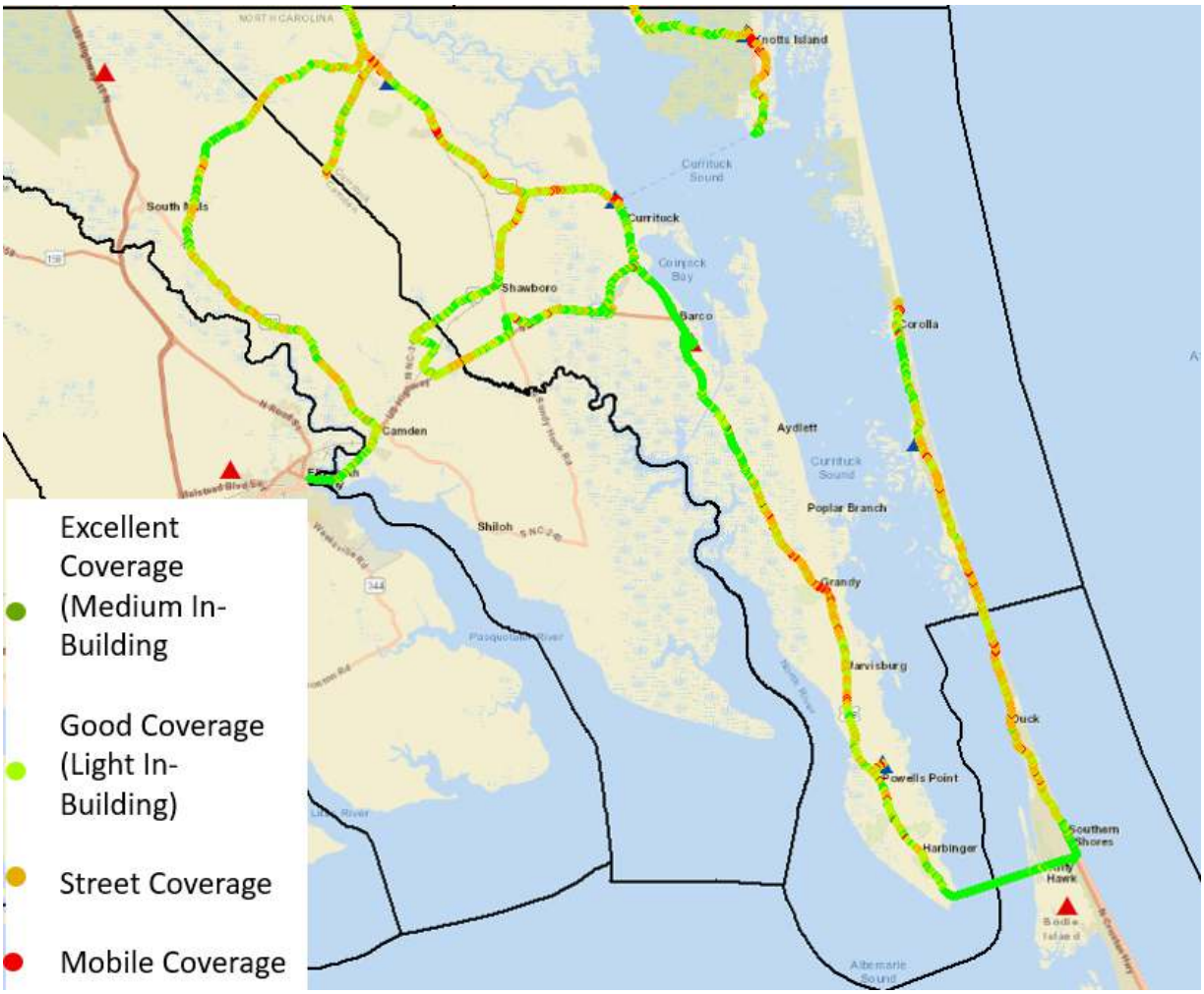


Figure 6: VIPER Composite Signal Level Measurement Map

In order to take advantage of the coverage shown in the composite map, the VIPER radio would have to switch between the various sites as it traverses the County. From the maps, it can be seen that coverage from the VIPER system is generally good throughout much of the County, except for the following areas:

- In the Grandy area
- Some portions of the Outer Banks, including Carova Beach based on data from the August testing
- Portions of Knotts Island, and
- Near Moyock.

When comparing VIPER coverage to the Currituck system, Currituck appears to have better coverage than the VIPER system in the Knotts Island, Outer Banks, and Moyock areas, although VIPER appears to provide better coverage in the area west of Moyock and in the extreme southern portion of the County near Harbinger. However, it is important to note that better coverage than measured from the Currituck LMR network should be available from the Fox Knoll site in the extreme southern portion of the County near Harbinger and should be remeasured after the RF performance assessment and optimization is performed on this site.

EXISTING SYSTEM PROPAGATION SIMULATIONS

For additional coverage analysis, detailed propagation simulations were developed for the Currituck system, as well as the VIPER system in and surrounding Currituck County. The simulations utilize the EDX SignalPro™ application, which is a standard propagation tool employed by Public Safety to model the system elements and to predict coverage by incorporating industry standard propagation algorithms in addition to terrain and land use databases.

Once the models were developed, the recorded data from the signal testing was factored into the SignalPro™ application in order to calibrate the models and improve their accuracy.

Currituck System Propagation Simulation

To predict coverage based on the current sites and system configuration, a radio propagation model simulation was performed to predict where the system would provide a voice quality (Delivered Audio Quality (DAQ)) of at least 3.4. The minimum Channel Performance Criteria (CPC) required for a DAQ level of 3.4 for a digital P25 system was derived using the information from Table A-1 of TSB-88[1]. The TSB-88 report serves as the public safety LMR network design industry standard. The propagation model predicts coverage for a mobile radio, as well as a portable radio in street (outdoors) and also within buildings up to a specific dB signal loss value. The predicted coverage is shown below.

[1] TIA Telecommunications System Bulletin TSB-88.1-C: Wireless Communications Systems Performance in Noise and Interference Limited Situations - Part1: Recommended Methods for Technology Independent Performance Modeling: February 2008.

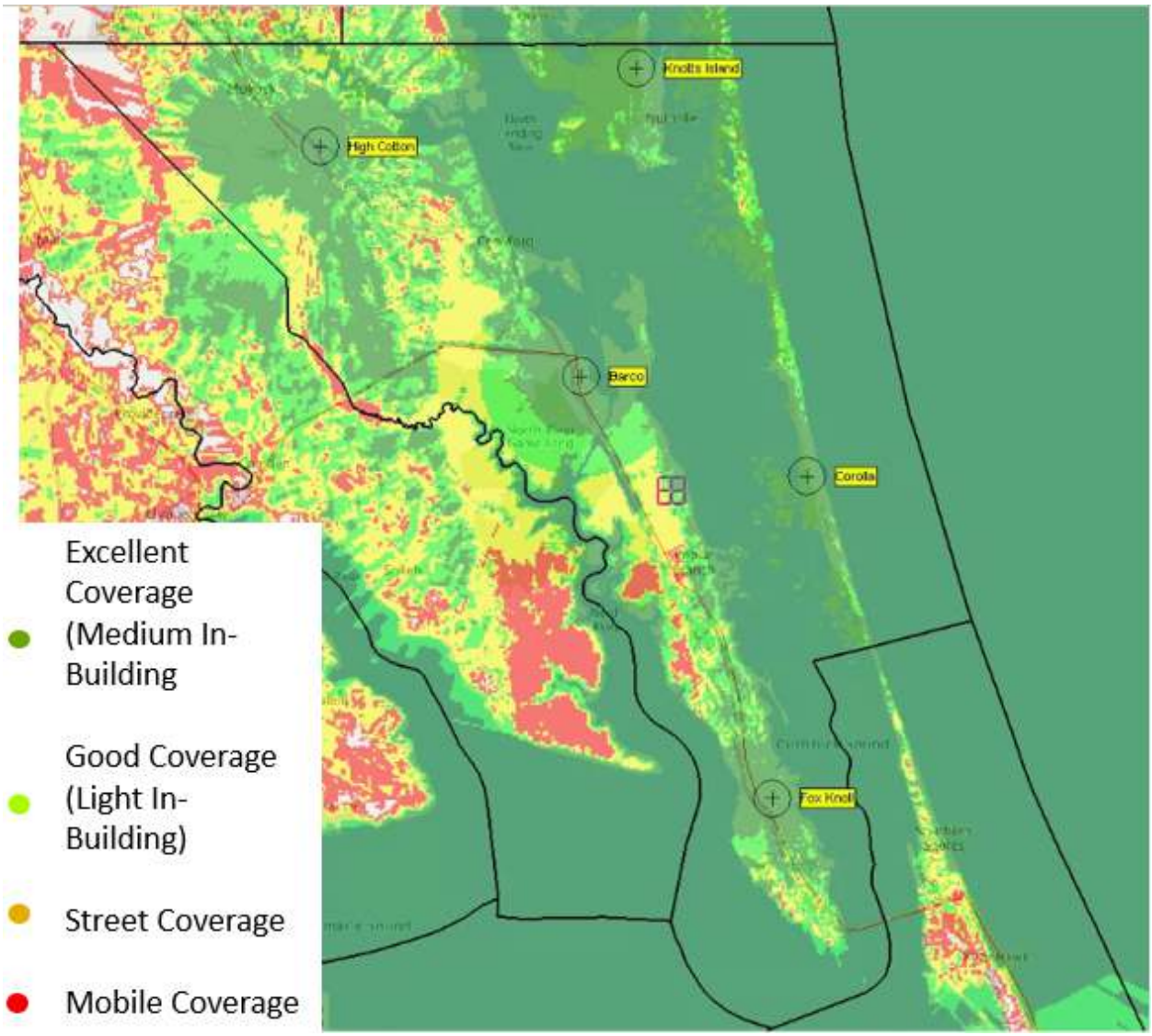


Figure 7: Currituck System Predicted Coverage

The simulation does predict marginal performance in the extreme northwestern part of the County, as well as areas around Grandy that do not appear to provide portable coverage as desired by the County users. However, areas in the southern most portions of the County and on the Outer Banks near Carova Beach appear acceptable, even though signal measurements in those areas showed marginal coverage and users in Carova Beach have expressed concern about spotty portable coverage. Given there are substantial areas where the simulation and the measured results do not agree and given the fact that users have commented that the system performance appears to have degraded, Televate has concern that the RF portion of the system has likely degraded and requires evaluation followed by remediation and re-optimization as necessary.

Televate also notes Carova Beach sits in an area that could potentially be covered by two or three sites. As a result, due to the system's simulcast configuration, shifts in the signal timing from one or more sites may cause intersystem interference in that area, which will manifest itself as poor coverage. Problems

with the microwave connectivity could also be contributing to signal timing problems, resulting in these apparent coverage issues.

VIPER Propagation Simulation

VIPER is a statewide Project 25 digital trunked radio system that provides voice communications throughout the State of North Carolina. Similar to the Currituck system, a simulation was performed to predict where the system is expected to provide a voice quality (Delivered Audio Quality (DAQ)) of at least 3.4. The minimum Channel Performance Criteria (CPC) required for a DAQ level of 3.4 for a digital P25 system was derived using the information from Table A-1 of TSB-88. The model predicts coverage for a mobile radio, as well as a portable radio in street (outdoors) and also within buildings up to a specific dB signal loss value. The predicted coverage is shown below.

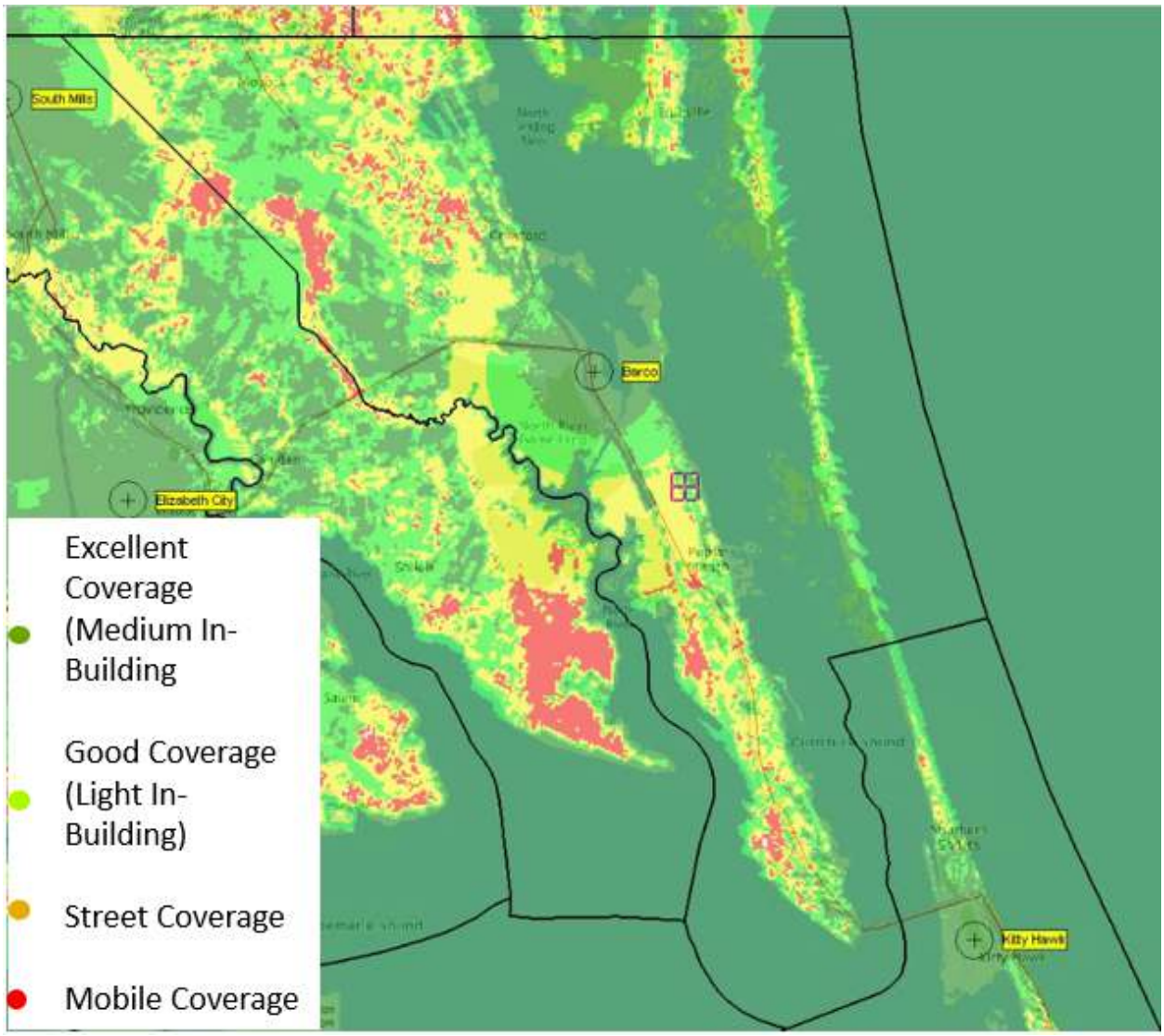


Figure 8: VIPER Model Predicted Coverage

As expected, coverage from the VIPER system varies throughout the County as well, although differently from the Currituck system. Predicted weak areas for VIPER occur in the northern portions of the County

near and around Moyock, again in the Grandy area, as well as on Knotts Island and portions of the northern Outer Banks.

MICROWAVE LINK ANALYSIS

Televate performed an analysis of the microwave links currently utilized by the Currituck system to understand their configurations. There are a total of six links that make up the microwave ring, as shown in Figure 1. The links are identified in the table below.

Link	Distance (Mi.)	Frequency Band (GHz)	Antenna Heights (Ft.)
Currituck 911 to/from High Cotton	7.2	11	90/135
High Cotton to/from Knotts Island	11.7	6	135/145
Knotts Island to/from Corolla	16.2	6	160/235
Corolla to/from Fox Knoll	11.9	6	135/138
Fox Knoll to/from Barco	17.0	6	138/230
Barco to/from Currituck 911	5.9	11	150/90

Table 1: Currituck County LMR Microwave Network

The link profiles for each of these links, which were generated from the manufacturers data for the terrain and potential obstructions are displayed in the figures below:

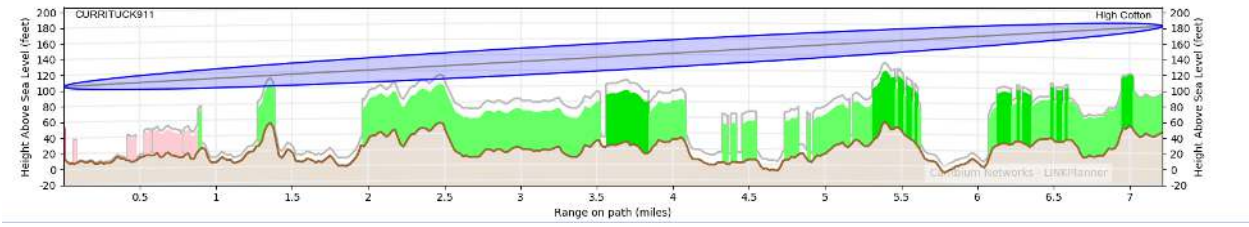


Figure 9: Currituck911 to High Cotton Microwave Link Profile at 11 GHz

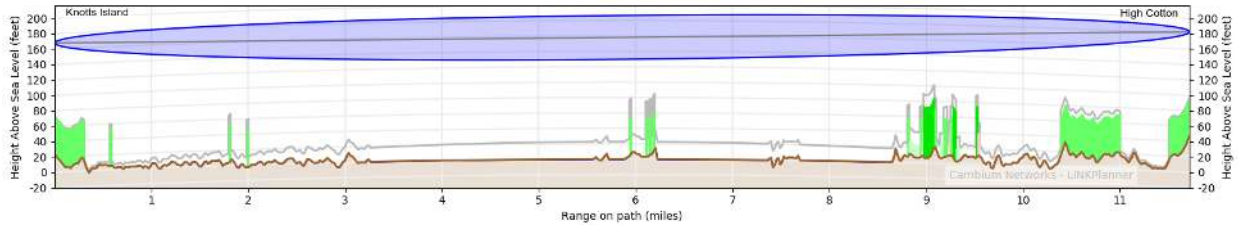


Figure 10: Knotts Island to High Cotton Microwave Link Profile at 6 Hz

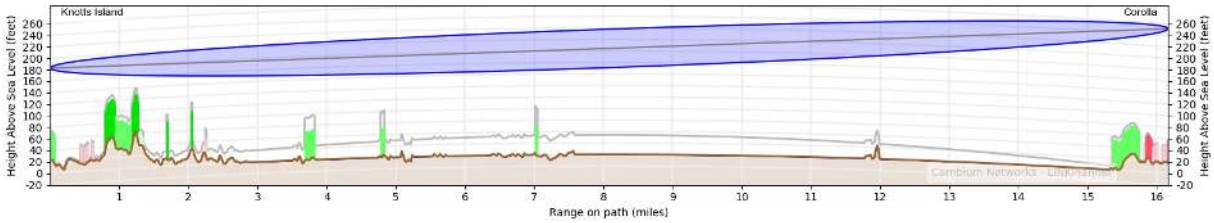


Figure 11: Knotts Island to Corolla Microwave Link Profile at 6 GHz

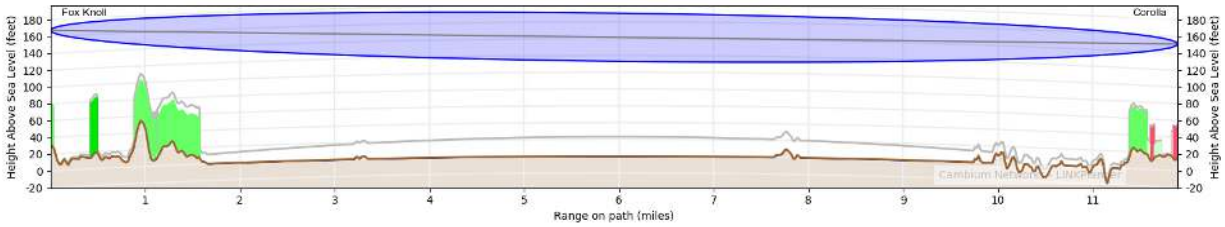


Figure 12: Fox Knoll to Corolla Microwave Link Profile at 6 GHz

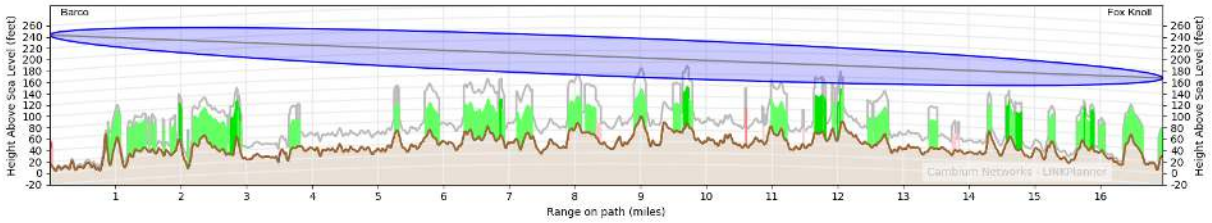


Figure 13: Barco to Fox Knoll Microwave Link Profile at 6 GHz

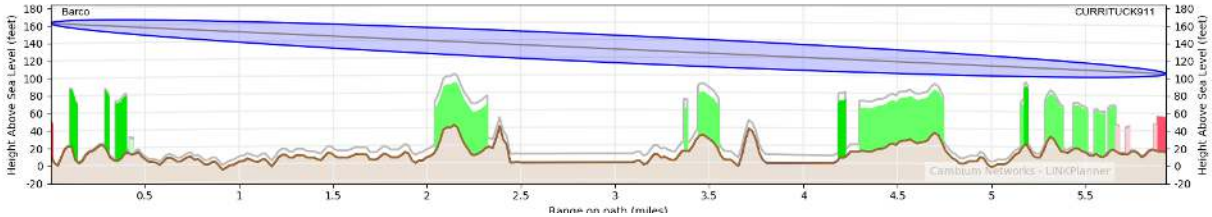


Figure 14: Barco to Currituck911 Microwave Link Profile at 11 GHz

Televate notes that the two links listed in the table below appear to be marginal due to potential obstructions.

Possible Marginal Links	Distance (Mi.)	Frequency Band (GHz)	Antenna Heights (Ft.)
Currituck 911 to/from High Cotton	7.2	11	90/135
Fox Knoll to/from Barco	17.0	6	138/230

During the consultant's initial visit to the County, the County's radio system service provider confirmed that the Currituck911 to High Cotton link can be problematic, although the Fox Knoll to Barco link is reliable. ***Televate's analysis of the Currituck911 to High Cotton link suggests that a physical path profile of the path should be performed to determine if obstructions do exist.*** Televate notes that the Motorola proposal for microwave replacement provided to the County (option 2) includes intermediate locations for each of these links in order to improve their reliability. Televate also notes that, in this region of the Country, 11 GHz links can be subject to rain fade, which can cause signal degradation and outages and therefore a change to a 6 GHz link is likely to improve performance if the path is indeed clear.

Also, the service provider indicated that the Corolla to Fox Knoll link also causes problems and suggested that it needs to be addressed in order to improve the system's reliability. Televate's analysis of this link reveals that a significant portion (nearly 10 miles) of this link passes over water and is therefore subject to path reflections, which can also cause signal degradation and outages. The effects of the variability over water can be seen in the following analysis. Televate's experience suggests that a diversity link is highly recommended to eliminate these variations.

During the visit, Televate had the opportunity to view the status of some of the links via the link status monitor application. For example, the signal level of the link between Corolla and Fox Knoll was seen to vary significantly over a 30-day period, as shown in the figure below.

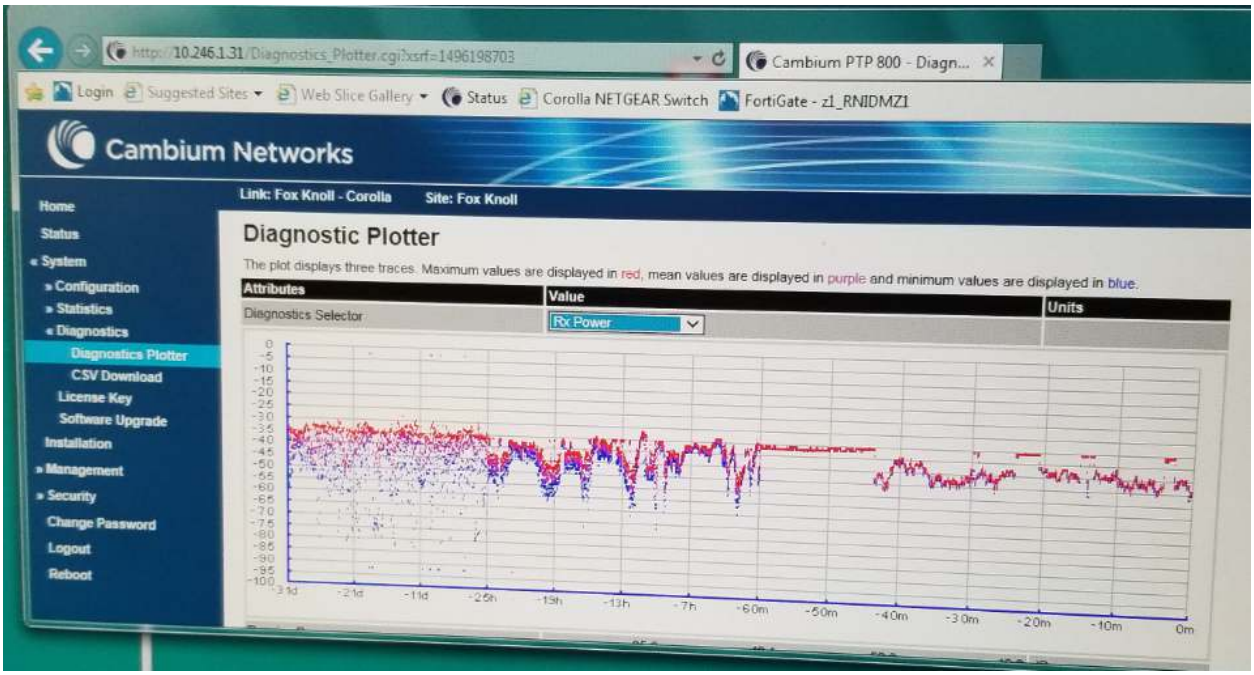


Figure 15: Microwave Link Signal Level for Fox Knoll to Corolla

As a result, the data throughput also varied, as shown in the figure below.

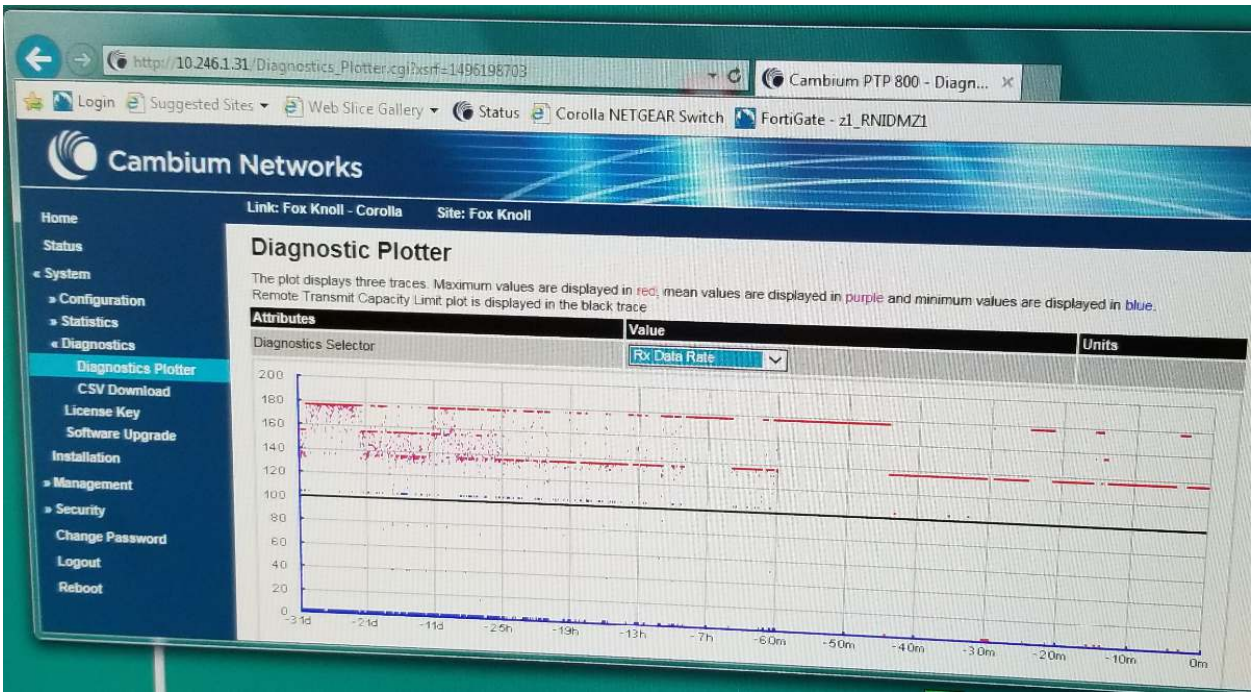


Figure 16: Microwave Link Data Throughput for Fox Knoll to Corolla

The above display indicates that the data throughput drops below the target of 100 Mbps fairly often, and sometimes even drops to zero, indicating a connection outage and likely confirming the effect of

reflections. Conversely, the Fox Knoll to Barco link appeared solid without any similar variations in signal level or throughput.

Unfortunately, the status of the link between Currituck911 and High Cotton could not be monitored due to a component failure that had not yet been repaired. To Televate's knowledge, this is the second microwave component failure within the last two years that has caused a network interruption. This issue raises concerns regarding the stocking and availability of repair components. Critical microwave manufacturer components should be purchased to promptly repair failures.

As stated earlier, reflections and ducting from the water can cause variability in the signal levels over time. That would include the Fox Knoll to Corolla link as the link monitor data suggests, as well as possibly the High Cotton to Knotts Island and Knotts Island to Corolla links. Combined with anticipated obstructions between High Cotton to Currituck911 as well as Barco to Fox Knoll, these factors could lead to link reliability issues along the microwave ring that would produce sporadic system performance. The installation of a second microwave antenna dish to achieve path diversity is advisable.

RECOMMENDED ACTIONS AND OPTIONS FOR IMPROVED PUBLIC SAFETY COMMUNICATIONS

The Currituck County public safety radio system has served them well in the past but has begun to exhibit some reliability problems and is causing concern among the users. As a result, the County desires to evaluate and consider necessary actions and potential options for improvements to the current system to address these issues and to put the system on a path for future growth and expansion.

Televate has developed several short-term recommended actions that we believe are critical to resolving current issues being experienced, as well as a number of system enhancement options that will provide further improvement and system efficiency. Each of these recommended actions and enhancements are discussed below.

Recommended Short-Term Actions

Televate recommends these actions be addressed immediately to resolve ongoing performance and reliability issues currently being experienced.

Action One: Correct RF and Microwave Reliability Issues

As stated earlier, both the coverage and microwave connectivity were reported to initially be reliable. They have degraded over time to cause disruptions in service, and coverage issues. The first course of action is to fully evaluate the existing systems to understand the causes for this degradation.

RF systems can degrade over time. Transmission lines and radio equipment connectors become loose, water collects in antennas and waveguides, and connectors, antennas, and other components can rust or corrode, especially in coastal areas. It is critical to better understand the performance of the existing hardware to determine if these factors are contributing to coverage loss. ***Televate recommends the County conduct RF sweeps of all lines and antennas to determine if additional losses are occurring.*** A passive intermodulation (PIM) test is also recommended to identify if poor connections could be causing intermodulation that is combining with other frequencies to cause self-interference with the network. Output power from each channel should be measured after the combiner to determine if combining problems are occurring.

It is clear that the microwave network supporting the Currituck communications system also needs attention to provide more reliable service as well. Inconsistent connections and even data dropouts appear to be commonplace. Some of the paths are known to cause problems based on feedback from the County's service provider and Televate's analysis suggests these problems can be caused by rain fade and reflections due to long paths over water. While specific links have been identified as problematic by the service provider, ***Televate recommends a detailed assessment of the entire microwave network be performed to determine the causes of all of the problems that may exist.*** This should include detailed monitoring and analysis of the microwave design and performance data to determine the frequency and timing of the outages to try to isolate potential causes of the problems. Detailed path surveys (or other test conducted on the microwave equipment) should be conducted along any unreliable or poorly performing path to determine if an obstruction is the cause of the unreliability. Detailed hardware tests, including sweeps where possible, should be conducted to isolate the cause of the reliability issues.

Televate also believes that the microwave connection issues could be a contributing factor to the reports of poor coverage as well. Given that Currituck operates a simulcast network, precise timing of

the transmission signals between the sites is critical. Any disruption of these signals or timing offsets could cause interference between the sites within the system which results in poor or static-filled communications.

Based on feedback from the County's service provider and Televate's desktop analysis, at least two existing microwave links must be addressed in the short-term – the link from Currituck911 to High Cotton and the link from Corolla to Fox Knoll. For the Currituck911 to High Cotton link, both a short-term and long-term solution are required. ***In the short-term, Televate recommends updating this link through antenna adjustments or modification to a 6 GHz link to address the immediate problems.***

In the long-term, Televate is aware that Currituck911 is scheduled to relocate to a new facility within the year. The new facility will be located at 125 College Way, Maple, NC. Relocation of the dispatch facility will provide the opportunity for relocation of the tower located at the current Currituck911 location, which will change the microwave links to and from the 911 facility. A different location and tower may provide the opportunity to provide a long-term solution for the current link problems between Currituck911 and High Cotton. However, Televate does note that the new location is close to the Currituck County Regional Airport, which may limit the height of a tower at that site, causing a risk of obstruction along the path. Therefore, ***Televate recommends an FAA study (FAA Form 760-1, Notice of Proposed Construction or Alteration) be performed to determine if a tower of sufficient height will be permitted, and a detailed path analysis along the link be conducted to identify all current and potential obstructions.***

In order to evaluate the necessary tower height, Televate performed additional link analyses for the new Currituck911 location for both links to dispatch. The link from Barco to the New Currituck911 site appears to be clear when using the same heights as the current antennas (see Figure **17**). This is assumed to be an 11 GHz link.

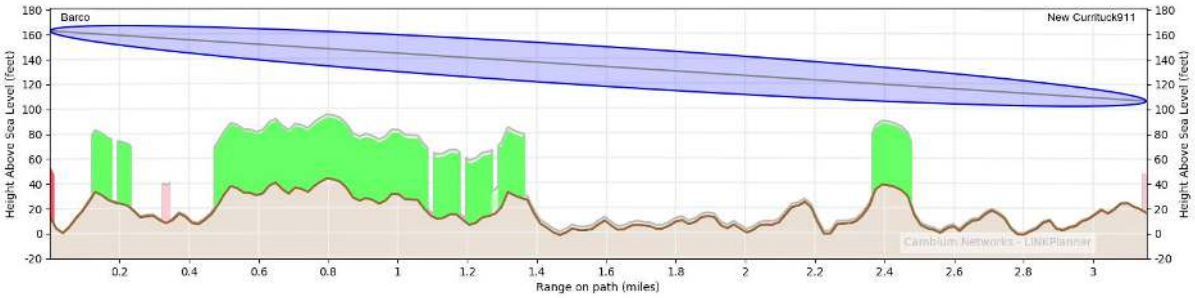


Figure 17**: Microwave Link Profile from Barco to New Currituck911 at 11GHz**

However, ***the desktop study indicates that the antennas for the proposed link from the New Currituck911 to High Cotton would need to be raised slightly (from 90' to 120') to create a clear link profile (see Figure 18)***. Additionally, while this current link is 11 GHz, ***Televate recommends reevaluating this link and possibly converting it to 6 GHz if rain fade shows an unacceptable reliability level***.

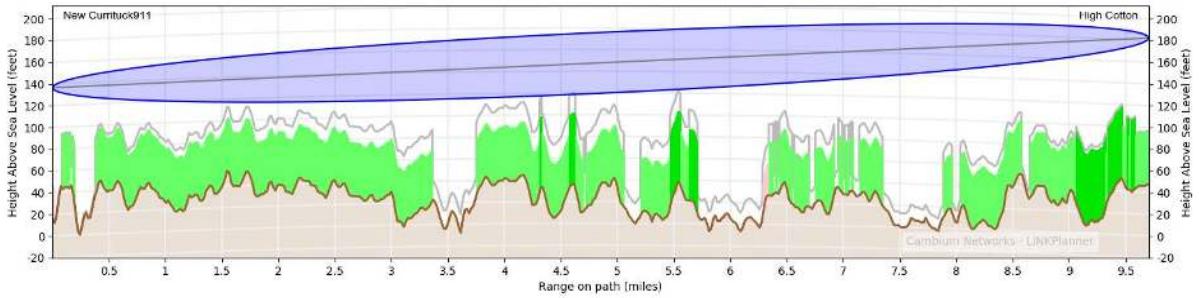


Figure 18: Microwave Link Profile from New Currituck911 to High Cotton at 6 GHz

As an option to the current microwave paths and as a possible alternative if the tower height at the New Currituck911 location is limited, the County could bypass the new 911 center in the microwave loop and go direct from Barco to High Cotton. This could avoid a taller site at the new 911 center. A desktop path analysis indicates that the link from Barco to High Cotton can be accomplished with similar antenna heights that are used today (please see Figure 19). Again, ***Televate recommends considering the 6 GHz band for this link.***

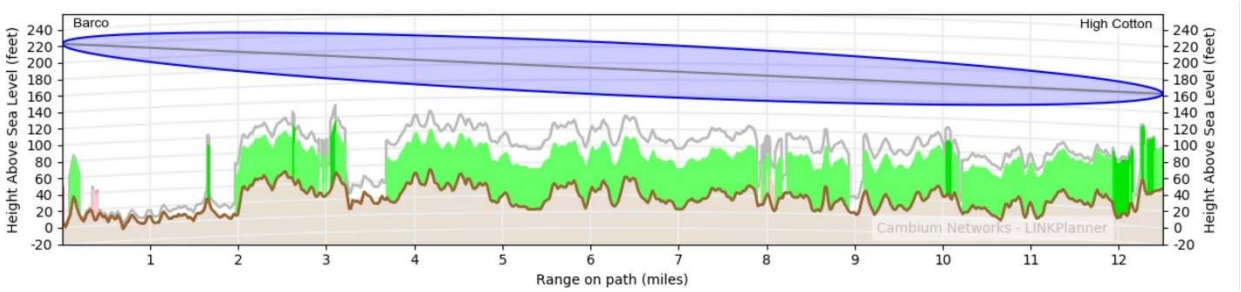


Figure 19: Microwave Link Profile from Barco to High Cotton at 6 GHz

To create sufficient redundancy, diverse antenna paths should be implemented for the spur between Barco and the new 911 center if that approach is taken. The path profile for that link is shown below in Figure 20 with the antenna at the New Currituck911 location at 90 feet. Note that the diverse path should be separated by 30 to 40' vertically, and the Barco tower must be evaluated and analyzed to determine if sufficient space and loading capacity exists to accommodate the diverse paths. A complete design analysis is recommended for this and any new link, and this analysis should include consideration of the frequency band to be used.

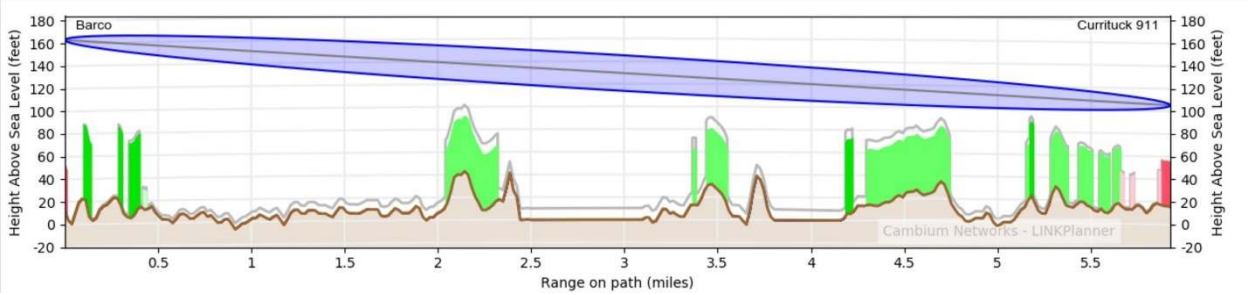


Figure 20: Microwave Link Profile from Barco to New Currituck911 at 11 GHz

Also, Motorola has provided Currituck County with a proposal[2] which includes an upgrade of the link from Corolla to Fox Knoll to a diversity path to address the reliability issues with this link. Televate recommends evaluating and considering this upgrade as soon as possible, although we note that this will require additional antennas on each tower which will require sufficient space available on the tower, as well as a structural analysis to confirm the capability to support the additional equipment.

Additionally, for this Action, Televate recommends having an equipment review performed by the microwave manufacturer (Cambium Networks) or service provider to determine the current status of the equipment in use and to determine what additional actions need to be taken to ensure reliable performance. At minimum, ***Televate recommends ensuring a sufficient collection of spare equipment be purchased and maintained by the County or its service provider which will result in minimal downtime should further equipment failures occur***. Certainly, if the County chooses to accept Motorola's proposal to replace the entire microwave network (as discussed below), this portion of the recommended action is not required.

Televate notes that Motorola recommends replacement of the entire microwave network with Nokia MPLS microwave equipment. Although this is significantly more expensive, this option may be worth considering, especially given the number of links over water that lack diversity, the need to address the new 911 center, and the possible obstructions on two of the Western hops. Televate's analysis did reveal potential obstructions with some existing paths (High Cotton to Currituck911 and Barco to Fox Knoll). Therefore, at minimum, Televate recommends a detailed investigation and field survey of these links by the microwave network provider.

The decision to replace the microwave equipment should be determined in conjunction with the County's consideration to migrate to the VIPER network. Because VIPER uses Nokia microwave radios, using the Nokia gear for a redesign or any replacement links could more easily integrate the Currituck sites into the VIPER network if the County opts to go in that direction in the future.

Importantly, the County should ensure that all LMR and microwave systems are fully monitored, and provisions are in place for service personnel to be dispatched as soon as possible whenever failures or outages are detected. Additionally, performance should be archived in a database to be able to better troubleshoot and benchmark the system. For example, historical analysis could show when and how often each of the microwave links fail, in order to identify the severity and frequency of the failures. Analysis of the time of day of outages can also help isolate potential causes of outages.

Estimated Cost: Televate assumes this Action will include the following items:

- RF equipment review including sweeping of all lines and antennas
- Review and monitoring of the microwave design and performance
- Physical path surveys for problematic links
- Update/short-term fix for Currituck911 to High Cotton link
- FAA Airspace Study and plan for new link to the new dispatch location
- Microwave equipment review and life cycle evaluation
- Microwave spares purchase if warranted
- Structural analysis of the Corolla tower
- Implement diversity for Corolla to Fox Knoll link (assumes complete link replacement)
- Optional inclusion of a new tower at the New Currituck911 location, and

[2] The proposal is for a complete microwave network replacement.

- Optional microwave system replacement in lieu of the other microwave tasks described above.

Televate estimates the cost of this action at $326,700, which includes $50,000 for spare microwave parts. This cost does not include replacement of any RF components that may be found to be degraded, as no specific items have been identified at this time.

This cost estimate does not include the cost of a new tower at the new Currituck911 facility. However, should the County wish to include the cost of a new tower at the new facility in this Action, Televate estimates an additional cost of $390,500 for a total cost estimate for this Action of $717,200. Additionally, if the decision is made to alter the microwave design which affects the equipment at the Barco site, a structural analysis of the Barco tower would be required to confirm capacity for the new antenna configuration.

An alternative to the microwave portion of this action is to include a complete microwave replacement. Motorola has proposed a complete replacement of the microwave equipment with Nokia equipment, as well as a modification to the network topology to address the links that are currently unreliable. The total estimated cost of this option, including the RF equipment review, but excluding a new tower, is $1,405,200. The Motorola proposal includes incorporating the New Currituck911 location, as well as incorporating an intermediate site, the Currituck water tank, between New Currituck911 and High Cotton to address reliability issues with the current link, and to account for the tower height limitations at the New Currituck911 location (Option 1). This allows Motorola to retain a ring architecture, at the cost of an additional site and an additional hop. The Motorola proposal (Option 2) also includes an additional intermediate site, Grandy water tank, between Fox Knoll and Barco, to avoid potential obstructions in the current link. Televate recommends that more analysis is done on these proposals. This includes investigating a higher reliability connection between Barco and the new 911 facility and closing the ring between Barco and High Cotton directly[3]. In addition, path surveys and other analyses should be conducted between Fox Knoll and Barco to conclusively determine if that path is obstructed. As identified above, while Televate's path analysis suggests there may be obstructions on this path, it may be clear given its lack of performance or reliability issues.

Action Two: Further Address Coverage Issues (Short-Term)

During the stakeholder interviews, some users, especially those in the Carova Beach area, expressed concerns with coverage. There are a number of actions the County can take to address these issues. Short-term actions include addressing the microwave and any potential RF performance issues (Action One), and training users to utilize the VIPER system if they experience coverage issues on the County system in certain areas of the County.

Microwave and Timing Issues

As explained above, Televate believes that the microwave reliability issues, and potential RF performance issues possibly due to equipment degradation may be contributing to the poor coverage reports being experienced by the County in the Carova Beach area. Therefore, Televate recommends that one of the County's highest priority actions should be to resolve the microwave issues and any RF performance issues uncovered during the Action One activities and have a timing analysis performed on the system. The timing analysis should occur immediately following resolution of the microwave issues as described in Action One.

[3] We note that Motorola suggested tower loading issues at the Barco site. This option would require more dishes on Barco and may not be feasible as a result.

Taking Advantage of Other System's Coverage

Another recommended short-term action to address some coverage issues is to take advantage of the coverage provided by the VIPER system in certain areas of the County if and where the VIPER network coverage is available and the Currituck County LMR network coverage is unreliable. If not already being done, Televate recommends County users coordinate with dispatch and switch their radios to one of the County VIPER talkgroups in the event that they have difficulty communicating on the County system either in the northwestern part of the County, or when they are across the bridge on their way to the Outer Banks. As can be observed both from the signal level measurements and the propagation analysis, the VIPER system has superior coverage in these areas due to sites in adjacent counties.

Estimated Cost: Televate assumes this action will include the following items:

- Timing analysis and adjustment as necessary
- Review radio templates and update communications plans, and
- Training session for users (assume 450).

Televate estimates the cost of this action at $77,000, which includes upgrading the communications plans and covering the time (salary) of the individuals to be trained.

Action Three: Incorporate Additional Conventional Channels into the Current Simulcast System

One of the primary issues raised by County stakeholders was the lack of wide-area repeated channels for coordination between Currituck responders on scene and incoming responders from within the County and from neighboring jurisdictions. During this type of response, responders do not have sufficient repeated channels to use on scene and must rely on tactical, non-repeated channels for this purpose. However, the limited range of these non-repeated channels does not provide en route responding units with the ability to communicate with the responders already on scene. This results in the inability of coordinating and communicating directly with responders prior to arriving on scene and therefore losing valuable coordination time.

One option to address this concern would be for Currituck to incorporate additional 800 MHz channels into the current repeated simulcast system. The County has already identified and licensed two additional 800 MHz frequency pairs that could be incorporated into the current system. These channels could be used for coordination between on-scene personnel as well as outside responders.

Access to these repeated channels will provide the functionality of additional repeated channels that was cited as a key need by several stakeholders. This approach utilizes frequencies previously licensed by Currituck. Incorporating new channels into the Currituck system would include making them available at the dispatch consoles for monitoring by dispatch.

However, any responders from outside the County would need to add these new channels to their radios in order to be able to communicate with Currituck responders. Also, this approach by itself would not address any of the coverage challenges that exist with the current Currituck system.

Estimated Cost: This approach will require the addition of two repeaters at all five sites to support these channels and combiner retuning will be necessary. Reprogramming all Currituck first responder radios to include these new channels would be required, as well as coordinating with neighboring jurisdictions to also add these channels to their radios.

Televate assumes this action will include the following items:

- Two new P25 repeaters at all five transmit/receive sites

- Retuning of the transmit combiners for two channels
- Expansion of simulcast timing/synchronization equipment for two channels
- Incorporation of the two new channels at the consoles, and
- Reprogramming of all existing mobile and portable radios (assume 450).

Televate estimates the cost of this action at $578,300. This estimated cost does not include the cost to reprogram any neighboring jurisdictions' radios.

While Televate classifies this as a Recommended Short-Term Action, we note that some of the Additional Enhancement Options described below, if implemented, may encompass this action, or eliminate the need to implement this Action.

Additional System Enhancement Options

Option One: Utilize VIPER or Other System Talkgroups for Communications Between Currituck and Outside County Responders.

While the number of repeated channels operated by Currituck County is limited, the County does have access to several trunked radio systems with various talkgroups that could be utilized for these activities. Specifically, Currituck first responder radios have access to talkgroups on the statewide VIPER system throughout the County. Additionally, Currituck first responder radios also have access to the Virginia Beach and Chesapeake, Virginia trunked radio systems in the northern portion of the County, and the Dare County trunked system in the southern portion of the County. While it may not be ideal operationally for Currituck first responders to switch to an outside system during their response, it may be beneficial for a period of time while outside responding entities are in transit.

Televate recommends that the County appoint a properly trained person such as a Communications Leader (COML) who would be responsible for thoroughly reviewing the Currituck radio templates, developing an incident radio communications plan with completed form 205, and a training program to educate Currituck first responders how to use all of the resources available to them. This activity will also require coordination with neighboring communities and first responders to ensure everyone in the region follows a compatible communications plan. Alternatively, Televate could assist with this effort.

Benefits of This Option: Access and use of these trunked channels will provide the functionality of additional repeated channels that was cited as a key need by several stakeholders. Also, this approach utilizes resources already available to Currituck County and does not require any additional infrastructure or radio programming.

Considerations of This Option: This approach will require coordination with neighboring jurisdictions. Coverage of some of these systems does not encompass the entire County and their use must take into account the limited coverage. Also, these talkgroups would need to be added to Currituck dispatch consoles if they are to be monitored by dispatch. This approach would not address some of the coverage challenges that exist with the current Currituck system, or the microwave connectivity problems.

Televate notes that this option is likely not necessary if Recommended Action Three above is implemented. However, it may be useful in the interim, or as a less expensive alternative. Televate also notes that this option could be combined with part of the recommended short term coverage action, which also includes training and coordination, to accomplish both actions in a more efficient manner.

Estimated Cost: Televate assumes this option will include the following items:

- Update/development of the Currituck County incident radio communications plan

- Training session for users (assume 450), and
- Coordination with neighboring jurisdictions including Chesapeake, Dare County, and Virginia Beach.

Televate estimates the cost of this option at $82,500, which includes covering the time (salary) of the individuals to be trained. This cost does not include incorporating neighboring jurisdictions' talkgroups into the Currituck consoles.

Option Two: Utilize 800 MHz TAC Channels in Repeated Mode for Communications Between Currituck and Outside County Responders.

Another option to address the concern described above would be for Currituck to implement the national mutual aid 800 MHz TAC channels in a repeated mode in order to extend their communications footprint and provide communications between Currituck and outside county responders. Most, if not all of the agencies Currituck collaborates with for mutual aid also operate on 800 MHz systems and would have access to the 800 MHz TAC channels. These channels can be used in a repeated mode if the infrastructure to support them is in place.

The County could add one or more of these channels to the High Cotton or Knotts Island site in the northern portion of the County and either the Fox Knoll or Corolla site in the southern portion of the County.

Benefits of This Option: Access to these repeated channels will provide the functionality of additional repeated channels for mutual aid that was cited as a key need by several stakeholders. Also, this approach utilizes frequencies allocated nationwide for mutual aid purposes and these channels are already included in Currituck mobile and portable radios and most likely, all neighboring jurisdictions radios as well.

Considerations of This Option: This approach will require the addition of repeaters at one or more sites to support these channels in repeated mode, and their coverage would be in various regions and not throughout the entire County. This approach would require frequency coordination to ensure they could be licensed at the desired sites and licensing through the FCC. Televate does note that based on a recent FCC search, these frequencies are not currently licensed for infrastructure use in Currituck County. This approach would also require coordination with neighboring jurisdictions, although all of Currituck's mutual aid partners should also have these channels in their radios. These channels could be made available in Currituck dispatch consoles for additional cost if there was a desire to have them monitored by dispatch. This approach would only provide repeated channels for use for mutual aid and would not address any of the coverage challenges that exist with the current Currituck system, or the microwave connectivity issues.

Televate notes that this option is likely not necessary if Recommended Action Three above is implemented. However, it may be useful in the interim, or as a less expensive alternative specifically for mutual aid. Also, Televate notes that no reprogramming of radios is required for this option, although some training and coordination may be necessary.

Estimated Cost: Televate assumes this option will include the following items:

- One new analog 800 MHz repeater at each of three sites
- Retuning of the transmit combiners for the additional channel at those three sites, and
- Optional incorporation of the three TAC channels at the consoles.

Televate estimates the cost of this option at $111,800 without incorporation of the channels at the consoles and approximately $162,900 with inclusion of new control stations and console integration.

Option Three: Transition to Trunking Operation and Add Additional Channels.

Another option to address the concern regarding repeated channels would be for Currituck to incorporate additional 800 MHz channels into the current simulcast system and migrate to trunking operation. As stated above, the County has identified and licensed two additional 800 MHz frequency pairs that could be incorporated into the current system in either a conventional or trunked mode. These additional channels would give the County a total of six channels which should be sufficient for the County's needs in trunked operation.

An infrastructure upgrade would be necessary to migrate to trunking operation. Although all Currituck subscribers are already capable of trunking operation, new radio templates and codeplugs would need to be developed to utilize the Currituck trunking system and all radios would have to be reprogrammed.

Benefits of This Option: Migrating to trunked operation would provide additional functionality for Currituck users in addition to providing the capability to support multiple repeated talkgroups and the functionality of additional repeated channels (talkgroups in trunked operation) that was cited as a key need by several stakeholders.

This approach would also address one of the other key concerns expressed by stakeholders regarding lack of capability for users to know when they were within coverage of the infrastructure with the current system. With a trunked system, the field radios are always monitoring the control channel and they will provide an audible indication when they no longer are in range of the infrastructure control channel.

Similar to the additional conventional channel option, this approach utilizes frequencies previously identified to be available for Currituck. Incorporating new channels into the Currituck system in a trunked configuration would also permit dispatch to have access to all of the talkgroups deemed necessary.

Considerations of This Option: This approach will require the addition of two repeaters at all five sites to support these channels and a combiner expansion may be necessary. This approach would also require new radio templates and codeplugs be developed to utilize the Currituck trunking system and all radios would have to be reprogrammed. A detailed transition plan would also be required in order to minimize the impact to operations. This approach would not address any of the coverage challenges that exist with the current Currituck system, or the microwave connectivity problems, as these issues must be addressed through other actions.

Estimated Cost: Televate assumes this option will include the following items:

- Two new P25 trunking repeaters at all five transmit/receive sites
- Retuning of the transmit combiners for two channels
- Expansion of the simulcast timing/synchronization equipment for two channels
- Upgrade of the system core and prime site equipment to bring it up to date and to support trunking
- Reprogramming of the console equipment to support trunking, and
- Reprogramming of all existing mobile and portable radios (assume 450).

Televate estimates the cost of this option at $1,756,600. This estimated cost does not include the cost to reprogram any neighboring jurisdictions' radios.

Televate notes that Motorola has provided a proposal similar in scope (upgrade of the system, although without a capacity increase) that is in line with the above cost estimate. The conversion to a trunked radio network will also likely increase the annual Motorola software licensing agreement or provide the

County the option to convert to a System Upgrade Agreement, either of which could result in increased annual operating costs.

Televate also notes that if the County chooses to pursue this option, it will eliminate the need for Options One and Two, as well as Recommended Action Three. However, Recommended Action Three could be implemented as an interim step to incorporating this option if all of the required funding is not available immediately.

Televate considers this one of the preferred options for the County (preferred over Options One and Two), as it addresses many of the stakeholder concerns and also puts the County on a path to long term enhancement and sustainability. This option would bring the County to the most current software version which can be fully supported by Motorola. While County users did not express any interest in advanced features that would be available with the new version, Televate recommends migrating to the newer version to include all security patches and fixes, and to be able to engage Motorola for ongoing patches and fixes.

Option Four: Transition to the VIPER System for Everyday Use.

Another option to address a number of concerns expressed by County stakeholders would be to transition all County radio operations to the statewide VIPER trunked system. This option would address the issue of needing additional repeated channels, as well as the lack of a connectivity alert characteristic of a conventional system. In order to provide at least equivalent coverage as the current system, Televate anticipates that VIPER would need to incorporate the existing Currituck sites (Corolla, Fox Knoll, High Cotton, and Knotts Island), along with the existing Barco site (which Currituck and VIPER share), as a simulcast subsystem within VIPER. With the incorporation of these sites and when taking into account the additional VIPER sites surrounding the County, overall coverage in this scenario would be improved when compared to the current system. However, this option would not address current coverage issues in the Carova Beach area.

Televate has discussed the possibility of this arrangement with the State, and they are open to having further discussions regarding this scenario. The State did make it clear that the cost of any coverage and capacity upgrades would be the responsibility of the County and that existing VIPER users would have to be taken into account when considering capacity.

Therefore, Televate assumes additional radio channel capacity will likely need to be added to the Currituck subsystem to accommodate the current VIPER users in the County in addition to the County users. While a comprehensive capacity study is required once all users and traffic loading are known, Televate has assumed four more channels at each of the five current Currituck sites would be required (for a total of eight), as well as one additional channel at the existing VIPER sites at South Mills and Kitty Hawk. It is likely that the two additional channels Currituck has licensed, could serve some of these needs, although additional channels would also be required.

Benefits of This Option: Migrating to trunked operation would provide additional functionality for Currituck users in addition to providing the capability to support multiple repeated talkgroups and the functionality of additional repeated channels (talkgroups in trunked operation) that was cited as a key need by several stakeholders.

This approach would also address one of the other key concerns expressed by stakeholders regarding the lack of capability for users to know when they were within coverage of the infrastructure with the current system. With a trunked system, the field radios are always monitoring the control channel and they will provide an audible indication when they no longer are in range of the infrastructure control

channel. Additionally, use of a trunked system would permit dispatch to have access to all of the talkgroups deemed necessary.

Another advantage to this approach is that once the revised infrastructure is in place as part of the VIPER system, the County could "turn over" the infrastructure to the State. Under that arrangement, future maintenance and replacement of the infrastructure will be the responsibility of the State and not the County and the County would no longer have to maintain a system core, prime site, or the RF infrastructure. This would equate to significant long-term savings for the County, and in the event that the County decided to revert back to local control of the County's LMR network, the agreement with the State would incorporate language for the LMR equipment to be handed back to the County. Additionally, Televate understands that the State does not currently require that the County pay subscription fees for use of the VIPER network. It is not clear if statewide access would be provided to Currituck users (statewide systems can be configured for local or statewide access to the network), but generally, access is provided to immediate neighbors. This option would no longer require Currituck to maintain a core or prime site, or software agreements as described above in the Key Findings.

Considerations of This Option: A key factor for this option is the details regarding the State's requirements for participation. What follows here is based on high-level discussions with the State, the terms of which would have to be negotiated between the parties with no guarantee that what follows would constitute the final agreement. Migration to the State system relies on the State to continually operate the network, and the County will likely need fallback plans in case the State opts to shut down the network, no longer support its continued agreement with the County, requires funding that the County cannot support, requires expensive upgrades to county subscriber devices, and potentially other factors.

This approach will require the addition and/or upgrade of various equipment at some sites, as well as an updated microwave network to be compatible with the VIPER network. This approach would require additional channels and licensing activity through the FCC at all five current County sites as well as the VIPER South Mills and Kitty Hawk sites. This approach would also require new radio templates and codeplugs to be developed to incorporate the revised system and all radios would have to be reprogrammed.

More analysis would be required to determine if all key mutual aid partners have the capability to use VIPER, and therefore confirm that this approach fully addresses the key issue of lack of communications with arriving mutual aid partners.

The new VIPER sites may also enable Currituck to shift or eliminate one or more County sites to further enhance coverage. As noted above, the first action proposed is to fully test and analyze the performance of the microwave and P25 RF systems to determine if they are the cause of the noted degradation. If additional coverage enhancements are desired following the microwave and RF systems analysis, two potential changes/enhancements to consider include:

- **Move Fox Knoll to Grandy:** The Kitty Hawk VIPER site covers the area currently covered by Fox Knoll very well up within a few miles of Grandy. Shifting the Fox Knoll site up to Grandy would then significantly improve the poor coverage areas in and around Grandy.
- **Move Knotts Island to Carova:** The VIPER system currently covers some of Knotts Island. An additional VIPER site on Carova Beach will augment coverage on Carova Beach as well as potentially pick up coverage at the Southern tip of Knotts Island. This should only be contemplated after a full analysis of the Knotts Island hardware is conducted and additional propagation analysis regarding the benefit of this site relocation has been performed.

These two changes in addition to the existing VIPER and other Currituck sites should provide highly reliable service throughout the County – superior to what the current Currituck system provides today.

Estimated Cost: Televate assumes this option will include the following items:

- Four new P25 trunking repeaters at the Barco, Corolla, Fox Knoll, High Cotton, and Knotts Island sites; one new P25 trunking repeater at the South Mills and Kitty Hawk sites
- Expansion of and retuning of the transmit combiners for four channels
- Expansion of the simulcast timing/synchronization equipment for the additional channels
- Replacement of the prime site equipment to bring it up to date and make it compatible with the VIPER network
- Replacement of the entire microwave network to be compatible with and consistent with the VIPER network
- Reprogramming of the console equipment to support trunking, and
- Reprogramming of all existing mobile and portable radios (assume 450).

Televate estimates the cost of this option at $3,481,000. This estimated cost does not include the potential site moves/enhancements discussed above.

Televate also considers this one of the preferred options for the County (preferred over Options One and Two), as it addresses many of the stakeholder concerns and puts the County on a path to long term enhancement and sustainability. Additionally, if the County were to plan for this option as a long-term solution, it should keep that in mind as decisions are made regarding short-term actions.

Option Five: Address Any Remaining Coverage Issues (Long-Term)

To address the system coverage issues, Televate provided some immediate recommendations in the Recommended Short Term Actions section above. However, the County should be prepared if these actions do not completely resolve all of the coverage issues the County is experiencing. Therefore, Televate has identified some additional Long-Term options to address coverage issues.

Higher Antenna in Moyock

One of the areas that has exhibited coverage problems is the northwestern portion of the County, west of Moyock. Weak signal levels were confirmed in this area during signal measurements, and propagation analysis also confirmed this area to be slightly problematic. As detailed earlier, the County should conduct a comprehensive assessment and associated maintenance on the sites to determine the causes of the reported degradation and resolve any problems that are found. If such efforts cannot correct all of the coverage issues in this area, a temporary and partial solution to address this area would be for the users to switch to the VIPER system when they have difficulty communicating on the Currituck system in this area. However, this may not be the optimal long-term solution for Currituck users. Televate has learned that an opportunity may exist to construct a tower in the Moyock area near the location of the current High Cotton water tank. Using its propagation simulation, Televate has confirmed that a higher antenna in this location would improve coverage in this area, and potentially solve the coverage issues in this portion of the County. A 300' tower would significantly improve coverage in that area. However, this is an expensive option, and the County should consider if this is a cost-effective solution. Additionally, Televate notes that this portion of the Option is likely not necessary if Option Four, migration to the VIPER network, were to be implemented.

Estimated Cost: Televate assumes this option will include the following items:

- Engineering and Environmental Services
- New Tower Steel and Construction

- New Transmission Lines and Installation, and
- Shelter Relocation Services.

Televate estimates the cost of this option at $450,000.

Add Carova Beach Tower Site

Another area of the County that has received extensive complaints of bad coverage is the Carova Beach area. In particular, coverage issues have seemed to become more prevalent recently. Televate believes this to be due degradation of the RF components at the Knotts Island site (and potentially others), and potentially due to the recent microwave issues that the county has been experiencing. Carova Beach sits in an area that could potentially be covered by two or three sites. As a result, due to the system's simulcast configuration, shifts in timing differential between one or more sites may cause intersystem interference in that area. Televate believes that a combination of the resolution of RF issues, microwave issues, and a thorough system timing analysis, will resolve many of the coverage problems in this area. Televate notes that propagation studies show solid coverage from Knotts Island on Carova Beach, and that is why Televate has recommended short-term Actions One and Two.

However, if after the RF, microwave, and any potential timing issues are resolved, the coverage problems still exist in the Carova Beach area, Televate recommends pursuing other options. One potential solution that Televate explored was increasing the antenna height at the Knotts Island site. However, the propagation simulation did not show any significant improvement in coverage would be gained by increasing this antenna height. Additionally, Televate explored increasing the antenna height at the Corolla tower site. Similarly, the propagation simulation did not show any significant improvement in coverage would be gained by increasing this antenna height either.

Since neither of these antenna height adjustments appear to improve coverage in this area, a more effective option would be to add an additional tower site in that area. Televate is aware that a monopole tower was constructed a few years ago by Clearview Tower Company (ASR #1301600) in the Carova Beach area, on the Carova Beach Fire Department (see Figure 21) property.

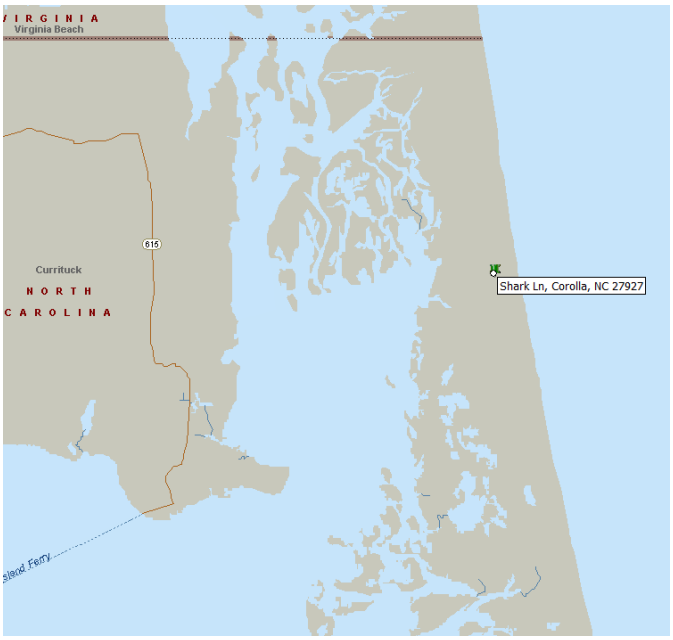


Figure 21: Picture of and Location of Carova Beach Tower

If the tower could accommodate antennas and connectivity for the Currituck radio system, an installation would certainly improve the coverage in the Carova Beach area. The figure identifies space on the tower, although at a relatively low height, likely below 100 feet. Since Currituck operates a simulcast system, a full site, interconnected with the rest of the Currituck system would be required, including connectivity via microwave or fiber.

If this option were to be pursued, the tower owner would need to be contacted, a structural analysis performed, as well as a propagation analysis, to more accurately predict the cost, and to estimate the benefit of this option. However, as expressed above, Televate believes that the Carova coverage degradation is likely due to RF components at Knotts Island (and potentially other sites), and potentially by intermittent microwave issues to the Knotts Island site. If, after these issues have been evaluated and corrected, the coverage issues persist, this additional site should be pursued.

Estimated Cost: Televate assumes this option will include the following items:

- Six P25 Conventional Repeaters
- All Associated Simulcast Equipment
- An Additional Microwave Link, if feasible, and
- All Installation and Professional Services.

Televate estimates the cost of this option at $688,000.

Incorporate vehicular repeaters.

If the tower and site developments described in this option do not appear cost effective to address the coverage issues in the County, another potential approach is to implement vehicular repeaters in selected vehicles, such as fire department vehicles. Vehicular repeaters can be used to extend the range of the network infrastructure by creating a link between the repeater and first responders operating locally in the area, where adequate mobile coverage exists. In this way, a higher power mobile radio in the vehicle can stay connected to the network infrastructure and relay communications to and from the portable radio users in the immediate area.

Benefits of This Option: This approach can be an effective solution for difficult in-building communications as well as local coverage holes.

Considerations of This Option: This approach requires the County to purchase additional equipment, specifically the vehicular repeaters. Additionally, these repeaters will need to be installed in a sufficient number of vehicles to ensure that they are available on-scene when needed – 15 are assumed. Also, a unique frequency or frequency pair, separate from the system frequencies, must be identified for operation with the vehicular repeaters, and it must be licensed and programmed into portable radios in order to be useful. Additionally, if areas of the County lack sufficient mobile coverage, those areas would require other augmentation – this is a solution for portable radio coverage.

Estimated Cost: Televate assumes this option will include the following items:

- Vehicular Repeater Equipment (assume 15 units)
- Vehicle installation
- Frequency Search and Licensing, and
- Reprogramming of all existing mobile and portable radios (assume 450).

Televate estimates the cost of this option at $243,650.

Recommended Actions and Options Summary

In this report, Televate has outlined a number of recommended actions and enhancement options for Currituck County to consider and is providing a summary of those here, as well as some concluding recommendations.

To reiterate, Televate has outlined three Recommended Short-Term Actions that the County must take as soon as possible to address key issues that are currently being experienced by County users. These actions include:

- **Action One:** Correct RF and Microwave Reliability Issues
- **Action Two:** Further Address Coverage Issues (Short-Term), and
- **Action Three:** Incorporate Additional Conventional Channels into the Current Simulcast System.

Additionally, beyond (or possibly in place of) these Actions, Televate has identified several enhancement Options for the County to consider to further improve communications capability and to position the County for future improvements and/or expansion. These Enhancement Options include:

- **Option One:** Utilize VIPER or Other System Talkgroups for Communications Between Currituck and Outside County Responders
- **Option Two:** Utilize 800 MHz TAC Channels in Repeated Mode for Communications Between Currituck and Outside County Responders
- **Option Three:** Transition to Trunking Operation and Add Additional Channels
- **Option Four:** Transition to the VIPER System for Everyday Use, and
- **Option Five:** Address Any Remaining Coverage Issues (Long-Term).

Options One and Two are provided as possible alternative solutions to the need for additional repeated channels and could be used in the interim, before Action Three is implemented.

Options Three and Four are enhancements which also address the need for additional repeated channels, as well as adding additional capability associated with trunking and positioning the County for further growth. These Options would either eliminate the need for Options One and Two and Action Three or permit incorporation of Action Three as an interim step. Televate considers these as preferred options for the County (preferred over Options One and Two), as they address many of the stakeholder concerns and also put the County on a path to long term enhancement and sustainability.

Finally, the three items included in Option Five should be considered, if necessary, based on the outcome of other activities, primarily Actions One and Two. Specifically, if Option Four were implemented, it would likely eliminate the need for a higher antenna in Moyock. Additionally, Actions One and Two may resolve the coverage problems in the Carova Beach area, therefore eliminating the need for an additional tower in that area.

APPENDIX A: OTHER SYSTEM SIGNAL MEASUREMENTS

Each of the images below display signal measurements recorded during the consultant's drive testing of a significant portion of the County.

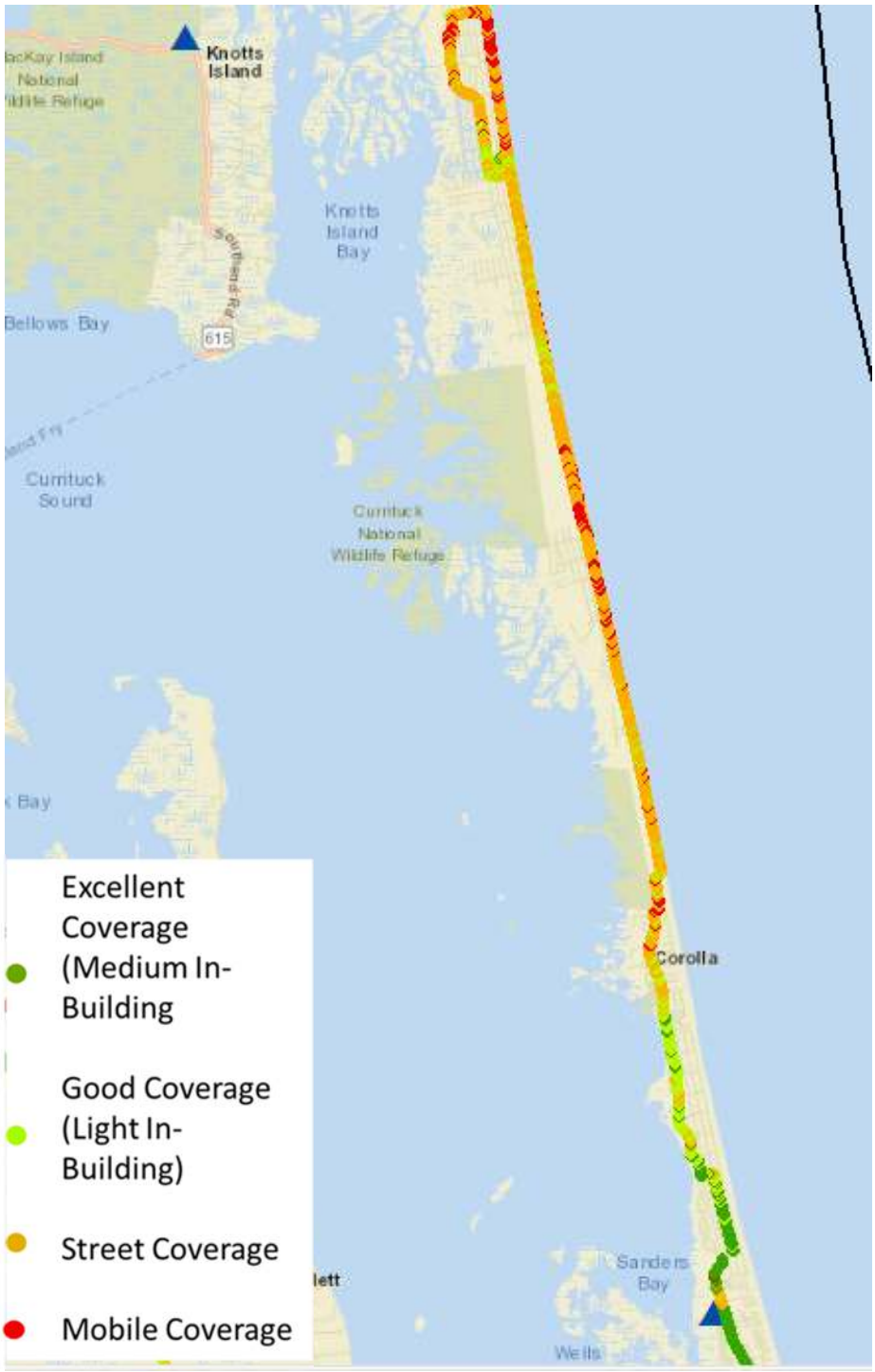


Figure 22: Currituck System (Carova Beach Area)

Figure 23: Currituck System (Grandy Area)

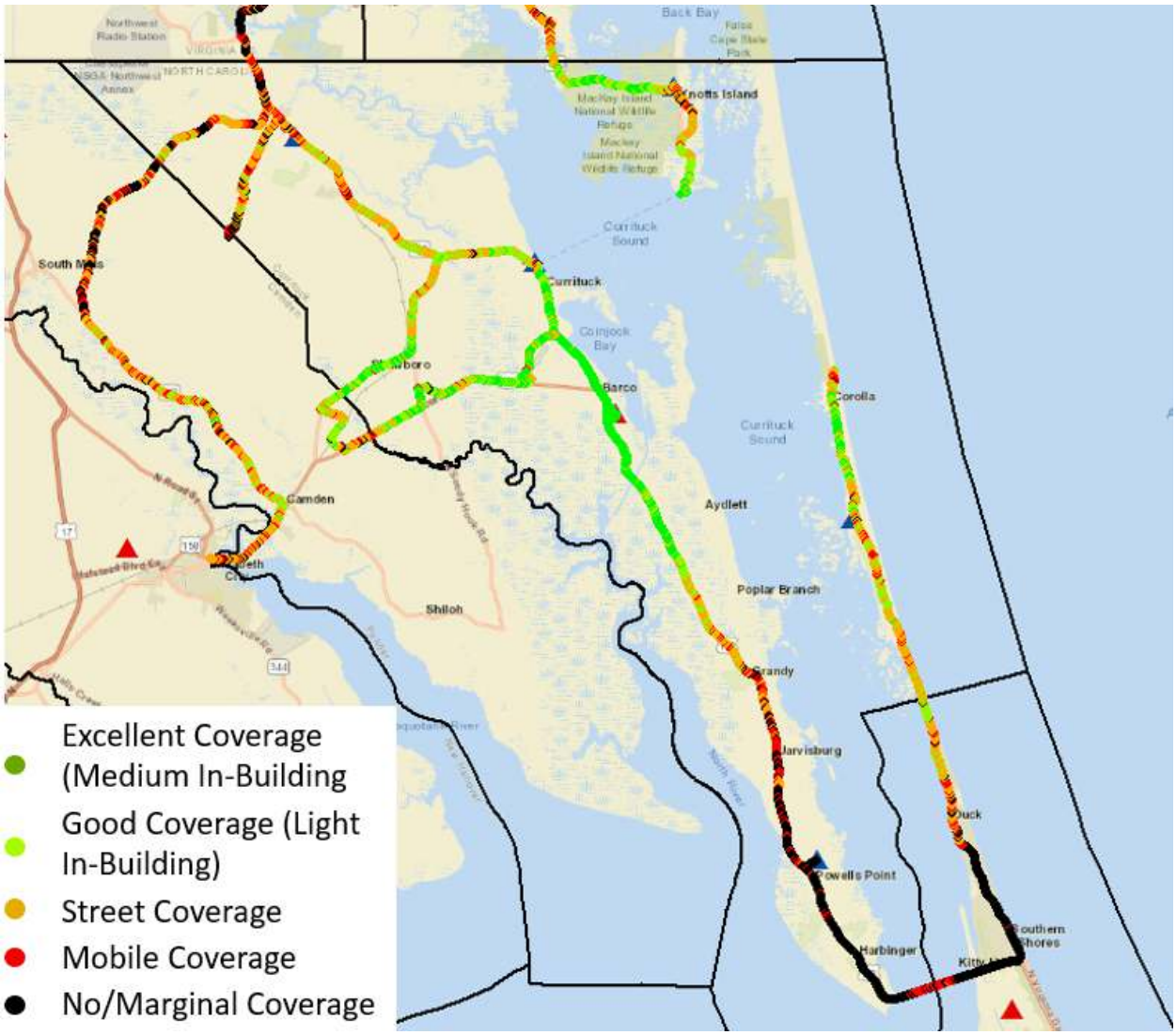


Figure 24: VIPER Barco Site Signal Level (April Test)

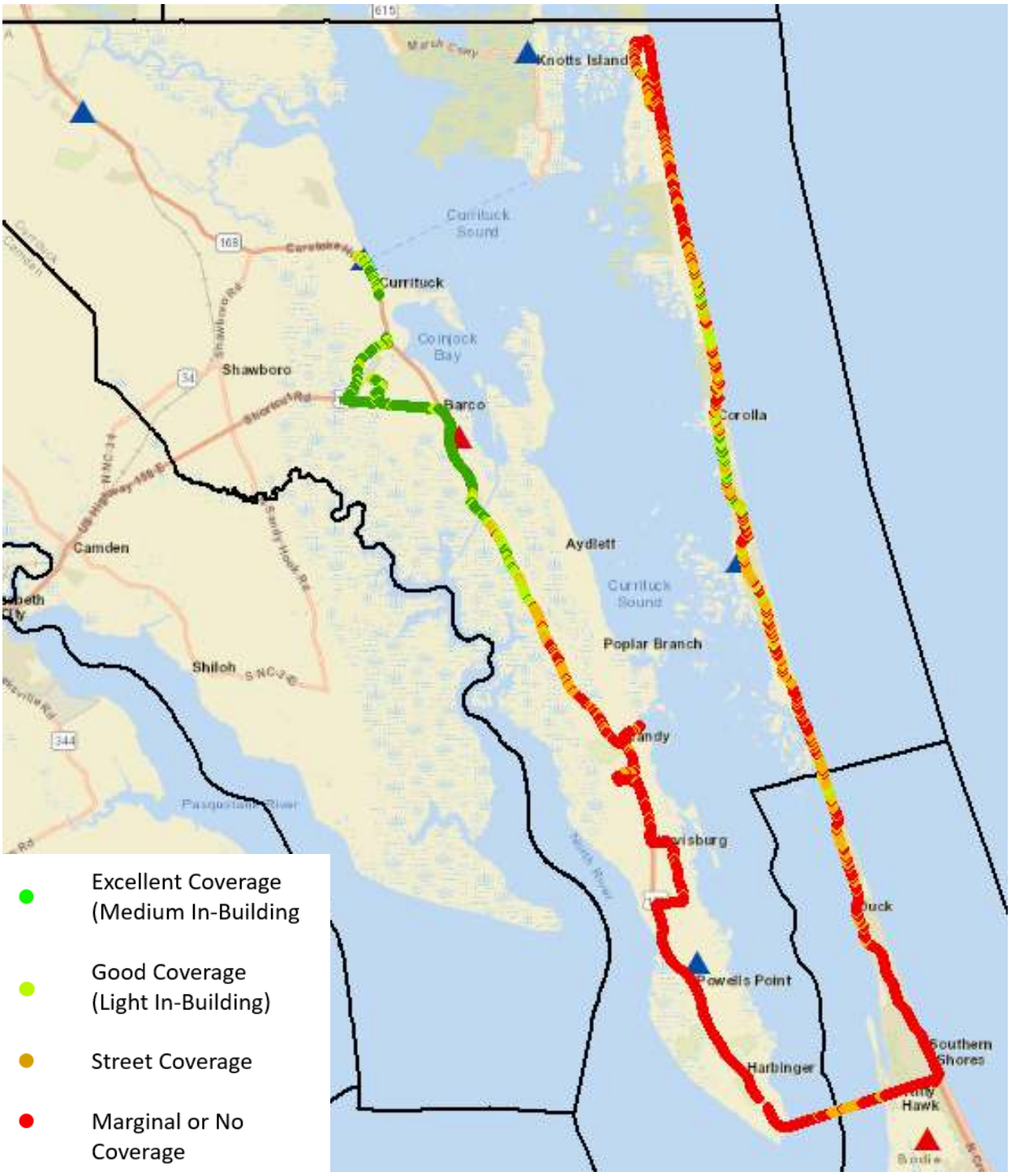


Figure 25: VIPER Barco Site Signal Level (August Test)

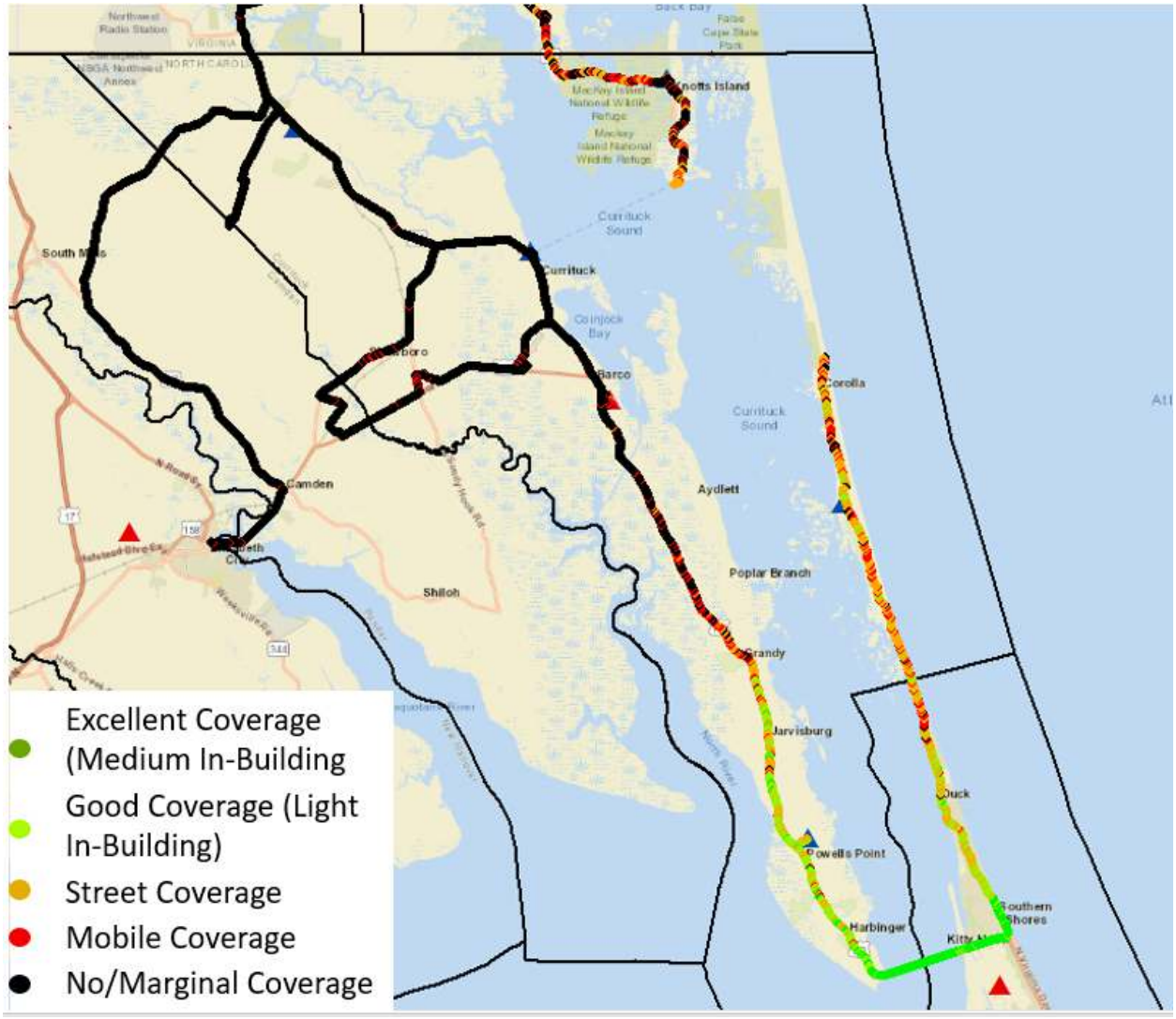


Figure 26: VIPER Kitty Hawk Site Signal Level

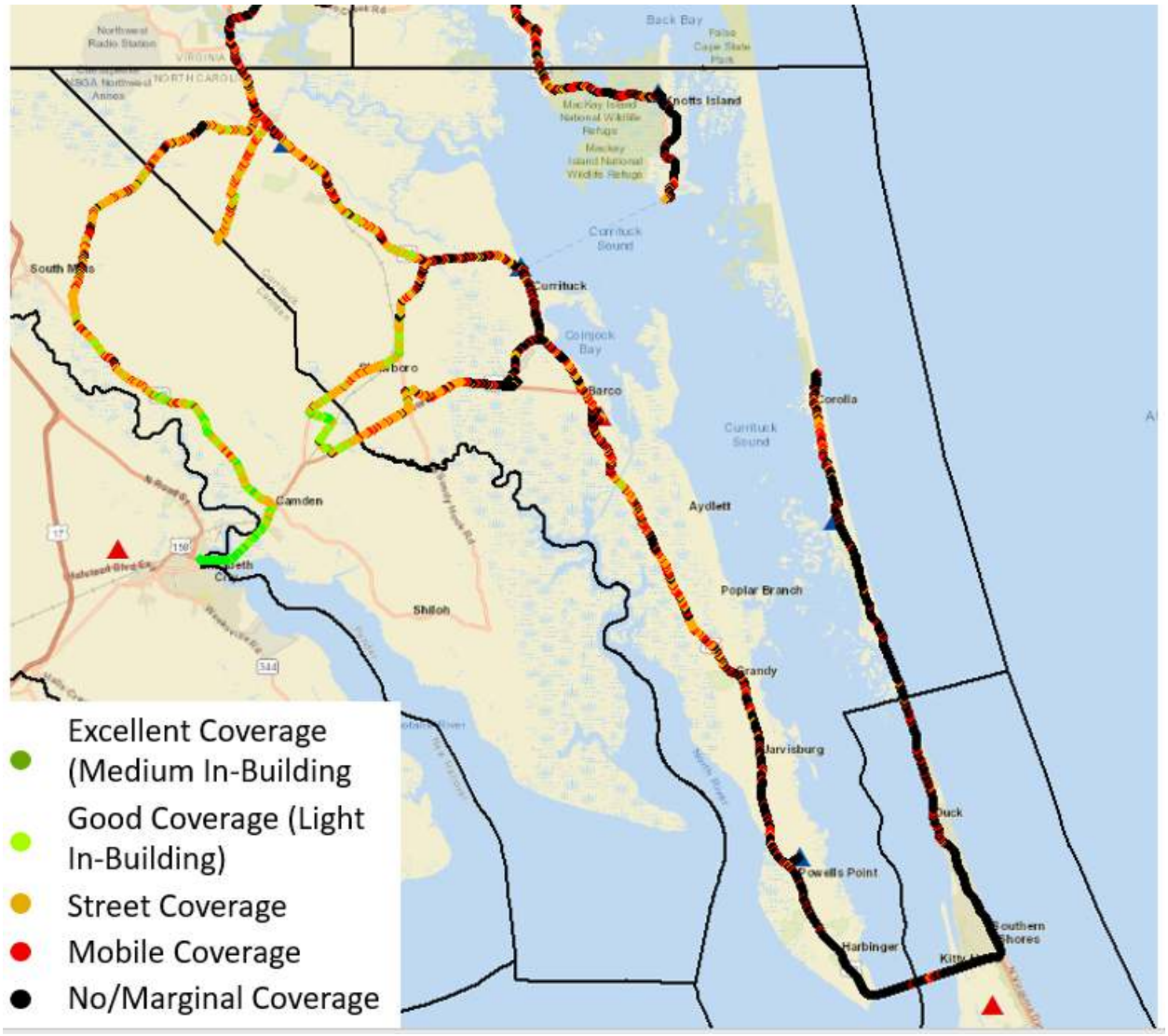


Figure 27: VIPER Elizabeth City Site Signal Level

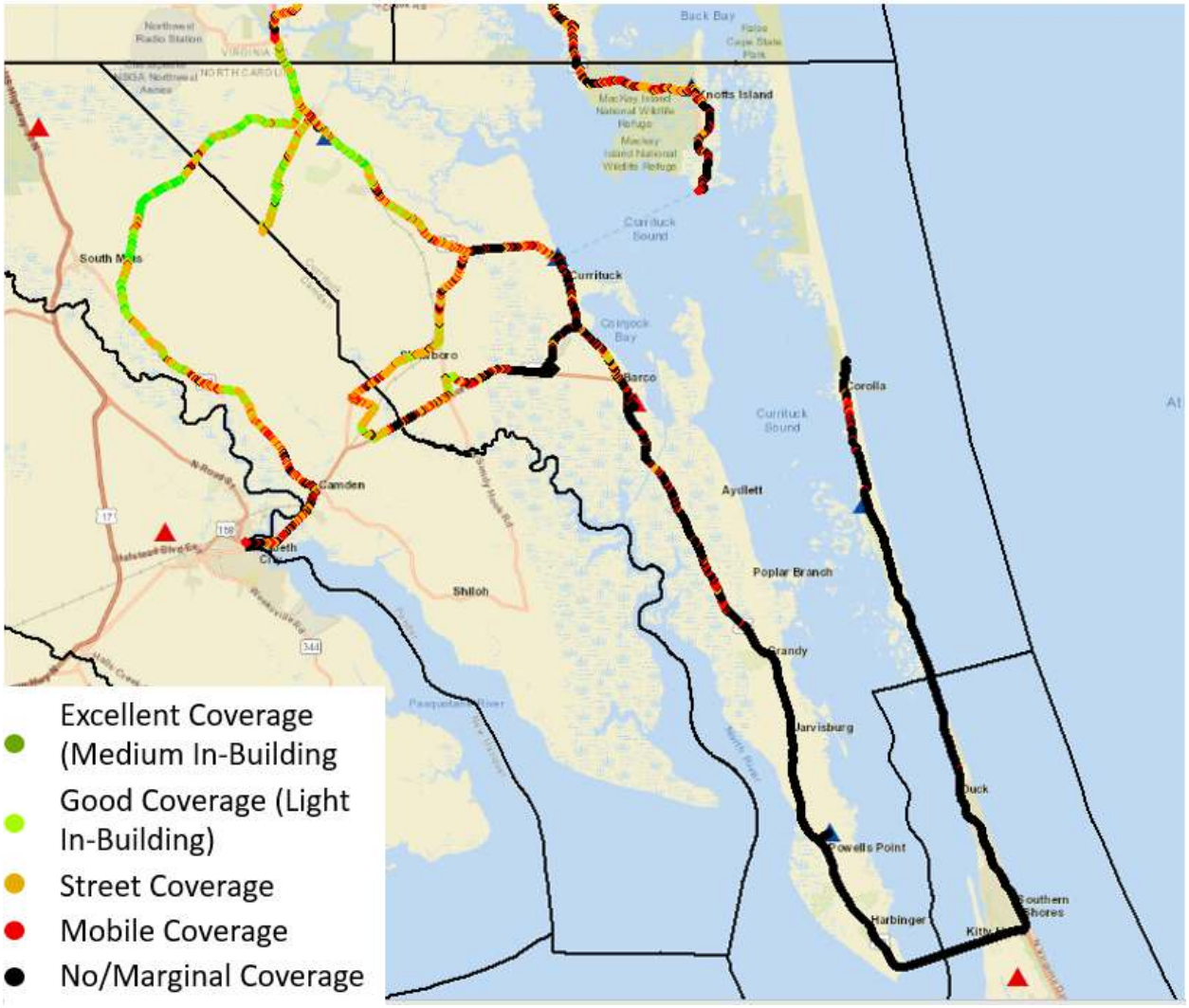


Figure 28: VIPER South Mills Site Signal Level

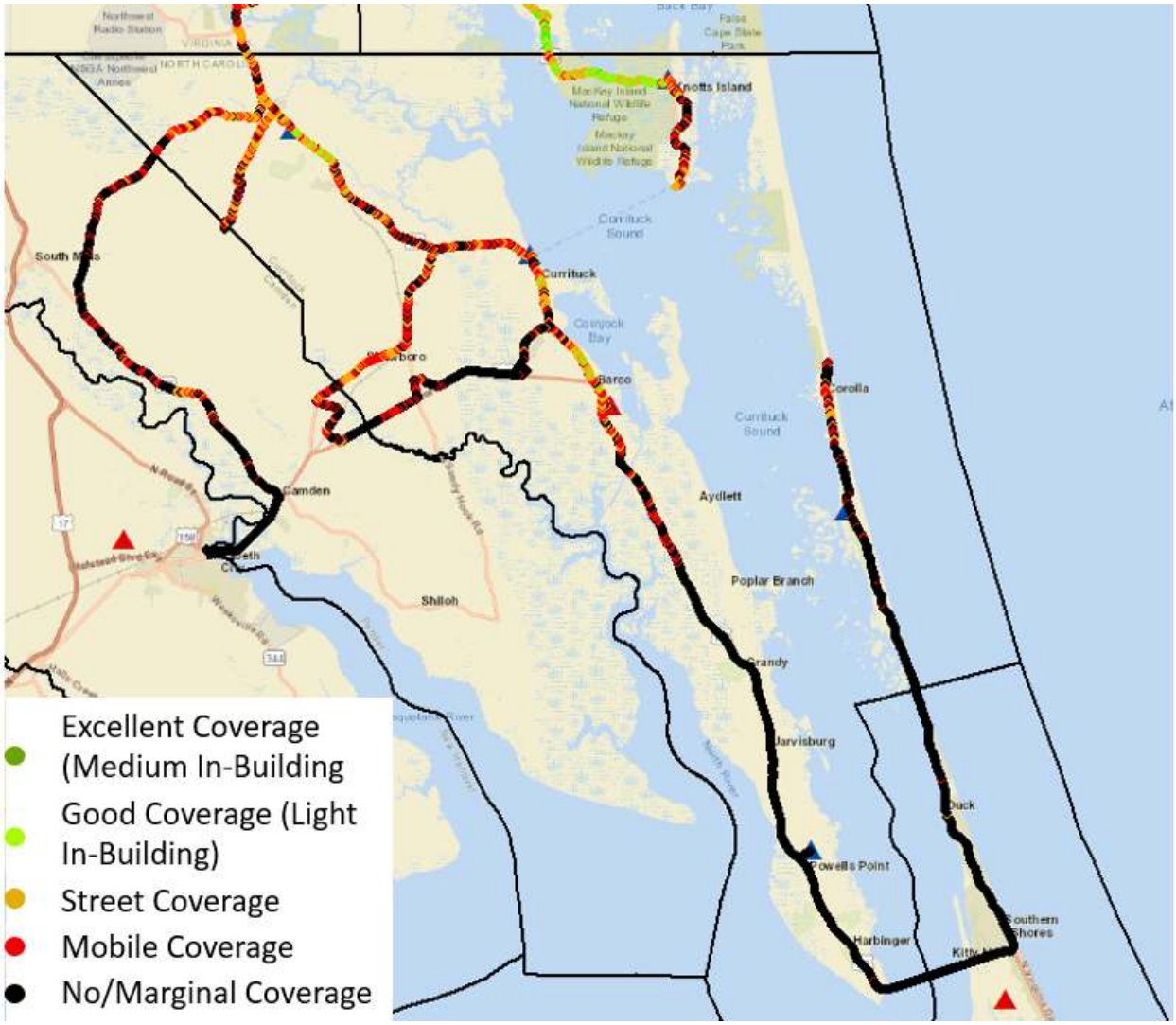


Figure 29: Virginia Beach System Signal Level

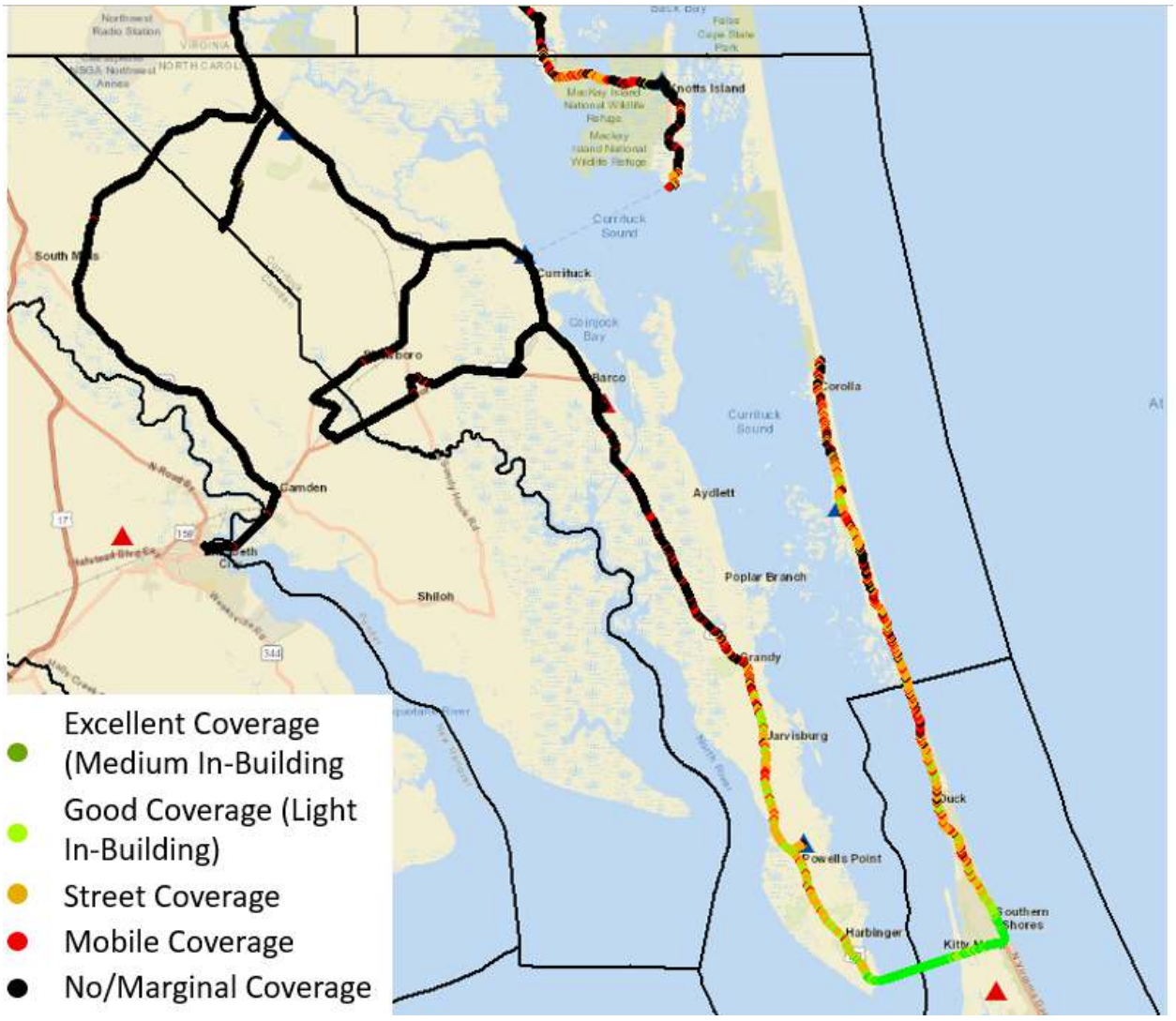


Figure 30: Dare County System Signal Level

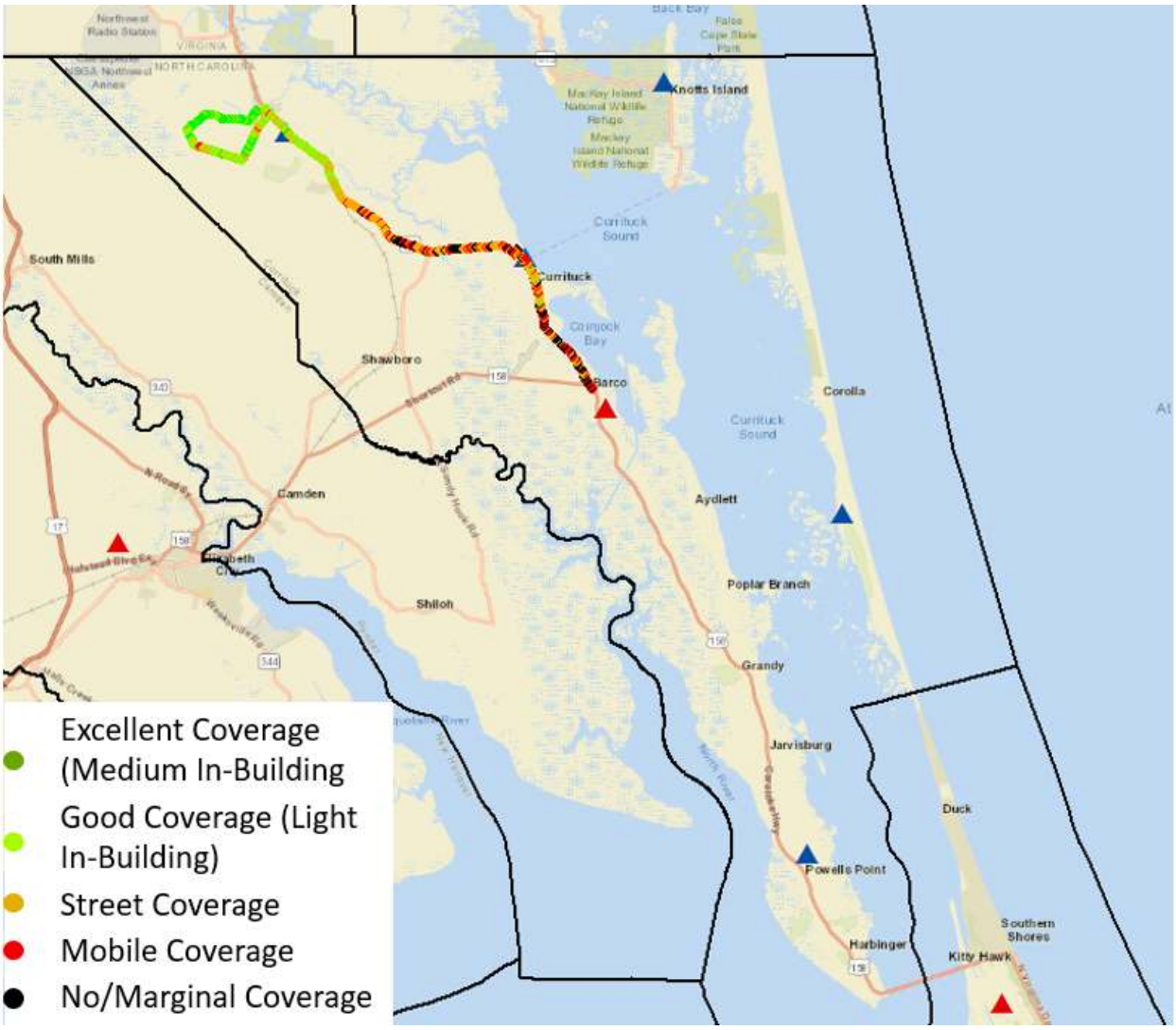


Figure 31: Chesapeake System Signal Level (Limited Data)

APPENDIX B: IN-BUILDING SYSTEM SIGNAL MEASUREMENTS

Signal measurements were recorded in three buildings in Corolla during Televate's August 2, 2021, visit. A summary of those measurements is provided below. Measurements were taken with the device held at waist level, similar to a portable radio worn at the hip. Additionally, a fire-fighter's jacket was briefly placed over the device, although no measurable change in signal level was observed.

Building	Strongest Signal Recorded (dBm)	Weakest Signal Recorded (dBm)	Median Signal Level (dBm)	95% Percentile Signal Level (dBm)
Whalehead Museum (Stairs and Basement)	-64	-116	-94	-106
Corolla Food Lion	-43	-103	-74	-86
Corolla Harris Teeter	-64	-113	-89	-102

For reference, a signal level greater than -110 dBm under these conditions would be sufficient for reliable communications. Although some measurements below this level (-110 dBm) were recorded, these occurrences were very brief and would not be expected to have a significant impact on communications. The 95th percentile column indicates the signal level where 95% of the measurements were equal to or greater than that level.

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – 3280

Agenda Item Title: PB 90-07 Pine Island Phase 5B:

Submitted By: Jennie Turner – Planning & Community Development

Item Type: Quasi-Judicial

Presenter of Item: Jennie Turner

Board Action: Action

Brief Description of Agenda Item:

Request for Amended Preliminary Plat/Special Use Permit to approve an additional unit of density in the form of an upper story dwelling unit over the cabana amenity and to designate a small commercial area within Pine Island PUD.

Planning Board Recommendation:

Staff Recommendation: Application Reviewed

TRC Recommendation: Application Reviewed

STAFF REPORT
PB 90-07 PINE ISLAND PUD
AMENDED PRELIMINARY PLAT /SPECIAL USE PERMIT
BOARD OF COMMISSIONERS
DECEMBER 6, 2021

APPLICATION SUMMARY	
Property Owner: Turnpike Properties, LLC 4400 Silas Creek Pkwy, Suite 302 Winston Salem, NC 27104	**Applicant:** Same
Case Number: PB90-07	**Application Type**: Amended Preliminary Plat/Special Use Permit Phase 5B
Parcel Identification Numbers: 0128-000-002H-0000 (Phase 5B)	**Existing Use:** Planned Unit Development
2006 Land Use Plan Classification: Full Service	**PUD Parcel Size (Acres):** 366.22 **Phase 5B:** 25.15
Request: Amended Preliminary Plat/Special Use Permit	**Zoning:** SFO with PUD Overlay
PUD Number of Units: 304 units **Phase 5B:** 23 units + 1 upper story dwelling unit	**PUD Density:** .87 units per acre **Phase 5B:** .95 units per acre
PUD Required Open Space: 128.18 acres (35%) **Phase 5B:** 5.03 acres (20%) (Mixed Use)	**PUD Provided Open Space:** 137.72 acres (37.6%) **Phase 5B:** 6.77 acres (26.9%)

SURROUNDING PARCELS		
	Land Use	**Zoning**
North	Hotel	SFO with PUD Overlay
South	Single Family Dwellings	SFO with PUD Overlay
East	Atlantic Ocean	SFO with PUD Overlay
West	Pine Island Open Space and Air Strip	SFO with PUD Overlay

STAFF ANALYSIS

Application Summary

The applicant is requesting an amended preliminary plat/special use permit to amend an existing approved 23 lot residential subdivision to add an upper story dwelling unit over the cabana amenity within the Pine Island Planned Unit Development (PUD). The upper story dwelling unit and cabana amenity including supporting features are proposed to be designated as commercial area.

On October 18, 2021, the Board of Commissioners approved an amended sketch plan/special use permit for Pine Island PUD to allow Phase 5B (Lot 4R) to be developed as 23 single-family dwelling lots and one additional upper story dwelling unit on condition that the side setbacks shall be a minimum of 15' on the proposed lots. The amended sketch plan/special use permit approval also designated the area of the upper story dwelling unit and cabana as commercial area. The property is located adjacent to the Atlantic Ocean, south of the Hampton Inn in Corolla. Paved sidewalks are proposed within the subdivision and connections will be made to the existing sidewalk along NC12. Community water access is available on the North and South of the property and each owner of oceanfront property may construct a private beach access way.

INFRASTRUCTURE

Water	Public
Sewer	Private Centralized System
Transportation	Pedestrian: Proposed sidewalk will connect to path along NC12
	Connectivity Score: Minimum = 1.2 Proposed = 1.5
Stormwater/Drainage	Reviewed by Soil and Stormwater Manager.
Lighting	None proposed.
Landscaping	Street Trees will be required.
Parking	Adequate parking will be provided on each lot as well as at the proposed cabana amenity.
Compatibility	The use is compatible with the 2006 Land Use Plan.
Recreation and Park Area Dedication	A fee-in-lieu will be provided. The fee will be based on the assessed value at the time of final plat.
Riparian Buffers	CAMA regulations apply to oceanfront lots.

STAFF REVIEW

TECHNICAL REVIEW COMMITTEE

The Technical Review Committee (TRC) reviewed the application and provided the following comments (these are carried over from prior Preliminary Plat/Special Use Permit):

1. The application complies with all applicable review standards of the UDO.
2. The applicant demonstrates the proposed use will meet the use permit review standards of the UDO.
3. The conditions of approval necessary to ensure compliance with the review standards of the UDO and to prevent or minimize adverse effects of the development application on surrounding lands include:
    a. Side setbacks shall be a minimum of 15' for principal structures.
    b. A fee in lieu is required and shall be paid prior to final plat.

2006 Land Use Plan

The 2006 Land Use Plan classifies this site as Full Service within the Corolla subarea. The Full-Service designation allows for a greater diversity of housing types. The policy emphasis for the Corolla subarea is to allow for predominantly medium density residential development (2 to 3 units per acre) with minimal commercial development arranged in clusters. An overall density of no more than 3 units per acre should apply to PUDs, the prevailing development form in the Corolla area.

The following policies of the plan may apply to the proposed request:

POLICY HN1: Currituck County shall encourage development to occur at densities appropriate for the location. LOCATION AND DENSITY FACTORS shall include whether the development is within an environmentally suitable area, the type and capacity of sewage treatment available to the site, the adequacy of transportation facilities providing access to the site, and the proximity of the site to existing and planned urban services. For example, projects falling within the Full Services areas of the Future Land Use Map would be permitted a higher density because of the availability of infrastructure as well as similarity to the existing development pattern. Such projects could be developed at a density of two (2) or more dwelling units per acre. Projects within areas designated as Limited Service would be permitted a density of one (1) to one and one half (1.5) units per acre depending upon the surrounding development pattern and availability of resources. Projects within areas designated as Rural or Conservation by the Future Land Use Plan would be permitted a much lower density of 1 dwelling unit per 3 acres because of the lack of infrastructure in the area, the existing low density development pattern, and presence of environmentally sensitive natural areas.

POLICY HN3: Currituck County shall especially encourage two forms of residential development, each with the objective of avoiding traditional suburban sprawl:

1. OPEN SPACE DEVELOPMENTS that cluster homes on less land, preserving permanently dedicated open space and often employ on-site or community sewage treatment. These types of developments are likely to occur primarily in the Conservation, Rural, and to a certain extent the Limited Service areas identified on the Future Land Use Map.
2. COMPACT, MIXED USE DEVELOPMENTS or DEVELOPMENTS NEAR A MIXTURE OF USES that promote a return to balanced, self-supporting community centers generally served by centralized water and sewer. The types of development are contemplated for the Full Service Areas identified on the Future Land Use Map.

SPECIAL USE PERMIT REVIEW STANDARDS

Following an evidentiary hearing, the board shall decide if the application is in accordance with Section 2.3.10, Decision-Making Body Review and Decision, and Section 2.4.6.D, Special Use Permit Review Standards.

Special Use Permit Review Standards

A special use permit shall be approved on a finding that the applicant demonstrates the proposed use will:

1. Not endanger the public health or safety.
2. Not injure the value of adjoining or abutting lands and will be in harmony with the area in which it is located.
3. Be in conformity with the Land Use Plan or other officially adopted plan.
4. Not exceed the county's ability to provide adequate public facilities, including but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate.

Pine Island PUD Phase 5B
Preliminary Plat/Use Permit
Aerial

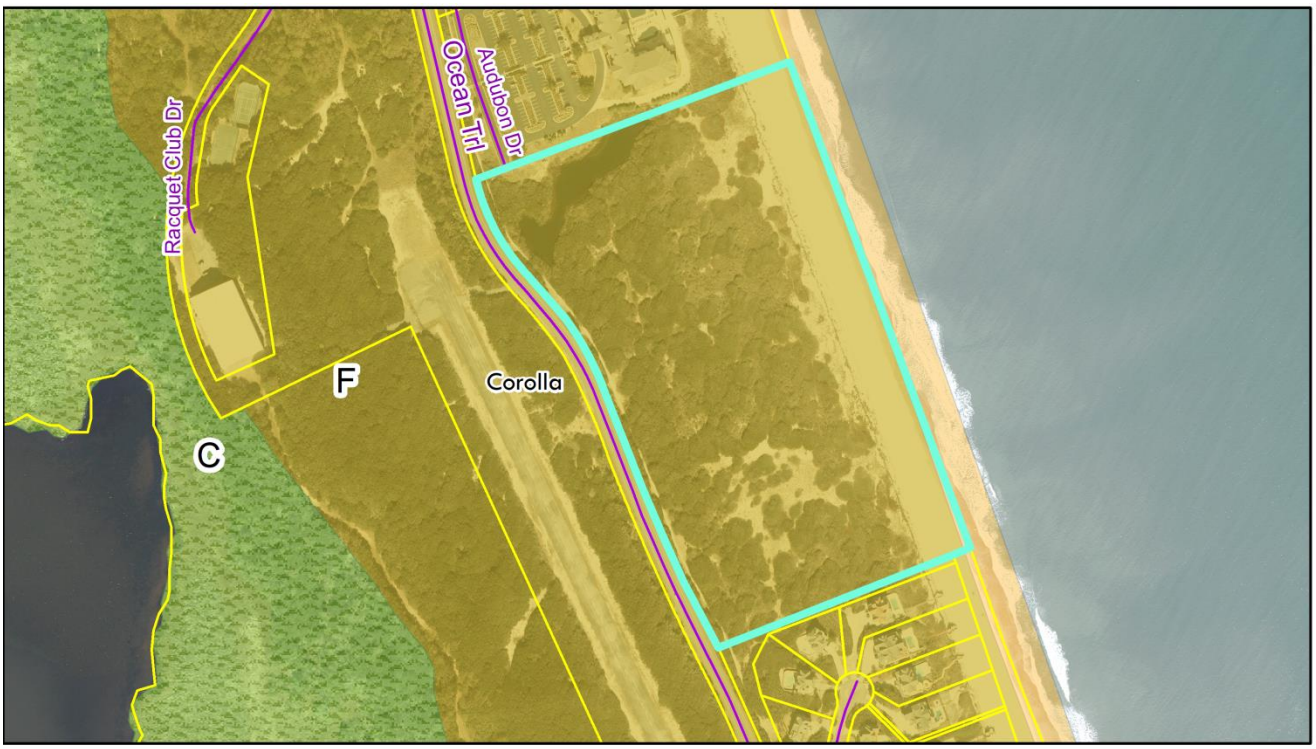
0 175 350 700 Feet

Currituck County
Planning and Community
Development

Pine Island PUD Phase 5B
Preliminary Plat/Use Permit
Zoning

0 175 350 700 Feet

Currituck County
Planning and Community
Development



Pine Island PUD Phase 5B
Preliminary Plat/Use Permit
Land Use Plan Classification

0 175 350 700 Feet

Currituck County
Planning and Community
Development

THE APPLICATION AND RELATED MATERIALS ARE AVAILABLE ON THE COUNTY'S WEBSITE
Board of Commissioners: www.co.currituck.nc.us/board-of-commissioners-minutes-current.cfm

PINE ISLAND PUD, PHASE 5B

ADDRESS ASSIGNMENT:

LOWER LEVEL CABANA = 331-A AUDUBON DR.
UPPER LEVEL CABANA = 331-B AUDUBON DR.
LOT 1 = 331 AUDUBON DR.
LOT 2 = 329 AUDUBON DR.
LOT 3 = 327 AUDUBON DR.
LOT 4 = 325 AUDUBON DR
LOT 5 = 323 AUDUBON DR
LOT 6 = 321 AUDUBON DR
LOT 7 = 319 AUDUBON DR.
LOT 8 = 317 AUDUBON DR.
LOT 9 = 315 AUDUBON DR.
LOT 10 = 313 AUDUBON DR.
LOT 11 = 311 AUDUBON DR.
LOT 12 = 309 AUDUBON DR.
LOT 13 = 307 AUDUBON DR.
LOT 14 = 306 AUDUBON DR.
LOT 15 = 308 AUDUBON DR.
LOT 16 = 310 AUDUBON DR.
LOT 17 = 312 AUDUBON DR.
LOT 18 = 314 AUDUBON DR.
LOT 19 = 318 AUDUBON DR.
LOT 20 = 320 AUDUBON DR.
LOT 21 = 322 AUDUBON DR.
LOT 22 = 324 AUDUBON DR.
LOT 23 = 326 AUDUBON DR.

OWNERSHIP & DEDICATION CERTIFICATE

I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY DESCRIBED HEREON, WHICH PROPERTY IS LOCATED WITHIN THE SUBDIVISION REGULATION JURISDICTION OF CURRITUCK COUNTY, THAT I HEREBY FREELY ADOPT THIS PLAT OF SUBDIVISION AND DEDICATE TO PUBLIC USE ALL AREAS SHOWN ON THIS PLAT AS STREETS, UTILITIES, ALLEYS, WALKS, RECREATION AND PARKS, OPEN SPACE AND EASEMENTS, EXCEPT THOSE SPECIFICALLY INDICATED AS PRIVATE AND THAT I WILL MAINTAIN ALL SUCH AREAS UNTIL THE OFFER OF DEDICATION IS ACCEPTED BY THE APPROPRIATE PUBLIC AUTHORITY OR HOME OWNER'S ASSOCIATION. ALL PROPERTY SHOWN ON THIS PLAT AS DEDICATED FOR PUBLIC USE SHALL BE DEEMED TO BE DEDICATED FOR ANY OTHER PUBLIC USE AUTHORIZED BY LAW WHEN SUCH USE IS APPROVED BY THE APPROPRIATE PUBLIC AUTHORITY IN THE PUBLIC INTEREST.

OWNER DATE

NOTARY CERTIFICATE

I, _____, A NOTARY PUBLIC OF _____ COUNTY NORTH CAROLINA, DO HEREBY CERTIFY THAT _____ PERSONALLY APPEARED BEFORE ME THIS DATE AND ACKNOWLEDGE THE DUE EXECUTION OF THE FOREGOING CERTIFICATE.

WITNESS MY HAND AND SEAL THIS _____ DAY OF _____ 2019.

NOTARY PUBLIC DATE

PRIVATE STREETS OWNER CERTIFICATE

I HEREBY CERTIFY THAT THE PRIVATE STREETS SHOWN ON THIS PLAT ARE INTENDED FOR PRIVATE USE AND WILL REMAIN UNDER THE CONTROL, MAINTENANCE AND RESPONSIBILITY OF THE DEVELOPER AND/OR A HOMEOWNER'S ASSOCIATION AND ACKNOWLEDGE THAT SOME PUBLIC SERVICES MAY NOT BE PROVIDED DUE TO THE PRIVATE NATURE OF THE ROAD.

OWNER DATE

APPROVAL CERTIFICATE

I HEREBY CERTIFY THAT THE SUBDIVISION SHOWN ON THIS PLAT IS IN ALL RESPECTS IN COMPLIANCE WITH THE CURRITUCK COUNTY UNIFIED DEVELOPMENT ORDINANCE AND, THEREFORE, THIS PLAT HAS BEEN APPROVED BY THE CURRITUCK COUNTY ADMINISTRATOR, SUBJECT TO ITS BEING RECORDED IN THE OFFICE OF THE CURRITUCK COUNTY REGISTER OF DEEDS WITHIN NINETY (90) DAYS OF THE DATE BELOW.

ADMINISTRATOR DATE

ENVIRONMENTAL CONCERN CERTIFICATE

THIS SUBDIVISION (OR PORTIONS THEREOF) IS LOCATED WITHIN AN AREA OF ENVIRONMENTAL CONCERN

LOCAL PERMIT OFFICER DATE

REVIEW OFFICER'S CERTIFICATE

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

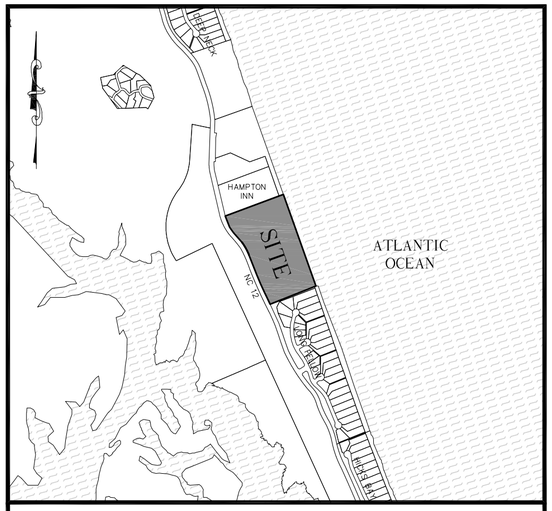
I, _____, REVIEW OFFICER OF CURRITUCK COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER DATE

IMPROVEMENTS CERTIFICATE

I HEREBY CERTIFY THAT ALL IMPROVEMENTS REQUIRED BY THE CURRITUCK COUNTY UNIFIED DEVELOPMENT ORDINANCE HAVE BEEN INSTALLED IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS PREPARED BY QUIBLE & ASSOCIATES, P.C., AND SAID IMPROVEMENTS COMPLY WITH CURRITUCK COUNTY SPECIFICATIONS.

REGISTERED ENGINEER DATE



VICINITY MAP (Pine Island)
1"=1,500'

PRIVATE ACCESS DISCLOSURE STATEMENT

PRIVATE ACCESS STREETS DO NOT MEET THE NCDOT'S MINIMUM STANDARDS FOR ASSUMPTION OF MAINTENANCE. CURRITUCK COUNTY DOES NOT CONSTRUCT OR MAINTAIN STREETS. FURTHER SUBDIVISION OF ANY LOT SHOWN ON THIS PLAT MAY BE PROHIBITED BY THE CURRITUCK COUNTY UDO UNLESS THE PRIVATE ACCESS STREET IS IMPROVED CONSISTENT WITH MINIMUM NCDOT STANDARDS.

EASEMENT ESTABLISHMENT STATEMENT

A 10 FOOT EASEMENT FOR UTILITIES AND DRAINAGE ALONG REAR AND SIDE PROPERTY LINES AND A 15 FOOT EASEMENT ALONG THE FRONT PROPERTY LINE IS HEREBY ESTABLISHED.

ALL SIDEWALK AREAS ARE HEREBY ESTABLISHED AS PEDESTRIAN EASEMENTS.

FLOODWAY/FLOODPLAIN STATEMENT

USE OF LAND WITHIN A FLOODWAY OR FLOODPLAIN IS SUBSTANTIALLY RESTRICTED BY CHAPTER 7 OF THE CURRITUCK COUNTY UNIFIED DEVELOPMENT ORDINANCE.

PUBLIC DEDICATION OF RECREATION AND PARK AREA, STATEMENT

A PAYMENT-IN-LIEU OF RECREATION AND PARK AREA DEDICATION HAS BEEN PROVIDED IN ACCORDANCE WITH THE CURRITUCK COUNTY UNIFIED DEVELOPMENT ORDINANCE. PAYMENTS-IN-LIEU RECEIVED BY THE COUNTY SHALL BE USED ONLY FOR THE ACQUISITION OR DEVELOPMENT OF RECREATION AND PARK AREAS, AND OPEN SPACE SITES CONSISTENT WITH THE REQUIREMENTS OF NORTH CAROLINA GENERAL STATUTES SECTION 153A-331.

STORMWATER STATEMENT

NO MORE THAN 45%* OF LOTS 1-23 SHALL BE COVERED BY IMPERVIOUS STRUCTURES AND MATERIALS, INCLUDING ASPHALT, GRAVEL, CONCRETE, BRICK STONE, SLATE, OR SIMILAR MATERIAL, NOT INCLUDING WOOD DECKING OR THE WATER SURFACE OF SWIMMING POOLS. THIS COVENANT IS INTENDED TO ENSURE COMPLIANCE WITH THE STORMWATER PERMIT NUMBER ISSUED BY THE STATE OF NORTH CAROLINA. THE COVENANT MAY NOT BE CHANGED OR DELETED WITHOUT THE CONSENT OF THE STATE. FILLING IN OR PIPING OF ANY VEGETATIVE CONVEYANCES (DITCHES, SWALES, ETC.) ASSOCIATED WITH THIS DEVELOPMENT, EXCEPT FOR AVERAGE DRIVEWAY CROSSINGS, IS STRICTLY PROHIBITED BY ANY PERSON. THE LOT COVERAGE ALLOWANCE PROVIDED IN THE CURRITUCK COUNTY UNIFIED DEVELOPMENT ORDINANCE MAY BE DIFFERENT THAN THE NC STATE STORMWATER PERMIT. THE MOST RESTRICTIVE LOT COVERAGE SHALL APPLY.

SURVEYOR'S CERTIFICATE

I, JOHN M. HURDLE, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (SEE NOTES); THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS DASHED LINES AND ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN (SEE NOTES); THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,0000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.

THIS SURVEY CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.

WITNESS MY ORIGINAL SIGNATURE, REGISTRATION AND SEAL THIS _____ DAY

OF _____, 2020, A.D.

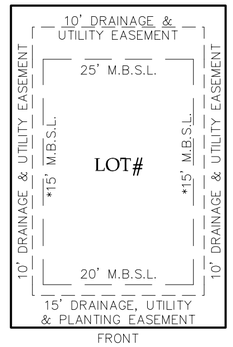
JOHN M. HURDLE, PLS NC L-5209

NOTES:

1. PROPERTY OWNER / APPLICANT: PINE ISLAND PROPERTIES LLC, 1100 SOUTH STRATFORD RD, SUITE 300, WINSTON SALEM, NC 27103
2. PROPERTY IDENTIFICATION: PID: 012B000002H0000, PIN:9942-77-8603
3. RECORDED REFERENCE: D.B. 1071, PG. 310, PC "J", SL 118
4. PROPERTY ZONED: LIMITED BUSINESS (LB) WPUD OVERLAY
5. TOTAL AREA = 1,045,671.47 SQ.FT. (25.15 AC.)
   OPEN SPACE = 245,099.81 SQ. FT. (6.77 AC.) OR 26.9%
   COMMERCIAL = 10,133 SQ.FT. (0.23 AC.)
   LOT AREA = 708,178.02 SQ. FT. (16.26 AC.)
   ROW = 82,260.42 SQ. FT. (1.89 AC.)
6. PROPOSED 23 LOT SUBDIVISION WITH UPPER STORY DWELLING UNIT LOCATED WITHIN COMMERCIAL AREA DESIGNATION.
7. BOUNDARY AND TOPOGRAPHIC DATA SHOWN ON THIS PLAN ARE BASED ON SURVEY BY QUIBLE & ASSOCIATES, PC., DATED 10/22/12.
8. PROPERTY LOCATED IN FIRM ZONES "VE" (11') & "X" PANEL#:3720994200K DATED 12/21/18. (SUBJECT TO CHANGE BY FEMA)
9. VERTICAL DATUM NAVD 88, BASED UPON RAPID STATIC GPS POST PROCESSED IN OPUS AND NCGS MONUMENT "RUN".
10. THIS PLAN SUBJECT TO ANY FACTS, INCLUDING BUILDING SETBACK RESTRICTIONS, EASEMENTS, COVENANTS, ETC., THAT MAY BE REVEALED BY A FULL AND ACCURATE TITLE SEARCH.
11. HORIZONTAL DATUM IS NAD83 (2011), DERIVED FROM NGS MONUMENT "RUN".
12. THERE ARE NO JURISDICTIONAL WETLANDS OR WATERS ON THE SUBJECT PROPERTY.
13. SOIL TYPES: NEWHAN FINE SAND (NeC), BEACHES-NEWHAN ASSOCIATION (BN) (SOILS BOUNDARY SHOWN IS APPROXIMATE).

LEGEND

- EXISTING ASPHALT PAVEMENT
- EXISTING IRON ROD
- CALCULATED POINT
- EXISTING TELEPHONE
- EXISTING CABLE
- EXISTING TRANSFORMER
- EXISTING FIRE HYDRANT
- EXISTING WATER VALVE
- 10 EXISTING CONTOUR
- VE / AE FIRM ZONE BOUNDARY
- EXISTING STORMWATER PIPE
- ---W--- EXISTING WATERLINE
- ---F--- EXISTING FORCEMAIN
- ---T--- EXISTING TELEPHONE
- --TV-- EXISTING CABLE
- --FO-- EXISTING FIBER OPTIC
- (T) TOTAL DISTANCE
- PROPOSED SANITARY MANHOLE/PUMP STATION
- —W— PROPOSED WATERLINE
- —SS— PROPOSED SANITARY SEWER



TYPICAL LOT SETBACKS & EASEMENTS

*CORNER LOTS SHALL HAVE 20' SIDE M.B.S.L.

Quible & Associates, P.C.
NC License#: C-0208 SINCE 1959
ENGINEERING** * CONSULTING * PLANNING
ENVIRONMENTAL SCIENCES * SURVEYING**
ENGINEERING/SURVEYING NOT OFFERED AT BLACK MTN. OFFICE
8466 CARATOKE HWY, POWELLS POINT, NC 27966, Phone: (252) 491-8147, Fax: (252) 491-8146, administrator@quible.com
90 CHURCH STREET, SUITE B, BLACK MOUNTAIN, NC 28711, Phone: (828) 793-0398, Fax: (252) 491-8146, administrator@quible.com

PRELIMINARY PLAT NOT FOR RECORDATION, CONVEYANCES OR SALES
CERTIFICATION

AMENDED PRELIMINARY PLAT 1 OF 3

LOT 4R
PINE ISLAND PUD, PHASE 5B

POPLAR BRANCH TOWNSHIP CURRITUCK COUNTY NORTH CAROLINA

COMMISSION NO.	P12073
DRAWN BY	CMS/JMH
CHECKED BY	JMH
SCALE	1"=80'
ISSUE DATE	11/24/21

Q:\2012\P12073\Drawings\Survey\P12073-plat.dwg 11/24/2021 10:49 AM Mstrader

ATLANTIC OCEAN

MHW CAMA/DHI

*MHW VALUE OF 1.18' NAVD '88 DERIVED FROM NOAA'S NOS TIDAL STATION DUCK, FRF PIER, NORTH CAROLINA, STATION I.D. 8651370.
*SHORELINES ARE DYNAMIC BOUNDARIES AND WILL VARY WITH TIME.

PC "1", SL 118

S 19° 22' 02" E — 1235.25' (T)

PHASE 6 COMMON PROPERTIES

TOE DUNE

FLSV LOCATED 11/18/2021

TOP DUNE

PHASE 6 VEGETATED BUFFER - OPEN SPACE

FIRM ZONE 'VE' (11')

60' SMALL STRUCTURE SETBACK LINE

FIRM ZONE LINE NOT SURVEYED

APPROX 10,133 SF (0.23 AC) COUNTED TOWARD COMMERCIAL AREA ALLOCATION. RESULTANT NEW OPEN SPACE WITHIN OS#1 = 241,552.75 SF (5.55 AC)

FIRM ZONE 'X'

BRUSH & TREES

S 68° 20' 42" W
704.41' (T)
N/F
PLACHA, DANIEL S.
PLACHA, LAURA C.
DB 626, PG 742
PC "E", SL 283
ZONED: SFO W/
PUD OVERLAY
PHASE 6
VEGETATED
BUFFER - OPEN
SPACE

476.0'

160' CAMA BLDG SETBACK (60,000 - 80,000 SF)

180' OCEAN HAZARD AEC LINE

366.23'

S 69° 29' 13" W

95.02'

1
44,379.89 Sq.Ft.
1.02 Acres

2
41,605.89 Sq.Ft.
0.96 Acres

3
39,225.73 Sq.Ft.
0.90 Acres

4
36,732.88 Sq.Ft.
0.84 Acres

5
36,056.75 Sq.Ft.
0.83 Acres

6
35,876.23 Sq.Ft.
0.82 Acres

7
35,695.71 Sq.Ft.
0.82 Acres

8
35,515.19 Sq.Ft.
0.82 Acres

9
35,334.68 Sq.Ft.
0.81 Acres

10
35,154.16 Sq.Ft.
0.81 Acres

11
34,973.64 Sq.Ft.
0.80 Acres

12
34,380.11 Sq.Ft.
0.79 Acres

13
31,708.46 Sq.Ft.
0.73 Acres

N 20° 30' 47" W
0.84'

N/F
KUEHNLE, WILLIAM H.
BRIDGEMAN, LINDA B
DB 1256, PG 61
PC "E", SL 283
ZONED: SFO W/
PUD OVERLAY

N 20° 30' 47" W
28.11'

EX. 20' WIDE UTILITY EASEMENT PER PC "E", SL 283

N/F
PINE ISLAND PROPERTIES, LLC
DB 1250, PG 886
PC "M", SL 146
ZONED: LB

403.01' (T)

N 64° 29' 13" E

795.3'

AUDUBON DRIVE
(40' R/W)

ROW
82,260.42 Sq.Ft.
1.89 Acres

L=25.32'
R=25.00'
57.89'

R=60.00'
L=124.40'

R=60.00'
L=121.57'

L=25.32'
R=25.00'

L=53.62'
R=60.00'

L=101.41'
R=60.00'

S 37° 08' 53" W
127.18'

S 37° 08' 53" W
45.72'

L=96.59'
R=320.00'

L=2.89'
R=320.00'

92.11'

95.00'

720.00' — N 20° 30' 47" W

S 20° 30' 47" E — 314.97'

S 20° 30' 47" E — 315.03'

105.00'

30.03'

5' WIDE NON-ACCESS EASEMENT

PROPOSED 10' WIDE UTILITY EASEMENT

EX. 6" WATERLINE (SIZE PER PINE ISLAND, PHASE 6 RECORD DRAWINGS)

S 37° 08' 53" W
217.92'

L=77.90'
R=320.00'

L=6.10'
R=320.00'

L=65.00'
R=320.00'

N 65° 00' 11" W
58.96'

R=280.00'
L=65.83'

R=280.00'
L=104.72'

R=280.00'
L=47.07'

29.97'

PINE ISLAND LIMITED WAY (70' R/W)

242.11'

S 69° 29' 13" W

OS#1
251,685.97 Sq.Ft.
5.78 Acres

EXISTING POND

179.55'

N 65° 00' 11" W

238.52'

S 65° 00' 11" E

EXISTING 40' WIDE PRIVATE ACCESS EASEMENT TO BE ABANDONED

22
24,929.45 Sq.Ft.
0.57 Acres

21
23,669.26 Sq.Ft.
0.54 Acres

20
23,236.26 Sq.Ft.
0.53 Acres

19
25,511.19 Sq.Ft.
0.59 Acres

23
25,257.96 Sq.Ft.
0.58 Acres

18
25,196.25 Sq.Ft.
0.58 Acres

17
22,428.38 Sq.Ft.
0.51 Acres

16
21,871.00 Sq.Ft.
0.50 Acres

15
19,845.49 Sq.Ft.
0.46 Acres

14
19,593.46 Sq.Ft.
0.45 Acres

N/F
RICHARDSON, ROBERT & LAURA
DB 1424, PG 817
PC "E", SL 283
ZONED: SFO W/
PUD OVERLAY

N/F
PINE ISLAND POA, INC.
DB 345, PG 497
PC "E", SL 283
ZONED: SFO W/
PUD OVERLAY

EX. CONC. SIDEWALK

EX. OLD WIRE FENCE

EX. 6" FORCEMAIN (APPROX. LOCATION BASED ON BEST AVAILABLE DATA)

40' PRIVATE ACCESS EASEMENT

R=60.00'
L=125.76'

OS#2
53,547.06 Sq.Ft.
1.23 Acres

FIRM ZONE SHADED X (0.2%)

L=157.20'
R=200.00'

L=16.26'

78.8'

105.0'

70.0'

38.4'

L=66.68'

L=68.08'

C2

N 24° 09' 52" W
132.24' (T)

40' WIDE ACCESS & UTILITY EASEMENT

L=97.34'

L=95.50'

L=63.16'

C3

N 21° 26' 26" W
242.13' (T)

50' WIDE ACCESS & UTILITY EASEMENT

5' WIDE NON-ACCESS EASEMENT

EX. 12" PVC WATERLINE (SIZE/MATERIAL PER CURRITUCK COUNTY GIS)

N/F
PI OPEN SPACE, LLC
DB 1088, PG 364
PC "N", SL 185
ZONED: PUD OVERLAY

L=264.25'
R=545.84'

C4

N 40° 51' 46" W
134.79'

97.4'

37.4'

167.7'

NC 12
60' R/W

FIRM ZONE AE EL. (4.0')

FIRM ZONE LINE NOT SURVEYED

L=7.65'

10.0'

L=85.34'

92.7'

N 26° 35' 58" W
42.73'

27.1'

95.2'

C1

VARIABLE WIDTH ACCESS & UTILITY EASEMENT

S 09° 31' 46" E
674.67' (TIE LINE TO NCGS "RUN")

CURVE TABLE				
CURVE#	LENGTH	RADIUS	CHD LENGTH	CHD BEARING
C1	92.98'	2187.90'	92.98'	N 25° 22' 55" W
C2	134.76'	2834.79'	134.75'	N 22° 48' 04" W
C3	272.26'	799.07'	270.95'	N 31° 12' 06" W
C4	264.25'	545.84'	261.67'	N 27° 05' 38" W

GRAPHIC SCALE

80' 0 40' 80' 160'

(IN FEET)
1 inch = 80' ft.

NC License#: C-0208
SINCE 1959
Quible & Associates, P.C.
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ENVIRONMENTAL SCIENCES * SURVEYING**
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administration@quible.com
90 CHURCH STREET, SUITE B
BLACK MOUNTAIN, NC 28711
Phone: (828) 793-0398
Fax: (252) 491-8146
administration@quible.com

PRELIMINARY PLAT NOT FOR RECORDATION, CONVEYANCES OR SALES
PE, PLS, CFM
CERTIFICATION

AMENDED PRELIMINARY PLAT 2 OF LOT 4R
PINE ISLAND PUD, PHASE 5B

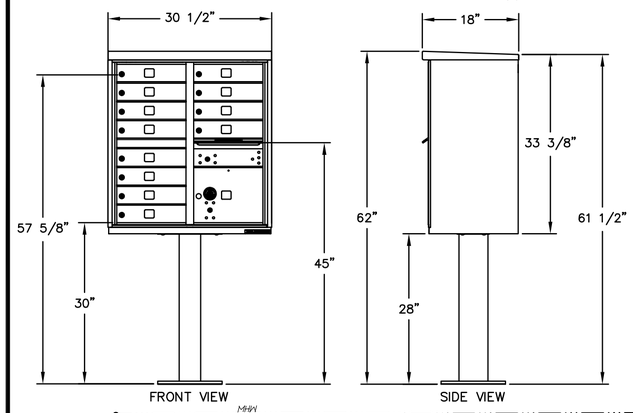
POPLAR BRANCH TOWNSHIP CURRITUCK COUNTY NORTH CAROLINA

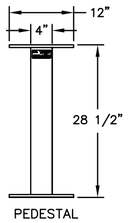
COMMISSION NO.	P12073
DRAWN BY	CMS/JMH
CHECKED BY	JMH
SCALE	1"=80'
ISSUE DATE	11/24/21

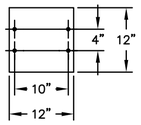
Q:\2012\P12073\Drawings\Survey\P12073-plat.dwg 11/24/2021 10:49 AM Mstroder

Attachment: Preliminary Plat (PB 90-07 Pine Island Phase 5B)

vital™ Cluster Box Unit - Type II







NOTES:

1. This unit is approved for USPS and private applications.
2. Decorative mailbox accessories sold separately and are USPS Approved products.
3. Pedestal should be installed with included Rubber Pad.
4. mounting hardware not included, refer to installation manual for recommendations.
5. Florence "F" series CBU is Officially Licensed by USPS; License #CDSEQ-08-B-0012.

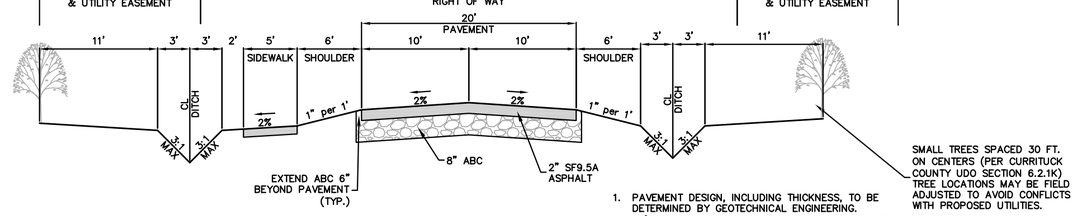
DOOR CHART

DOOR TYPE	DIMENSION (HEIGHT x WIDTH)
TENANT	3-3/8" x 12-13/16"
10" PARCEL	10-1/4" x 12-13/16"
OUTGOING SLOT	3/4" x 11-3/4"

PRODUCT SERIES: vital™ CLUSTER BOX UNIT

FLORENCE manufacturing company
5935 Corporate Drive • Manhattan, KS 66503
www.florencemailboxes.com • (800) 275-1747
A GIBRALTAR INDUSTRIES COMPANY

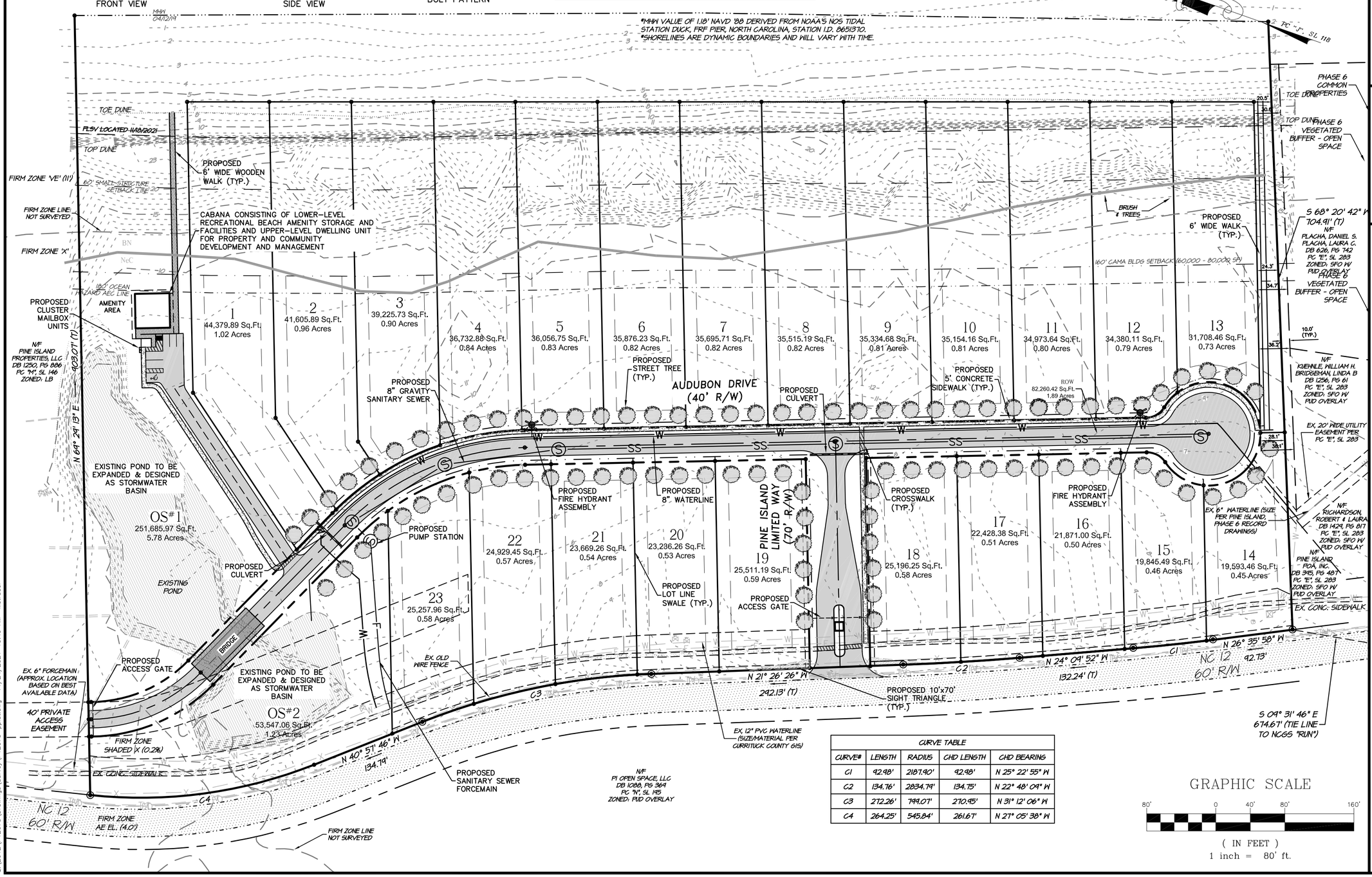
MODEL	1570-12	REV	A
SCALE	NONE	LAST REV DATE	9/26/2012
DRAWING NUMBER	1570-12CS	DRAWN BY	AFD



1. PAVEMENT DESIGN, INCLUDING THICKNESS, TO BE DETERMINED BY GEOTECHNICAL ENGINEERING.
2. 70' WIDE RIGHT-OF-WAY PROVIDED ALONG PINE ISLAND LIMITED WAY.

TYPICAL ROAD SECTION

N.T.S



CURVE TABLE				
CURVE#	LENGTH	RADIUS	CHD LENGTH	CHD BEARING
C1	92.98'	2187.90'	92.98'	N 25° 22' 55" W
C2	134.76'	2834.79'	134.75'	N 22° 48' 09" W
C3	272.26'	799.07'	270.95'	N 31° 12' 06" W
C4	264.25'	545.84'	261.67'	N 27° 05' 38" W

GRAPHIC SCALE

80' 0 40' 80' 160'

(IN FEET)
1 inch = 80' ft.

Quible & Associates, P.C.
NC License#: C-0208 SINCE 1959
ENGINEERING** * CONSULTING * PLANNING
ENVIRONMENTAL SCIENCES * SURVEYING**
ENGINEERING/SURVEYING NOT OFFERED AT BLACK MTN. OFFICE
8466 CARATOKE HWY POWELLS POINT, NC 27966 Phone: (252) 491-8147 Fax: (252) 491-8146 administration@quible.com
90 CHURCH STREET, SUITE B BLACK MOUNTAIN, NC 28711 Phone: (828) 793-0398 Fax: (252) 491-8146 administration@quible.com

PRELIMINARY PLAT NOT FOR RECORDATION, CONVEYANCES OR SALES

CERTIFICATION

AMENDED PRELIMINARY PLAT 3 OF 3

LOT 4R
PINE ISLAND PUD, PHASE 5B

POPLAR BRANCH TOWNSHIP CURRITUCK COUNTY NORTH CAROLINA

COMMISSION NO.	P12073
DRAWN BY	CMS/JMH
CHECKED BY	JMH
SCALE	1"=80'
ISSUE DATE	11/24/21

Q:\2012\P12073\Drawings\Survey\P12073-plplot.dwg 11/24/2021 10:49 AM Mstroder

Attachment: Preliminary Plat (PB 90-07 Pine Island Phase 5B)

Major Subdivision
Application

OFFICIAL USE ONLY:
Case Number: _____
Date Filed: _____
Gate Keeper: _____
Amount Paid: _____

Contact Information

APPLICANT:
Name: TURNPIKE PROPERTIES, LLC
Address: 4400 SILAS CREEK PKWY, SUITE 302
WINSTON SALEM, NC 27104
Telephone: (336) 722-2236
E-Mail Address: rblizzard1@me.com

PROPERTY OWNER:
Name: TURNPIKE PROPERTIES, LLC
Address: 4400 SILAS CREEK PKWY, SUITE 302
WINSTON SALEM, NC 27104
Telephone: (336) 722-2236
E-Mail Address: rblizzard1@me.com

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: SAME

Request

Physical Street Address: 331 AUDUBON DRIVE, COROLLA
Parcel Identification Number(s): 0128000002H0000
Subdivision Name: PINE ISLAND PUD (PINE ISLAND LIMITED)
Number of Lots or Units: 304
Phase: 5B

TYPE OF SUBMITTAL

- ☐ Conservation and Development Plan
- ☐ Amended Sketch Plan/Use Permit
- ☑ Preliminary Plat (or amended)
  - ☐ Type I OR ☑ Type II
- ☐ Construction Drawings (or amended)
- ☐ Final Plat (or amended)

TYPE OF SUBDIVISION

- ☐ Traditional Development
- ☐ Conservation Subdivision
- ☑ Planned Unit Development
- ☐ Planned Development

I hereby authorize county officials to enter my property for purposes of determining compliance with all applicable standards. All information submitted and required as part of this process shall become public record.

Property Owner(s)/Applicant* _____ Date 10/13/2021

***NOTE: Form must be signed by the owner(s) of record, contract purchaser(s), or other person(s) having a recognized property interest. If there are multiple property owners/applicants a signature is required for each.**

Community Meeting, if applicable

Date Meeting Held: July 15, 2021 at 4pm
Meeting Location: Corolla Library

Use Permit Review Standards, if applicable

PUD Amended Sketch Plan/Use Permit, Type II Preliminary Plat

Purpose of Use Permit and Project Narrative (please provide on additional paper if needed):

This Use Permit is being submitted to amend the existing Pine Island PUD to allow for an additional unit of density within Phase 5B by designating a small commercial area within the vicinity of the approved cabana. This would allow an upper story dwelling unit within the cabana and increases the permitted density from 303 to 304 units.

The applicant shall provide a response to the each one of the following issues. The Board of Commissioners must provide specific findings of fact based on the evidence submitted. All findings shall be made in the affirmative for the Board of Commissioners to issue the use permit.

A. The use will not endanger the public health or safety.

The proposed use will not materially endanger the public health or safety and conforms to adjacent land uses. The proposed upper story dwelling unit would reside within previously approved conditioned storage space within the cabana, above the lower level storage/bath.

B. The use will not injure the value of adjoining or abutting lands and will be in harmony with the area in which it is located.

The proposed use will not injure the values of adjoining or abutting properties and will compliment the adjoining existing uses. The proposed mixed-use commercial area consisting of the upper story dwelling unit would reside in the cabana adjacent to the hotel property.

C. The use will be in conformity with the Land Use Plan or other officially adopted plan.

The proposed use is in general conformance with the County's Land Use Plan, current UDO, and the latest approved sketch plan. The proposed uses are allowed and encouraged within PUDs, open space, density, and commercial area percentages are compliant with the UDO.

D. The use will not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate.

The proposed use will not exceed the County's ability to provide adequate public facilities. Utility services have already been approved and permitted for the site, capacity is available, and stormwater management already provided to handle approved runoff.

I, the undersigned, do certify that all of the information presented in this application is accurate to the best of my knowledge, information, and belief. Further, I hereby authorize county officials to enter my property for purposes of determining zoning compliance. All information submitted and required as part of this application process shall become public record.

Property Owner(s)/Applicant*

10/13/2021
Date

***NOTE: Form must be signed by the owner(s) of record, contract purchaser(s), or other person(s) having a recognized property interest. If there are multiple property owners/applicants a signature is required for each.**

Quible

Quible & Associates, P.C.

ENGINEERING • ENVIRONMENTAL SCIENCES • PLANNING • SURVEYING
SINCE 1959

P.O. Drawer 870
Kitty Hawk, NC 27949
Phone: 252-491-8147
Fax: 252-491-8146
web: quible.com

July 22, 2021

Ms. Jennie Turner
Currituck County Planning and Community Development
P.O. Box 73
Currituck, NC 27927

RE: **Community Meeting Report**
Use Permit Application and Amended Sketch Plan for Pine Island PUD
Parcel ID No. 0128000002H0000
Corolla, Currituck County, NC

Ms. Turner,

A community meeting for the proposed Use Permit Application and Amended Sketch Plan of the above referenced parcel within Pine Island PUD was held on Thursday, July 15, 2021 at 4:00 p.m. in the Corolla Library. The meeting was conducted by Quible & Associates, P.C. (Quible) on behalf of Turnpike Properties, LLC, with representatives from Turnpike Properties, LLC, Currituck County, and Pine Island property owners in attendance.

Purpose

The purpose of the meeting was to inform the community in the vicinity of the subject parcel of the intent to amend the sketch plan and use permit to allow for an upper story dwelling unit within the previously approved cabana located within the northern amenity area. It was explained that commercial area would be designated to encompass the commercial footprint and supporting improvements, and that an additional unit of density would be proposed. The proposed change would increase the PUD residential density from 303 to 304 units, increase the PUD commercial development area from 18.47 acres to 18.7 acres, and PUD open space would change from 37.67% to 37.6%.

Meeting synopsis

The community meeting presentation documents were set up within the meeting area of the Corolla Library by 3:30pm. The Corolla Library was open to the public and attendees began arriving at approximately 3:45 pm. Prior to beginning the community meeting, an "Open House" viewing of the Amended Sketch Plan, Amended Preliminary Plat, and Amended Amenity Site Plan, along with the Use Permit Application, surrounding property owner notification letters, County Use Permit Review Procedures, and County Application Submittal Schedule were available to the public. The exhibits were mounted on a poster board and placed on an easel for ease of viewing.

As attendees arrived, they were asked to provide their contact information on the sign-in sheet at the check in table and were advised to please utilize the provided comment sheets to remit comments. Attendees were also advised that comments could be received by Quible &

Associates, P.C. either by email or telephone, and Rolf Blizzard, with Turnpike Properties, LLC, offered his contact information to address questions or concerns.

At 4:00 pm a presentation of the proposed amendment to the uses and minor change to the cabana within the amenity area was provided by Quible & Associates. A copy of the agenda was distributed to everyone in attendance and the sign-in sheet was routed throughout the room. The presentation setting was as casual as possible and loosely followed the Agenda (Exhibit 1), to allow for a comfortable atmosphere allowing the community to ask questions throughout the meeting.

Quible & Associates (Michael W. Strader, Jr., P.E.) introduced the Owner Representative (Rolf Blizzard with Turnpike Properties, LLC), and the County Representative (Jennie Turner) and began with a brief discussion about the County procedures for reviewing and approving the proposed project and purpose for the community meeting and the proposed development.

The parcel proposed for use permit amendments, density, open space and commercial area reallocation were described and identified on the exhibits. The proposed amended sketch plan and use permit application were described as in compliance with the current Currituck County UDO PUD requirements and in keeping with the surrounding neighborhoods and County Land Use Plan.

Throughout the presentation, the floor was open for questions and comments from the audience. Comments and questions received during the meeting were as follows:

1. A question was raised about why the cabana needed to be designated as commercial for an upper story dwelling unit. It was explained that although an upper story dwelling unit is within the residential use classification, the County UDO describes in Section 1.8.6(2)(b) that land designated for commercial (or multi-family) development shall be limited to the allowable uses for the PD-O district listed in Table 4.1.1.B, Summary Use Table. Upper story dwelling is allowed within the PD-O district with a Master Plan within Table 4.1.1.B. Alternatively, an upper story dwelling is not listed as an allowable use within Table 4.1.1.A. under the SFO district which would be the Summary Use Table for land designated for residential development. Therefore, in order to propose an upper story dwelling within the PUD, the land must be designated for commercial development.
2. A question was asked about whether the upper story dwelling would be sold or rented. It was explained that the cabana would remain within the amenity area parcel and would not be sold. It was further explained that the upper story dwelling was not intended to be rented, Airbnb, VRBO, etc. It was clarified that the upper story dwelling is intended to be used by a property caretaker or manager. A reminder that the developer's intent is to build 2 or 3 houses (however many that the single GC can properly handle) and that the developer intends to monitor construction periodically by staying within the unit. It was further explained that other properties that the developer has previously utilized for accommodations have since been sold.
3. A follow-up question that arose after the explanation above was what would happen with the upper story dwelling unit after the development was built out. The developer explained that after the approximate 10-year development plan, the unit could be utilized by the property maintenance or a property manager. The developer explained

that the intent is to retain ownership of the development and lots and manage the properties.

4. A question arose about what is within the approved cabana. It was explained that the currently approved cabana building permit has lower-level storage and restroom facilities and upper story conditioned storage. It was further explained that the lower level contains amenities for the Pine Island Limited community including facilities, and beach equipment storage for the non-oceanfront lots. The intent is that the proposed oceanfront houses will have beach equipment storage.
5. A question was asked about why the proposed commercial designation encompassed more than just the rectangular structure itself. It was explained that the County requires the supporting improvements of the commercial use be included within the commercial area designation. It was clarified using the Amended Amenity Area Site Plan exhibit that the proposed commercial area not only included the cabana structure, but a 4' offset area, the parking area, sidewalk, 10' width access, and grassed strip in between up to the right-of-way.
6. Getting off topic a bit, there were some questions about the proposed size of the homes and associated number of bedrooms of the 23 lots previously approved during ASP and preliminary plat. The developer explained that while the current market would dictate, he has been planning for approximate 12-bedroom oceanfront homes and approximately 8-bedroom non-oceanfront homes. Although the development team was currently considering a 10-bedroom footprint for the first lot. However, when compared with Pine Island Reserve and Pine Island Club (Phase 9) to the north of the Hampton Inn, the Pine Island Limited (Phase 5B) development would have less bedrooms. In addition, it was stated that the subject development has increased side yard setbacks of 15' providing for more separation between structures.
7. A question was asked about whether the new homes would be within the PIPOA. The developer explained that no, this development was exclusive and will not be a part of the PIPOA.
8. There were some questions about timing and what happens next with this proposal. It was discussed that the intent is to submit the application requesting to amend the sketch plan and use permit by the July 22nd submittal deadline which would put the item on track for the October 18th Board of Commissioners agenda. It was also stated that an amendment to the previously approved preliminary plat would need to be submitted, reviewed, and approved by the County. We stated that while we are uncertain of when that amended preliminary plat can be submitted, we are clear that no action may be taken until the new ASP/Use Permit is approved. It was then stated that there are already Permits and Approvals in place to allow for final platting of the previously approved development and associated lots, the only item or use that cannot be constructed at this time is the upper story dwelling unit; but the cabana itself with upper story conditioned space may continue.
9. In addition to the above, it was explained that the developer intends to phase the final plat(s) where the initial phase would be limited to the main entrance and headed northward; there remains uncertainty about how many and which lots may be platted within Phase 1 pending feedback from Planning Staff regarding open space area platting. Finally, it was stated that once the ASP/Use Permit and amended preliminary plat are approved, then an application requesting to amend the current cabana building permit would be submitted to allow for the upper story dwelling unit.

Upon the conclusion of the discussions, attendees were again reminded that any further questions or comments not addressed at the meeting can be forwarded to Quible & Associates and the meeting was adjourned. There did not seem to be any opposition or adversity to the application, but rather inquisitiveness. No written comments were received.

Copies of all handouts, exhibits, and other documents available at the meeting are provided in attachments to this document.

Please do not hesitate to contact me at (252) 491-8147 or mstrader@quible.com should you have any questions and/or concerns.

Sincerely,
Quible & Associates, P.C.

Michael W. Strader, Jr., P.E.

cc: Rolf Blizzard, Turnpike Properties, LLC

Pine Island Currituck LLC
4400 Silas Creek Parkway, Suite 302
Winston Salem, North Carolina 27104

November 5, 2021

Mr. Michael Strader
Quible and Associates
8466 Caratoke Highway, Building 400
Powells Point, North Carolina. 27966

RE: Wastewater Utility, Willingness to Serve, Pine Island Limited – Corolla, North Carolina

Dear Mr. Strader:

As you are aware, Pine Island Currituck LLC (PICLLC) provides wastewater treatment service to the Pine Island Development, the Currituck Club and certain portions of the Sanderling Development in Dare and Currituck Counties. PICLLC is a regulated public utility company in the State of North Carolina.

PICLLC is willing and able and hereby agrees to accommodate the domestic wastewater utility needs for the Pine Island Limited Community currently designated as Lot 4R in Phase 5B of the Pine Island PUD, including the additional upper story dwelling unit recently approved in October 2021 by Currituck County. The property already lies within the service area for PICLLC.

Should you have any questions, please do not hesitate to contact me directly at 919.389.3655 or by email at rblizzard1@me.com. Thank you for your attention.

Sincerely,

Rolf Blizzard
Pine Island Currictuck LLC

Quible

Quible & Associates, P.C.

ENGINEERING • ENVIRONMENTAL SCIENCES • PLANNING • SURVEYING
SINCE 1959

P.O. Drawer 870
Kitty Hawk, NC 27949
Phone: 252-491-8147
Fax: 252-491-8146
web: quible.com

November 18, 2021

Ms. Jennie Turner, CFM
Planner II
Currituck County Planning and Community Development
153 Courthouse Road, Suite 110
Currituck, NC 27929

Re: **Amended Preliminary Plat/Use Permit Application for Pine Island PUD, Phase 5B (PB90-07)**
Corolla, Currituck County, North Carolina

Dear Ms. Turner:

Thank you for your review comments received from the November 10, 2021 TRC meeting for the above referenced project. On behalf of Turnpike Properties, LLC, Quible & Associates, P.C. hereby submit for your review the following documentation for the Pine Island PUD, Phase 5B Type II Amended Preliminary Plat (presently being referred to as Pine Island Limited).

- Two (2) Full-Size (18"x24") Copies of Amended Preliminary Plats
- One (1) 8.5"x11" Copy of the Revised Preliminary Plat
- One (1) PDF copy of Amended Preliminary Plat (enclosed CD)

Please find our responses to your review comments below. A copy of the TRC review comments is enclosed for your reference.

Planning, Jennie Turner:

1. Quible has arranged to re-visit the FLSV and re-stake for confirmation, if appropriate. This should occur within days and we will notify you of what we find. We will either update the date of the plat or show an updated FLSV with updated date on the plat. Please also acknowledge that prior to individual site plan review and approvals, the FLSV will be re-visited, respectively.

Currituck County Soil and Water, Dylan Lloyd:

1. Acknowledged, thank you.

Currituck County Building Code Official, Richard Godsey:

1. Acknowledged. At the time of amended building permit application, the required documentation will be provided for review.

NC DEQ-Division of Coastal Management, Charlan Owens:

1. Acknowledged.

Currituck County Economic Development, Larry Lombardi:

1. Acknowledged.

Currituck County Water, Will Rumsey/Dave Spence:

1. Acknowledged, thank you.

Currituck County Water/Backflow, Chas Sawyer:

1. Acknowledged, thank you.

Currituck County Parks and Recreation, Jason Weeks:

1. Acknowledged, thank you.

Albemarle Regional Health Services, Joe Hobbs:

1. The prior obtained wastewater approval received from DWR included the associated design flow from the proposed cabana.

Currituck County GIS, Harry Lee:

1. Acknowledged, thank you.

US Army Corps of Engineers, Anthony Scarbraugh:

1. Acknowledged, thank you.

Please review the enclosed documentation and confirm that all TRC review comments have been addressed adequately to demonstrate proper compliance with the UDO and Land Use Plan for preparation of the Staff Report to the Board. Please do not hesitate to contact me at 252.491.8147 or mstrader@quible.com if you have any questions, comments or requests for additional information.

Sincerely,

Quible & Associates, P.C.

Michael W. Strader, Jr., P.E.

encl.: as stated
cc: Rolf Blizzard, Turnpike Properties, LLC

P.O. Drawer 870 ▪ Kitty Hawk, NC 27949
Telephone (252) 491-8147 ▪ Fax (252) 491-8146

Currituck County
Department of Planning and Community Development
153 Courthouse Road, Suite 110
Currituck, North Carolina 27929
252-232-3055
FAX 252-232-3026

MEMORANDUM

To: Rolf Blizzard, Turnpike Properties, LLC
Michael Strader, Quible & Associates, P.C.

From: Jennie Turner, Senior Planner

Date: November 10, 2021

Re: PB90-07 Pine Island PUD – Phase 5B Amended Preliminary Plat/Use Permit

---

The following comments were received at the November 10, 2021 TRC meeting. TRC comments are valid for six months from the date of the TRC meeting.

To be scheduled for the January 17, 2021, Board of Commissioners meeting, please address all comments and resubmit a corrected plan by 3:00 p.m. on November 18, 2021.

Planning, Jennie Turner 252-232-6031
Reviewed
Confirm FLSNV still accurate.

Currituck County Soil & Stormwater, Dylan Lloyd 252-232-3360
Approval
All previous stormwater features from previous plat to be left unchanged.

Currituck County Inspections, Richard Godsey, 252-232-6020
Approved
Needed fire flow for construction is determined by ISO method.
Appendix B required at permitting.
Sprinkler plans required at permitting.
Construction cannot create a need greater than available fire flow.

NC DEQ-Division of Coastal Management, Charlan Owens 252-264-3901
No Comment

Currituck County Economic Development, Larry Lombardi, 252-232-6015
Reviewed
No Comment

Currituck County Water, Will Rumsey/Dave Spence 252-232-6060
Approved

Currituck County Water/Backflow, Chas Sawyer, 232-6060 ext. 4221
No Comment

Currituck County Parks and Recreation, Jason Weeks, 252-232-3007
No Comment

Albemarle Regional Health Services, Joe Hobbs 252-232-6603
Reviewed
*DEVELOPER NEEDS WRITTEN APPROVAL FROM NC DEPARTMENT OF WATER QUALITY (WASHINGTON REGIONAL OFFICE)
CONCERNING ADEQUATE WASTWATER APPROVAL FOR PROPOSED DEVELOPMENT.

Currituck County GIS, Harry Lee 252-232-2034
Reviewed
None

US Army Corps of Engineers, Anthony Scarbraugh, 910-251-4619
No Comment

The following items are necessary for resubmittal:

- 2- full size copies of revised plans.
- 1- 8.5”x11” copy of all revised plans.
- 1- PDF digital copy of all revised or new documents and plans.

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3269)

Agenda Item Title: Consideration of the Guaranteed Maximum Price for Moyock Elementary School Addition and Renovation Project.

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Updated Design-Build Amendment including Sussex Moyock Elementary School Exhibit 1A.

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

EXHIBIT 1A

SUSSEX

4 November 2021

Michelle Perry, PE
Assistant County Engineer
County of Currituck
Public Works Department
153 Courthouse Road, Suite 302
Currituck, North Carolina 27929

Project: **Moyock Elementary School Additions and Renovations**
Subject: **65% Progress Budget for GMP**

Dear Michelle,

We respectfully submit to you and the County our 65% Progress Budget for the purpose of setting the Guaranteed Maximum Price for the Construction portion of the project "Additions and Renovations at Moyock Elementary School". The overall Baseline project budget including construction and non-construction costs is $14,259,800.00 This amount includes the design fees that were in the original contract award, PO#20211763, and all contract amendments to date. This total excludes alternates, add options, and unit pricing items.

Attached you will find a Proposed 65% Progress Budget summary outlining the budgeted costs, 35% projected costs, updated 65% projected cost.

Attached you will find a Clarifications and Exclusions page. We have listed Add Alternates, Options, and Unit Pricing for your consideration.

Please let us know if you have questions or require additional information. We appreciate the continued opportunities to be of service to Currituck County and look forward to breaking ground on this project in the coming months.

Sincerely,

Harry L. Davis, III
President

Attachments

SUSSEX

MOYOCK ELEMENTARY SCHOOL ADDITIONS & RENOVATIONS
PROPOSED 65% PROGRESS BUDGET – 4 November 2021

	ORIGINAL PROJECTED COSTS	35% PROGRESS BUDGET	65% PROGRESS BUDGET
CONSTRUCTION COSTS			
New Building Construction	$11,244,125.00	$11,263,872.02	$11,602,378.99
Owner Reserves	$488,875.00	$488,875.00	$488,875.00
Construction Costs Subtotal	**$11,733,000.00**	**$11,752,747.02**	**$12,091,253.99**
NON-CONSTRUCTION COSTS			
Architect / Engineer Fees	$1,043,500.00	$1,110,807.00	$1,110,807.00
Design Amendment #001 & #002	$0.00	$0.00	$27,043.20
Construction Testing	$150,000.00	$150,000.00	$100,000.00
Furniture, Fixtures, & Equipment	$ 1,173,300.00	$1,173,300.00	$770,695.81
Playground Equipment	$100,000.00	$100,000.00	$100,000.00
Commissioning	$40,000.00	$40,000.00	$40,000.00
Permit Review Fees	$20,000.00	$20,000.00	$20,000.00
Non-Construction Subtotal	**$2,526,800.00**	**$2,594,107.00**	**$2,168,546.01**
TOTAL PROJECT BUDGET	**$14,259,800.00**	**$14,346,854.02**	**$14,259,800.00**

SUSSEX

PROPOSAL FOR CONSTRUCTION &
GENERAL CONTRACTING SERVICES FOR:

Moyock Elementary School
255 Shingle Landing Road
Moyock NC, 27958

October 28, 2021

109 South Lynnhaven Road, Suite 200, Virginia Beach, VA 23452
Telephone (757) 422-2400 Facsimile (757-422-0398
www.sussexdevelopment.com

SUSSEX

CONSTRUCTION BID PROPOSAL

PROJECT INFORMATION

Name: Moyock Elementary School
Address 1: 255 Shingle Landing Road
Address 2: Moyock NC, 27958

Project No.: 2021-082
Date: 10/28/21
Revision No: 65% for GMP

OWNER INFORMATION

Contact: Michelle Perry
Company: Currituck County
Address 1: 153 Courthouse Road
Address 2: Currituck, North Carolina 27929
Telephone: 252-232-6034
Email: michelle.perry@currituckcountyNC.gov

ARCHITECT INFORMATION

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Company: boomerang DESIGN
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Sussex Development hereby proposes to perform the above project:
In a Total of 595 Calendar Days, (82 weeks), which includes 21 Calendar Days for preconstruction activities such as submittal review and material ordering, for the LUMP SUM TOTAL OF:

Unbonded: $11,977,037.69
Bonded: $12,091,253.99

Scope of Work:
Work to be performed per 65% Design Drawings by Boomerang Design dated 21 September 2021, and further clarified below:

Addenda Acknowledged:

Clarifications & Exclusions:
See Letter attached.

Alternates:

1.	TPO Membrane in lieu of PVC Membrane	$34,033.95
2.	COVID Control and Contact Tracking Measures if Required	$22,741.17
3.	Add for Redundant Pumps for HVAC, not required by Code	$21,073.93
4.	Additional Parking Lots Alterations	$122,850.50
5.	Exterior Teaching Area	$116,354.70
6.	Chiller Enclosure, Masonry upgrade in lieu of fence	$31,121.83
7.	Casework Features in Dining Area	$55,574.70
8.	Open/not used	$0.00
9.	Open/not used	$0.00
10.	Emergency Genie Connection (pending details)	$0.00
11.	Connection for Portable Chiller (pending details)	$0.00
12.	Elec Hand Dryers, Dyson type	$8,891.95
13.	Unit Price - Remove Unsuitable, replace with Select Fill	$32.69
14.	Unit Price - Remove Unsuitable, replace with #57 stone	$78.44

SUSSEX

MOYOCK ELEMENTARY SCHOOL ADDITIONS & RENOVATIONS
65% BUDGET CLARIFICATIONS & EXCLUSIONS

The following clarifications, exclusions and allowances summary serves as a supplement to the proposed GMP Budget with Estimate date 28 October 2021.

Clarifications

1. The 65% Budget was assembled based upon the Currituck County RFQ dated 1 December 2020 and Boomerang Design drawings dated 21 September 2021.
2. The project schedule is based upon a timeline of (82) weeks. Schedule reflects nineteen (19) months of construction activities.
3. Builders Risk insurance is included, with coverage as noted below:
   - Term – to be determined prior to project start, current duration of (19) months.
   - Perils – All Risk Excluding Flood/Quake.
   - Deductibles – $25K AOP, $50K Water Intrusion, $25K W/H, 14-Day S/Cs.
4. Construction Costs include the complete budget for construction excluding any costs presented as Non-Construction Costs. Non-Construction costs include design, special inspections and 3rd party testing, FF&E design and procurement, playground equipment, Commissioning, and Permit review fees. Refer to the breakdown included in this presentation package.
5. The FF&E Budget has been reduced by approximately 30% in order to keep the overall total project budget from exceeding the original projected project cost. The Owner Reserve has not been reduced from its original projected cost.
6. The Roof Material pricing is based upon a TPO Membrane system in lieu of a PVC Membrane. Alternate #1 presents optional pricing for an upgrade to a PVC Membrane system.
7. Alternate #2 presents optional pricing for COVID-19 Measures if required. This pricing is being presented in the event that the State of North Carolina and/or County of Currituck restrictions are imposed that impact the operations, policies, procedures, and safety of the project.
8. Alternate #3 presents optional pricing to add redundant pumps for HVAC equipment. The current progress design does not require nor are technical details provided.
9. Alternate #4 presents optional pricing for alterations to the Bus Parking lot and the Faculty Parking lot. The design costs for the initial civil engineering review and schematic options were included in the original contract. The additional design cost and scope to proceed with the parking lot alterations from schematic design through to final design were already awarded and included in Contract Amendment #001. The fire truck access lane requirements and the milling and paving of the Bus parking lot are included in the current project scope and budget.
10. Alternate #5 presents optional pricing for the outdoor teaching area that is shown in the current 65% progress design. See drawing sheet A-202. This would include a Kalwall protective covering, stone benches, fixed tables with canopies, pebble walk, landscaping considerations, and synthetic turf.
11. Alternate #6 presents optional pricing to construct the chiller enclosure with masonry products as currently shown in the 65% progress design. In this current project budget for the GMP Sussex has included a standard 8-ft chain link fence with privacy slats. The 95% progress design will reflect this change.

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MOYOCK ELEMENTARY SCHOOL ADDITIONS & RENOVATIONS
65% BUDGET CLARIFICATIONS & EXCLUSIONS

12. Alternate #7 presents a budget to provide casework features that are currently shown on the 65% drawings in the Dining Area. These amenities are not required to fulfill the requirements of this project but they are features that the School team would desire if they can be provided without exceeding the project budget.
13. Alternates #8 and #9 are currently open/not used.
14. Alternates #10 and #11 are still in development, more detailed information will be needed prior to developing pricing.
15. Alternate #12 presenting optional pricing to provide Dyson-type electric hand dryers in all the student gang restrooms.
16. Alternate #13 provides Unit Pricing for the removal of unsuitable material and the placement of Select fill.
17. Alternate #14 provides Unit Pricing for the removal of unsuitable material and the placement of #57 stone.

Alternates and Unit Prices:

1.	TPO Membrane in lieu of PVC Membrane	$34,033.95
2.	COVID Control and Contact Tracking Measures if Required	$22,741.17
3.	Add for Redundant Pumps for HVAC, not required by Code	$21,073.93
4.	Additional Parking Lots Alterations	$122,850.50
5.	Exterior Teaching Area	$116,354.70
6.	Chiller Enclosure, Masonry upgrade in lieu of fence	$31,121.83
7.	Casework Features in Dining Area	$55,574.70
8.	Open/not used	$0.00
9.	Open/not used	$0.00
10.	Emergency Genie Connection (pending details)	$0.00
11.	Connection for Portable Chiller (pending details)	$0.00
12.	Elec Hand Dryers, Dyson type	$8,891.95
13.	Unit Price - Remove Unsuitable, replace with Select Fill	$32.69
14.	Unit Price - Remove Unsuitable, replace with #57 stone	$78.44

Allowances (currently reflected in Base Budget, final design requirements in development in coordination with Owner)

1.	Architectural Casework	$300,000.00
2.	Interior & Exterior Signage	$15,000.00
3.	Builder's Risk Insurance	$130,000.00

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MOYOCK ELEMENTARY SCHOOL ADDITIONS & RENOVATIONS
65% BUDGET CLARIFICATIONS & EXCLUSIONS

Exclusions

1. Cost of project land.
2. Existing furniture relocation, transport, removal, or disposal.
3. Fences or gates other than what is delineated on the plans.
4. Floor moisture mitigation, if not specifically required by manufacturer for warranty of install.
5. New furniture, fixtures, and equipment and the design of same. Includes display boards, marker boards, smart boards, window blinds, appliances, benches, lockers, audio/video equipment, projection screens, projectors and mounts.
6. Building Permit fees has been waived by the County Building Official.
7. Upgrades to existing whole systems inside the main building facility unless specifically called out in the project documents; i.e. HVAC systems, fire alarm system, main electrical service, and electronic security system.
8. Alterations or renovations to other areas of the existing main building facility that are not directly impacted by the project additions; i.e. deteriorated structural columns in basement, roof replacement, etc.

SCHEDULE OF VALUES

Project Name:	Moyock Elementary School	**Estimate Date:**	10/28/21
Project No.:	2021-082	**Revision #**	65% for GMP
Area (SF):	29,826	**Estimator:**	Dave Mangus
Acreage:	2.82	**Total Construction Cost:**	$11,977,037.69
Cost Per SF:	$401.56		

ITEM DESCRIPTION	AMOUNT	SF COST
DIVISION 1 - GENERAL REQUIREMENTS	$ 583,315.36	$ 19.56
DIVISION 2 - EXISTING CONDITIONS	$ 106,500.00	$ 3.57
DIVISION 3 - CONCRETE	$ 319,755.00	$ 10.72
DIVISION 4 - MASONRY	$ 1,193,350.00	$ 40.01
DIVISION 5 - METALS	$ 964,000.00	$ 32.32
DIVISION 6 - WOODS, PLASTICS & COMPOSITES	$ 331,224.30	$ 11.11
DIVISION 7 - THERMAL AND MOISTURE PROTECTION	$ 462,925.00	$ 15.52
DIVISION 8 - OPENINGS	$ 759,251.00	$ 25.46
DIVISION 9 - FINISHES	$ 578,849.52	$ 19.41
DIVISION 10 - SPECIALTIES	$ 97,125.00	$ 3.26
DIVISION 11 - EQUIPMENT	$ -	$ -
DIVISION 12 - FURNISHINGS	$ -	$ -
DIVISION 13 - SPECIAL CONSTRUCTION	$ -	$ -
DIVISION 14 - CONVEYING EQUIPMENT	$ 121,820.00	$ 4.08
DIVISION 21 - FIRE SUPPRESSION	$ 117,568.00	$ 3.94
DIVISION 22 - PLUMBING	$ 395,908.00	$ 13.27
DIVISION 23 - HVAC	$ 2,203,362.00	$ 73.87
DIVISION 25 - INTEGRATED OPERATION	$ -	$ -
DIVISION 26 - ELECTRICAL	$ 1,398,050.00	$ 46.87
DIVISION 27 - COMMUNICATIONS	$ -	$ -
DIVISION 28 - ELECTRONIC SAFETY & SECURITY	$ -	$ -
DIVISION 31 - EARTHWORK	$ 702,000.00	$ 23.54
DIVISION 32 - EXTERIOR IMPROVEMENTS	$ 79,740.00	$ 2.67
DIVISION 33 - UTILITIES	$ -	$ -
Sub-Total of Construction Costs	$ 10,414,743.18	$ 349.18
GC Overhead & Profit	$ 833,179.45	$ 27.93
Procurement & Contracting	$ 240,240.06	$ 8.05
TOTAL COST OF CONSTRUCTION without Bond	$ 11,977,037.69	$ 401.56
TOTAL COST OF CONSTRUCTION with Bond	**$ 12,091,253.99**	$ 405.39

** The above total includes a project contingency in the amount of:* *$ 488,875.00*

CONSTRUCTION COST ESTIMATE

Project Name: Moyock Elementary School
Project No.: 2021-082
Area (SF): 29,826
Acreage: 2.82
Cost Per SF: $401.56
Const. Type: 3-Non Combustible

Estimate Date: 10/28/21
Revision # 65% for GMP
Estimator: Dave Mangus
Total Construction Cost: $ 11,977,037.69
Total Bonded Cost: $ 12,091,253.99

ITEM	DESCRIPTION	QTY	UNIT		UNIT COST	BASE BID	SF COST	SUB/VEND
DIVISION 1 - GENERAL REQUIREMENTS								
1.	Field Supervision Expenses	1	LS	@ $	330,710.00	$ 330,710.00	$ 11.09	Sussex
2.	Temporary Facilities & Controls	1	LS	@ $	72,250.00	$ 72,250.00	$ 2.42	Sussex
3.	Site Access, Protection & Upkeep	1	LS	@ $	140,946.66	$ 140,946.66	$ 4.73	Sussex
4	Administrative & Close Out Services	1	LS	@ $	39,408.70	$ 39,408.70	$ 1.32	Sussex
DIVISION 2 - EXISTING CONDITIONS								
1.	Engineering Layout - Building	1	LS	@ $	6,000.00	$ 6,000.00	$ 0.20	
2.	Haul Off	1	LS	@ $	5,000.00	$ 5,000.00	$ 0.17	
3.	Open	0	LS	@ $	-	$ -	$ -	
4	Demolition	1	LS	@ $	80,000.00	$ 80,000.00	$ 2.68	
5.	Temporary Walk way Enclosure	200	SF	@ $	50.00	$ 10,000.00	$ 0.34	
6.	Temp. Walkway Matting (2) 50 ft rolls	1	LS	@ $	5,500.00	$ 5,500.00	$ 0.18	
7.	Alt #4 Add'l Park Lot alterations, demo	0		@ $	-	$ -	$ -	
8.	Open	0		@ $	-	$ -	$ -	
9.	Carpenter Labor	0	HR	@ $	55.00	$ -	$ -	
10.	Temporary Labor	0	HR	@ $	17.64	$ -	$ -	
DIVISION 3 - CONCRETE								
1.	Open	0		@ $	-	$ -	$ -	
2.	Open	0		@ $	-	$ -	$ -	
3.	Concrete Rebar	1	LS	@ $	310,900.00	$ 310,900.00	$ 10.42	
4	Concrete Wash Out	0	LS	@ $	-	$ -	$ -	
5.	Footings & Slabs	0	LS	@ $	-	$ -	$ -	
6.	Haul Off	1	LS	@ $	5,000.00	$ 5,000.00	$ 0.17	
7	Foundations	0	LS	@ $	-	$ -	$ -	
8.	Mechanical Housekeeping Pads	1	LS	@ $	3,855.00	$ 3,855.00	$ 0.13	
9	Carpenter Labor	0	HR	@ $	55.00	$ -	$ -	
10.	Temporary Labor	0	HR	@ $	17.64	$ -	$ -	
DIVISION 4 - MASONRY								
1.	Masonry	1	LS	@ $	1,162,225.00	$ 1,162,225.00	$ 38.97	
2.	Masonry Rebar	0	LS	@ $	-	$ -	$ -	
3.	Masonry Wash Out	0	LS	@ $	-	$ -	$ -	
4	Firecaulking at Top of CMU Walls	1275	LF	@ $	15.00	$ 19,125.00	$ 0.64	
5.	Stone Window Stools	300	LF	@ $	40.00	$ 12,000.00	$ 0.40	
6.	Alternate: Chiller Enclosure - masonry	1	LS	@ $	-	$ -	$ -	
7.	Open	0		@ $	-	$ -	$ -	
8.	Open	0		@ $	-	$ -	$ -	
9	Carpenter Labor	0	HR	@ $	55.00	$ -	$ -	
10.	Temporary Labor	0	HR	@ $	17.64	$ -	$ -	
DIVISION 5 - METALS								
1.	Micellaneous Steel	0	LS	@ $	-	$ -	$ -	
2.	Structural Steel	1	LS	@ $	950,000.00	$ 950,000.00	$ 31.85	
3.	Int.Railings (Glass & s/s option deleted)	0	LS	@ $	-	$ -	$ -	
4.	Lintels at Ductwork Penetration	70	EA	@ $	200.00	$ 14,000.00	$ 0.47	
5.	Open	0		@ $	-	$ -	$ -	
6.	Open	0		@ $	-	$ -	$ -	

CONSTRUCTION COST ESTIMATE

Project Name: Moyock Elementary School
Project No.: 2021-082
Area (SF): 29,826
Acreage: 2.82
Cost Per SF: $401.56
Const. Type: 3-Non Combustible

Estimate Date: 10/28/21
Revision # 65% for GMP
Estimator: Dave Mangus
Total Construction Cost: $ 11,977,037.69
Total Bonded Cost: $ 12,091,253.99

ITEM	DESCRIPTION	QTY	UNIT		UNIT COST	BASE BID	SF COST	SUB/VEND
7.	Open	0		@ $	-	$ -	$ -	
8.	Pit Ladder install, labor & misc fasteners	1	LS	@ $	-	$ -	$ -	
9.	Carpenter Labor	0	HR	@ $	55.00	$ -	$ -	
10.	Temporary Labor	0	HR	@ $	17.64	$ -	$ -	

CONSTRUCTION COST ESTIMATE

Project Name:	Moyock Elementary School	**Estimate Date:**	10/28/21
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Cost Per SF:	$401.56	**Total Bonded Cost:**	$ 12,091,253.99
Const. Type:	3-Non Combustible		

ITEM	DESCRIPTION	QTY	UNIT		UNIT COST	BASE BID	SF COST	SUB/VEND
DIVISION 6 - WOODS, PLASTICS & COMPOSITES								
1.	Materials - Blocking / Rough Carpentry	1	LS	@ $	31,224.30	$ 31,224.30	$ 1.05	
2.	Open	0		@ $	-	$ -	$ -	
3.	Architectural Casework	1	LS	@ $	300,000.00	$ 300,000.00	$ 10.06	
4.	Alt #7 Casework Features in Dining Rm	1		@ $	-	$ -	$ -	
5.	Open	0		@ $	-	$ -	$ -	
6.	Open	0		@ $	-	$ -	$ -	
7	Open	0		@ $	-	$ -	$ -	
8.	Open	0		@ $	-	$ -	$ -	
9	Carpenter Labor	0	HR	@ $	55.00	$ -	$ -	
10	Temporary Labor	0	HR	@ $	17.64	$ -	$ -	
DIVISION 7 - THERMAL AND MOISTURE PROTECTION								
1.	Damproofing	0		@ $	-	$ -	$ -	
2.	Self-Adhered Sheet Waterproofing	0		@ $	-	$ -	$ -	
3.	Metal Soffit Panels at Entry's	20	SF	@ $	100.00	$ 2,000.00	$ 0.07	
4	Roofing, TPO as basis of budget	1	LS	@ $	365,000.00	$ 365,000.00	$ 12.24	
5.	Caulking / Joint Protection	1	LS	@ $	5,000.00	$ 5,000.00	$ 0.17	
6.	Spray insulation (exterior cavity wall)	20000	SF	@ $	4.00	$ 80,000.00	$ 2.68	
7	Modified Bituminous Sheet Air Barrier	675	SF	@ $	6.00	$ 4,050.00	$ 0.14	
8.	Decorative Cornice Mouldings	0	LF	@ $	-	$ -	$ -	
9.	Fluid-Applied Permeable Air Barrier	1375	SF	@ $	5.00	$ 6,875.00	$ 0.23	
10.	Temporary Labor	0	HR	@ $	17.64	$ -	$ -	
DIVISION 8 - OPENINGS								
1.	Material - Doors, Frames & Hardware	1	LS	@ $	195,000.00	$ 195,000.00	$ 6.54	
2.	Glass & Storefront; Sunshades	1	LS	@ $	386,151.00	$ 386,151.00	$ 12.95	
3.	Auto-Doors	1	LS	@ $	-	$ -	$ -	
4	Exterior wall Louvers	260	SF	@ $	100.00	$ 26,000.00	$ 0.87	
5.	Open	0	LS	@ $	-	$ -	$ -	
6.	Walkway Protective Cover - Column Supported	1175	SF	@ $	50.00	$ 58,750.00	$ 1.97	
7.	Install HM Doorframes	37	EA	@ $	150.00	$ 5,550.00	$ 0.19	
8.	Wall-Hung Protective Covers	464	SF	@ $	75.00	$ 34,800.00	$ 1.17	
9.	Carpenter Labor	1	LS	@ $	17,000.00	$ 17,000.00	$ 0.57	
10.	Overhead Doors - Manual	1	LS	@ $	36,000.00	$ 36,000.00	$ 1.21	
DIVISION 9 - FINISHES								
1.	Metal Studs & Drywall	1	LS	@ $	145,062.00	$ 145,062.00	$ 4.86	
2.	Ceilings	17600	SF	@ $	4.00	$ 70,400.00	$ 2.36	
3.	Floor Covering	1	LS	@ $	254,709.52	$ 254,709.52	$ 8.54	
4.	Paint & Wall Covering	29826	SF	@ $	3.00	$ 89,478.00	$ 3.00	
5.	Acoustical Ceiling Panels	960	SF	@ $	20.00	$ 19,200.00	$ 0.64	
6.	Open	0		@ $	-	$ -	$ -	
7	Open	0		@ $	-	$ -	$ -	
8.	Open	0		@ $	-	$ -	$ -	
9.	Carpenter Labor	0	HR	@ $	55.00	$ -	$ -	
10.	Temporary Labor	0	HR	@ $	17.64	$ -	$ -	

CONSTRUCTION COST ESTIMATE

Project Name: Moyock Elementary School
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Area (SF): 29,826
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Estimate Date: 10/28/21
Revision # 65% for GMP
Estimator: Dave Mangus
Total Construction Cost: $ 11,977,037.69
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ITEM	DESCRIPTION	QTY	UNIT		UNIT COST		BASE BID		SF COST	SUB/VEND
DIVISION 10 - SPECIALTIES										
1.	Signage - Code Required	1	LS	@ $	15,000.00	$	15,000.00	$	0.50	
2.	Kalwall Protective Covering (A-202)	600	SF	@ $	-	$	-	$	-	
3.	Toilet Partitions	18	EA	@ $	2,000.00	$	36,000.00	$	1.21	
4.	Exterior 13" high Letter	1	LS	@ $	6,600.00	$	6,600.00	$	0.22	
5.	Material - Toilet Accessories, w/exception	1	LS	@ $	10,575.00	$	10,575.00	$	0.35	
6.	Fire Extinguishers / Cabinets	8	EA	@ $	450.00	$	3,600.00	$	0.12	
7	Paper towel, TP, soap dispensers OFCI	0		@ $	-	$	-	$	-	
8.	Expansion Joint Covers (079500)	250	LF	@ $	75.00	$	18,750.00	$	0.63	
9	Carpenter Labor	120	HR	@ $	55.00	$	6,600.00	$	0.22	
10.	Temporary Labor	0	HR	@ $	17.64	$	-	$	-	
DIVISION 11 - EQUIPMENT										
1.	Open	0		@ $	-	$	-	$	-	
2.	Open	0		@ $	-	$	-	$	-	
3.	Open	0		@ $	-	$	-	$	-	
4.	Open	0		@ $	-	$	-	$	-	
5.	Open	0		@ $	-	$	-	$	-	
6.	Open	0		@ $	-	$	-	$	-	
7.	Open	0		@ $	-	$	-	$	-	
8.	Open	0		@ $	-	$	-	$	-	
9.	Carpenter Labor	0	HR	@ $	55.00	$	-	$	-	
10.	Temporary Labor	0	HR	@ $	17.64	$	-	$	-	
DIVISION 12 - FURNISHINGS										
1.	Open	0		@ $	-	$	-	$	-	
2.	Open	0		@ $	-	$	-	$	-	
3.	Open	0		@ $	-	$	-	$	-	
4.	Open	0		@ $	-	$	-	$	-	
5.	Open	0		@ $	-	$	-	$	-	
6.	Open	0		@ $	-	$	-	$	-	
7.	Open	0		@ $	-	$	-	$	-	
8.	Open	0		@ $	-	$	-	$	-	
9.	Carpenter Labor	0	HR	@ $	55.00	$	-	$	-	
10.	Temporary Labor	0	HR	@ $	17.64	$	-	$	-	
DIVISION 13 - SPECIAL CONSTRUCTION										
1.	Open	0		@ $	-	$	-	$	-	
2.	Open	0		@ $	-	$	-	$	-	
3.	Open	0		@ $	-	$	-	$	-	
4	Open	0		@ $	-	$	-	$	-	
5.	Open	0		@ $	-	$	-	$	-	
6.	Open	0		@ $	-	$	-	$	-	
7.	Open	0		@ $	-	$	-	$	-	
8.	Open	0		@ $	-	$	-	$	-	
9.	Carpenter Labor	0	HR	@ $	55.00	$	-	$	-	
10.	Temporary Labor	0	HR	@ $	17.64	$	-	$	-	

CONSTRUCTION COST ESTIMATE

Project Name: Moyock Elementary School
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Area (SF): 29,826
Acreage: 2.82
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Estimate Date: 10/28/21
Revision # 65% for GMP
Estimator: Dave Mangus
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ITEM	DESCRIPTION	QTY	UNIT		UNIT COST	BASE BID	SF COST	SUB/VEND
DIVISION 14 - CONVEYING EQUIPMENT								
1.	Elevator	1	LS	@ $	104,625.00	$ 104,625.00	$ 3.51	
2.	Crane/Lift to unload equipment	1	LS	@ $	2,500.00	$ 2,500.00	$ 0.08	
3.	Miscellaneous Costs for Elevator	1	LS	@ $	1,520.00	$ 1,520.00	$ 0.05	
4	Waterproof Pit	1	LS	@ $	2,500.00	$ 2,500.00	$ 0.08	
5.	ADD for S.S. Ceiling with LED Lights	1	LS	@ $	3,275.00	$ 3,275.00	$ 0.11	
6.	Elevator Operator	40	HR	@ $	185.00	$ 7,400.00	$ 0.25	
7.	Open	0		@ $	-	$ -	$ -	
8.	Open	0		@ $	-	$ -	$ -	
9	Carpenter Labor	0	HR	@ $	55.00	$ -	$ -	
10.	Temporary Labor	0	HR	@ $	17.64	$ -	$ -	
DIVISION 21 - FIRE SUPPRESSION								
1.	Fire Suppression	1	LS	@ $	108,968.00	$ 108,968.00	$ 3.65	
2.	Fire Suppression Design	0	LS	@ $	-	$ -	$ -	
3.	5'-to-1' Connection	1	LS	@ $	8,600.00	$ 8,600.00	$ 0.29	
4	Open	0		@ $	-	$ -	$ -	
5.	Open	0		@ $	-	$ -	$ -	
6.	Open	0		@ $	-	$ -	$ -	
7.	Open	0		@ $	-	$ -	$ -	
8.	Open	0		@ $	-	$ -	$ -	
9.	Carpenter Labor	0	HR	@ $	55.00	$ -	$ -	
10.	Temporary Labor	0	HR	@ $	17.64	$ -	$ -	
DIVISION 22 - PLUMBING								
1.	Plumbing	1	LS	@ $	395,908.00	$ 395,908.00	$ 13.27	
2.	Open	0		@ $	-	$ -	$ -	
3.	Open	0		@ $	-	$ -	$ -	
4.	Open	0		@ $	-	$ -	$ -	
5.	Open	0		@ $	-	$ -	$ -	
6.	Open	0		@ $	-	$ -	$ -	
7	Open	0		@ $	-	$ -	$ -	
8.	Open	0		@ $	-	$ -	$ -	
9.	Carpenter Labor	0	HR	@ $	55.00	$ -	$ -	
10.	Temporary Labor	0	HR	@ $	17.64	$ -	$ -	
DIVISION 23 - HVAC								
1.	HVAC	1	LS	@ $	2,178,362.00	$ 2,178,362.00	$ 73.04	
2.	Open	0		@ $	-	$ -	$ -	
3.	Testing & Air Balance	1	LS	@ $	25,000.00	$ 25,000.00	$ 0.84	
4	ADD for Redundant Pumps	1	LS	@ $	-	$ -	$ -	
5.	Open	0		@ $	-	$ -	$ -	
6.	Open	0		@ $	-	$ -	$ -	
7	Open	0		@ $	-	$ -	$ -	
8.	Alt #11 - Connection for Portable Chiller	0		@ $	-	$ -	$ -	
9.	Carpenter Labor	0	HR	@ $	55.00	$ -	$ -	
10.	Temporary Labor	0	HR	@ $	17.64	$ -	$ -	

CONSTRUCTION COST ESTIMATE

Project Name: Moyock Elementary School
Project No.: 2021-082
Area (SF): 29,826
Acreage: 2.82
Cost Per SF: $401.56
Const. Type: 3-Non Combustible

Estimate Date: 10/28/21
Revision # 65% for GMP
Estimator: Dave Mangus
Total Construction Cost: $ 11,977,037.69
Total Bonded Cost: $ 12,091,253.99

ITEM	DESCRIPTION	QTY	UNIT		UNIT COST		BASE BID		SF COST	SUB/VEND
DIVISION 25 - INTEGRATED OPERATION										
1.	Open	0		@ $	-	$	-	$	-	
2.	Open	0		@ $	-	$	-	$	-	
3.	Open	0		@ $	-	$	-	$	-	
4	Open	0		@ $	-	$	-	$	-	
5.	Open	0		@ $	-	$	-	$	-	
6.	Open	0		@ $	-	$	-	$	-	
7.	Open	0		@ $	-	$	-	$	-	
8.	Open	0		@ $	-	$	-	$	-	
9.	Carpenter Labor	0	HR	@ $	55.00	$	-	$	-	
10.	Temporary Labor	0	HR	@ $	17.64	$	-	$	-	
DIVISION 26 - ELECTRICAL										
1.	Open	0		@ $	-	$	-	$	-	
2.	Electric	1	LS	@ $	1,389,260.00	$	1,389,260.00	$	46.58	
3.	Elevator 2-Way	1	LS	@ $	8,790.00	$	8,790.00	$	0.29	
4.	Temporary Electric	0	LS	@ $	-	$	-	$	-	
5.	BDA System	1	LS	@ $	-	$	-	$	-	
6.	Alt #12 Power for Hand Dryers	0		@ $	-	$	-	$	-	
7.	Site lighting, poles, bases	0		@ $	-	$	-	$	-	
8.	Alt #11 - Emerg Genie Connection	0		@ $	-	$	-	$	-	
9	Carpenter Labor	0	HR	@ $	55.00	$	-	$	-	
10.	Temporary Labor	0	HR	@ $	17.64	$	-	$	-	
DIVISION 27 - COMMUNICATIONS										
1.	Telecom Pathways	0		@ $	-	$	-	$	-	
2.	Telecom Parts & Smarts	0		@ $	-	$	-	$	-	
3.	Open	0		@ $	-	$	-	$	-	
4.	Open	0		@ $	-	$	-	$	-	
5.	Open	0		@ $	-	$	-	$	-	
6.	Open	0		@ $	-	$	-	$	-	
7	Open	0		@ $	-	$	-	$	-	
8.	Open	0		@ $	-	$	-	$	-	
9.	Carpenter Labor	0	HR	@ $	55.00	$	-	$	-	
10.	Temporary Labor	0	HR	@ $	17.64	$	-	$	-	
DIVISION 28 - ELECTRONIC SAFETY & SECURITY										
1.	Fire Alarm	0		@ $	-	$	-	$	-	
2.	Open	0		@ $	-	$	-	$	-	
3.	Open	0		@ $	-	$	-	$	-	
4.	Open	0		@ $	-	$	-	$	-	
5.	Open	0		@ $	-	$	-	$	-	
6.	Open	0		@ $	-	$	-	$	-	
7.	Open	0		@ $	-	$	-	$	-	
8.	Open	0		@ $	-	$	-	$	-	
9.	Carpenter Labor	0	HR	@ $	55.00	$	-	$	-	
10.	Temporary Labor	0	HR	@ $	17.64	$	-	$	-	

CONSTRUCTION COST ESTIMATE

Project Name:	Moyock Elementary School	**Estimate Date:**	10/28/21
Project No.:	2021-082	**Revision #**	65% for GMP
Area (SF):	29,826	**Estimator:**	Dave Mangus
Acreage:	2.82	**Total Construction Cost:**	$ 11,977,037.69
Cost Per SF:	$401.56	**Total Bonded Cost:**	$ 12,091,253.99
Const. Type:	3-Non Combustible		

ITEM	DESCRIPTION	QTY	UNIT		UNIT COST		BASE BID		SF COST	SUB/VEND
DIVISION 31 - EARTHWORK										
1.	Site Clearing	1	LS	@ $	700,000.00	$	700,000.00	$	23.47	
2.	Soil Treatment	1	LS	@ $	2,000.00	$	2,000.00	$	0.07	
3.	Porous fill (Sand)	0		@ $	-	$	-	$	-	
4.	Replace Pavement at West Side	1	LS	@ $	-	$	-	$	-	
5.	Pebble Walk	162	SF	@ $	-	$	-	$	-	
6.	Open	0		@ $	-	$	-	$	-	
7.	Unit Pricing: Excavate unsuitable, replace with off-site Select Fill (CY)	0		@ $	-	$	-	$	-	
8.	Unit Pricing: Excavate unsuitable, replace with #57 stone (CY)	0		@ $	-	$	-	$	-	
9	Carpenter Labor	0	HR	@ $	55.00	$	-	$	-	
10.	Temporary Labor	0	HR	@ $	17.64	$	-	$	-	
DIVISION 32 - EXTERIOR IMPROVEMENTS										
1.	Paving	0		@ $	-	$	-	$	-	
2.	Curbs, Gutters, Sidewalks, Driveway	0		@ $	-	$	-	$	-	
3.	Provide Temporary Parking	1	LS	@ $	25,000.00	$	25,000.00	$	0.84	
4.	Permanent seeding	1	LS	@ $	10,000.00	$	10,000.00	$	0.34	
5.	Landscaping	1	LS	@ $	40,000.00	$	40,000.00	$	1.34	
6.	Relocate flagpole	1	LS	@ $	-	$	-	$	-	
7	Painted Play area on asphalt paving	1	LS	@ $	2,500.00	$	2,500.00	$	0.08	
8.	Synthetic Turf	322	SF	@ $	-	$	-	$	-	
9.	Chiller Enclosure, 8' chain link	70	LF	@ $	32.00	$	2,240.00	$	0.08	
10.	Outdoor Picnic Table units	3	EA	@ $	-	$	-	$	-	
DIVISION 33 - UTILITIES										
1.	Water Distribution	0		@ $	-	$	-	$	-	
2.	Storm Drainage	0		@ $	-	$	-	$	-	
3.	Open	0		@ $	-	$	-	$	-	
4.	Open	0		@ $	-	$	-	$	-	
5.	Open	0		@ $	-	$	-	$	-	
6.	Open	0		@ $	-	$	-	$	-	
7.	Open	0		@ $	-	$	-	$	-	
8.	Open	0		@ $	-	$	-	$	-	
9	Carpenter Labor	0	HR	@ $	55.00	$	-	$	-	
10.	Temporary Labor	0	HR	@ $	17.64	$	-	$	-	

CONSTRUCTION COST ESTIMATE

Project Name:	Moyock Elementary School	**Estimate Date:**	10/28/21
Project No.:	2021-082	**Revision #**	65% for GMP
Area (SF):	29,826	**Estimator:**	Dave Mangus
Acreage:	2.82	**Total Construction Cost:**	$ 11,977,037.69
Cost Per SF:	$401.56	**Total Bonded Cost:**	$ 12,091,253.99
Const. Type:	3-Non Combustible		

ITEM	DESCRIPTION	QTY	UNIT		UNIT COST	BASE BID	SF COST	SUB/VEND
PROCUREMENT & CONTRACTING								
1.	Architectural Design *	0	LS	@ $	-	$ -	$ -	
2.	Structural Design *	0		@ $	-	$ -	$ -	
3.	Site / Civil Design *	0		@ $	-	$ -	$ -	
4.	Special Inspections	0	LS	@ $	-	$ -	$ -	
5.	Testing & Inspection Services	0	LS	@ $	-	$ -	$ -	
6.	Environmental Assessments	0		@ $	-	$ -	$ -	
7.	HazMat Assessments	0		@ $	-	$ -	$ -	
8.	Geotechnical Assessments	0		@ $	-	$ -	$ -	
9.	Bid Solicitation Expenses	0		@ $	-	$ -	$ -	
10.	Preconstruction Meeting Expenses	0		@ $	-	$ -	$ -	
11.	Erosion & Sediment Control Bond	1	LS	@ $	1,500.00	$ 1,500.00	$ 0.05	
12.	Storm Water Management Bond	1	LS	@ $	5,000.00	$ 5,000.00	$ 0.17	
13.	Water & Sewer Fees	0		@ $	-	$ -	$ -	
14	Utility Fees	0		@ $	-	$ -	$ -	
15.	Right of Way Fees (Permit/Bond)	1	LS	@ $	2,400.00	$ 2,400.00	$ 0.08	
16.	Other	0		@ $	-	$ -	$ -	
17.	Building Permit - By Owner	0	LS	@ $	-	$ -	$ -	
18.	Other Permit Related Expenses	1	LS	@ $	2,400.00	$ 2,400.00	$ 0.08	
19.	General Liability Insurance	1	LS	@ $	78,110.57	$ 78,110.57	$ 2.62	
20.	Builders Risk Insurance	1	LS	@ $	130,000.00	$ 130,000.00	$ 4.36	
21.	Business License	1	LS	@ $	20,829 49	$ 20,829 49	$ 0.70	
22.	Project Manager	0		@ $	-	$ -	$ -	
23.	Project Engineer	0		@ $	-	$ -	$ -	
24.	SWPPP Maintenance	0		@ $	-	$ -	$ -	
25.	Other	0		@ $	-	$ -	$ -	
	Sub-Total of Construction Costs					$ 10,414,743.18	$ 349.18	
	GC Overhead & Profit					$ 833,179.45	$ 27.93	
	Procurement & Contracting					$ 240,240.06	$ 8.05	
	Owner's Project Reserves	1	LS	@ $	488,875.00	$ 488,875.00	$ 16.39	
TOTAL COST OF CONSTRUCTION						$ 11,977,037.69	$ 401.56	
	Payment & Performance Bond					$ 114,216.30	$ 3.83	
TOTAL BONDED COST OF CONSTRUCTION						$ 12,091,253.99	$ 405.39	

GENERAL CONDITIONS

Project Name: Moyock Elementary School
Project No.: 2021-082
Area (SF): 29,826

Estimate Date: 10/28/21
Revision # 65% for GMP
Estimator: Dave Mangus

ITEM	DESCRIPTION	CODE	CAT	QTY	UNIT		UNIT COST		BASE BID		SF COST	SUB/VEND
DIVISION 1 - GENERAL REQUIREMENTS												
FIELD SUPERVISION EXPENSES												
1.	Superintendent	01.01	E	82	WK	@ $	2,800.00	$	229,600.00	$	7 70	
2.	Superintendent Overtime Rate	01.01	E	0	WK	@ $	2,800.00	$	-	$	-	
3.	Superintendent Vehicle	01.01	E	82	WK	@ $	250.00	$	20,500.00	$	0.69	
4	Field Technologies	01.01	E	82	WK	@ $	105.00	$	8,610.00	$	0.29	
5.	Field Travel Expenses	01.21	E	0	LS	@ $	-	$	-	$	-	
6.	Project Engineer	01.02	E	40	WK	@ $	1,800.00	$	72,000.00	$	2.41	
7	Carpenter	01.22	E	0	WK	@ $	-	$	-	$	-	
8.	Laborer	01.02	E	0	WK	@ $	-	$	-	$	-	
9	Other	01.01	E	0	WK	@ $	-	$	-	$	-	
10.	Other	01.01	E	0	WK	@ $	-	$	-	$	-	
TEMPORARY FACILITIES & CONTROLS												
1.	Drinking Water	01.01	E	0	WK	@ $	-	$	-	$	-	
2.	Temporary Electric	01.03	E	0	MO	@ $	-	$	-	$	-	
3.	Temporary HVAC	01.03	E	1	LS	@ $	15,000.00	$	15,000.00	$	0.50	
4.	Temporary Lighting	01.03	E	0	MO	@ $	-	$	-	$	-	
5.	Temporary Natural Gas	01.03	E	0	MO	@ $	-	$	-	$	-	
6.	Temporary Toilet	01.03	E	19	MO	@ $	750.00	$	14,250.00	$	0.48	
7	Temporary Water	01.03	E	0	LS	@ $	-	$	-	$	-	
8.	Field Office / Job Trailer	01.04	E	17	MO	@ $	800.00	$	13,600.00	$	0.46	
9.	Field Office Telephone / Fax	01.04	E	17	MO	@ $	200.00	$	3,400.00	$	0.11	
10.	Temporary Storage Containers	01.04	E	1	LS	@ $	2,000.00	$	2,000.00	$	0.07	
11.	Project Signage	01.05	E	1	LS	@ $	8,000.00	$	8,000.00	$	0.27	
12.	Temporary Barricades	01.06	E	1	LS	@ $	5,000.00	$	5,000.00	$	0.17	
13.	Temporary Dust Barriers	01.06	E	20	LF	@ $	65.00	$	1,300.00	$	0.04	
14	Temporary Fences	01.06	E	800	LF	@ $	9.00	$	7,200.00	$	0.24	
15.	Temporary Security	01.06	E	0	MO	@ $	-	$	-	$	-	
16.	Sticky Mats (3/box)	01.13	E	0	EA	@ $	55.00	$	-	$	-	
17	Mobilization Expenses	01.06	E	1	LS	@ $	2,500.00	$	2,500.00	$	0.08	
18.	Other		E	0	EA	@ $	-	$	-	$	-	
19.	Other		E	0	EA	@ $	-	$	-	$	-	
20.	Other		E	0	EA	@ $	-	$	-	$	-	
SITE ACCESS, PROTECTION & UPKEEP												
1.	Construction Elevators & Hoist	01.07	E	1	LS	@ $	3,000.00	$	3,000.00	$	0.10	
2.	Rental Equipment	01.07	E	1	LS	@ $	6,500.00	$	6,500.00	$	0.22	
3.	Scaffolding & Platforms	01.07	E	0	MO	@ $	-	$	-	$	-	
4.	Daily Support	01.08	E	40	WK	@ $	1,010.00	$	40,400.00	$	1.35	
5.	Dumpster Rental / Disposal	01.09	E	58	EA	@ $	450.00	$	26,100.00	$	0.88	
6.	SDC Dump Truck	01.09	E	0	DY	@ $	250.00	$	-	$	-	
7	SDC Loader	01.09	E	30	DY	@ $	250.00	$	7,500.00	$	0.25	
8.	Negative Air Flow / Air Filtration	01.10	E	0	LS	@ $	-	$	-	$	-	
9.	OSHA Railings - Roof	01.11	E	540	LF	@ $	10.00	$	5,400.00	$	0.18	
10.	Silica Protection	01.11	E	0	LS	@ $	-	$	-	$	-	
11.	Site Safety	01.11	O	1	LS	@ $	25,856.66	$	25,856.66	$	0.87	
12.	Small Tools & Supplies	01.12	E	19	MO	@ $	250.00	$	4,750.00	$	0.16	
13.	Protection of Existing or New Constructio	01.13	E	0	SF	@ $	-	$	-	$	-	
14.	Winter Protection	01.13	E	0	LS	@ $	-	$	-	$	-	
15.	COVID Measures	01.22	E	0	LS	@ $	-	$	-	$	-	
16.	Temporary closure of windows/doors		E	5360	SF	@ $	4.00	$	21,440.00	$	0.72	
17	Other		E	0	LS	@ $	-	$	-	$	-	
18.	Other		E	0	EA	@ $	-	$	-	$	-	

GENERAL CONDITIONS

Project Name: Moyock Elementary School
Project No.: 2021-082
Area (SF): 29,826

Estimate Date: 10/28/21
Revision # 65% for GMP
Estimator: Dave Mangus

ITEM	DESCRIPTION	CODE	CAT	QTY	UNIT		UNIT COST		BASE BID		SF COST	SUB/VEND
ADMINISTRATIVE & CLOSE OUT SERVICES												
1.	Client Systems Training	01.14	E	0	LS	@ $	-	$	-	$	-	
2.	OA Contract Admin Services	01.14	E	0	LS	@ $	-	$	-	$	-	
3.	OA Online Software Fees	01.14	S	0	LS	@ $	-	$	-	$	-	
4.	Postage, Submittal Delivery	01.15	E	0	LS	@ $	-	$	-	$	-	
5.	Drawings, As-Builts, Close Out	01.15	E	1	LS	@ $	6,000.00	$	6,000.00	$	0.20	
6.	Site As-Built Survey	01.15	E	1	LS	@ $	2,500.00	$	2,500.00	$	0.08	
7	Final Cleaning	01.16	E	29826	SF	@ $	0.55	$	16,404.30	$	0.55	
8.	Commissioning Services	01.17	E	0	LS	@ $	-	$	-	$	-	
9.	Professional Photos	01.20	E	0	LS	@ $	-	$	-	$	-	
10.	Office Technologies	01.01	E	82	WK	@ $	105.00	$	8,610.00	$	0.29	
11.	Clean Windows/Glass		E	4912	SF	@ $	1.20	$	5,894.40	$	0.20	
GENERAL CONDITIONS SUB TOTALS:												
	Field Supervision Expenses							$	330,710.00	$	11.09	
	Temporary Facilities & Controls							$	72,250.00	$	2.42	
	Site Access, Protection & Upkeep							$	140,946.66	$	4.73	
	Administrative & Close Out Services							$	39,408.70	$	1.32	
GENERAL CONDITIONS GRAND TOTAL:								$	583,315.36	$	19.56	

DRAFT AIA® Document A141™ – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the « » day of « » in the year «2021 » (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

« Moyock Elementary School Addition and Renovation »
« 255 Shingle Landing Road, Moyock, North Carolina 27958 »

THE OWNER:
(Name, legal status and address)

«County of Currituck
County Manager's Office »« »
«153 Courthouse Road, Suite 204, Currituck, North Carolina 27929 »

THE DESIGN-BUILDER:
(Name, legal status and address)

«Sussex Development Corporation »« »
«109 S. Lynnhaven Road, Suite 200, Virginia Beach, Virginia 23452 »

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

A.1 CONTRACT SUM

A.2 CONTRACT TIME

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

A.5 COST OF THE WORK

TABLE OF EXHIBITS

1A 65% PROGRESS BUDGET FOR GUARANTEED MAXIMUM PRICE

2A PROJECT MANUAL, MOYOCK ELEMENTARY ADDITIONS AND RENOVATIONS 65% DESIGN DATED SEPTEMBER 21, 2021

3A 65% CONSTRUCTION DRAWINGS DATED SEPTEMBER 21, 2021

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:
(Check the appropriate box.)

[« »] Stipulated Sum, in accordance with Section A.1.2 below

[« »] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

[« X »] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be « » ($ « »), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

« »

§ A.1.2.3 Unit prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit ($0.00)

§ A.1.3 Cost of the Work Plus Design-Builder's Fee

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

« »

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

« 8 % »

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed «Fourteen Million Two Hundred Fifty-Nine Thousand Eight Hundred Dollars and No Cents » ($ «14,259,800.00 »), subject to additions and deductions for changes in the Work as provided in the Design-Build

Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.
(Insert specific provisions if the Design-Builder is to participate in any savings.)

« »

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price
Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.
(Provide information below or reference an attachment.)

« See Exhibit 1A (Attached) »

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

« »

§ A.1.4.3.4 Unit Prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit ($0.00)

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

«See Exhibit 1A (Attached) »

§ A.1.5 Payments
§ A.1.5.1 Progress Payments
§ A.1.5.1.1 Prior to the submission of any Application for Payment, the Design-Builder shall submit for approval a schedule to values with respective quantities. The schedule of values shall allocate the contract amount among the various portions of the Design-Builder's work and be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the « 1st » day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the «25th » day of the « Same » month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than « thirty » («30 ») days after the Owner receives the Application for Payment. With respect to all materials, equipment, or supplies for which the Design-Builder has made a request for payment:

1. all such materials, equipment or supplies shall be deemed owned by the Owner and shall be clearly marked as belonging to the Owner; and
2. the Design-Builder shall be responsible for all security and shall promptly reimburse the Owner for all loss, damage and theft.

(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment. In addition to the other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with state law:

1. A current sworn statement from the Design-Builder setting forth all contractors, subcontractors, and material suppliers with whom the Design-Builder has contracted or subcontracted, the amount of each contract or subcontract, the amount requested for any contractor, subcontractor, or material supplier in the Application for Payment, and the amount to be paid by the Design-Builder from such progress payment to contractors, subcontractors, and material suppliers, together with a current duly executed waiver of mechanics' and material suppliers' liens from the Design-Builder establishing receipt of payment for satisfaction of the payments requested by the Design-Builder in the currently Application for Payment. In its sole discretion, the Owner shall be entitled to pay directly any or all of the Design-Builder's contractors, subcontractors, and material suppliers and charge those payments against the Contract Sum. In the event the amounts remaining due under the Design-Build Contract to Design-Builder then Owner shall be entitled to collect from Design-Builder those amounts.
2. Commencing with the second Application for Payment submitted by a Contractor, duly executed so-called "after-the-fact" waivers of mechanics' and material suppliers' liens from all contractors, subcontractors, material suppliers, and when appropriate, lower-tier subcontractors, acknowledging receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Design-Builder of the current Application for Payment, plus sworn statements from all contractors, subcontractors, material suppliers, and where appropriate, lower-tier subcontractors, covering all amounts described in this Section 5.1.4.
3. Such other information, documentation, and materials as the Owner, the Architect, Owner's lender, or the title insurer may require.
4. If at any time there shall be evidence of a lien or claim of lien which, if established, the Owner might become liable, and that is for Work within the scope of this Design-Build Contract or if the Design-Builder shall incur any liability to the Owner, or the Owner shall have any claim or demand against the Design-Builder of any kind or for any reason, whether reduced to judgment or award, the Owner shall have the right to retain out of any payment due, or to become due under this Agreement or any other agreement between the Owner and the Design-Builder, an amount sufficient to indemnify the Owner against any lien or claim, or to fully satisfy such liability, claim, or demand. The Owner shall also be entitled to charge against or deduct from any such payment all costs of defense or collection with respect thereto, including reasonable attorneys' fees and expenses. Should any claim or lien develop after all payments are made hereunder, the Design-Builder shall refund to the Owner within ten (10) days of demand therefor all monies that the Owner shall be compelled to pay in discharging or satisfying such claims or liens and all costs, including reasonable attorneys' fees incurred in collecting said monies from the Design-Builder. Owner shall have the right in its sole judgment to satisfy or file a bond to discharge a claim of lien or other claim and to deduct all amounts paid to satisfy or discharge a claim of lien or other claim plus Owner's attorneys' fees and expenses from any amounts remaining due under the Design-Build Contract to Design-Builder or to collect from Design-Builder those amounts to the extent those amounts exceed the amount remaining in the Contract Sum.
5. No progress payments made under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no such payment shall be construed to be acceptance of defective work or improper materials.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown

separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of « » percent (« » %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of « » percent (« » %);

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)

.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

§ A.1.5.2.4.1 If after the Project is deemed fifty percent (50%) complete based upon the Design-Builder's gross project invoices, excluding the value of materials stored off-site, except that the value of the materials stored on-site shall not exceed twenty percent (20%) of the Design-Builder's gross project invoices for the purpose of determining the percent completion of the Project, and the Design-Builder provides Owner the following:

1. Written verification evidencing fifty percent (50%) completion of the Project; and,
2. Written consent of the surety named in the Project Performance and payment bonds agreeing that the Owner shall not retain any further retainage from periodic payments due to the Design-Builder.

The Owner shall cease holding retainage from future periodic payments if the Owner finds that the Design-Builder is performing satisfactorily, and any nonconforming work identified in writing by the Owner (prior to the point of 50% project completion) has been corrected by the Design-Builder and accepted by the Owner. If, however, the Owner determines the Design-Builder's performance is unsatisfactory, the Owner may reinstate the specified retainage for each subsequent periodic payment. Notwithstanding anything to the contrary, Owner may assess retainage after 50% project completion, even if the Design-Builder has complied with Section A1.5.2.4.1.1 and A.1.5.2.4.1.2 (above) and continues to perform satisfactorily as necessary to retain two and one-half percentage (2.5%) total retainage through the completion of the Project.

§ A.1.5.2.4.2 If by or before the Project is deemed 50% complete and one hundred percent (100%) performance has been completed for the following "early" finishing trades; (1) structural steel; (2) piling; (3) caisson; or (4) demolition; and after receipt by the Owner of an approval or certificate from the Architect and Design-Builder that such early finishing work is acceptable and in accordance with the Design-Build Documents, and after Design-Builder provides the Owner the following:

1. The early finishing trade subcontractor's written request for such payment; and,
2. Written consent of the surety named in the project performance and payment bonds agreeing that the Owner shall make such early finishing trade payment;

The Owner shall make full payment to the Design-Builder for said 100% completion early finishing trade work less retainage of five-tenths percent (0.5%)(of the early finishing trade contract) upon the later occurrence of (1) sixty (60) days receipt of said early finishing trade subcontracto's written request, or (2) immediately upon receipt of said written consent of the surety.

§ A.1.5.2.4.3 Within sixty (60) days of receipt by Owner of (1) a pay request, and (2) written consent of the surety, and after Owner has either (1) received a certificate of substantial completion, or (2) received a beneficial occupancy or use of the Project (if applicable), the Owner shall pay an amount sufficient to increase total payment to the Design-Builder to the Contract Sum, less such amounts as the Owner shall determine in accordance with the Final Payment provisions of A.1.5.5 including up to two hundred fifty percent (250%) of the Owner's estimate of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

« »

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take the Cost of the Work as described in Article A.5 of this Amendment;

.2 Add the Design-Builder's Fee, less retainage of « » percent (« » %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract retainage of « » percent (« » %) from that portion of the Work that the Design-Builder self-performs;

.4 Subtract the aggregate of previous payments made by the Owner;

.5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on

agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Design-Builder's Fee~~. , less retainage of « » percent (« » %).~~ The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of «Five » percent («5 » %) ~~from that portion of the Work that the Design-Builder self-performs~~ in accordance with N.C.G.S. 143-134.1;

.5 Subtract the aggregate of previous payments made by the Owner;

.6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment. Final Payment is further subject to the Owner's prior receipt from the Design-Builder of all as-build drawings, certifications, maintenance manuals, operating instructions, written guarantees, warranties, and bonds related to the Work, and assignments of all guarantees and warranties from contractors, subcontractors, vendors, suppliers, or manufacturers, all as required by the Design-Build Documents.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final

Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than « » (« ») days from the date of this Amendment, or as follows: Not later than the date set forth in Section 1.1.7 of the Agreement.
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« »

Portion of Work	Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents. . The Design-Builder shall pay the Owner as liquidated damages, and not as penalty, the sum of FIVE HUNDRED AND NO/100 DOLLARS ($500.00) for each calendar day of delay after the date established for Substantial Completion until the Work is substantially complete.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

« »

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.3.1.2 The Specifications:
(Either list the specifications here or refer to an exhibit attached to this Amendment.)

«Exhibit 2A (Attached) »

Section	Title	Date	Pages

§ A.3.1.3 The Drawings:
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

«Exhibit 3A (Attached) »

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles

and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

« »

§ A.3.1.5 Allowances and Contingencies:
(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

«See Exhibit 1A (Attached) »

.2 Contingencies

«See Exhibit 1A (Attached) »

§ A.3.1.6 Design-Builder's assumptions and clarifications:

«See Exhibit 1A (Attached) »

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

« »

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

« »

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:
(Identify name, title and contact information.)

.1 Superintendent

«Jeff Ocker, Project Superintendent
109 South Lynnhaven Road, Suite 200
Virginia Beach, VA 23452
Office: (757) 422-2400
Cell: (757) 636-4404
Email: jocker@sussexdevelopment.com»

.2 Project Manager

«Jim Vachon, Senior Project Manager
109 South Lynnhaven Road, Suite 200
Virginia Beach, VA 23452
Office: (757) 422-2400
Cell: (757) 636-0548
Email: jvachon@sussexdevelopment.com »

.3 Others

«Danielle Hangen, Senior Project Engineer
109 South Lynnhaven Road, Suite 200
Virginia Beach, VA 23452
Office: (757) 422-2400
Cell: (757) 636-4421
Email: dhangen@sussexdevelopment.com »

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

«Angela Crawford Easterday, Architect
Boomerang Design, P.A.
6131 Falls of Neuse Road, Suite 204
Raleigh, NC 27609
Office: (919) 573-6403
Cell: (919) 280-5009
Email: ACrawford@thinkboomerang.com

Kim Hamby P.E., Senior Project Manager
Timmons Group
1805 West City Drive, Unit E
Elizabeth City, NC 27909
Office (252) 621-5029
Cell: (252) 340-3264
Email: kim.hamby@timmons.com

Gerald Stalls, Jr., P.E. Senior Geotechnical Engineer
GET Solutions, Inc., A Terracon Company
106 Capital Trace, Unit E
Elizabeth City, North Carolina 27909
Office: (252) 335-9765
Cell: (252) 207-1387
Email: gstalls@getsolutionsinc.com »

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.
(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate ($0.00)	Rate (unit of time)

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the

transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;

.2 Expenses of the Design-Builder's principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Section A.5.1;

.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;

.5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Section A.5.1; and

.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall

preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER *(Signature)*	**DESIGN-BUILDER** *(Signature)*
«Donald I. McRee, Jr. »«Interim County Manager/County Attorney »	«Harry L. Davis, III »«President »
(Printed name and title)	*(Printed name and title)*
ATTEST:	**ATTEST:**

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

_____
Sandra Hill
Finance Officer

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3294)

Agenda Item Title: Discussion Regarding Albemarle Regional Health Services Vaccination Requirements for Employees and Impact to Currituck County.

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Discussion

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3295)

Agenda Item Title: Consideration of National Opioid Settlement Agreement and Authorize Interim County Manager/County Attorney to Execute Settlement Agreements.

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

National Opioid Settlement

Executive Summary [Subject to ongoing corrections and updates]

Nationwide settlements have been reached to resolve all Opioids litigation brought by states and local political subdivisions against the three largest pharmaceutical distributors: McKesson, Cardinal Health and AmerisourceBergen ("Distributors"), and manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson (collectively, "J&J"). These settlements will provide substantial funds to states and subdivisions for abatement of the Opioids epidemic across the country and will impose transformative changes in the way the settling defendants conduct their business.

If the proposed settlements are fully adopted by states and subdivisions nationwide:

- The Distributors will pay a maximum of $21 billion over 18 years, while J&J will pay a maximum of $5 billion over no more than nine years, with approximately $22.8 billion in settlement proceeds payable to state and local subdivisions.[1]. Of the funds going directly to participating states and subdivisions, at least 85% must be used for abatement of the Opioid Epidemic, with the overwhelming bulk of the proceeds restricted to funding future abatement efforts by state and local governments.
- The Distributors will make an initial deposit of funds into escrow by the end of September 2021, with additional deposits by J&J and the Distributors in early Summer of 2022.
- Funds can begin to flow to states and local governments as early as April 2022, depending on when a settling State meets certain requirements. The J&J agreement also offers opportunities for significant acceleration of payments if states and subdivisions meet specified participation levels.
- The settlements will allow for a broad range of approved abatement uses by state and local governments. Developed in consultation with the nation's leading public health experts, the list of pre-approved uses includes a wide range of intervention, treatment, education, and recovery services so that state and local governments can decide what will best serve their communities. It is anticipated that entire communities will benefit from the effects of the opioid-remediation efforts funded by the settlements and the injunctive relief the settlements provide.
- In addition to billions of dollars for abatement, the agreements also provide for injunctive relief that requires important changes to the Distributors' and J&J's conduct to better protect our nation's health and welfare. This reform package includes the creation of a groundbreaking clearinghouse through which the Distributors will be required to account not only for their own shipments, but also the shipments of the other distributors, in order to detect, stop, and report suspicious Opioids orders. In addition, J&J (which ceased marketing Opioids in 2015 and ceased selling Opioids in 2020)

will not market or sell any Opioid products in the next ten years and has agreed to cease lobbying concerning prescription opioids for ten years. J&J also has agreed to make the clinical trial data for its discontinued Opioids available for medical research.

- Less than 10% of the settlement proceeds will be earmarked to compensate private lawyers who have been prosecuting Opioids cases on behalf of state and local governments for several years and have incurred substantial out of pocket costs. Compensation will occur through an application procedure overseen by court-appointed arbiters. An additional sum is provided to settling States that did not hire outside counsel, to use towards furthering the abatement goal and to defray their investigation and litigation costs.

These are not class action "opt out" settlements. Instead, these settlements require that a critical mass of both state and local governments "opt in" over the next six months. The extent of this participation will determine whether the settlement agreements take effect. The Distributors and J&J on the one hand, and the states and subdivisions on the other, each have options to walk away if they are not satisfied with levels of participation. Participation levels also affect how much money settling parties will receive because about half of the abatement funds are in the form of "incentive payments" and certain other settlement provisions also provide incentives for higher levels of participation. Put simply, the greater the level of participation, the more funds will ultimately be paid out for abatement.

The Tribes, the Distributors, and J&J are also working toward resolution of Tribal Opioids claims through mediations under the auspices of the MDL court.

The agreements with the Distributors and J&J are the culmination of almost three years of intense negotiations among representatives of the State Attorneys General, the court-appointed Plaintiffs' Executive Committee and Negotiation Committee comprised of lawyers in the National Prescription Opiate MDL who represent subdivisions, and counsel to the Distributors and J&J, facilitated by Judge Dan Polster (who oversees the federal MDL litigation) and by the Special Masters appointed by the MDL Court.

The agreements, if adopted, will not settle or release any claims brought by private parties, including private individuals, private hospitals, or private third-party payers.

[1] West Virginia previously settled with the Distributors in an unrelated settlement. A portion of the Distributors' settlement funds ($491 million) is treated as a credit toward potential settlements with West Virginia subdivisions and with Tribes. For J&J's agreement, a portion of the settlement funds ($270 million) is treated as a credit for Oklahoma (which obtained a trial verdict against J&J), the Tribes, and other litigation cost for non-participating entities.

National Opioid Settlement

Frequently Asked Questions about the National Opioid Settlement [Subject to ongoing corrections and updates]

1. Which Entities Are Eligible to Participate?

These settlements are open only to states and subdivisions. Claims brought on behalf of private individuals and businesses (including private hospitals and private third-party payers) are not included (and will not be released).

All states may participate in the J&J settlement and all states except West Virginia may participate in the Distributors settlement.[1] Washington DC and the five U.S. Territories[2] are treated as states in the settlements. Within a settling State, nonlitigating and litigating political subdivisions may participate, including all county, municipal, and township governments and any other subdivision that has filed a lawsuit that falls within the release provisions of the agreements. A limited number of "Special Districts," such as school districts, fire districts, and hospital districts, may be eligible to participate (with certain limitations).[3] Subdivisions and Special Districts in non-settling states cannot participate in the settlements.[4] Subdivisions and Special Districts that separately resolved their claims with the Distributors or J&J prior to the Reference Date (explained below) also cannot participate.

Each settling State, subdivision, or Special District must provide a release to participate. (The settlements also incentivize states to obtain legislative or judicial bars on subdivisions and Special Districts suing on claims otherwise encompassed in the settlement. Even if a settling State has obtained a bar, however, a subdivision must provide a release of its own to participate and be eligible for designated subdivision settlement funds.)

2. What Funds Will Be Available for Abatement?

About $23.5 billion of the maximum $26 billion would be available to be paid out in settlement proceeds for abatement, if there is full participation in the settlement. About $760 million of that is set aside as a credit towards potential settlements with the Tribes and certain subdivisions, leaving a "net abatement" settlement fund of about $22.8 billion. Each of the Distributors and J&J will make annual payments consisting of base and incentive payments (described below).[5] Approximately half of settlement funds are earmarked for base payments. The remaining funds are earmarked for incentive payments

determined on a state-by-state basis depending on whether certain participation benchmarks are met. [6]

3. How Will Settlement Proceeds Be Used?

At least 70% of the funds are to be used to fund future opioid-remediation efforts. The agreement includes a broad and non-exhaustive list of qualifying opioid remediation expenditures.[7]

4. What Is the Process to Opt In and What Are the Deadlines to Do So?

There are three phases before either settlement becomes effective. And there are opportunities to walk away if there is not enough "critical mass" to make settlement worth continuing. The settlements are designed to incentivize higher participation rates.

Phase 1, State Participation: Each state will have 30 days to decide whether to participate in the settlements. The Distributors and J&J then each have up to 14 days to decide whether, in their view, there are enough states to proceed to the next phase of the respective settlements.

Phase 2, Subdivision Participation: In phase 2, the subdivisions in each settling State will have 120 days to decide whether to participate in the settlements (the "Initial Participation Date"). The Distributors and J&J each then have 30 days to again decide whether there is enough "critical mass" to proceed with the respective settlements (the "Reference Date").[8]

Phase 3, Consent Judgments and Effective Date: The Effective Date for the settlements is 60 days after the Reference Date. During that time, each settling State will seek entry of a consent judgment to implement releases and injunctive relief. No settlement funds will be disbursed to a settling State unless a consent judgment has been entered.

Later Participation: States may join the settlements after the Initial Participation Date only with the consent of the Distributors/J&J. Subdivisions of Settling states may sign on and participate after the Initial Participation Date ("Later Participating Subdivisions"), but may receive lower total payments than those that join earlier. If a state joins after the 30-day state cutoff, the subdivisions in that state will be given 90 days from the date the state joins.

5. How Will Settlement Funds Be Allocated Within a State?

Settlement proceeds will be allocated in accordance with the terms of any qualifying agreement between a State and its subdivisions, or by a qualifying statute or statutory trust. In the absence of a qualifying agreement between a State and its subdivisions, a qualifying statute or statutory trust, settlement proceeds will be allocated in accordance with default allocation terms set out in the

settlement agreement. Under these default terms, settlement proceeds will be allocated among three subfunds for each settling State: a State Fund, an Abatement Accounts Fund, and a Subdivision Fund.[9] There are several important points to observe with respect to three subfunds:

- The settlement agreements provide default allocations among the subfunds (15% to the State Fund, 70% to the Abatement Accounts Fund, and 15% to the Subdivision Fund). As noted above, these defaults can be changed state-by-state through a qualifying agreement between a state and its subdivisions, or by a qualifying statute or statutory trust.[10]
- Under the default, at least 50% of the annual spend from the Abatement Accounts Fund must be allocated at a regional level for Settling States above a certain population. Each settling State will have an Advisory Committee—with equal representation from the state and local levels—to recommend how to spend the Abatement Accounts Fund.[11]
- Certain large participating subdivisions also will be eligible to receive block grants from the Abatement Accounts Fund.
- A settling State also is free to direct all or a portion of its State Fund to its Abatement Accounts Fund. A settling subdivision also may choose to direct all or a portion of its Subdivision Fund to the State's Abatement Accounts Fund or to another settling subdivision.

6. How Much Will a Settling State Receive in Base Payments?

Approximately $12.1 billion in abatement funds would be available for base payments to settling States. These base payments do not require a settling State to meet any specific participation benchmarks or conditions. Base payments will be paid out annually for distribution to each settling State according to its share of the abatement funds using the top-level state allocation model discussed below. Each state's base payment is then allocated into the three sub-funds or according to a state-subdivision agreement, as explained above.

7. How Much Can a State Receive in Incentive Payments?

Approximately $10.6 billion in abatement funds would be earmarked for "Incentive Payments" designed to reward states for increasing participation in the settlements by their subdivisions and/or taking steps to bar or otherwise resolve current and future subdivision litigation. States can qualify for a combination of four different Incentive Payments (A-D) to maximize payments. While the Incentive Payments under the Distributors' agreement and J&J's agreement are similar, there are differences in how they operate and when they accrue.

8. How Will Payments Be Calculated? How Will Payments Be Allocated Among the Settling States and Subdivisions?

If the proposed settlements become effective, each of the Distributors and J&J would make annual payments consisting of base and incentive payments (described above). Calculation of the amounts distributed to each settling State (including the state and its settling subdivisions) starts with a top level allocation among all states of the maximum potential payment. How much of that maximum amount each state will receive in any given year is then based on (a) which Incentive Payment categories that state qualifies for that year; and (b) whether amounts otherwise payable are suspended due to litigation by non-settling subdivisions within a settling State and whether any offsets are taken against amounts otherwise payable, based on judgments in favor of non-settling subdivisions. Once the annual payment for a state is calculated, the further allocation of that state's payment among that state's Abatement, State, and Subdivision Funds proceeds as outlined above.

9. How Will the State-Level Allocations Be Made?

For purposes of the top level maximum potential allocation discussed above, an Overall Allocation Percentage has been calculated for each state. The Overall Allocation Percentage is a blend (85%/15%) of sub-percentages calculated at both the state and subdivision levels.

The sub-percentages for each State are based on population adjusted for the proportionate share of the impact of the Opioid epidemic using reliable, detailed, and objective national data, including: (1) the amount of opioids shipped to the state; (2) the number of opioid-related deaths that occurred in the state; and (3) the number of people who suffer opioid use disorder in the state. Similarly, the sub-percentages for each subdivision were calculated based on each subdivision's proportionate share of the nationwide impact of the Opioid epidemic using that same data: (1) the amount of opioids shipped to the state; (2) the number of opioid-related deaths that occurred in the state; and (3) the number of people who suffer opioid use disorder in the state. Adjustments were made to reflect the severity of impact because the oversupply of opioids had more deleterious effects in some locales than in others. Ultimately, the model allocates settlement funds in proportion to where the opioid crisis has caused harm.

10. How Do "Tiers" Affect Payments?

There would be four possible Tiers applicable to the agreements; the more states and subdivisions that participate, the higher the Tier. The Tiers impact the extent to which payments can be suspended or offset due to litigation.

Under the Distributors' agreement, and subject to certain exceptions, the Tiers would determine (a) the circumstances and periods under which litigation by Later Litigating Subdivisions will trigger a suspension of a portion of a state's annual payment, (b) the per capita rate used to calculate the suspension amounts, (c) the annual per state cap on suspension amounts, and (d) the annual per state cap on offsets for certain monetary judgments in favor of non-settling subdivisions.

Under J&J's agreement, the Tiers would affect the circumstances under which litigation by non-settling subdivisions will trigger a suspension of a portion of a state's base and incentive payments.

11. Can Settlement Payments Be Suspended? Can a Defendant Take an Offset Against a Settlement Payment?

Yes, if the settlements become effective, portions of a settling State's payments could be held in suspension and/or offset under specified circumstances concerning litigation by its subdivisions.

A central goal of the proposed settlements is to shift the focus from litigation to getting Opioid abatement funds to states and subdivisions. With that goal in mind, portions of the payments to each state may be subject to "suspension" (i.e., placed in escrow) in the event certain subdivisions bring or expand litigation against the Distributors or J&J after the Reference Date, if the litigation continues past specified suspension deadlines. The suspension deadlines are determined by the applicable participation Tier (the higher the Tier, the less onerous the suspension deadline). Dollar-for-dollar "offsets" also may be taken if certain subdivisions obtain judgments that require payments by the Distributors or J&J.

- Will There Be a Grace Period During Which Payments Will Not Be Subject to Suspension?

Yes. Under the Distributors' agreement, suspensions will not be applicable to any settling State's annual payments during the first two payment years and, in payment years 3-18, suspensions are not applicable to the annual payment of any state that is eligible for Incentive Payment A (see above) in that year. Other exceptions would apply, including claims for less than $10 million and (when Tier 1 applies) claims by subdivisions of fewer than 10,000 people.

Under J&J's agreement, the suspension will not affect base payments in years 1-7. The suspension would affect only Incentive Payments A-D in any year and base payments in the last two payment years.

12. Will the Settlements Require Any Change to How the Defendants Operate Their Businesses?

In addition to billions of dollars to be used for abatement of the effects of the Opioid epidemic in communities across the nation, the proposed settlements would provide robust injunctive relief that will require the Distributors and J&J to make significant changes in the way they conduct their business in order to address the Opioid epidemic on the supply side as well. Among other changes, the Distributors must follow substantially increased and improved measures to identify suspicious orders and pharmacy customers, under the oversight of an independent third-party monitor. The Distributors each would be required to begin using a clearinghouse that accounts not only for their own opioid shipments, but the shipments of the other distributors. This enables, for the first time, a truer picture of

overall opioids distribution and requires drug distributors to alter their shipments based on the shipments by others.

As for J&J, which no longer markets or sells Opioids, the company and its subsidiaries (including Janssen) would agree not to reintroduce any Opioids for a 10-year period. This prohibition would extend to the manufacture, sale, promotion, and distribution of any opioid products as well as any lobbying relating to prescription opioids. J&J also would agree to make the clinical trial data for its discontinued opioid products available for medical research via the Yale University Open Data Access Project.

13. How Will Attorneys' Fees and Costs Be Addressed?

The overarching goal of this global settlement is to dedicate funds to abate opioid-related harms. If private lawyers, who represent some of the states and thousands of subdivisions, were to enforce their contingency fee contracts, a significant portion of the global settlement payments would go towards legal fees to compensate efforts to prosecute the lawsuits that are being resolved as to the Distributors and J&J. As a result, the government entities that hired counsel to litigate against the Distributors and J&J would net less proportional recovery than entities that did not litigate. To guard against this imbalance and maximize the amounts available for abatement, the negotiating State Attorneys General, the PEC's Negotiation Team, and the settling defendants have proposed to agree that these defendants will pay, and the parties will set aside, separate funds totaling a maximum of $1.95 billion to pay private counsel attorneys' fees.

These funds would include $350 million for outside counsel representing participating states and about $1.6 billion for outside counsel representing participating subdivisions. The $350 million state fund would be allocated by agreement between the states and their outside counsel.

14. How will more information on the settlements be made available?

Settlement documents, information, and updates will be posted on a public settlement website, https://nationalopioidsettlement.com/. The website will provide current information on an ongoing basis as the settlement implementation progresses. Some States have also set up their own websites to provide State-specific information.

[1] West Virginia previously settled with the Distributors in an unrelated settlement. A portion of the Distributors' settlement funds is treated as a credit toward potential settlements with West Virginia subdivisions and with Tribes. For J&J's agreement, a portion of the settlement funds is treated as a credit for Oklahoma, non-settling government entities and the Tribes. Settlement payments by the Distributors and J&J are calculated as net after those credits.

[2] American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands.

[3] Special Districts are treated as subdivisions under the Distributor agreement. The J&J agreement defines Special Districts separately from subdivisions, but still allows them to participate in the settlement by signing release forms.

[4] There is one exception in the J&J settlement agreement: subdivisions of the State of Oklahoma, whose litigated claims against J&J are the subject of an appeal pending in the Oklahoma Supreme Court, are eligible to participate in the J&J settlement whether or not the State elects to participate.

[5] J&J's base and incentive payments are front-loaded, with about 80% coming in the first three years and the rest over the next six years. The Distributors' payments are spread over 18 years.

[6] In the Distributors' agreement, 55% of the payments are earmarked as base payments. In the J&J agreement, 45% of the payments are earmarked as base payments.

[7] If settlement proceeds are used for something other than Opioid Remediation, the amounts and uses (including any use to pay attorneys' fees and costs) must be publicly reported.

[8] Additionally, under the Distributors Agreement only, each settling state will have 15 days from the Initial Participation Date to decide whether to proceed with the settlement.

[9] Non-litigating municipalities with a population under 10,000 and special districts get no direct allocation from the Subdivision Fund, unless an intrastate agreement provides otherwise.

[10] Allocation agreements/statutes have already been reached or enacted in several states.

[11] Spending from the Abatement Allocation Account Fund will be tracked and reported annually.

DISTRIBUTORS' 10.22.21
EXHIBIT UPDATES

DISTRIBUTOR SETTLEMENT AGREEMENT

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DISTRIBUTOR SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of July 21, 2021 (the "*Agreement*"), sets forth the terms of settlement between and among the Settling States, the Settling Distributors, and the Participating Subdivisions (as those terms are defined below). Upon satisfaction of the conditions set forth in Section II and Section VIII, this Agreement will be binding on all Settling States, Settling Distributors, and Participating Subdivisions. This Agreement will then be filed as part of Consent Judgments in the respective courts of each of the Settling States, pursuant to the terms set forth in Section VIII.

I. Definitions

For all sections of this Agreement except Exhibit E and Exhibit P, the following definitions apply:

A. "*Abatement Accounts Fund.*" The component of the Settlement Fund described in Section V.E.

B. "*Additional Restitution Amount.*" The amount available to Settling States listed on Exhibit N totaling $282,692,307.70.

C. "*Agreement.*" This agreement, as set forth above. For the avoidance of doubt, this Agreement is inclusive of all exhibits.

D. "*Alleged Harms.*" The alleged past, present, and future financial, societal, and public nuisance harms and related expenditures arising out of the alleged misuse and abuse of Products, non-exclusive examples of which are described in the documents listed on Exhibit A, that have allegedly arisen as a result of the physical and bodily injuries sustained by individuals suffering from opioid-related addiction, abuse, death, and other related diseases and disorders, and that have allegedly been caused by the Settling Distributors.

E. "*Allocation Statute.*" A state law that governs allocation, distribution, and/or use of some or all of the Settlement Fund amounts allocated to that State and/or its Subdivisions. In addition to modifying the allocation set forth in Section V.D.2, an Allocation Statute may, without limitation, contain a Statutory Trust, further restrict expenditures of funds, form an advisory committee, establish oversight and reporting requirements, or address other default provisions and other matters related to the funds. An Allocation Statute is not required to address all three (3) types of funds comprising the Settlement Fund or all default provisions.

F. "*Annual Payment.*" The total amount payable to the Settlement Fund Administrator by the Settling Distributors on the Payment Date each year, as calculated by the Settlement Fund Administrator pursuant to Section IV.B.1.e. For the avoidance of doubt, this term does not include the Additional Restitution Amount or amounts paid pursuant to Section X.

G. "*Appropriate Official.*" As defined in Section XIV.F.3.

H. "*Bankruptcy Code.*" Title 11 of the United States Code, 11 U.S.C. § 101, et seq.

I. "*Bar*." Either: (1) a law barring Subdivisions in a State from maintaining Released Claims against Released Entities (either through a direct bar or through a grant of authority to release claims and the exercise of such authority in full) or (2) a ruling by the highest court of the State (or, in a State with a single intermediate court of appeals, the intermediate court of appeals when not subject to further review by the highest court of the State) setting forth the general principle that Subdivisions in the State may not maintain any Released Claims against Released Entities, whether on the ground of this Agreement (or the release in it) or otherwise. For the avoidance of doubt, a law or ruling that is conditioned or predicated upon payment by a Released Entity (apart from the Annual Payments by Settling Distributors under this Agreement) shall not constitute a Bar.

J. "*Case-Specific Resolution*." Either: (1) a law barring the Subdivision at issue from maintaining any Released Claims against any Released Entities (either through a direct bar or through a grant of authority to release claims and the exercise of such authority in full); or (2) a ruling by a court of competent jurisdiction over the Subdivision at issue that the Subdivision may not maintain any Released Claims at issue against any Released Entities, whether on the ground of this Agreement (or the release in it) or otherwise. For the avoidance of doubt, a law or ruling that is conditioned or predicated upon payment by a Released Entity (apart from the Annual Payments by Settling Distributors under this Agreement) shall not constitute a Case-Specific Resolution.

K. "*Claim*." Any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, *parens patriae* claim, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state or local common law, statute, regulation, guidance, ordinance or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including, but not limited to, any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, abatement, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

L. "*Claim-Over*." A Claim asserted by a Non-Released Entity against a Released Entity on the basis of contribution, indemnity, or other claim-over on any theory relating to a Non-Party Covered Conduct Claim asserted by a Releasor.

M. "*Compensatory Restitution Amount*." The aggregate amount paid or incurred by the Settling Distributors hereunder other than amounts paid as attorneys' fees and costs or identified pursuant to Section V.B.2 as being used to pay attorneys' fees, investigation costs or litigation costs.

N. "*Consent Judgment.*" A state-specific consent judgment in a form to be agreed by the Settling States and the Settling Distributors prior to the Initial Participation Date that, among other things, (1) approves this Agreement and (2) provides for the release set forth in Section XI.A, including the dismissal with prejudice of any Released Claims that the Settling State has brought against Released Entities.

O. "*Covered Conduct.*" Any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the Reference Date (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) relating in any way to (1) the discovery, development, manufacture, packaging, repackaging, marketing, promotion, advertising, labeling, recall, withdrawal, distribution, delivery, monitoring, reporting, supply, sale, prescribing, dispensing, physical security, warehousing, use or abuse of, or operating procedures relating to, any Product, or any system, plan, policy or advocacy relating to any Product or class of Products, including, but not limited to, any unbranded promotion, marketing, programs, or campaigns relating to any Product or class of Products; (2) the characteristics, properties, risks, or benefits of any Product; (3) the reporting, disclosure, non-reporting or non-disclosure to federal, state or other regulators of orders placed with any Released Entity; or (4) diversion control programs or suspicious order monitoring; *provided, however*, that as to any Claim that a Releasor has brought or could bring, Covered Conduct does not include non-compliance with statutory or administrative supply security standards concerning cleanliness of facilities or stopping counterfeit products, so long as such standards apply to the storage and distribution of both controlled and non-controlled pharmaceuticals.

P. "*Designated State.*" New York.

Q. "*Effective Date.*" The date sixty (60) calendar days after the Reference Date.

R. "*Enforcement Committee.*" A committee consisting of representatives of the Settling States and of the Participating Subdivisions. Exhibit B contains the organizational bylaws of the Enforcement Committee. Notice pursuant to Section XIV.Q shall be provided when there are changes in membership or contact information.

S. "*Final Order.*" An order or judgment of a court of competent jurisdiction with respect to the applicable subject matter (1) which has not been reversed or superseded by a modified or amended order, is not currently stayed, and as to which any right to appeal or seek certiorari, review, reargument, stay, or rehearing has expired, and as to which no appeal or petition for certiorari, review, reargument, stay, or rehearing is pending, or (2) as to which an appeal has been taken or petition for certiorari, review, reargument, stay, or rehearing has been filed and (a) such appeal or petition for certiorari, review, reargument, stay, or rehearing has been resolved by the highest court to which the order or judgment was appealed or from which certiorari, review, reargument, stay, or rehearing was sought, or (b) the time to appeal further or seek certiorari, review, reargument, stay, or rehearing has expired and no such further appeal or petition for certiorari, review, reargument, stay, or rehearing is pending.

T. "*Global Settlement Abatement Amount.*" The abatement amount of $19,045,384,616.

U. "*Global Settlement Amount.*" The Global Settlement Amount is $21 billion, which shall be divided into the Global Settlement Abatement Amount, the Additional Restitution Amount, and the Global Settlement Attorney Fee Amount.

V. "*Global Settlement Attorney Fee Amount.*" The attorney fee amount of $1,671,923,077.

W. "*Incentive Payment A.*" The incentive payment described in Section IV.F.1.

X. "*Incentive Payment B.*" The incentive payment described in Section IV.F.2.

Y. "*Incentive Payment C.*" The incentive payment described in Section IV.F.3.

Z. "*Incentive Payment D.*" The incentive payment described in Section IV.F.4.

AA. "*Incentive Payment Final Eligibility Date.*" With respect to a Settling State, the date that is the earlier of (1) the fifth Payment Date, (2) the date of completion of opening statements in a trial of any action brought by a Subdivision in that State that includes a Released Claim against a Released Entity when such date is more than two (2) years after the Effective Date, or (3) two (2) years after the Effective Date in the event a trial of an action brought by a Subdivision in that State that includes a Released Claim against a Released Entity began after the Initial Participation Date but before two (2) years after the Effective Date.

BB. "*Initial Participating Subdivision.*" A Subdivision that meets the requirements set forth in Section VII.D.

CC. "*Initial Participation Date.*" The date one hundred twenty (120) calendar days after the Preliminary Agreement Date, unless it is extended by written agreement of the Settling Distributors and the Enforcement Committee.

DD. "*Injunctive Relief Terms.*" The terms described in Section III and set forth in Exhibit P.

EE. "*Later Litigating Subdivision.*" A Subdivision (or Subdivision official asserting the right of or for the Subdivision to recover for alleged harms to the Subdivision and/or the people thereof) that: (1) first files a lawsuit bringing a Released Claim against a Released Entity after the Trigger Date; or (2) adds a Released Claim against a Released Entity after the Trigger Date to a lawsuit brought before the Trigger Date that, prior to the Trigger Date, did not include any Released Claims against a Released Entity; or (3) (a) was a Litigating Subdivision whose Released Claims against Released Entities were resolved by a legislative Bar or legislative Case-Specific Resolution as of the Trigger Date, (b) such legislative Bar or legislative Case-Specific Resolution is subject to a Revocation Event after the Trigger Date, and (c) the earlier of the date of completion of opening statements in a trial in an action brought by a Subdivision in that State that includes a Released Claim against a Released Entity or one hundred eighty (180) days from the Revocation Event passes without a Bar or Case-Specific

Resolution being implemented as to that Litigating Subdivision or the Litigating Subdivision's Released Claims being dismissed; or (4) (a) was a Litigating Subdivision whose Released Claims against Released Entities were resolved by a judicial Bar or judicial Case-Specific Resolution as of the Trigger Date, (b) such judicial Bar or judicial Case-Specific Resolution is subject to a Revocation Event after the Trigger Date, and (c) such Litigating Subdivision takes any action in its lawsuit asserting a Released Claim against a Released Entity other than seeking a stay or dismissal.

FF. "*Later Participating Subdivision.*" A Participating Subdivision that is not an Initial Participating Subdivision, but meets the requirements set forth in Section VII.E.

GG. "*Litigating Subdivision.*" A Subdivision (or Subdivision official) that brought any Released Claim against any Released Entity prior to the Trigger Date; *provided, however*, that a Subdivision (or Subdivision official) that is a Prior Litigating Subdivision shall not be considered a Litigating Subdivision. Exhibit C is an agreed list of all Litigating Subdivisions. Exhibit C will be updated (including with any corrections) periodically, and a final version of Exhibit C will be attached hereto as of the Reference Date.

HH. "*National Arbitration Panel.*" The panel comprised as described in Section VI.F.2.b.

II. "*National Disputes.*" As defined in Section VI.F.2.a.

JJ. "*Net Abatement Amount.*" The Global Settlement Abatement Amount as reduced by the Tribal/W. Va. Subdivision Credit.

KK. "*Net Settlement Prepayment Amount.*" As defined in Section IV.J.1.

LL. "*Non-Litigating Subdivision.*" Any Subdivision that is neither a Litigating Subdivision nor a Later Litigating Subdivision.

MM. "*Non-Participating Subdivision.*" Any Subdivision that is not a Participating Subdivision.

NN. "*Non-Party Covered Conduct Claim.*" A Claim against any Non-Released Entity involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity).

OO. "*Non-Party Settlement.*" A settlement by any Releasor that settles any Non-Party Covered Conduct Claim and includes a release of any Non-Released Entity.

PP. "*Non-Released Entity.*" An entity that is not a Released Entity.

QQ. "*Non-Settling State.*" Any State that is not a Settling State.

RR. "*Offset Cap.*" The per-State dollar amount which the dollar-for-dollar offset described in Section XII.A cannot exceed in a Payment Year, to be calculated by multiplying the

amount of the relevant Annual Payment apportioned to the State and to its Subdivisions for that Payment Year by the percentage for the applicable Participation Tier as set forth in Exhibit D.

SS. "*Opioid Remediation.*" Care, treatment, and other programs and expenditures (including reimbursement for past such programs or expenditures[1] except where this Agreement restricts the use of funds solely to future Opioid Remediation) designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of, including on those injured as a result of, the opioid epidemic. Exhibit E provides a non-exhaustive list of expenditures that qualify as being paid for Opioid Remediation. Qualifying expenditures may include reasonable related administrative expenses.

TT. "*Opioid Tax.*" Any tax, assessment, license fee, surcharge or any other fee (other than a fixed prospective excise tax or similar tax or fee that has no restriction on pass-through) imposed by a State on a Settling Distributor on the sale, transfer or distribution of opioid products; *provided, however*, that neither the Excise Tax on sale of Opioids, Article 20-D of New York's Tax Law nor the Opioid Stewardship Act, Article 33, Title 2-A of New York's Public Health Law shall be considered an Opioid Tax for purposes of this Agreement.

UU. "*Overall Allocation Percentage.*" A Settling State's percentage as set forth in Exhibit F. The aggregate Overall Allocation Percentages of all States (including Settling States and Non-Settling States) shall equal one hundred percent (100%).

VV. "*Participating Subdivision.*" Any Subdivision that meets the requirements for becoming a Participating Subdivision under Section VII.B and Section VII.C. Participating Subdivisions include both Initial Participating Subdivisions and Later Participating Subdivisions.

WW. "*Participation Tier.*" The level of participation in this Agreement as determined pursuant to Section VIII.C using the criteria set forth in Exhibit H.

XX. "*Parties.*" The Settling Distributors and the Settling States (each, a "*Party*").

YY. "*Payment Date.*" The date on which the Settling Distributors make the Annual Payment pursuant to Section IV.B.

ZZ. "*Payment Year.*" The calendar year during which the applicable Annual Payment is due pursuant to Section IV.B. Payment Year 1 is 2021, Payment Year 2 is 2022 and so forth. References to payment "*for a Payment Year*" mean the Annual Payment due during that year. References to eligibility "*for a Payment Year*" mean eligibility in connection with the Annual Payment due during that year.

AAA. "*Preliminary Agreement Date.*" The date on which the Settling Distributors are to inform the Settling States of their determination whether the condition in Section II.B has been satisfied. The Preliminary Agreement Date shall be no more than fourteen (14) calendar days after the end of the notice period to States, unless it is extended by written agreement of the Settling Distributors and the Enforcement Committee.

[1] Reimbursement includes amounts paid to any governmental entities for past expenditures or programs.

BBB. "*Prepayment Notice.*" As defined in Section IV.J.1.

CCC. "*Primary Subdivision.*" A Subdivision that is a General Purpose Government (including, but not limited to, a municipality, county, county subdivision, city, town, township, parish, village, borough, gore, or any other entities that provide municipal-type government) with population over 10,000; *provided, however*, that as used in connection with Incentive Payment C, the population threshold is 30,000. Attached as Exhibit I is an agreed list of the Primary Subdivisions in each State.

DDD. "*Prior Litigating Subdivision*" A Subdivision (or Subdivision official) that brought any Released Claim against any Released Entity prior to the Trigger Date and all such Released Claims were separately settled or finally adjudicated prior to the Trigger Date; *provided, however*, that if the final adjudication was pursuant to a Bar, such Subdivision shall not be considered a Prior Litigating Subdivision. Notwithstanding the prior sentence, the Settling Distributors and the Settling State of the relevant Subdivision may agree in writing that the Subdivision shall not be considered a Prior Litigating Subdivision.

EEE. "*Product.*" Any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is: (1) an opioid or opiate, as well as any product containing any such substance; or (2) benzodiazepine, carisoprodol, or gabapentin; or (3) a combination or "cocktail" of chemical substances prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. "Product" shall include, but is not limited to, any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, diazepam, estazolam, quazepam, alprazolam, clonazepam, oxazepam, flurazepam, triozolam, temazepam, midazolam, carisoprodol, gabapentin, or any variant of these substances or any similar substance. Notwithstanding the foregoing, nothing in this section prohibits a Settling State from taking administrative or regulatory action related to benzodiazepine (including, but not limited to, diazepam, estazolam, quazepam, alprazolam, clonazepam, oxazepam, flurazepam, triozolam, temazepam, and midazolam), carisoprodol, or gabapentin that is wholly independent from the use of such drugs in combination with opioids, *provided* such action does not seek money (including abatement and/or remediation) for conduct prior to the Effective Date.

FFF. "*Reference Date.*" The date on which the Settling Distributors are to inform the Settling States of their determination whether the condition in Section VIII has been satisfied. The Reference Date shall be no later than thirty (30) calendar days after the Initial Participation Date, unless it is extended by written agreement of the Settling Distributors and the Enforcement Committee.

GGG. "*Released Claims.*" Any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct occurring prior to the Reference Date. Without limiting the foregoing, Released Claims include any Claims that have been asserted against a Settling Distributor by any Settling State or Litigating Subdivision in any federal, state, or local action or proceeding (whether judicial, arbitral, or administrative) based on, arising out of, or relating to, in whole or in part, the Covered Conduct, or any such Claims

that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by a State, Subdivision, or Releasor (whether or not such State, Subdivision, or Releasor has brought such action or proceeding). Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to this Agreement, whether or not such claims relate to Covered Conduct. The Parties intend that this term, "Released Claims," be interpreted broadly. This Agreement does not release Claims by private individuals. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law. Released Claims is also used herein to describe claims brought by a Later Litigating Subdivision or other non-party Subdivision that would have been Released Claims if they had been brought by a Releasor against a Released Entity.

HHH. "*Released Entities.*" With respect to Released Claims, the Settling Distributors and (1) all past and present subsidiaries, divisions, predecessors, successors, and assigns (in each case, whether direct or indirect) of each Settling Distributor; (2) all past and present subsidiaries and divisions (in each case, whether direct or indirect) of any entity described in subsection (1); (3) the respective past and present officers, directors, members, trustees, and employees of any of the foregoing (each for actions that occurred during and related to their work for, or employment with, any of the Settling Distributors or the foregoing entities); (4) all past and present joint ventures (whether direct or indirect) of each Settling Distributor or its subsidiaries, including in any Settling Distributor or subsidiary's capacity as a participating member in such joint venture; (5) all direct or indirect parents and shareholders of the Settling Distributors (solely in their capacity as parents or shareholders of the applicable Settling Distributor with respect to Covered Conduct); and (6) any insurer of any Settling Distributor or any person or entity otherwise described in subsections (1)-(5) (solely in its role as insurer of such person or entity and subject to the last sentence of Section XI.C). Any person or entity described in subsections (3)-(6) shall be a Released Entity solely in the capacity described in such clause and shall not be a Released Entity with respect to its conduct in any other capacity. For the avoidance of doubt, CVS Health Corp., Walgreens Boots Alliance, Inc., and Walmart Inc. (collectively, the "*Pharmacies*") are not Released Entities, nor are their direct or indirect past or present subsidiaries, divisions, predecessors, successors, assigns, joint ventures, shareholders, officers, directors, members, trustees, or employees (shareholders, officers, directors, members, trustees, and employees for actions related to their work for, employment with, or involvement with the Pharmacies) Released Entities. Notwithstanding the prior sentence, any joint venture or past or present subsidiary of a Settling Distributor is a Released Entity, including any joint venture between a Settling Distributor or any Settling Distributor's subsidiary and a Pharmacy (or any subsidiary of a Pharmacy); *provided*, *however*, that any joint venture partner of a Settling Distributor or a Settling Distributor's subsidiary is not a Released Entity unless it falls within subsections (1)-(6) above. Lists of Settling Distributors' subsidiaries, joint ventures, and predecessor entities are appended to this Agreement as Exhibit J. With respect to joint ventures (including predecessor entities), only entities listed on Exhibit J are Released Entities. With respect to wholly-owned subsidiaries (including predecessor entities), Exhibit J represents a good faith effort by the Settling Distributors to list all such entities, but any and all wholly-owned subsidiaries (including predecessor entities) of any Settling Distributor are Released Entities, whether or not they are listed on Exhibit J. For the avoidance of doubt, any entity acquired, or joint venture entered into, by a Settling Distributor after the Reference Date is not a Released Entity.

III. "*Releasors*." With respect to Released Claims, (1) each Settling State; (2) each Participating Subdivision; and (3) without limitation and to the maximum extent of the power of each Settling State's Attorney General and/or Participating Subdivision to release Claims, (a) the Settling State's and Participating Subdivision's departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in his or her official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, and other Special Districts in a Settling State, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to a Settling State or Subdivision in a Settling State, whether or not any of them participate in this Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Subdivision. Each Settling State's Attorney General represents that he or she has or has obtained (or will obtain no later than the Initial Participation Date) the authority set forth in Section XI.G. In addition to being a Releasor as provided herein, a Participating Subdivision shall also provide the Subdivision Settlement Participation Form referenced in Section VII providing for a release to the fullest extent of the Participating Subdivision's authority.

JJJ. "*Revocation Event*." With respect to a Bar, Settlement Class Resolution, or Case-Specific Resolution, a revocation, rescission, reversal, overruling, or interpretation that in any way limits the effect of such Bar, Settlement Class Resolution, or Case-Specific Resolution on Released Claims, or any other action or event that otherwise deprives the Bar, Settlement Class Resolution, or Case-Specific Resolution of force or effect in any material respect.

KKK. "*Settlement Class Resolution*." A class action resolution in a court of competent jurisdiction in a Settling State (that is not successfully removed to federal court) with respect to a class of Subdivisions in that State that (1) conforms with that Settling State's statutes, case law, and rules of procedure regarding class actions; (2) is approved and entered as an order of a court of competent jurisdiction in that State and such order has become a Final Order; (3) is binding on all Non-Participating Subdivisions in that State (other than opt outs as permitted under the next sentence); (4) provides that all such Non-Participating Subdivisions may not bring any Released Claims against any Released Entities, whether on the ground of this Agreement (or the releases herein) or otherwise; and (5) does not impose any costs or obligations on Settling Distributors other than those provided for in this Agreement, or contain any provision inconsistent with any provision of this Agreement. If applicable state law requires that opt-out rights be afforded to members of the class, a class action resolution otherwise meeting the foregoing requirements shall qualify as a Settlement Class Resolution unless Subdivisions collectively representing more than one percent (1%) of the total population of that State opt out. In seeking certification of any Settlement Class, the applicable State and Participating Subdivisions shall make clear that certification is sought solely for settlement purposes and shall have no applicability beyond approval of the settlement for which certification is sought. Nothing in this Agreement constitutes an admission by any Party that class certification would be appropriate for litigation purposes in any case or for purposes unrelated to this Agreement.

LLL. "*Settlement Fund.*" The interest-bearing fund established pursuant to this Agreement into which the Annual Payments are made under Section IV.

MMM. "*Settlement Fund Administrator.*" The entity that annually determines the Annual Payment (including calculating Incentive Payments pursuant to Section IV and any amounts subject to suspension, offset, or reduction pursuant to Section XII and Section XIII), annually determines the Participation Tier pursuant to Section VIII.C, administers the Settlement Fund, and distributes amounts into the Abatement Accounts Fund, State Fund, and Subdivision Fund pursuant to this Agreement. The duties of the Settlement Fund Administrator shall be governed by this Agreement. Prior to the Initial Participation Date, the Settling Distributors and the Enforcement Committee shall agree to selection and removal processes for and the identity of the Settlement Fund Administrator, and a detailed description of the Settlement Fund Administrator's duties and responsibilities, including a detailed mechanism for paying the Settlement Fund Administrator's fees and costs, all of which shall be appended to the Agreement as Exhibit L.

NNN. "*Settlement Fund Escrow.*" The interest-bearing escrow fund established pursuant to this Agreement to hold disputed or suspended payments made under this Agreement, and to hold the first Annual Payment until the Effective Date.

OOO. "*Settlement Payment Schedule.*" The schedule attached to this Agreement as Exhibit M.

PPP. "*Settlement Prepayment.*" As defined in Section IV.J.1.

QQQ. "*Settlement Prepayment Reduction Schedule.*" As defined in Section IV.J.1.

RRR. "*Settling Distributors.*" McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (each, a "*Settling Distributor*").

SSS. "*Settling State.*" A State that has entered into this Agreement with all Settling Distributors and delivers executed releases in accordance with Section VIII.A.

TTT. "*State.*" With the exception of West Virginia, which has addressed its claims separately and is excluded from participation in this Agreement, the states, commonwealths, and territories of the United States of America, as well as the District of Columbia. The 55 States are listed in Exhibit F. Additionally, the use of non-capitalized "state" to describe something (*e.g.*, "state court") shall also be read to include parallel entities in commonwealths, territories, and the District of Columbia (*e.g.*, "territorial court").

UUU. "*State Fund.*" The component of the Settlement Fund described in Section V.C.

VVV. "*State-Subdivision Agreement.*" An agreement that a Settling State reaches with the Subdivisions in that State regarding the allocation, distribution, and/or use of funds allocated to that State and to its Subdivisions. A State-Subdivision Agreement shall be effective if approved pursuant to the provisions of Exhibit O or if adopted by statute. Preexisting agreements addressing funds other than those allocated pursuant to this Agreement shall qualify

if the approval requirements of Exhibit O are met. A State and its Subdivisions may revise a State-Subdivision Agreement if approved pursuant to the provisions of Exhibit O, or if such revision is adopted by statute.

WWW. "*Statutory Trust.*" A trust fund established by state law to receive funds allocated to a Settling State's Abatement Accounts Fund and restrict any expenditures made using funds from such Settling State's Abatement Accounts Fund to Opioid Remediation, subject to reasonable administrative expenses. A State may give a Statutory Trust authority to allocate one (1) or more of the three (3) types of funds comprising such State's Settlement Fund, but this is not required.

XXX. "*Subdivision.*" Any (1) General Purpose Government (including, but not limited to, a municipality, county, county subdivision, city, town, township, parish, village, borough, gore, or any other entities that provide municipal-type government), School District, or Special District within a State, and (2) any other subdivision or subdivision official or sub-entity of or located within a State (whether political, geographical or otherwise, whether functioning or non-functioning, regardless of population overlap, and including, but not limited to, Nonfunctioning Governmental Units and public institutions) that has filed a lawsuit that includes a Released Claim against a Released Entity in a direct, *parens patriae*, or any other capacity. "General Purpose Government," "School District," and "Special District" shall correspond to the "five basic types of local governments" recognized by the U.S. Census Bureau and match the 2017 list of Governmental Units.[2] The three (3) General Purpose Governments are county, municipal, and township governments; the two (2) special purpose governments are School Districts and Special Districts.[3] "Fire District," "Health District," "Hospital District," and "Library District" shall correspond to categories of Special Districts recognized by the U.S. Census Bureau.[4] References to a State's Subdivisions or to a Subdivision "in," "of," or "within" a State include Subdivisions located within the State even if they are not formally or legally a sub-entity of the State; *provided, however*, that a "Health District" that includes any of the following words or phrases in its name shall not be considered a Subdivision: mosquito, pest, insect, spray, vector, animal, air quality, air pollution, clean air, coastal water, tuberculosis, and sanitary.

YYY. "*Subdivision Allocation Percentage.*" The portion of a Settling State's Subdivision Fund set forth in Exhibit G that a Subdivision will receive pursuant to Section V.C or Section V.D if it becomes a Participating Subdivision. The aggregate Subdivision Allocation

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[2] https://www.census.gov/data/datasets/2017/econ/gus/public-use-files.html

[3] *E.g.*, U.S. Census Bureau, "Technical Documentation: 2017 Public Use Files for State and Local Government Organization" at 7 (noting that "the Census Bureau recognizes five basic types of local governments," that three of those are "general purpose governments" (county governments, municipal governments, and township governments), and that the other two are "school district and special district governments"), https://www2.census.gov/programs-surveys/gus/datasets/2017/2017_gov_org_meth_tech_doc.pdf.

[4] A list of 2017 Government Units provided by the Census Bureau identifies 38,542 Special Districts and categorizes them by "FUNCTION_NAME." "Govt_Units_2017_Final" spreadsheet, "Special District" sheet, included in "Independent Governments - list of governments with reference information," https://www.census.gov/data/datasets/2017/econ/gus/public-use-files.html. As used herein, "Fire District" corresponds to Special District function name "24 – Local Fire Protection," "Health District" corresponds to Special District function name "32 – Health," "Hospital District" corresponds to Special District function name "40 – Hospitals," and "Library District" corresponds to Special District function name "52 – Libraries." *See id.*

Percentage of all Subdivisions receiving a Subdivision Allocation Percentage in each State shall equal one hundred percent (100%). Immediately upon the effectiveness of any State-Subdivision Agreement, Allocation Statute, Statutory Trust, or voluntary redistribution allowed by Section V.D.3 (or upon the effectiveness of an amendment to any State-Subdivision Agreement, Allocation Statute, Statutory Trust, or voluntary redistribution allowed by Section V.D.3) that addresses allocation from the Subdivision Fund, or upon any, whether before or after the Initial Participation Date, Exhibit G will automatically be amended to reflect the allocation from the Subdivision Fund pursuant to the State-Subdivision Agreement, Allocation Statute, Statutory Trust, or voluntary redistribution allowed by Section V.D.3. The Subdivision Allocation Percentages contained in Exhibit G may not change once notice is distributed pursuant to Section VII.A, except upon the effectiveness of any State-Subdivision Agreement, Allocation Statute, Statutory Trust, or voluntary redistribution allowed by Section V.D.3 (or upon the effectiveness of an amendment to any State-Subdivision Agreement, Allocation Statute, Statutory Trust, or voluntary redistribution allowed by Section V.D.3) that addresses allocation from the Subdivision Fund. For the avoidance of doubt, no Subdivision not listed on Exhibit G shall receive an allocation from the Subdivision Fund and no provision of this Agreement shall be interpreted to create such an entitlement.

ZZZ. "*Subdivision Fund*." The component of the Settlement Fund described in Section V.C.

AAAA. "*Subdivision Settlement Participation Form*." The form attached as Exhibit K that Participating Subdivisions must execute and return to the Settlement Fund Administrator.

BBBB. "*Suspension Amount*." The amount calculated as follows: the per capita amount corresponding to the applicable Participation Tier as set forth in Exhibit D multiplied by the population of the Later Litigating Subdivision.

CCCC. "*Suspension Cap*." The amount calculated as follows: the suspension percentage corresponding to the applicable Participation Tier as set forth in Exhibit D multiplied by the amount of the relevant Annual Payment apportioned to the State of the Later Litigating Subdivision and to Subdivisions in that State in each year of the suspension.

DDDD. "*Suspension Deadline*." With respect to a lawsuit filed by a Later Litigating Subdivision asserting a Released Claim, the deadline set forth in Exhibit D corresponding to the applicable Participation Tier.

EEEE. "*Threshold Motion*." A motion to dismiss or equivalent dispositive motion made at the outset of litigation under applicable procedure. A Threshold Motion must include as potential grounds for dismissal any applicable Bar or the relevant release by a Settling State or Participating Subdivision provided under this Agreement and, where appropriate under applicable law, any applicable limitations defense.

FFFF. "*Tribal/W. Va. Subdivision Credit*." The Tribal/W. Va. Subdivision Credit shall equal 2.58% of the Global Settlement Abatement Amount.

GGGG. "*Trigger Date*." In the case of a Primary Subdivision, the Reference Date. In the case of all other Subdivisions, the Preliminary Agreement Date.

II. Participation by States and Condition to Preliminary Agreement

A. *Notice to States.* On July 22, 2021 this Agreement shall be distributed to all States. The States' Attorneys General shall then have a period of thirty (30) calendar days to decide whether to become Settling States. States that determine to become Settling States shall so notify the National Association of Attorneys General and Settling Distributors and shall further commit to obtaining any necessary additional State releases prior to the Reference Date. This notice period may be extended by written agreement of the Settling Distributors and the Enforcement Committee.

B. *Condition to Preliminary Agreement.* Following the notice period set forth in Section II.A above, the Settling Distributors shall determine on or before the Preliminary Agreement Date whether, in their sole discretion, enough States have agreed to become Settling States to proceed with notice to Subdivisions as set forth in Section VII below. If the Settling Distributors determine that this condition has been satisfied, and that notice to the Litigating Subdivisions should proceed, they will so notify the Settling States by providing notice to the Enforcement Committee and Settlement Fund Administrator on the Preliminary Agreement Date. If the Settling Distributors determine that this condition has not been satisfied, they will so notify the Settling States by providing notice to the Enforcement Committee and Settlement Fund Administrator, and this Agreement will have no further effect and all releases and other commitments or obligations contained herein will be void.

C. *Later Joinder by States.* After the Preliminary Agreement Date, a State may only become a Settling State with the consent of the Settling Distributors, in their sole discretion. If a State becomes a Settling State more than sixty (60) calendar days after the Preliminary Agreement Date, but on or before January 1, 2022, the Subdivisions in that State that become Participating Subdivisions within ninety (90) calendar days of the State becoming a Settling State shall be considered Initial Participating Subdvisions. A State may not become a Settling State after January 1, 2022.

D. *Litigation Activity.* Following the Preliminary Agreement Date, States that determine to become Settling States shall make best efforts to cease litigation activity against Settling Distributors, including by jointly seeking stays or severance of claim against the Settling Distributors, where feasible, and otherwise to minimize such activity by means of agreed deadline extensions and agreed postponement of depositions, document productions, and motion practice if a motion to stay or sever is not feasible or is denied.

III. Injunctive Relief

A. *Injunctive Relief.* As part of the Consent Judgment, the Parties agree to the entry of the injunctive relief terms attached in Exhibit P.

IV. Settlement Payments

A. *Settlement Fund.* All payments under this Section IV shall be made into the Settlement Fund, except that, where specified, they shall be made into the Settlement Fund Escrow. The Settlement Fund shall be allocated and used only as specified in Section V.

B. *Annual Payments*. The Settling Distributors shall make eighteen (18) Annual Payments, each comprised of base and incentive payments as provided in this Section IV, as well as fifty percent (50%) of the amount of any Settlement Fund Administrator costs and fees that exceed the available interest accrued in the Settlement Fund as provided in Section V.C.5, and as determined by the Settlement Fund Administrator as set forth in this Agreement.

1. All data relevant to the determination of the Annual Payment and allocations to Settling States and their Participating Subdivisions listed on Exhibit G shall be submitted to the Settlement Fund Administrator no later than sixty (60) calendar days prior to the Payment Date for each Annual Payment. The Settlement Fund Administrator shall then determine the Annual Payment, the amount to be paid to each Settling State and its Participating Subdivisions included on Exhibit G, and the amount of any Settlement Fund Administrator costs and fees, all consistent with the provisions in Exhibit L, by:

a. determining, for each Settling State, the amount of base and incentive payments to which the State is entitled by applying the criteria under Section IV.D, Section IV.E, and Section IV.F;

b. applying any suspensions, offsets, or reductions as specified under Section IV, Section XII, and Section XIII;

c. applying any adjustment required as a result of prepayment or significant financial constraint, as specified under Section IV.J and Section IV.K;

d. determining the amount of any Settlement Fund Administrator costs and fees that exceed the available interest accrued in the Settlement Fund, as well as the amounts, if any, of such costs and fees owed by Settling Distributors and out of the Settlement Fund pursuant to Section V.C.5;

e. determining the total amount owed by Settling Distributors (including any amounts to be held in the Settlement Fund Escrow pending resolution of a case by a Later Litigating Subdivision as described in Section XII) to all Settling States and the Participating Subdivisions listed on Exhibit G; and

f. the Settlement Fund Administrator shall then allocate, after subtracting the portion of any Settlement Fund Administrator costs and fees owed out of funds from the Settlement Fund pursuant to Section V.C.5, the Annual Payment pursuant to Section V.C and Section V.D among the Settling States, among the separate types of funds for each Settling State (if applicable), and among the Participating Subdivisions listed on Exhibit G.

2. The Settlement Fund Administrator shall also apply the allocation percentages set forth in Section IV.I and determine for each Settling Distributor the amount of its allocable share of the Annual Payment. For the avoidance of doubt, each Settling Distributor's liability for its share of the Annual Payment is several, and not joint.

3. As soon as possible, but no later than fifty (50) calendar days prior to the Payment Date for each Annual Payment and following the determination described in Section IV.B.1 and Section IV.B.2, the Settlement Fund Administrator shall give notice to the Settling Distributors, the Settling States, and the Enforcement Committee of the amount of the Annual Payment (including the amount of the Settlement Fund to be allocated to the Settlement Fund Administrator in costs and fees pursuant to Section V.C.5), the amount to be received by each Settling State, the amount to be received by the separate types of funds for each Settling State (if applicable), and the amount to be received by each Settling State's Participating Subdivisions listed on Exhibit G. The Settlement Fund Administrator shall also give notice to each Settling Distributor of the amount of its allocable share of the Annual Payment, including its allocable share of the amount of any Settlement Fund Administrator costs and fees that exceed the available interest accrued in the Settlement Fund pursuant to Section V.C.5.

4. Within twenty-one (21) calendar days of the notice provided by the Settlement Fund Administrator, any party may dispute, in writing, the calculation of the Annual Payment (including the amount allocated for Settlement Fund Administrator costs and fees), or the amount to be received by a Settling State and/or its Participating Subdivisions listed on Exhibit G. Such disputing party must provide a written notice of dispute to the Settlement Fund Administrator, the Enforcement Committee, any affected Settling State, and the Settling Distributors identifying the nature of the dispute, the amount of money that is disputed, and the Settling State(s) affected.

5. Within twenty-one (21) calendar days of the sending of a written notice of dispute, any affected party may submit a response, in writing, to the Settlement Fund Administrator, the Enforcement Committee, any affected Settling State, and the Settling Distributors identifying the basis for disagreement with the notice of dispute.

6. If no response is filed, the Settlement Fund Administrator shall adjust the amount calculated consistent with the written notice of dispute, and each Settling Distributor shall pay its allocable share of the adjusted amount, collectively totaling that year's Annual Payment, on the Payment Date. If a written response to the written notice of dispute is timely sent to the Settlement Fund Administrator, the Settlement Fund Administrator shall notify the Settling Distributors of the preliminary amount to be paid, which shall be the greater of the amount originally calculated by the Settling Administrator or the amount that would be consistent with the notice of dispute, *provided, however*, that in no circumstances shall the preliminary amount to be paid be higher than the maximum amount of Base and Incentive Payments A and D for that Payment Year as set forth on Exhibit M. For the avoidance of doubt, a transfer of suspended payments from the Settlement Fund Escrow pursuant to Section XII.A.2 does not count toward determining whether the amount to be paid is higher than the maximum amount of Base and Incentive Payments A and D for that Payment Year as set forth on Exhibit M.

7. The Settlement Fund Administrator shall place any disputed amount of the preliminary amount paid by the Settling Distributors into the Settlement Fund Escrow and shall disburse any undisputed amount to each Settling State and its Participating

Subdivisions listed on Exhibit G within fifteen (15) calendar days of the Payment Date or at such later time as directed by each Settling State.

8. Disputes described in this subsection shall be resolved in accordance with the terms of Section VI.F.

9. For the avoidance of doubt, no Subdivision not listed on Exhibit G shall receive an allocation from the Subdivision Fund and no provision of this Agreement shall be interpreted to create such an entitlement.

C. *Procedure for Annual Payment in Payment Years 1 and 2.* The process described in Section IV.B shall not apply to Payment Years 1 and 2. The procedure in lieu of Section IV.B.1 for Payment Years 1 and 2 is as set forth below:

1. The Payment Date for Payment Year 1 is September 30, 2021. *Provided* that the condition set forth in Section II.B has been satisfied, on or before such date, the Settling Distributors shall pay into the Settlement Fund Escrow the total amount of the base payment, Incentive Payment A for the Settling States (the amount specified in Exhibit M for Payment Year 1 reduced by the allocable share of any Non-Settling States), and the Settling Distributors' allocable share of the amount of any Settlement Fund Administrator costs and fees that exceed the available interest accrued in the Settlement Fund pursuant to Section V.C.5. In the event that, in accordance with the terms of Section VIII.A, the Settling Distributors determine not to proceed with the Settlement, or the Settlement does not become effective for any other reason, the funds held in the Settlement Fund Escrow shall immediately revert to the Settling Distributors. If the condition set forth in Section VIII.A is met, the Settlement Fund Administrator shall allocate the Annual Payment, after subtracting the portion of Settlement Fund Administrator costs and fees owed out of funds from the Settlement Fund pursuant to Section V.C.5, pursuant to Section V.C and Section V.D among the Settling States and their Participating Subdivisions listed on Exhibit G. The portion of any Settlement Fund Administrator costs and fees owed out of funds from the Settlement Fund pursuant to Section V.C.5 shall be available to the Settlement Fund Administrator for the payment of such costs and fees immediately. The remainder of the Annual Payment for Payment Year 1 shall be transferred by the Settlement Fund Administrator on the Effective Date from the Settlement Fund Escrow to the Settlement Fund and then to each Settling State and to its Initial Participating Subdivisions included on Exhibit G; *provided*, *however*, that for any Settling State where the Consent Judgment has not been entered as of the Effective Date, the funds allocable to that Settling State and its Participating Subdivisions included on Exhibit G shall not be transferred from the Settlement Fund Escrow or disbursed until ten (10) calendar days after the entry of the Consent Judgment in that State; and, *provided*, *further*, the Settlement Fund Administrator shall leave in the Settlement Fund Escrow funds allocated to Subdivisions included on Exhibit G that are not Initial Participating Subdivisions. Should such a Subdivision become a Participating Subdivision between the Initial Participation Date and the Effective Date, the allocation for such Participating Subdivision shall be transferred to the Settlement Fund and paid to the Participating Subdivision at the same time as Initial Participating Subdivisions in that State are paid.

2. The Payment Date for Payment Year 2 is July 15, 2022. On or before such date, the Settling Distributors shall pay into the Settlement Fund the total amount of the base payment, Incentive Payment A for the Settling States (the amount specified in Exhibit M for Payment Year 2 reduced by the allocable share of any Non-Settling States), and the Settling Distributors' allocable share of the amount of any Settlement Fund Administrator costs and fees that exceed the available interest accrued in the Settlement Fund pursuant to Section V.C.5. The portion of any Settlement Fund Administrator costs and fees owed out of funds from the Settlement Fund pursuant to Section V.C.5 shall be available to the Settlement Fund Administrator for the payment of such costs and fees immediately. The Settlement Fund Administrator shall disburse the remaining amounts to each Settling State and to its Participating Subdivisions included on Exhibit G within fifteen (15) calendar days of the Payment Date or at such later time as directed by each Settling State. If a Settling State enacts a legislative Bar after the Initial Participation Date, but before July 15, 2022, a Subdivision that meets the requirements for becoming a Participating Subdivision under Section VII prior to July 15, 2022 (but was not an Initial Participating Subdivision) shall be eligible to receive its allocated share (if any) for Payment Year 2, and it shall also receive any amounts allocated to it for Payment Year 1 from the Settlement Fund Escrow.

3. Any amounts remaining in the Settlement Fund Escrow for allocations to Subdivisions listed on Exhibit G that have not become Participating Subdivisions after all payments for Payment Year 2 are disbursed shall be transferred to the Settlement Fund and disbursed to the appropriate sub-funds in each Settling State pursuant to Section V.D.5.

4. Any disputes as to the allocation of the Annual Payments in Payment Years 1 and 2 shall be resolved pursuant to the process set forth in Section IV.B.3 through Section IV.B.8, except that in Payment Year 1, the Settlement Fund Administrator shall have until ten (10) calendar days after the Initial Participation Date to give notice of the amount to be received by each Settling State, the amount to be received by the separate types of funds for each Settling State (if applicable), and the amount to be received by each Initial Participating Subdivision in the Settling States that is listed on Exhibit G.

D. *Payment Date for Subsequent Payment Years*. The Payment Date for Payment Year 3 and successive Payment Years is July 15 of the third and successive years and the Annual Payment shall be made pursuant to the process set forth in Section IV.B, except that, with respect to Payment Year 3, Settling States shall have up to the Payment Date to become eligible for Incentive Payment A and thus avoid the reductions set forth in Section XIII. If a Settling State enacts a Bar less than sixty (60) calendar days before the Payment Date for Payment Year 3, each Settling Distributor shall pay, within thirty (30) calendar days of the Payment Year 3 Payment Date, its allocable share, pursuant to Section IV.I, of the difference between the Annual Payment as calculated by the Settlement Fund Administrator and the amount that would have been owed had the Settlement Fund Administrator taken the Bar into account.

E. *Base Payments*. Subject to the suspension, reduction, and offset provisions set forth in Section XII and Section XIII, the Settling Distributors shall collectively make base

payments equal to fifty-five percent (55%) of the Net Abatement Amount multiplied by the aggregate Overall Allocation Percentage of the Settling States. These payments will be due in installments consistent with Exhibit M over the eighteen (18) Payment Years and as adjusted by the Settlement Fund Administrator pursuant to the provisions in Section IV, Section XII, and Section XIII.

F. *Incentive Payments.* Subject to the suspension, offset, and reduction provisions set forth in Section XII and Section XIII, the Settling Distributors shall collectively make potential additional incentive payments totaling up to a maximum of forty-five percent (45%) of the Net Abatement Amount multiplied by the aggregate Overall Allocation Percentage of the Settling States, with the actual amount depending on whether and the extent to which the criteria set forth below are met in each Settling State. The incentive payments shall be divided among four (4) categories, referred to as Incentive Payments A-D. Incentive Payments A-C will be due in installments over the eighteen (18) Payment Years, and Incentive Payment D will be due in installments over thirteen (13) years beginning with Payment Year 6. The total amount of incentive payments in an Annual Payment shall be the sum of the incentive payments for which individual Settling States are eligible for that Payment Year under the criteria set forth below. The incentive payments shall be made with respect to a specific Settling State based on its eligibility for that year under the criteria set forth below.

1. Incentive Payment A. Incentive Payment A shall be equal to forty percent (40%) of the Net Abatement Amount multiplied by the aggregate Overall Allocation Percentage of the Settling States, provided all Settling States satisfy the requirements of Incentive Payment A. Incentive Payment A will be due to a Settling State as part of the Annual Payment in each of the eighteen (18) Payment Years that a Settling State is eligible for Incentive Payment A and shall equal a total potential maximum of $7,421,605,477 if all States are eligible for all eighteen (18) Payment Years. Each Settling State's share of Incentive Payment A in a given year, *provided* that Settling State is eligible, shall equal the total maximum amount available for Incentive Payment A for that year as reflected in Exhibit M times the Settling State's Overall Allocation Percentage. Eligibility for Incentive Payment A is as follows:

a. For the Payment Years 1 and 2, all Settling States are deemed eligible for Incentive Payment A.

b. For each Payment Year other than Payment Years 1 and 2, a Settling State is eligible for Incentive Payment A if, as of sixty (60) calendar days prior to the Payment Date (except that in Payment Year 3, this date is as of the Payment Date), (i) there is a Bar in that State in full force and effect, (ii) there is a Settlement Class Resolution in that State in full force and effect, (iii) the Released Claims of all of the following entities are released through the execution of Subdivision Settlement Participation Forms, or there is a Case-Specific Resolution against such entities: all Primary Subdivisions, Litigating Subdivisions, School Districts with a K-12 student enrollment of at least 25,000 or .10% of a State's population, whichever is greater, and Health Districts and Hospital Districts that have at least one hundred twenty-five (125) hospital beds in one or more hospitals rendering services in that district; or (iv) a combination of

the actions in clauses (i)-(iii) has achieved the same level of resolution of Claims by Subdivisions (*e.g.*, a Bar against future litigation combined with full joinder by Litigating Subdivisions). For the avoidance of doubt, subsection (iv) cannot be satisfied unless all Litigating Subdivisions are Participating Subdivisions or there is a Case-Specific Resolution against any such Subdivisions that are not Participating Subdivisions. The Settling Distributors and the Enforcement Committee shall meet and confer in order to agree on data sources for purposes of this Section prior to the Preliminary Agreement Date.

c. Notwithstanding Section IV.F.1.b, for each Payment Year other than Payment Years 1 and 2, a Settling State that is not eligible for Incentive Payment A as of the Incentive Payment Final Eligibility Date shall not be eligible for Incentive Payment A for that Payment Year or any subsequent Payment Years.

d. If the Settling Distributors made a payment under Incentive Payment A solely on the basis of a Bar or Settlement Class Resolution in a Settling State and that Bar or Settlement Class Resolution is subsequently removed, revoked, rescinded, reversed, overruled, interpreted in a manner to limit the scope of the release, or otherwise deprived of force or effect in any material respect, that Settling State shall not be eligible for Incentive Payment A thereafter, unless the State requalifies for Incentive Payment A through any method pursuant to Section IV.F.1.b, in which case the Settling State shall be eligible for Incentive Payment A less any litigation fees and costs incurred by Settling Distributor in the interim, except that, if the re-imposition occurs after the completion of opening statements in a trial involving a Released Claim, the Settling State shall not be eligible for Incentive Payment A (unless this exception is waived by the Settling Distributors).

e. In determining the amount of Incentive Payment A that Settling Distributors will pay in a Payment Year and each Settling State's share, if any, of Incentive Payment A for that Payment Year, the Settlement Fund Administrator shall: (i) identify all Settling States that are eligible for Incentive Payment A; (ii) multiply the Overall Allocation Percentage for each such eligible Settling State by the maximum amount that Settling Distributors could owe with respect to Incentive Payment A for that Payment Year as listed on Exhibit M. The amount calculated in (ii) shall be the amount allocated to a Settling State eligible for Incentive Payment A for that Payment Year and the aggregate of each such amount for Settling States eligible for Incentive Payment A shall be the amount of Incentive Payment A Settling Distributors are obligated to pay in that Payment Year, all such amounts subject to the suspension, offset, and reduction provisions in Section XII and Section XIII.

2. Incentive Payment B. Incentive Payment B shall be available to Settling States that are not eligible for Incentive Payment A for the applicable Payment Year. Incentive Payment B shall be equal to up to twenty-five percent (25%) of the Net Abatement Amount multiplied by the aggregate Overall Allocation Percentage of the

Settling States. Incentive Payment B will be due to a Settling State as part of the Annual Payment in each of the eighteen (18) Payment Years that a Settling State is eligible for Incentive Payment B and equal a total potential maximum of $4,638,503,423 if all States are eligible for all eighteen (18) Payment Years. Each Settling State's maximum share of Incentive Payment B in a given year shall equal the total maximum amount available for Incentive Payment B for that year as reflected in Exhibit M times the Settling State's Overall Allocation Percentage. Eligibility for Incentive Payment B is as follows:

a. A Settling State is not eligible for Incentive Payment B for a Payment Year for which it is eligible for Incentive Payment A.

b. Subject to Section IV.F.2.a, the amount of Incentive Payment B for which a Settling State is eligible in a Payment Year shall be a percentage of that State's maximum share of Incentive Payment B based on the extent to which (A) Litigating Subdivisions in the State are Participating Subdivisions or (B) there is a Case-Specific Resolution against Litigating Subdivisions in the State, collectively, "*Incentive B Eligible Subdivisions*." The percentage of the State's maximum share of Incentive Payment B that the State is eligible for in a Payment Year shall be determined according to the table below:

Percentage of Litigating Subdivision Population that is Incentive B Eligible Subdivision Population[5]	**Incentive Payment B Eligibility Percentage**
Up to 85%	0%
85%+	30%
86+	40%
91+	50%
95+	60%
99%+	95%
100%	100%

[5] The "Percentage of Litigating Subdivision Population that is Incentive B Eligible Subdivision Population" shall be determined by the aggregate population of the Settling State's Litigating Subdivisions that are Incentive B Eligible Subdivisions divided by the aggregate population of the Settling State's Litigating Subdivisions. In calculating the Settling State's population that resides in Litigating Subdivisions, (a) the population of the Settling State's Litigating Subdivisions shall be the sum of the population of all Litigating Subdivisions in the Settling State, notwithstanding that persons may be included within the population of more than one Litigating Subdivision, and (b) the population that resides in Incentive B Eligible Subdivisions shall be the sum of the population of the Incentive B Eligible Subdivisions, notwithstanding that persons may be included within the population of more than one Incentive B Eligible Subdivision. An individual Litigating Subdivision shall not be included more than once in the numerator, and shall not be included more than once in the denominator, of the calculation regardless if it (or any of its officials) is named as multiple plaintiffs in the same lawsuit; *provided, however*, that for the avoidance of doubt, no Litigating Subdivision will be excluded from the numerator or denominator under this sentence unless a Litigating Subdivision otherwise counted in the denominator has the authority to release the Claims (consistent with Section XI) of the Litigating Subdivision to be excluded. For the avoidance of doubt, a Settling State in which the population that resides in Incentive B Eligible Subdivisions is less than eighty-five percent (85%) of the population of Litigating Subdivisions shall not be eligible for any portion of Incentive Payment B.

c. In determining the amount that Settling Distributors will pay in a Payment Year under Incentive Payment B and each Settling State's share of Incentive Payment B for that Payment Year, the Settlement Fund Administrator shall: (i) identify all States that are eligible for Incentive Payment B because they are ineligible for Incentive Payment A; (ii) determine the Incentive Payment B eligibility percentage for each such Settling State; (iii) multiply the Incentive Payment B eligibility percentage for each such State by the Overall Allocation Percentage of that State; (iv) multiply the product from (iii) by the maximum amount that Settling Distributors could owe under Incentive Payment B for that Payment Year from Exhibit M. The amount calculated in (iv) shall be the amount allocated to a Settling State eligible for Incentive Payment B for that Payment Year, and the aggregate of such amounts for Settling States eligible for Incentive Payment B shall be the amount paid for that Payment Year by Settling Distributors with respect to Incentive Payment B, all such amounts subject to the suspension, offset, and reduction provisions in Section XII and Section XIII. If there are no Litigating Subdivisions in a Settling State, and that Settling State is otherwise eligible for Incentive Payment B, that Settling State will receive its full allocable share of Incentive Payment B.

d. A Settling State's eligibility for Incentive Payment B for a Payment Year shall be determined as of sixty (60) calendar days prior to the Payment Date for that Payment Year; *provided* that the percentage of Incentive Payment B for which a Settling State is eligible as of the Incentive Payment Final Eligibility Date shall cap its eligibility for that Payment Year and all subsequent Payment Years.

3. Incentive Payment C. Incentive Payment C shall be available to Settling States that are not eligible for Incentive Payment A for a Payment Year, including to Settling States that are also eligible for Incentive Payment B. Incentive Payment C shall be equal to up to fifteen percent (15%) of the Net Abatement Amount multiplied by the aggregate Overall Allocation Percentage of the Settling States. Incentive Payment C will be due to a Settling State as part of the Annual Payment in each of the eighteen (18) Payment Years that a Settling State is eligible for Incentive Payment C and equal a total potential maximum of $2,783,102,054 if all States are eligible for all eighteen (18) Payment Years. Each Settling State's maximum share of Incentive Payment C in a given year shall equal the total maximum amount available for Incentive Payment C for that year as reflected in Exhibit M multiplied by the Settling State's Overall Allocation Percentage. Eligibility for Incentive Payment C is as follows:

a. A Settling State is not eligible for Incentive Payment C for a Payment Year in which it is eligible for Incentive Payment A.

b. Subject to Section IV.F.3.a, the amount of Incentive Payment C for which a Settling State is eligible in a Payment Year shall be a percentage of the State's maximum share of Incentive Payment C based on the extent to which (A) Non-Litigating Subdivisions that are Primary Subdivisions with a population

over 30,000 and Litigating Subdivisions in the State are Participating Subdivisions or (B) there is a Case-Specific Resolution against Non-Litigating Subdivisions that are Primary Subdivisions with a population over 30,000 and Litigating Subdivisions in the State, collectively, "*Incentive C Eligible Subdivisions*." The percentage of the State's maximum share of Incentive Payment C that the State is eligible for in a Payment Year shall be determined according to the table below:

Percentage of Relevant Subdivision Population that is Incentive C Eligible Population[6]	**Incentive Payment C Eligibility Percentage**
Up to 60%	0%
60%+	25%
70%+	35%
75%+	40%
80%+	45%
85%+	55%
90%+	60%
93%+	65%
94%+	75%
95+	90%
98+	95%
100%	100%

c. In determining the amount that Settling Distributors will pay in a Payment Year under Incentive Payment C and each Settling State's share of Incentive Payment C for that Payment Year, the Settlement Fund Administrator shall: (i) identify all States that are eligible for Incentive Payment C because they are ineligible for Incentive Payment A; (ii) determine the Incentive Payment C eligibility percentage for each such Settling State; (iii) multiply the Incentive Payment C eligibility percentage for each such State by the Overall Allocation Percentage of that State; (iv) multiply the product from (iii) by the maximum

[6] The "Percentage of Relevant Subdivision Population that is Incentive C Eligible Population" shall be determined by the aggregate population of the Settling State's Incentive C Eligible Subdivisions divided by the aggregate population of the Settling State's Non-Litigating Primary Subdivisions with a population over 30,000 and Litigating Subdivisions ("*Incentive Payment C Subdivisions*"). None of the population figures shall include Prior Litigating Subdivisions. In calculating the Settling State's population that resides in Incentive Payment C Subdivisions, (a) the population shall be the sum of the population of all Incentive Payment C Subdivisions in the Settling State, notwithstanding that persons may be included within the population of more than one Incentive Payment C Subdivision, and (b) the population that resides in Incentive C Eligible Subdivisions shall be the sum of the population of the Incentive C Eligible Subdivisions, notwithstanding that persons may be included within the population of more than one Incentive C Eligible Subdivision. An individual Incentive Payment C Subdivision shall not be included more than once in the numerator, and shall not be included more than once in the denominator, of the calculation regardless if it (or any of its officials) is named as multiple plaintiffs in the same lawsuit. For the avoidance of doubt, a Settling State in which the population that resides in Incentive C Eligible Subdivisions is less than sixty percent (60%) of the population of Incentive Payment C Subdivisions shall not be eligible for any portion of Incentive Payment C.

amount that Settling Distributors could owe under Incentive Payment C for that Payment Year from Exhibit M. The amount calculated in (iv) shall be the amount allocated to a Settling State eligible for Incentive Payment C for that Payment Year and the aggregate of such amounts for Settling States eligible for Incentive Payment C shall be the amount paid for that Payment Year by Settling Distributors with respect to Incentive Payment C, all such amounts subject to the suspension, offset, and reduction provisions in Section XII and Section XIII. If there are no Litigating Subdivisions or Non-Litigating Subdivisions that are Primary Subdivisions with a population of more than 30,000 in a Settling State, and that Settling State is otherwise eligible for Incentive Payment C, that Settling State will receive its full allocable share of Incentive Payment C.

d. A Settling State's eligibility for Incentive Payment C for a Payment Year shall be determined as of sixty (60) calendar days prior to the Payment Date for that Payment Year; *provided* that the percentage of Incentive Payment C for which a Settling State is eligible as of the Incentive Payment Final Eligibility Date shall cap its eligibility for that Payment Year and all subsequent Payment Years.

4. Incentive Payment D. Incentive Payment D shall be applied at Payment Year 6. Incentive Payment D shall be equal to five percent (5%) of the Net Abatement Amount multiplied by the aggregate Overall Allocation Percentage of the Settling States. Incentive Payment D will be due to a Settling State as part of the Annual Payment for each of thirteen (13) Payment Years (from Payment Year 6 to Payment Year 18) that any Settling State is eligible for Incentive Payment D and equal a total potential maximum of $927,700,685 if all States are eligible for all thirteen (13) Payment Years. Each Settling State's share of Incentive Payment D in a given year shall equal the total maximum amount available for Incentive Payment D for that year as reflected in Exhibit M times the Settling State's Overall Allocation Percentage. Eligibility for Incentive Payment D is as follows:

a. A Settling State is eligible for Incentive Payment D if there has been no Later Litigating Subdivision in that State that has had a Claim against a Released Entity survive more than six (6) months after denial in whole or in part of a Threshold Motion.

b. A Settling State's eligibility for Incentive Payment D shall be determined as of sixty (60) calendar days prior to the Payment Date. If a Later Litigating Subdivision's lawsuit in that State survives more than six (6) months after denial in whole or in part of a Threshold Motion after that date, that State shall not be eligible for Incentive Payment D for the Payment Year in which that occurs and any subsequent Payment Year.

c. Notwithstanding Section IV.F.4, a Settling State can become re-eligible for Incentive Payment D if the lawsuit that survived a Threshold Motion is dismissed pursuant to a later motion on grounds included in the Threshold Motion, in which case the Settling State shall be eligible for Incentive Payment D

less any litigation fees and costs incurred by Settling Distributor in the interim, except that if the dismissal motion occurs after the completion of opening statements in such action, the Settling State shall not be eligible for Incentive Payment D.

d. For the avoidance of doubt, a Settling State may be eligible for Incentive Payment D whether or not it is eligible for Incentive Payments A-C.

e. In determining the amount of Incentive Payment D that Settling Distributors will pay in a Payment Year and each Settling State's share, if any, of Incentive Payment D for that Payment Year, the Settlement Fund Administrator shall: (i) identify all Settling States that are eligible for Incentive Payment D; (ii) multiply the Overall Allocation Percentage for each such eligible Settling State by the maximum amount that Settling Distributors could owe with respect to Incentive Payment D for that Payment Year listed on Exhibit M; and (iii) subtract any litigation fees and costs allowed to be deducted pursuant to Section IV.F.4.c. The amount calculated in (iii) shall be the amount allocated to a Settling State eligible for Incentive Payment D for that Payment Year and the aggregate of each such amount for Settling States eligible for Incentive Payment D shall be the amount of Incentive Payment D Settling Distributors are obligated to pay in that Payment Year, all such amounts subject to the suspension, reduction, and offset provisions in Section XII and Section XIII.

G. *Reductions/Offsets.* The base and incentive payments are subject to suspension, offset, and reduction as provided in Section XII and Section XIII.

H. *State-Specific Agreements.* Notwithstanding any other provision of this Agreement or any other agreement, in the event that: (1) the Settling Distributors enter into an agreement with any Settling State that resolves with finality such Settling State's Claims consistent with Section XI of this Agreement and such agreement has an effective date prior to the Effective Date of this Agreement (such agreement, a "*State-Specific Agreement*") and (2) pursuant to the terms of the State-Specific Agreement, any payments, or any portion thereof, made by the Settling Distributors thereunder are made in lieu of any payments (for the avoidance of doubt, including the Additional Restitution Amount), or any portion thereof, to be made under this Agreement and the Settling Distributors make such a payment pursuant to the State-Specific Agreement, then the Settling Distributors will reduce any payments allocable to such Settling State (whether made to the Settlement Fund Escrow or the Settlement Fund) made pursuant to this Agreement to the extent such amount was already paid pursuant to the terms of the State-Specific Agreement.

I. *Allocation of Payments among Settling Distributors.* Payments due from the Settling Distributors under this Section IV, Section IX, and Section X will be allocated among the Settling Distributors as follows: McKesson – 38.1%; Amerisource – 31.0%; Cardinal – 30.9%. A Settling Distributor's sole responsibility for payments under this Agreement shall be to make its share of each payment. The obligations of the Settling Distributors in this Agreement are several and not joint. No Settling Distributor shall be responsible for any portion of another Settling Distributor's share.

J. *Pre-payment Option.*

1. Any Settling Distributor shall have the right, subject to the limitations set forth in Section IV.J.3, to prepay any base payment or incentive payment in whole or in part, without premium or penalty (a "*Settlement Prepayment*") by providing at least fourteen (14) calendar days prior written notice to the Settlement Fund Administrator and Enforcement Committee (a "*Prepayment Notice*"). Any Prepayment Notice shall specify: (a) the gross amount of the Settlement Prepayment (the "*Gross Settlement Amount*"), (b) the manner in which such Settlement Prepayment shall be applied to reduce such Settling Distributor's future share of Annual Payments (*i.e.*, to which future year(s) the allocable portion of an Annual Payment owed by such Settling Distributor the Settlement Prepayment should be applied) (such manner of application, a "*Settlement Prepayment Reduction Schedule*"), (c) the net present value of the Settlement Prepayment as of the Prepayment Date based on the Settlement Prepayment Reduction Schedule using a discount rate equal to the prime rate as published by the *Wall Street Journal* on the date of the Prepayment Notice plus 1.75% (such net present value amount, the "*Net Settlement Prepayment Amount*"), and (d) the date on which the prepayment will be made, which shall be no more than fifteen (15) calendar days after the date of the Prepayment Notice (the "*Prepayment Date*").

2. On the Prepayment Date the Settling Distributor shall pay the Net Settlement Prepayment Amount to the Settlement Fund and such amount shall be used only as specified in Section V. Following such payment, all future portions of the Annual Payments allocated to the applicable Settling Distributor under Section IV.E and Section IV.F shall be reduced pursuant to the Settlement Prepayment Reduction Schedule, and the Exhibit M will be updated to give effect to such reduction, and going forward such updated schedule will be Exhibit M.

3. A Settling Distributor's right to make prepayments shall be subject to the following limitations:

a. Prepayments may apply to base payments or to both base and incentive payments. If the prepayment applies to both base and incentive payments, the prepayments will apply proportionately across base and incentive payments.

b. A Settling Distributor shall make no more than three (3) prepayments over the eighteen (18) year payment term. A Settling Distributor shall not make more than one (1) prepayment in a five (5) year period and there shall not be prepayments made in the first two (2) Payment Years.

c. Prepayments shall only be applied to one (1) or more of the three (3) Payment Years following the prepayment.

d. The total amount of a prepayment of base payments after discounting calculations shall not be larger than the base payment for the Payment Year with the lowest Annual Payment amount affected by the prepayment. The

total amount of a prepayment for both base payments and incentive payments shall not be larger than the base payment and anticipated incentive payment for the lowest Payment Year affected by the prepayment. The "anticipated incentive payment" for a future Payment Year shall reflect the incentives earned by each Settling State as of the time of the prepayment and any offsets or adjustments known at that time.

e. In a Payment Year against which there has been a prepayment, if the amount a Settling State is calculated to receive is greater than the amount prepaid prior to discounting calculations, the Settling Distributor shall pay the difference. If, in a Payment Year for which there has been a prepayment, the amount that a Settling State is calculated to receive is less than the amount calculated at the time of the prepayment, there shall be a credit for the difference to the Settling Distributor to be applied in the subsequent Payment Year(s), if any.

f. Prepayments shall be applied proportionately to all Settling States.

4. The Settling States may agree to a prepayment that does not apply these restrictions. Such a prepayment would need approval of Settling States representing at least ninety-five percent (95%) allocable share as measured by the allocations in Exhibit F; *provided, however*, that this provision does not limit or restrict any Settling State from negotiating its own prepayment with a Settling Distributor.

5. For illustrative purposes only, attached as Exhibit Q are examples showing a Settlement Prepayment, the related calculation of the Net Settlement Prepayment Amount, and the related adjustment to the Settlement Payment Schedule.

K. *Significant Financial Constraint.*

1. A Settling Distributor's allocable share of the Annual Payment for a Payment Year may, at the election of such Settling Distributor, be deferred either (a) up to the amount by which that share plus such Settling Distributor's share of amounts payable under Section IX and Section X would exceed twenty percent (20%) of such Settling Distributor's total operating cash flow (as determined pursuant to United States generally accepted accounting principles) for its fiscal year that concluded most recently prior to the due date for that payment or (b) (i) up to twenty-five percent (25%) if, as of thirty (30) calendar days preceding that payment date, the company's credit rating from one or more of the three nationally recognized rating agencies is below BBB or Baa2 or (ii) up to one hundred percent (100%) if, as of thirty (30) calendar days preceding that payment date, the company's credit rating from one or more of the three nationally recognized rating agencies is below BBB- or Baa3. If the reason for exceeding twenty percent (20%) of a Settling Distributor's total operating cash flow or the decrease in credit rating is substantially attributable to the incurrence of debt to fund post-settlement acquisitions or to the payment of dividends and/or share repurchases that together are of an amount that exceeds the total amount of those two items for the prior fiscal year, no deferral is available. A Settling Distributor shall not be allowed to defer payment for a

Payment Year if that Settling Distributor engaged in any share repurchases in the three fiscal quarters prior to the Payment Date for that Payment Year.

2. If a Settling Distributor has reason to believe that it will not be able to pay some or all of its allocable share of the Annual Payment for a Payment Year, it shall provide at least ninety (90) calendar days' prior written notice to the Settlement Fund Administrator and Enforcement Committee (a "*Deferred Payment Notice*"). Any Deferred Payment Notice shall specify and include: (a) the gross amount of the payments owed (including the estimated allocable portion of the Annual Payment, and amounts owed under Section IX and Section X, by the relevant Settling Distributor), (b) the amount that the Settling Distributor believes it will be unable to pay, (c) the accounting and audited financial documents upon which the Settling Distributor relied for making this determination, and (d) any other relevant information for the Enforcement Committee to consider.

3. A Settling Distributor shall not utilize this provision during the first three (3) Payment Years. If a Settling Distributor defers some or all of the payments due in a Payment Year pursuant to this Section IV.K, it shall not repurchase any shares, or fund new acquisitions with an acquisition price greater than $250 million, during the deferral period until the deferred amount is fully repaid with interest. Any amounts deferred shall bear interest at an interest rate equal to the prime rate as published by the *Wall Street Journal* on the date of the Deferral Payment Notice plus 0.5%.

4. The Settling Distributor shall pay all deferred amounts, including applicable interest on the next Payment Date. If the amounts previously deferred (including interest) together with the Settling Distributor's share of all payments due for a Payment Year would allow for a deferral under Section IV.K.1, the Settling Distributor shall pay as much of the previously deferred amounts (including interest) as it can pay without triggering the ability to defer payment and may defer the remainder as permitted under (and subject to the restrictions of) this Section IV.K.

5. Deferrals will apply proportionally across base payments and incentive payments. For the avoidance of doubt, this Section IV.K applies fully to Payment Years after the first three (3) Payment Years, including the base payments and all incentive payments due pursuant to this Agreement during the Payment Year at issue.

6. If a Settling Distributor could pay a portion of its allocable share of the Annual Payments due pursuant to this Agreement during a Payment Year without triggering this Section IV.K, the Settling Distributor shall be required to pay that portion as scheduled and only the excess would be subject to deferral at the election of the Settling Distributor (in whole or in part) as provided herein.

7. The Settling Distributor shall pay any deferred amounts, including applicable interest on or before the date on which the payment is due for Payment Year 18.

V. Allocation and Use of Settlement Payments

A. *Components of Settlement Fund.* The Settlement Fund shall be comprised of an Abatement Accounts Fund, a State Fund, and a Subdivision Fund for each Settling State. The payments made under Section IV into the Settlement Fund shall be initially allocated among those three (3) sub-funds and distributed and used as provided below. Payments placed into the Settlement Fund do not revert back to the Settling Distributors.

B. *Use of Settlement Payments.*

1. It is the intent of the Parties that the payments disbursed from the Settlement Fund to Settling States and Participating Subdivisions be for Opioid Remediation, subject to exceptions that must be documented in accordance with Section V.B.2. In no event may less than eighty-five percent (85%) of the Settling Distributors' maximum amount of payments pursuant to Section IV, Section IX, and Section X as set forth on Exhibit M over the entirety of all Payments Years (but not any single Payment Year) be spent on Opioid Remediation.

2. While disfavored by the Parties, a Settling State or a Participating Subdivision set forth on Exhibit G may use monies from the Settlement Fund (that have not been restricted by this Agreement solely to future Opioid Remediation) for purposes that do not qualify as Opioid Remediation. If, at any time, a Settling State or a Participating Subdivision set forth on Exhibit G uses any monies from the Settlement Fund for a purpose that does not qualify as Opioid Remediation, such Settling State or Participating Subdivision set forth on Exhibit G shall identify such amounts and report to the Settlement Fund Administrator and the Settling Distributors how such funds were used, including if used to pay attorneys' fees, investigation costs, litigation costs, or costs related to the operation and enforcement of this Agreement, respectively. It is the intent of the Parties that the reporting under this Section V.B.2 shall be available to the public. For the avoidance of doubt, (a) any amounts not identified under this Section V.B.2 as used to pay attorneys' fees, investigation costs, or litigation costs shall be included in the "*Compensatory Restitution Amount*" for purposes of Section VI.F and (b) Participating Subdivisions not listed on Exhibit G may only use monies from the Settlement Fund for purposes that qualify as Opioid Remediation.

C. *Allocation of Settlement Fund.*

The allocation of the Settlement Fund allows for different approaches to be taken in different states, such as through a State-Subdivision Agreement. Given the uniqueness of States and their Subdivisions, Settling States and their Subdivisions are encouraged to enter into State-Subdivision Agreements in order to direct the allocation of their portion of the Settlement Fund. As set out below, the Settlement Fund Administrator will make an initial allocation to three (3) state-level sub-funds. The Settlement Fund Administrator will then, for each Settling State and its Participating Subdivisions, apply the terms of this Agreement and any relevant State-Subdivision Agreement, Statutory Trust, Allocation Statute, or voluntary redistribution of funds as set out below before disbursing the funds.

1. Base Payments. The Settlement Fund Administrator will allocate base payments under Section IV.D among the Settling States in proportion to their respective Overall Allocation Percentages. Base payments for each Settling State will then be allocated fifteen percent (15%) to its State Fund, seventy percent (70%) to its Abatement Accounts Fund, and fifteen percent (15%) to its Subdivision Fund. Amounts may be reallocated and will be distributed as provided in Section V.D.

2. Incentive Payments. The Settlement Fund Administrator will treat incentive payments under Section IV.F on a State-specific basis. Incentive payments for which a Settling State is eligible under Section IV.F will be allocated fifteen percent (15%) to its State Fund, seventy percent (70%) to its Abatement Accounts Fund, and fifteen percent (15%) to its Subdivision Fund. Amounts may be reallocated and will be distributed as provided in Section V.D.

3. Application of Adjustments. If a suspension, offset, or reduction under Section XII or Section XIII applies with respect to a Settling State, the suspension, offset, or reduction shall be applied proportionally to all amounts that would otherwise be apportioned and distributed to the State Fund, the Abatement Accounts Fund, and the Subdivision Fund for that State.

4. Settlement Fund Administrator. Prior to the Initial Participation Date, the Settling Distributors and the Enforcement Committee will agree to a detailed mechanism consistent with the foregoing for the Settlement Fund Administrator to follow in allocating, apportioning, and distributing payments, which shall then be appended hereto as Exhibit L.

5. Settlement Fund Administrator Costs. Any costs and fees associated with or arising out of the duties of the Settlement Fund Administrator as described in Exhibit L shall be paid from the interest accrued in the Settlement Fund Escrow and the Settlement Fund; *provided, however*, that if such accrued interest is insufficient to pay the entirety of any such costs and fees, Settling Distributors shall pay fifty percent (50%) of the additional amount and fifty percent (50%) shall be paid out of the Settlement Fund.

D. *Settlement Fund Reallocation and Distribution.*

As set forth below, within a particular Settling State's account, amounts contained in the Settlement Fund sub-funds may be reallocated and distributed per a State-Subdivision Agreement or other means. If the apportionment of amounts is not addressed and controlled under Section V.D.1 and Section V.D.2, then the default provisions of Section V.D.4 apply. It is not necessary that a State-Subdivision Agreement or other means of allocating funds pursuant to Section V.D.1 and Section V.D.2 address all of the Settlement Fund sub-funds. For example, a Statutory Trust might only address disbursements from a Settling State's Abatement Accounts Fund.

1. Distribution by State-Subdivision Agreement. If a Settling State has a State-Subdivision Agreement, amounts apportioned to that State's State Fund, Abatement Accounts Fund, and Subdivision Fund under Section V.C shall be reallocated and

distributed as provided by that agreement. Any State-Subdivision Agreement entered into after the Preliminary Agreement Date shall be applied only if it requires: (a) that all amounts be used for Opioid Remediation, except as allowed by Section V.B.2, and (b) that at least seventy percent (70%) of amounts be used solely for future Opioid Remediation.[7] For a State-Subdivision Agreement to be applied to the relevant portion of an Annual Payment, notice must be provided to the Settling Distributors and the Settlement Fund Administrator at least sixty (60) calendar days prior to the Payment Date.

2. Distribution by Allocation Statute. If a Settling State has an Allocation Statute and/or a Statutory Trust that addresses allocation or distribution of amounts apportioned to such State's State Fund, Abatement Accounts Fund, and/or Subdivision Fund and that, to the extent any or all such sub-funds are addressed, requires (1) all amounts to be used for Opioid Remediation, except as allowed by Section V.B.2, and (2) at least seventy percent (70%) of all amounts to be used solely for future Opioid Remediation,[8] then, to the extent allocation or distribution is addressed, the amounts apportioned to that State's State Fund, Abatement Accounts Fund, and Subdivision Fund under Section V.C shall be allocated and distributed as addressed and provided by the applicable Allocation Statute or Statutory Trust. For the avoidance of doubt, an Allocation Statute or Statutory Trust need not address all three (3) sub-funds that comprise the Settlement Fund, and if the applicable Allocation Statute or Statutory Trust does not address distribution of all or some of these three (3) sub-funds, the applicable Allocation Statute or Statutory Trust does not replace the default provisions described in Section V.D.4 of any such unaddressed fund. For example, if an Allocation Statute or Statutory Trust that meets the requirements of this Section V.D.2 only addresses funds restricted to abatement, then the default provisions in this Agreement concerning allocation among the three (3) sub-funds comprising the Settlement Fund and the distribution of the State Fund and Subdivision Fund for that State would still apply, while the distribution of the applicable State's Abatement Accounts Fund would be governed by the qualifying Allocation Statute or Statutory Trust.

3. Voluntary Redistribution. A Settling State may choose to reallocate all or a portion of its State Fund to its Abatement Accounts Fund. A Participating Subdivision included on Exhibit G may choose to reallocate all or a portion of its allocation from the Subdivision Fund to the State's Abatement Accounts Fund or to another Participating Subdivision. For a voluntary redistribution to be applied to the relevant portion of an Annual Payment, notice must be provided to the Settling Distributors and the Settlement Fund Administrator at least sixty (60) calendar days prior to the Payment Date.

4. Distribution in the Absence of a State-Subdivision Agreement, Allocation Statute, or Statutory Trust. If Section V.D.1 and Section V.D.2 do not apply, amounts

[7] Future Opioid Remediation includes amounts paid to satisfy any future demand by another governmental entity to make a required reimbursement in connection with the past care and treatment of a person related to the Alleged Harms.

[8] Future Opioid Remediation includes amounts paid to satisfy any future demand by another governmental entity to make a required reimbursement in connection with the past care and treatment of a person related to the Alleged Harms.

apportioned to that State's State Fund, Abatement Accounts Fund, and Subdivision Fund under Section V.C shall be distributed as follows:

a. Amounts apportioned to that State's State Fund shall be distributed to that State.

b. Amounts apportioned to that State's Abatement Accounts Fund shall be distributed consistent with Section V.E. Each Settling State shall submit to the Settlement Fund Administrator a designation of a lead state agency or other entity to serve as the single point of contact for that Settling State's funding requests from the Abatement Accounts Fund and other communications with the Settlement Fund Administrator. The designation of an individual entity is for administrative purposes only and such designation shall not limit funding to such entity or even require that such entity receive funds from this Agreement. The designated entity shall be the only entity authorized to request funds from the Settlement Fund Administrator to be disbursed from that Settling State's Abatement Accounts Fund. If a Settling State has established a Statutory Trust then that Settling State's single point of contact may direct the Settlement Fund Administrator to release the State's Abatement Accounts Fund to the Statutory Trust.

c. Amounts apportioned to that State's Subdivision Fund shall be distributed to Participating Subdivisions in that State included on Exhibit G per the Subdivision Allocation Percentage listed in Exhibit G. Section VII.I shall govern amounts that would otherwise be distributed to Non-Participating Subdivisions listed in Exhibit G. For the avoidance of doubt and notwithstanding any other provision in this Agreement, no Non-Participating Subdivision will receive any amount from the Settlement Fund, regardless of whether such Subdivision is included on Exhibit G.

d. Special Districts shall not be allocated funds from the Subdivision Fund, except through a voluntary redistribution allowed by Section V.D.3. A Settling State may allocate funds from its State Fund or Abatement Accounts Fund for Special Districts.

5. Restrictions on Distribution. No amounts may be distributed from the Subdivision Fund contrary to Section VII, *i.e.*, no amounts may be distributed directly to Non-Participating Subdivisions or to Later Participating Subdivisions to the extent such a distribution would violate Section VII.E through Section VII.H. Amounts allocated to the Subdivision Fund that cannot be distributed by virtue of the preceding sentence shall be distributed into the sub-account in the Abatement Accounts Fund for the Settling State in which the Subdivision is located, unless those payments are redirected elsewhere by a State-Subdivision Agreement described in Section V.D.1 or by an Allocation Statute or a Statutory Trust described in Section V.D.2.

E. *Provisions Regarding the Abatement Accounts Fund.*

1. State-Subdivision Agreement, Allocation Statute, and Statutory Trust Fund Provisions. A State-Subdivision Agreement, Allocation Statute, or Statutory Trust may govern the operation and use of amounts in that State's Abatement Accounts Fund so long as it complies with the requirements of Section V.D.1 or Section V.D.2, as applicable, and all direct payments to Subdivisions comply with Section VII.E through Section VII.H.

2. Absence of a State-Subdivision Agreement, Allocation Statute, or Statutory Trust. In the absence of a State-Subdivision Agreement, Allocation Statute, or Statutory Trust that addresses distribution, the Abatement Accounts Fund will be used solely for future Opioid Remediation[9] and the following shall apply with respect to a Settling State:

a. *Regional Remediation.*

(i) At least fifty percent (50%) of distributions for remediation from a State's Abatement Accounts Fund shall be annually allocated and tracked to the regional level. A Settling State may allow the Advisory Committee established pursuant to Section V.E.2.d to define its regions and assign regional allocations percentages. Otherwise, a Settling State shall (A) define its initial regions, which shall consist of one (1) or more General Purpose Subdivisions and which shall be designated by the state agency with primary responsibility for substance abuse disorder services employing, to the maximum extent practical, existing regions established in that State for opioid abuse treatment or other public health purposes; (B) assign initial regional allocation percentages to the regions based on the Subdivision Allocation Percentages in Exhibit G and an assumption that all Subdivisions included on Exhibit G will become Participating Subdivisions.

(ii) This minimum regional expenditure percentage is calculated on the Settling State's initial Abatement Accounts Fund allocation and does not include any additional amounts a Settling State has directed to its Abatement Accounts Fund from its State Fund, or any other amounts directed to the fund. A Settling State may dedicate more than fifty percent (50%) of its Abatement Accounts Fund to the regional expenditure and may annually adjust the percentage of its Abatement Accounts Fund dedicated to regional expenditures as long as the percentage remains above the minimum amount.

(iii) The Settling State (A) has the authority to adjust the definition of the regions, and (B) may annually revise the percentages

[9] Future Opioid Remediation includes amounts paid to satisfy any future demand by another governmental entity to make a required reimbursement in connection with the past care and treatment of a person related to the Alleged Harms.

allocated to each region to reflect the number of General Purpose Subdivisions in each region that are Non-Participating Subdivisions.

b. *Subdivision Block Grants.* Certain Subdivisions shall be eligible to receive regional allocation funds in the form of a block grant for future Opioid Remediation. A Participating Subdivision eligible for block grants is a county or parish (or in the case of States that do not have counties or parishes that function as political subdivisions, a city) that (1) does not contain a Litigating Subdivision or a Later Litigating Subdivision for which it has the authority to end the litigation through a release, bar or other action, (2) either (i) has a population of 400,000 or more or (ii) in the case of California has a population of 750,000 or more, and (3) has funded or otherwise managed an established health care or treatment infrastructure (*e.g.*, health department or similar agency). Each Subdivision eligible to receive block grants shall be assigned its own region.

c. *Small States.* Notwithstanding the provisions of Section V.E.2.a, Settling States with populations under four (4) million that do not have existing regions described in Section V.E.2.a shall not be required to establish regions. However, such a Settling State that contains one (1) or more Subdivisions eligible for block grants under Section V.E.2.c shall be divided regionally so that each block-grant eligible Subdivision is a region and the remainder of the state is a region.

d. *Advisory Committee.* The Settling State shall designate an Opioid Settlement Remediation Advisory Committee (the "*Advisory Committee*") to provide input and recommendations regarding remediation spending from that Settling State's Abatement Accounts Fund. A Settling State may elect to use an existing advisory committee or similar entity (created outside of a State-Subdivision Agreement or Allocation Statute); *provided*, *however*, the Advisory Committee or similar entity shall meet the following requirements:

(i) Written guidelines that establish the formation and composition of the Advisory Committee, terms of service for members, contingency for removal or resignation of members, a schedule of meetings, and any other administrative details;

(ii) Composition that includes at least an equal number of local representatives as state representatives;

(iii) A process for receiving input from Subdivisions and other communities regarding how the opioid crisis is affecting their communities, their abatement needs, and proposals for abatement strategies and responses; and

(iv) A process by which Advisory Committee recommendations for expenditures for Opioid Remediation will be made to and considered by the appropriate state agencies.

3. Abatement Accounts Fund Reporting. The Settlement Fund Administrator shall track and assist in the report of remediation disbursements as agreed to among the Settling Distributors and the Enforcement Committee.

F. *Nature of Payment.* Each of the Settling Distributors, the Settling States, and the Participating Subdivisions acknowledges and agrees that notwithstanding anything to the contrary in this Agreement, including, but not limited to, the scope of the Released Claims:

1. It has entered into this Agreement to avoid the delay, expense, inconvenience, and uncertainty of further litigation;

2. (a) The Settling States and Participating Subdivisions sought compensatory restitution (within the meaning of 26 U.S.C. § 162(f)(2)(A)) as damages for the Alleged Harms allegedly suffered by the Settling States and Participating Subdivisions; (b) the Compensatory Restitution Amount is no greater than the amount, in the aggregate, of the Alleged Harms allegedly suffered by the Settling States and Participating Subdivisions; and (c) the portion of the Compensatory Restitution Amount received by each Settling State or Participating Subdivision is no greater than the amount of the Alleged Harms allegedly suffered by such Settling State or Participating Subdivision;

3. The payment of the Compensatory Restitution Amount by the Settling Distributors constitutes, and is paid for, compensatory restitution (within the meaning of 26 U.S.C. § 162(f)(2)(A)) for alleged damage or harm (as compensation for alleged damage or harm arising out of alleged bodily injury) allegedly caused by the Settling Distributors;

4. The Compensatory Restitution Amount is being paid as compensatory restitution (within the meaning of 26 U.S.C. § 162(f)(2)(A)) in order to restore, in whole or in part, the Settling States and Participating Subdivisions to the same position or condition that they would be in had the Settling States and Participating Subdivisions not suffered the Alleged Harms; and

5. For the avoidance of doubt: (a) no portion of the Compensatory Restitution Amount represents reimbursement to any Settling State or Participating Subdivision or other person or entity for the costs of any investigation or litigation, (b) the entire Compensatory Restitution Amount is properly characterized as described in Section V.F, and (c) no portion of the Compensatory Restitution Amount constitutes disgorgement or is properly characterized as the payment of statutory or other fines, penalties, punitive damages, or other punitive assessments.

VI. Enforcement

A. *Enforceability.* This Agreement is enforceable only by the Settling States and the Settling Distributors; *provided*, *however*, that Released Entities may enforce Section XI and Participating Subdivisions listed on Exhibit G have the enforcement rights described in Section VI.D. Except to the extent allowed by the Injunctive Relief Terms, Settling States and Participating Subdivisions shall not have enforcement rights with respect to either the terms of

this Agreement that apply only to or in other States or any Consent Judgment entered into by another Settling State. Participating Subdivisions shall not have enforcement rights against the Settling Distributors with respect to this Agreement or any Consent Judgment except that Participating Subdivisions listed on Exhibit G shall have enforcement rights as set forth herein as to payments that would be allocated to the Subdivision Fund or Abatement Accounts Fund pursuant to Section V; *provided*, *however*, that each Settling State shall allow Participating Subdivisions in such Settling State to notify it of any perceived violations of this Agreement or the applicable Consent Judgment.

B. *Jurisdiction.* The Settling Distributors consent to the jurisdiction of the court in which each Settling State files its Consent Judgment, limited to resolution of disputes identified in Section VI.F.1 for resolution in that court.

C. *Specific Terms Dispute Resolution.*

1. Any dispute that is addressed by the provisions set forth in the Injunctive Relief Terms shall be resolved as provided therein.

2. In the event that Settling Distributors believe that the eight-five percent (85%) threshold established in Section V.B.1 is not being satisfied, any Party may request that the Settling Distributors and Enforcement Committee meet and confer regarding the use of funds to implement Section V.B.1. The completion of such meet-and-confer process is a precondition to further action regarding any such dispute. Further action concerning Section V.B.1 shall: (i) be limited to the Settling Distributors seeking to reduce their Annual Payments by no more than five percent (5%) of the difference between the actual amount of Opioid Remediation and the eighty-five percent (85%) threshold established in Section V.B.1; (ii) only reduce Annual Payments to those Settling States and their Participating Subdivisions that are below the eighty-five percent (85%) threshold established in Section V.B.1; and (iii) not reduce Annual Payments restricted to future Opioid Remediation.

D. *State-Subdivision Enforcement.*

1. A Subdivision shall not have enforcement rights against a Settling State in which it is located with respect to this Agreement or any Consent Judgment except that a Participating Subdivision listed on Exhibit G shall have enforcement rights (a) as provided for in a State-Subdivision Agreement, Allocation Statute, or Statutory Trust with respect to intrastate allocation or (b) in the absence of a State-Subdivision Agreement, Allocation Statute, or Statutory Trust, to allegations that (i) the Settling State's use of Abatement Accounts Fund monies were not used for uses similar to or in the nature of those uses contained in Exhibit E; or (ii) a Settling State failed to pay funds directly from the Abatement Accounts Fund to a Participating Subdivision eligible to receive a block grant pursuant to Section V.E.2.b.

2. A Settling State shall have enforcement rights against a Participating Subdivision located in its territory (a) as provided for in a State-Subdivision Agreement, Allocation Statute, or Statutory Trust; or (b) in the absence of a State-Subdivision

Agreement, Allocation Statute, or Statutory Trust, to allegations that the Participating Subdivisions' uses of Abatement Accounts Fund monies were not used for purposes similar to or in the nature of those uses contained in Exhibit E.

3. As between Settling States and Participating Subdivisions, the above rights are contractual in nature and nothing herein is intended to limit, restrict, change or alter any other existing rights under law.

E. *Subdivision Distributor Payment Enforcement.* A Participating Subdivision listed on Exhibit G shall have the same right as a Settling State pursuant to Section VI.F.2.a(v) to seek resolution regarding the failure by a Settling Distributor to make its allocable share of an Annual Payment in a Payment Year.

F. *Other Terms Regarding Dispute Resolution.*

1. Except to the extent provided by Section VI.C or Section VI.F.2, all disputes shall be resolved in either the court that entered the relevant Consent Judgment or, if no such Consent Judgment was entered, a state or territorial court with jurisdiction located wherever the seat of the relevant state government is located.

a. State court proceedings shall be governed by the rules and procedures of the relevant forum.

b. For the avoidance of doubt, disputes to be resolved in state court include, but are not limited to, the following:

(i) disputes concerning whether expenditures qualify as Opioid Remediation;

(ii) disputes between a Settling State and its Participating Subdivisions as provided by Section VI.D, except to the extent the State-Subdivision Agreement provides for other dispute resolution mechanisms. For the avoidance of doubt, disputes between a Settling State and any Participating Subdivision shall not be considered National Disputes;

(iii) whether this Agreement and relevant Consent Judgment are binding under state law;

(iv) the extent of the Attorney General's or other participating entity's authority under state law, including the extent of the authority to release claims;

(v) whether the definition of a Bar, a Case-Specific Resolution, Final Order, lead state agency as described in Section V.D.4.b, Later Litigating Subdivision, Litigating Subdivision, or Threshold Motion have been met; and

(vi) all other disputes not specifically identified in Section VI.C or Section VI.F.2.

c. Any Party may request that the National Arbitration Panel provide an interpretation of any provision of the settlement that is relevant to the state court determination, and the National Arbitration Panel shall make reasonable best efforts to supply such interpretation within the earlier of thirty (30) calendar days or the time period required by the state court proceedings. Any Party may submit that interpretation to the state court to the extent permitted by, and for such weight provided by, the state court's rules and procedures. If requested by a Party, the National Arbitration Panel shall request that its interpretation be accepted in the form of an *amicus curiae* brief, and any attorneys' fees and costs for preparing any such filing shall be paid for by the requesting Party.

2. National Disputes involving a Settling State, a Participating Subdivision that has enforcement rights pursuant to Section VI.A, and/or a Settling Distributor shall be resolved by the National Arbitration Panel.

a. National Disputes are disputes that are not addressed by Section VI.C, and which are exceptions to Section VI.F.1's presumption of resolution in state courts because they involve issues of interpretation of terms contained in this Agreement applicable to all Settling States without reference to a particular State's law. Disputes between a Settling State and any Participating Subdivision shall not be considered National Disputes. National Disputes are limited to the following:

(i) the amount of offset and/or credit attributable to Non-Settling States or the Tribal/W. Va. Subdivision Credit;

(ii) issues involving the scope and definition of Product;

(iii) interpretation and application of the terms "Covered Conduct," "Released Entities," and "Released Claims";

(iv) the allocation of payments among Settling Distributors as described in Section IV.I;

(v) the failure by a Settling Distributor to pay its allocable share of the Annual Payment or of the Additional Restitution Amount in a Payment Year, but for the avoidance of doubt, disputes between a Settling Distributor and a Settling State over the amounts owed only to that state that do not affect any other Settling State shall not be considered National Disputes;

(vi) the interpretation and application of the significant financial constraint provision in Section IV.K, including, without limitation, eligibility for and amount of deferrals for any given year, time for repayment, and compliance with restrictions during deferral term;

(vii) the interpretation and application of the prepayment provisions as described in Section IV.J;

(viii) the interpretation and application of any most-favored-nation provision in Section XIV.E;

(ix) questions regarding the performance and/or removal of the Settlement Fund Administrator;

(x) replacement of the Monitor, as provided in the Injunctive Relief Terms;

(xi) disputes involving liability of successor entities;

(xii) disputes that require a determination of the sufficiency of participation in order to qualify for Incentive Payments A, B, or C, as well as disputes over qualification for Participation Tiers;

(xiii) disputes involving a Releasor's compliance with, and the appropriate remedy under, Section XI.B.I.A.3;

(xiv) disputes requiring the interpretation of Agreement terms that are national in scope or impact, which shall mean disputes requiring the interpretation of Agreement terms that (i) concretely affect four (4) or more Settling States; and (ii) do not turn on unique definitions and interpretations under state law; and

(xv) any dispute subject to resolution under Section VI.F.1 but for which all parties to the dispute agree to arbitration before the National Arbitration Panel under the provisions of this Section VI.F.2.

b. The National Arbitration Panel shall be comprised of three (3) arbitrators. One (1) arbitrator shall be chosen by the Settling Distributors, one (1) arbitrator shall be chosen by the Enforcement Committee with due input from Participating Subdivisions listed on Exhibit G, and the third arbitrator shall be agreed upon by the first two (2) arbitrators. The membership of the National Arbitration Panel is intended to remain constant throughout the term of this Agreement, but in the event that replacements are required, the retiring arbitrator shall be replaced by the party that selected him/her.

c. The National Arbitration Panel shall make reasonable best efforts to decide all matters within one hundred eighty (180) calendar days of filing, and in no event shall it take longer than one (1) year.

d. The National Arbitration Panel shall conduct all proceedings in a reasonably streamlined process consistent with an opportunity for the parties to be heard. Issues shall be resolved without the need for live witnesses where feasible,

and with a presumption in favor of remote participation to minimize the burdens on the parties.

e. To the extent allowed under state law, a Settling State, a Participating Subdivision that has enforcement rights pursuant to Section VI.A, and (at any party's request) the National Arbitration Panel may certify to an appropriate state court any question of state law. The National Arbitration Panel shall be bound by a final state court determination of such a certified question. The time period for the arbitration shall be tolled during the course of the certification process.

f. The arbitrators will give due deference to any authoritative interpretation of state law, including any declaratory judgment or similar relief obtained by a Settling State, a Participating Subdivision that has enforcement rights pursuant to Section VI.A, or Settling Distributor on a state law issue.

g. The decisions of the National Arbitration Panel shall be binding on Settling States, Participating Subdivisions, Settling Distributors, and the Settlement Fund Administrator. In any proceeding before the National Arbitration Panel involving a dispute between a Settling State and one or more Settling Distributors whose resolution could prejudice the rights of a Participating Subdivision(s) in that Settling State, such Participating Subdivision(s) shall be allowed to file a statement of view in the proceeding.

h. Nothing herein shall be construed so as to limit or otherwise restrict a State from seeking injunctive or other equitable relief in state court to protect the health, safety, or welfare of its citizens.

i. Each party shall bear its own costs in any arbitration or court proceeding arising under this Section VI. The costs for the arbitrators on the National Arbitration Panel shall be divided and paid equally by the disputing sides for each individual dispute, *e.g.*, a dispute between a Settling Distributor and Settling States/Participating Subdivisions shall be split fifty percent (50%) by the Settling Distributor and fifty percent (50%) by the Settling States/Participating Subdivisions that are parties to the dispute; a dispute between a Settling State and a Participating Subdivision shall be split fifty percent (50%) by the Settling State that is party to the dispute and fifty percent (50%) by any Participating Subdivisions that are parties to the dispute.

3. Prior to initiating an action to enforce pursuant to this Section VI.F, the complaining party must:

a. Provide written notice to the Enforcement Committee of its complaint, including the provision of the Consent Judgment and/or Agreement that the practice appears to violate, as well as the basis for its interpretation of the disputed provision. The Enforcement Committee shall establish a reasonable process and timeline for obtaining additional information from the involved

parties; *provided, however*, that the date the Enforcement Committee establishes for obtaining additional information from the parties shall not be more than forty-five (45) calendar days following the notice. The Enforcement Committee may advise the involved parties of its views on the complaint and/or seek to resolve the complaint informally.

b. Wait to commence any enforcement action until thirty (30) calendar days after the date that the Enforcement Committee establishes for obtaining additional information from the involved parties.

4. If the parties to a dispute cannot agree on the proper forum for resolution of the dispute under the provisions of Section VI.F.1 or Section VI.F.2, a committee comprising the Enforcement Committee and sufficient representatives of the Settling Distributors such that the members of the Enforcement Committee have a majority of one (1) member will determine the forum where the dispute will be initiated within twenty-eight (28) calendar days of receiving notification of the dispute relating to the proper forum. The forum identified by such committee shall be the sole forum for litigating the issue of which forum will hear the substantive dispute, and the committee's identification of such forum in the first instance shall not be entitled to deference by the forum selected.

G. *No Effect.* Nothing in this Agreement shall be interpreted to limit the Settling State's Civil Investigative Demand ("*CID*") or investigative subpoena authority, to the extent such authority exists under applicable state law and the CID or investigative subpoena is issued pursuant to such authority, and Settling Distributors reserve all of their rights in connection with a CID or investigative subpoena issued pursuant to such authority.

VII. Participation by Subdivisions

A. *Notice.* No later than fifteen (15) calendar days after the Preliminary Agreement Date, the Settling States, with the cooperation of the Settling Distributors, shall send individual written notice of the opportunity to participate in this Agreement and the requirements of participation to all Subdivisions in the Settling States that are (1) Litigating Subdivisions or (2) Non-Litigating Subdivisions listed on Exhibit G. The costs of the written notice to such Subdivisions shall be paid for by the Settling Distributors. The Settling States, with the cooperation of the Settling Distributors, may also provide general notice reasonably calculated to alert Non-Litigating Subdivisions in the Settling States to this Agreement, the opportunity to participate in it, and the requirements for participation. Such notice may include publication and other standard forms of notification, as well as notice to national state and county organizations such as the National Association of Counties and the National League of Cities. The notice will include that the deadline for becoming an Initial Participating Subdivision is the Initial Participation Date. Nothing contained herein shall preclude a Settling State from providing further notice to or otherwise contacting any of its Subdivisions about becoming a Participating Subdivision, including beginning any of the activities described in this paragraph prior to the Preliminary Agreement Date.

B. *Requirements for Becoming a Participating Subdivision—Non-Litigating Subdivisions.* A Non-Litigating Subdivision in a Settling State may become a Participating

Subdivision by returning an executed Subdivision Settlement Participation Form to the Settlement Fund Administrator specifying (1) that the Subdivision agrees to the terms of this Agreement pertaining to Subdivisions, (2) that the Subdivision releases all Released Claims against all Released Entities, (3) that the Subdivision agrees to use monies it receives, if any, from the Settlement Fund pursuant to the applicable requirements of Section V; *provided, however*, that Non-Litigating Subdivisions may only use monies originating from the Settlement Fund for purposes that qualify as Opioid Remediation, and (4) that the Subdivision submits to the jurisdiction of the court where the applicable Consent Judgment is filed for purposes limited to that court's role under this Agreement. The required Subdivision Settlement Participation Form is attached as Exhibit K.

C. *Requirements for Becoming a Participating Subdivision—Litigating Subdivisions/Later Litigating Subdivisions*. A Litigating Subdivision or Later Litigating Subdivision in a Settling State may become a Participating Subdivision by returning an executed Subdivision Settlement Participation Form to the Settlement Fund Administrator and upon prompt dismissal with prejudice of its lawsuit. A Settling State may require each Litigating Subdivision in that State to specify on the Subdivision Settlement Participation Form whether its counsel has waived any contingency fee contract with that Participating Subdivision and whether, if eligible, it intends to seek fees pursuant to Exhibit R. The Settlement Fund Administrator shall provide quarterly reports of this information to the parties organized by Settling State. A Litigating Subdivision or Later Litigating Subdivision may not become a Participating Subdivision after the completion of opening statements in a trial of the lawsuit it brought that includes a Released Claim against a Released Entity.

D. *Initial Participating Subdivisions*. A Subdivision qualifies as an Initial Participating Subdivision if it meets the applicable requirements for becoming a Participating Subdivision set forth in Section VII.B or Section VII.C by the Initial Participation Date. All Subdivision Settlement Participation Forms shall be held in escrow by the Settlement Fund Administrator until the Reference Date.

E. *Later Participating Subdivisions.* A Subdivision that is not an Initial Participating Subdivision may become a Later Participating Subdivision by meeting the applicable requirements for becoming a Participating Subdivision set forth in Section VII.B or Section VII.C after the Initial Participation Date and by agreeing to be subject to the terms of a State-Subdivision Agreement (if any) or any other structure adopted or applicable pursuant to Section V.D or Section V.E. The following provisions govern what a Later Participating Subdivision can receive (but do not apply to Initial Participating Subdivisions):

1. Except as provided in Section IV.C, a Later Participating Subdivision shall not receive any share of any Annual Payment due before it became a Participating Subdivision.

2. A Later Participating Subdivision that becomes a Participating Subdivision after July 15, 2022 shall receive seventy-five percent (75%) of the share of future base or incentive payments that it would have received had it become a Later Participating Subdivision prior to that date (unless the Later Participating Subdivision is subject to Section VII.E.3 or Section VII.E.4).

3. A Later Participating Subdivision that, after the Initial Participation Date, maintains a lawsuit for a Released Claim(s) against a Released Entity and has judgment entered against it on every such Claim before it became a Participating Subdivision (other than a consensual dismissal with prejudice) shall receive fifty percent (50%) of the share of future base or incentive payments that it would have received had it become a Later Participating Subdivision prior to such judgment; *provided*, *however*, that if the Subdivision appeals the judgment and the judgment is affirmed with finality before the Subdivision becomes a Participating Subdivision, the Subdivision shall not receive any share of any base payment or incentive payments.

4. A Later Participating Subdivision that becomes a Participating Subdivision while a Bar or Case-Specific Resolution involving a different Subdivision exists in its State shall receive twenty-five percent (25%) of the share of future base or incentive payments that it would have received had it become a Later Participating Subdivision without such Bar or Case-Specific Resolution.

F. *No Increase in Payments*. Amounts to be received by Later Participating Subdivisions shall not increase the payments due from the Settling Distributors.

G. *Ineligible Subdivisions*. Subdivisions in Non-Settling States and Prior Litigating Subdivisions are not eligible to be Participating Subdivisions.

H. *Non-Participating Subdivisions*. Non-Participating Subdivisions shall not directly receive any portion of any Annual Payment, including from the State Fund and direct distributions from the Abatement Accounts Fund; however, a Settling State may choose to fund future Opioid Remediation that indirectly benefits Non-Participating Subdivisions.

I. *Unpaid Allocations to Later Participating Subdivisions and Non-Participating Subdivisions*. Any base payment and incentive payments allocated pursuant to Section V.D to a Later Participating Subdivision or Non-Participating Subdivision that cannot be paid pursuant to this Section VII, including the amounts that remain unpaid after the reductions required by Section VII.E.2 through Section VII.E.4, will be allocated to the Abatement Accounts Fund for the Settling State in which the Subdivision is located, unless those payments are redirected elsewhere by a State-Subdivision Agreement or by a Statutory Trust.

VIII. Condition to Effectiveness of Agreement and Filing of Consent Judgment

A. *Determination to Proceed With Settlement.*

1. The Settling States shall confer with legal representatives of the Participating Subdivisions listed on Exhibit G and inform the Settling Distributors no later than fifteen (15) calendar days prior to the Reference Date whether there is sufficient participation to proceed with this Agreement. Within seven (7) calendar days of informing the Settling Distributors that there is sufficient participation to proceed, the Settling States will deliver all signatures and releases required by the Agreement to be provided by the Settling States to the Settling Distributors.

2. If the Settling States inform Settling Distributors that there is sufficient participation, the Settling Distributors will then determine on or before the Reference Date whether there is sufficient State participation and sufficient resolution of the Claims of the Litigating Subdivisions in the Settling States (through participation under Section VII, Case-Specific Resolution(s) and Bar(s)) to proceed with this Agreement. The determination shall be in the sole discretion of the Settling Distributors and may be based on any criteria or factors deemed relevant by the Settling Distributors.

B. *Notice by Settling Distributors*. On or before the Reference Date, the Settling Distributors shall inform the Settling States of their determination pursuant to Section VIII.A. If the Settling Distributors determine to proceed, the Parties will proceed to file the Consent Judgments and the obligations in the Subdivision Settlement Participation Forms will be effective and binding as of the Reference Date. If the Settling Distributors determine not to proceed, this Agreement will have no further effect, any amounts placed in escrow for Payment Year 1, including funds referenced in Section IV.C.1, Section IX, Section X, and Exhibit M, shall be returned to the Settling Distributors, and all releases (including those contained in Subdivision Settlement Participation Forms) and other commitments or obligations contained herein or in Subdivision Settlement Participation Forms will be void.

C. *Determination of the Participation Tier.*

1. On the Reference Date, *provided* that Settling Distributors determine to proceed with this Agreement, the Settlement Fund Administrator shall determine the Participation Tier. The criteria used to determine the Participation Tier are set forth in Exhibit H. Any disputes as to the determination of the Participation Tier shall be decided by the National Arbitration Panel.

2. The Participation Tier shall be redetermined by the Settlement Fund Administrator annually as of the Payment Date, beginning with Payment Year 3, pursuant to the criteria set forth in Exhibit H.

3. After Payment Year 6, the Participation Tier cannot move higher, unless this restriction is waived by the Settling Distributors.

4. In the event that a Participation Tier redetermination moves the Participation Tier higher, and that change is in whole or in part as a result of the post-Reference Date enactment of a Bar and there is later a Revocation Event with respect to such Bar, then on the next Payment Date that is at least one hundred eighty (180) calendar days after the Revocation Event, the Participation Tier shall move down to the Participation Tier that would have applied had the Bar never been enacted, unless the Bar is reinstated or all Subdivisions affected by the Revocation Event become Participating Subdivisions within one hundred eighty (180) calendar days of the Revocation Event. This is the sole circumstance in which, on a nationwide basis, the Participation Tier can move down.

5. In the event that there is a post-Reference Date Revocation Event with respect to a Bar that was enacted in a Settling State prior to the Reference Date, then, on

the next Payment Date that is at least one hundred eighty (180) calendar days after the Revocation Event, unless the Bar is reinstated or all Subdivisions affected by the Revocation Event become Participating Subdivisions within one hundred eighty (180) calendar days of the Revocation Event, the Participation Tier shall decrease – solely for the State in which the Revocation Event occurred – to the Participation Tier commensurate with the percentage of Litigating Subdivisions in that State that are Participating Subdivisions and the percentage of Non-Litigating Subdivisions that are both Primary Subdivisions and Participating Subdivisions, according to the criteria set forth in Exhibit G, except that the calculations shall be performed as to that State alone. For the avoidance of doubt and solely for the calculation in this subparagraph, the Settling States Column of Exhibit H shall play no role. This is the sole circumstance in which one Settling State will have a different Participation Tier than other Settling States.

6. The redetermination of the Participation Tier under Section VIII.C.2 shall not affect payments already made or suspensions, offsets, or reductions already applied.

IX. Additional Restitution

A. *Additional Restitution Amount.* Pursuant to the schedule set forth in Exhibit M and subject to the reduction specified in Section IX.B, the Settling Distributors shall pay an Additional Restitution Amount to the Settling States listed in Exhibit N. Such funds shall be paid, on the schedule set forth on Exhibit M, on the Payment Date for each relevant Payment Year to such Settling States as allocated by the Settlement Fund Administrator pursuant to Exhibit N.

B. *Reduction of Additional Restitution Amount.* In the event that any Non-Settling States appear on Exhibit N, the amounts owed by Settling Distributors pursuant to this Section IX shall be reduced by the allocations set forth on Exhibit N for any such Non-Settling States.

C. *Use of Funds.* All funds paid as an Additional Restitution Amount shall be part of the Compensatory Restitution Amount, shall be used for Opioid Remediation, except as allowed by Section V.B.2, and shall be governed by the same requirements as specified in Section V.F.

X. Plaintiffs' Attorneys' Fees and Costs

The Agreement on Attorneys' Fees, Expenses and Costs is set forth in Exhibit R and incorporated herein by reference. The Agreement on the State Outside Counsel Fee Fund and Agreement on the State Cost Fund Administration are set forth in Exhibit S and Exhibit T, respectively, and are incorporated herein by reference.

XI. Release

A. *Scope.* As of the Effective Date, the Released Entities are hereby released and forever discharged from all of the Releasors' Released Claims. Each Settling State (for itself and its Releasors) and Participating Subdivision hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in

any forum whatsoever. The releases provided for in this Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of each Settling State and its Attorney General to release claims. This Agreement shall be a complete bar to any Released Claim.

B. *Claim-Over and Non-Party Settlement.*

1. It is the intent of the Parties that:

a. Released Entities should not seek contribution or indemnification (other than pursuant to an insurance contract), from other parties for their payment obligations under this Agreement;

b. the payments made under this Agreement shall be the sole payments made by the Released Entities to the Releasors involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity);

c. Claims by Releasors against non-Parties should not result in additional payments by Released Entities, whether through contribution, indemnification or any other means; and

d. the Agreement meets the requirements of the Uniform Contribution Among Joint Tortfeasors Act and any similar state law or doctrine that reduces or discharges a released party's liability to any other parties.

The provisions of this Section XI.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissals provided for herein are made in good faith.

2. No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner; *provided* that a Released Entity shall be relieved of this prohibition with respect to any entity that asserts a Claim-Over against it. For the avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

3. To the extent that, on or after the Reference Date, any Releasor enters into a Non-Party Settlement, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include), unless prohibited from doing so under applicable law, in the Non-Party Settlement a prohibition on contribution or indemnity of any kind substantially equivalent to that required from the Settling Distributors in Section XI.B.2, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain

the prohibition and/or release required by this subsection is a material term of this Agreement.

4. In the event that any Releasor obtains a judgment with respect to Non-Party Covered Conduct against a Non-Released Entity that does not contain a prohibition like that described in Section XI.B.3, or any Releasor files a Non-Party Covered Conduct Claim against a Non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement as provided in Section XI.B.3, and such Non-Released Entity asserts a Claim-Over against a Released Entity, the Released Entity shall be relieved of the prohibition in Section XI.B.2 with respect to that Non-Released Entity and that Releasor and the Settling Distributors shall take the following actions to ensure that the Released Entities do not pay more with respect to Covered Conduct to Releasors or to Non-Released Entities than the amounts owed under this Settlement Agreement by the Settling Distributors:

a. Settling Distributors shall notify that Releasor of the Claim-Over within sixty (60) calendar days of the assertion of the Claim-Over or sixty (60) calendar days of the Effective Date of this Settlement Agreement, whichever is later;

b. Settling Distributors and that Releasor shall meet and confer concerning the means to hold Released Entities harmless and ensure that they are not required to pay more with respect to Covered Conduct than the amounts owed by Settling Distributors under this Agreement;

c. That Releasor and Settling Distributors shall take steps sufficient and permissible under the law of the State of the Releasor to hold Released Entities harmless from the Claim-Over and ensure Released Entities are not required to pay more with respect to Covered Conduct than the amounts owed by Settling Distributors under this Agreement. Such steps may include, where permissible:

(i) Filing of motions to dismiss or such other appropriate motion by Settling Distributors or Released Entities, and supported by Releasors, in response to any claim filed in litigation or arbitration;

(ii) Reduction of that Releasors' Claim and any judgment it has obtained or may obtain against such Non-Released Entity by whatever amount or percentage is necessary to extinguish such Claim-Over under applicable law, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non-Released Entity;

(iii) Placement into escrow of funds paid by the Non-Released Entities such that those funds are available to satisfy the Claim-Over;

(iv) Return of monies paid by Settling Distributors to that Releasor under this Settlement Agreement to permit satisfaction of a

judgment against or settlement with the Non-Released Entity to satisfy the Claim-Over;

(v) Payment of monies to Settling Distributors by that Releasor to ensure they are held harmless from such Claim-Over, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non-Released Entity;

(vi) Credit to the Settling Distributors under this Agreement to reduce the overall amounts to be paid under the Agreement such that they are held harmless from the Claim-Over; and

(vii) Such other actions as that Releasor and Settling Distributors may devise to hold Settling Distributors harmless from the Claim-Over.

d. The actions of that Releasor and Settling Distributors taken pursuant to paragraph (c) must, in combination, ensure Settling Distributors are not required to pay more with respect to Covered Conduct than the amounts owed by Settling Distributors under this Agreement.

e. In the event of any dispute over the sufficiency of the actions taken pursuant to paragraph (c), that Releasor and the Settling Distributors may seek review by the National Arbitration Panel, provided that, if the parties agree, such dispute may be heard by the state court where the relevant Consent Judgment was filed. The National Arbitration Panel shall have authority to require Releasors to implement a remedy that includes one or more of the actions specified in paragraph (c) sufficient to hold Released Entities fully harmless. In the event that the Panel's actions do not result in Released Entities being held fully harmless, Settling Distributors shall have a claim for breach of this Agreement by Releasors, with the remedy being payment of sufficient funds to hold Settling Distributors harmless from the Claim-Over. For the avoidance of doubt, the prior sentence does not limit or eliminate any other remedy that Settling Distributors may have.

5. To the extent that the Claim-Over is based on a contractual indemnity, the obligations under Section XI.B.4 shall extend solely to a Non-Party Covered Conduct Claim against a pharmacy, clinic, hospital or other purchaser or dispenser of Products, a manufacturer that sold Products, a consultant, and/or a pharmacy benefit manager or other third-party payor. Each Settling Distributor shall notify the Settling States, to the extent permitted by applicable law, in the event that any of these types of Non-Released Entity asserts a Claim-Over arising out of contractual indemnity against it.

C. *Indemnification and Contribution Prohibited.* No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory, from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner. For the

avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

D. *General Release*. In connection with the releases provided for in this Agreement, each Settling State (for itself and its Releasors) and Participating Subdivision expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any State or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

> **General Release; extent**. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Settling State (for itself and its Releasors) and Participating Subdivision hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Settling States' decision to enter into this Agreement or the Participating Subdivisions' decision to participate in this Agreement.

E. *Assigned Interest Waiver*. To the extent that any Settling State has any direct or indirect interest in any rights of a third-party that is a debtor under the Bankruptcy Code as a result of a claim arising out of Covered Conduct by way of assignment or otherwise, including as a result of being the beneficiary of a trust or other distribution entity, to assert claims against a Settling Distributor (whether derivatively or otherwise), under any legal or equitable theory, including for indemnification, contribution, or subrogation, such Settling State waives the right to assert any such claim, or to receive a distribution or any benefit on account of such claim and such claim, distribution, or benefit shall be deemed assigned to such Settling Distributor.

F. *Res Judicata*. Nothing in this Agreement shall be deemed to reduce the scope of the res judicata or claim preclusive effect that the settlement memorialized in this Agreement, and/or any Consent Judgment or other judgment entered on this Agreement, gives rise to under applicable law.

G. *Representation and Warranty*. The signatories hereto on behalf of their respective Settling States expressly represent and warrant that they have (or have obtained, or will obtain no later than the Initial Participation Date) the authority to settle and release, to the maximum extent of the State's power, all Released Claims of (1) their respective Settling States, (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts, and (3) any of their respective Settling State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or

revocation of a pharmaceutical distribution license. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor. Also for the purposes of clause (3), a release from a State's Governor is sufficient to demonstrate that the appropriate releases have been obtained.

H. *Effectiveness*. The releases set forth in this Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the Releasors. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the Settlement Fund or any portion thereof, or by the enactment of future laws, or by any seizure of the Settlement Fund or any portion thereof.

I. *Cooperation*. Releasors (1) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (2) will reasonably cooperate with and not oppose any effort by Settling Distributors to secure the prompt dismissal of any and all Released Claims.

J. *Non-Released Claims*. Notwithstanding the foregoing or anything in the definition of Released Claims, this Agreement does not waive, release or limit any criminal liability, Claims for liability under tax law, Claims under securities law by a State Releasor as investor, Claims against parties who are not Released Entities, Claims by private individuals, and any claims arising under this Agreement for enforcement of this Agreement.

XII. Later Litigating Subdivisions

A. *Released Claims against Released Entities*. Subject to Section XII.B, the following shall apply in the event a Later Litigating Subdivision in a Settling State maintains a lawsuit for a Released Claim against a Released Entity after the Reference Date:

1. The Released Entity shall take ordinary and reasonable measures to defend the action, including filing a Threshold Motion with respect to the Released Claim. The Released Entity shall further notify the Settling State and Settlement Fund Administrator immediately upon notice of a Later Litigating Subdivision bringing a lawsuit for a Released Claim, and shall not oppose a Settling State's submission in support of the Threshold Motion.

2. The provisions of this Section XII.A.2 apply if the Later Litigating Subdivision is a Primary Subdivision (except as provided in Section XII.A.2.f):

a. If a lawsuit including a Released Claim survives until the Suspension Deadline for that lawsuit, the Settlement Fund Administrator shall calculate the Suspension Amount applicable to the next Payment due from the Settling Distributor(s) at issue and apportioned to the State of the Later Litigating Subdivision and to Subdivisions in that State; *provided*, *however*, that the Suspension Amount for a Payment Year cannot exceed the Suspension Cap. The Suspension Amount shall be paid into the Settlement Fund Escrow account. If the Suspension Amount exceeds the Suspension Cap for that Payment Year, then the

remaining amount will be paid into the Settlement Fund Escrow in the following Payment Year, subject to the Suspension Cap for that Payment Year, and so forth in each succeeding Payment Year until the entire Suspension Amount has been paid into the Settlement Fund Escrow or the Released Claim is resolved, as provided below, whichever comes first. A suspension does not apply during the pendency of any appeal dismissing the lawsuit for a Released Claim in whole.

b. If the Released Claim is resolved with finality without requirement of payment by the Released Entity, the placement of any remaining balance of the Suspension Amount into the Settlement Fund Escrow shall cease and the Settlement Fund Administrator shall immediately transfer amounts in the Settlement Fund Escrow on account of the suspension to the Settling State at issue and its Participating Subdivisions. The lawsuit will not cause further suspensions unless the Released Claim is reinstated upon further review, legislative action, or otherwise.

c. If the Released Claim is resolved with finality on terms requiring payment by the Released Entity, the Settlement Fund Administrator will transfer the amounts in the Settlement Fund Escrow on account of the suspension to the Settling Distributor(s) at issue necessary to satisfy the payment obligation of the Released Entity to the relevant Later Litigating Subdivision. If any balance remains in the Settlement Fund Escrow on account of the suspension after transfer of the amount necessary to satisfy the payment obligation, the Settlement Fund Administrator will immediately transfer the balance to the Settling State at issue and its Participating Subdivisions. If the payment obligation of the Released Entity to the relevant Later Litigating Subdivision exceeds the amounts in the Settlement Fund Escrow on account of the suspension, the Settling Distributor at issue shall receive a dollar-for-dollar offset, subject to the yearly Offset Cap, for the excess amount against its obligation to pay its allocable share of Annual Payments that would be apportioned to the Settling State at issue and to its Subdivisions. The offset shall be applied as follows: first against the Settling Distributor's allocable share of the Annual Payment due in Payment Year 18, up to the Offset Cap for that Payment Year, with any remaining amounts above the Offset Cap applied against the Settling Distributor's allocable share of the Annual Payment due in Payment Year 17, up to the Offset Cap for that Payment Year, and so forth for each preceding Payment Year until the entire amount to be offset has been applied or no future Payment Years remain.

d. If the lawsuit asserting a Released Claim is resolved with finality on terms requiring payment by the Released Entity, and the Released Claim did not give rise to a suspension of any Settling Distributor's portion of any Annual Payments (*e.g.*, because it was resolved during Payment Years 1 or 2, during which all Settling States are deemed eligible for Incentive Payment A and thus no suspension of payments took place, as provided by Section XII.B), the Settling Distributor at issue shall receive a dollar-for-dollar offset, subject to the yearly Offset Cap, for the amount paid. The offset shall be applied against the relevant Settling Distributor's allocable portion of the Annual Payments starting in

Payment Year 18 and working backwards as set forth in Section XII.A.2.c. If the lawsuit for a Released Claim is otherwise resolved by the Released Entity, without the Settling Distributor filing a Threshold Motion despite an opportunity to do so, and the Released Claim did not give rise to a suspension of any Settling Distributor's portion of any Annual Payments, the Settling Distributor at issue shall not receive any offset for the amount paid.

e. If more than one Primary Subdivision in a Settling State becomes a Later Litigating Subdivision, a single Suspension Cap applies and the total amounts deducted from the share of the Annual Payment allocated to the Settling State and its Participating Subdivisions in a given Payment Year cannot exceed the Suspension Cap. For the avoidance of doubt, an individual Primary Subdivision shall not trigger more than one suspension regardless if it (or any of its officials) is named as multiple plaintiffs in the same lawsuit.

f. This Section XII.A.2 shall not apply with respect to a Primary Subdivision that is either (i) a Later Litigating Subdivision under clause (3) of the definition of that term solely because a legislative Bar or legislative Case-Specific Resolution applicable as of the Reference Date is invalidated by judicial decision after the Reference Date or (ii) a Later Litigating Subdivision under clause (4) of the definition of that term. Such a Primary Subdivision shall be treated as a General Purpose Government under Section XII.A.3.

3. The terms of this Section XII.A.3 apply if a the Later Litigating Subdivision is not a Primary Subdivision (except for Primary Subdivisions referenced in Section XII.A.2.f) but is a General Purpose Government, School District, Health District or Hospital District: if the Released Claim is resolved with finality on terms requiring payment by the Released Entity, the Settling Distributor at issue shall receive a dollar-for-dollar offset, subject to the yearly Offset Cap, for the amount paid against its portion of the obligation to make Annual Payments that would be apportioned to the Settling State at issue and to its Subdivisions. The offset shall be applied as follows: first against the relevant Settling Distributor's allocable share of the Annual Payment due in Payment Year 18, up to the Offset Cap for that Payment Year, with any remaining amounts above the Offset Cap applied against the Payment due in Payment Year 17, up to the Offset Cap for that Payment Year, and so forth for each preceding Payment Year until the entire amount to be offset has been applied or no future Payment Year remains. If the Released Claim is resolved on terms requiring payment during the first two (2) Payment Years, in no case will any amounts be offset against the amounts due in Payment Years 1 and 2.

4. In no event shall the total of Suspension Amounts and offsets pursuant to this Section applicable to a Settling State in a Payment Year for that Payment Year exceed the Offset Cap for that State. If, in a Payment Year, the total of Suspension Amounts and offsets applicable to a Settling State exceeds the Offset Cap, the Suspension Amounts shall be reduced so that the total of Suspension Amounts and offsets equals the Offset Cap.

5. For the avoidance of doubt, any offset pursuant to this Section XII in a Settling State that is not eligible for Incentive Payment A shall continue to apply even if the Settling State at issue subsequently becomes eligible for Incentive Payment A.

6. "*Terms requiring payment*" shall mean (i) a final monetary judgment or (ii) a settlement; *provided* that the Released Entity sought the applicable State Attorney General's consent to the settlement and such consent was either obtained or unreasonably withheld. Should the judgment or settlement resolve claims that are not Released Claims, the offset shall be for the Released Claims portion only, which shall be distinguishable in the judgment or settlement.

B. *Exceptions.*

1. Section XII.A shall not apply where the Settling State at issue meets the eligibility criteria for and is entitled to Incentive Payment A for the Payment Year at issue, except as expressly provided therein. For the avoidance of doubt, because all Settling States are deemed eligible for Incentive Payment A for Payment Years 1 and 2 under Section IV.F.1.c, a suspension of Payments under Section XII.A.2 shall not apply to any Settling States for those Payment Years.

2. An offset under Section XII.A.2 and Section XII.A.3 shall not apply where the Later Litigating Subdivision opted out of a Settlement Class Resolution in the Settling State at issue that was in full force and effect in that Settling State as of the due date of the payment for Payment Year 2 and remains in full force and effect; *provided* that an offset relating to that Subdivision may apply under Section XIII.

3. Section XII.A shall not apply where the Later Litigating Subdivision seeks less than $10 million, or so long as its total claim is reduced to less than $10 million, in the lawsuit for a Released Claim at issue.

4. An offset under Section XII.A.3 shall not apply where the applicable Participation Tier is Participation Tier 1 and the population of the Later Litigating Subdivision is under 10,000.

5. If the applicable Participation Tier is Participation Tier 2 or higher, and the Later Litigating Subdivision has a population less than 10,000, the offset under Section XII.A.3 shall only apply to amounts paid pursuant to a settlement or judgment that are over $10 million per case or resolution. Any type of consolidated or aggregated or joined or class actions, however styled, shall be considered a single case, and any resolutions that occur within a sixty (60) calendar day period of each other and involve Later Litigating Subdivisions that share common counsel and/or are created by the same or related judgments, settlement agreements, or other instruments or are conditioned upon one another, shall be considered a single resolution. For the avoidance of doubt, any such case or resolution shall have only a single $10,000,000 exemption from the offset under Section XII.A.3.

C. *No Effect on Other Provisions.* A suspension or offset under Section XII.A shall not affect the Injunctive Relief Terms or the Consent Judgment.

D. *No Effect on Other States*. A suspension or offset under Section XII.A applicable to one State shall not affect the allocation or payment of the Annual Payment to other Settling States.

XIII. Reductions/Offsets

A. *Non-Settling States.* Non-Settling States shall not be eligible for any payments or have any rights in connection with this Agreement. Accordingly, the stated maximum dollar amounts of the payments specified in Exhibit M are reduced by the aggregate Overall Allocation Percentage of Non-Settling States as set forth in Exhibit F.

B. *Offset Relating to Incentive Payment A.* If a Settling State is not eligible for Incentive Payment A at the third Payment Date, the Settling Distributors shall receive an offset with respect to that State.[10] The offset shall be the dollar amount difference between (1) the total amount of the Incentive Payment A due from the Settling Distributors on the Effective Date and on the Payment Date for Payment Year 2 allocated to that State and its Participating Subdivisions, and (2) the total amount of Incentive Payments B and C that would have been due from the Settling Distributors on the Effective Date and on the Payment Date for Payment Year 2 so allocated but for the State's deemed eligibility for Incentive Payment A. The offset shall be applied in equal installments to reduce the Annual Payments for Payment Years 3 through 7 that would be apportioned to that State and to its Subdivisions, and shall remain applicable even if that State subsequently becomes eligible for Incentive Payment A.

C. *Settlement Class Resolution Opt Outs.* If a Settling State is eligible for Incentive Payment A on the basis of a Settlement Class Resolution, and a Primary Subdivision that opted out of the Settlement Class Resolution maintains a lawsuit asserting a Released Claim against a Released Entity, the following shall apply. If the lawsuit asserting a Released Claim either survives a Threshold Motion or has an unresolved Threshold Motion fewer than sixty (60) calendar days prior to the scheduled start of a trial involving a Released Claim, and is resolved with finality on terms requiring payment by the Released Entity, the Settling Distributor at issue shall receive a dollar-for-dollar offset for the amount paid against its obligation to make remaining Incentive Payment A payments that would be apportioned to that State and to its Subdivisions. For the avoidance of doubt, an offset shall not be applicable under this subsection if it is applicable under Section XII.A with respect to the Subdivision at issue.

D. *Revoked Bar, Settlement Class Resolution, or Case-Specific Resolution.* If the Settling Distributors made any Annual Payments that included any incentive payments earned as a result of the existence of a Bar, Settlement Class Resolution, or Case-Specific Resolution in a Settling State, and there is subsequently a Revocation Event with respect to that Bar, Settlement Class Resolution, or Case-Specific Resolution after the determination of the amount of such Annual Payment, the Settling Distributors shall receive a dollar-for-dollar offset against the portion of remaining Annual Payments that would be allocated to that State and its Participating Subdivisions. This offset will be calculated as the dollar amount difference between (1) the total amount of incentive payments paid by the Settling Distributors by virtue of the Bar, Settlement

[10] For purposes of this provision, in determining whether a Settling State would not be eligible for Incentive Payment A for Payment Year 3, the criteria set forth in Section IV.F.1.b shall apply to that Payment Year.

Class Resolution, or Case-Specific Resolution subject to the Revocation Event and (2) the total amount of incentive payments that would have been due from the Settling Distributors during that time had the Bar, Settlement Class Resolution, or Case-Specific Resolution subject to the Revocation Event not been in effect. The amount of incentive payments that would have been due, referenced in clause (2) above, will be calculated one hundred eighty (180) calendar days after the Revocation Event; for purposes of calculating the amount of incentive payments that would have been due, any relevant Subdivision shall be included as a Participating Subdivision if: (1) its Released Claims are extinguished by any subsequent Bar, Settlement Class Resolution, or Case-Specific Resolution in effect as of the date of such calculation, or (2) it becomes a Participating Subdivision (in addition to all other Participating Subdivisions) prior to the date of such calculation.

E. *Certain Taxes.* Amounts paid by a Settling Distributor under an Opioid Tax in a Settling State in a Payment Year shall give rise to a dollar-for-dollar offset against that Settling Distributor's obligation to pay its share of the Annual Payment in that Payment Year that would be allocated to the taxing State or its Participating Subdivisions. If such amounts paid exceed that Settling Distributor's allocable share of the Annual Payment allocable to the taxing State or its Participating Subdivisions in that Payment Year, the excess shall carry forward as an offset against its allocable share of remaining Annual Payments that would be allocated to the taxing State or its Participating Subdivisions

F. *Not Subject to Suspension Cap or Offset Cap.* For the avoidance of doubt, neither the Suspension Cap nor the Offset Cap apply to the offsets and reductions set forth in this Section XIII.

XIV. Miscellaneous

A. *Population of General Purpose Governments.* The population figures for General Purpose Governments shall be the published U.S. Census Bureau's population estimates for July 1, 2019, released May 2020. These population figures shall remain unchanged during the term of this Agreement.[11]

B. *Population of Special Districts.* For any purpose in this Agreement in which the population of a Special District is used other than Section IV.F.1.b: (a) School Districts' population will be measured by the number of students enrolled who are eligible under the Individuals with Disabilities Education Act ("*IDEA*") or Section 504 of the Rehabilitation Act of 1973; (b) Health Districts' and Hospital Districts' population will be measured at twenty-five percent (25%) of discharges; and (c) all other Special Districts' (including Fire Districts' and Library Districts') population will be measured at ten percent (10%) of the population served. The Settling Distributors and the Enforcement Committee shall meet and confer in order to agree on data sources for purposes of this Section prior to the Preliminary Agreement Date.

[11] The estimates for counties and parishes were accessed at https://www.census.gov/data/datasets/time-series/demo/popest/2010s-countiestotal.html. The estimates for cities and towns can currently be found at https://www.census.gov/data/datasets/time-series/demo/popest/2010s-total-cities-and-towns.html.

C. *Population Associated with Sheriffs*. For any purpose in this Agreement in which the population associated with a lawsuit by a sheriff is used, the population will be measured at twenty percent (20%) of the capacity of the jail(s) operated by the sheriff.

D. *No Admission.* The Settling Distributors do not admit liability or wrongdoing. Neither this Agreement nor the Consent Judgments shall be considered, construed or represented to be (1) an admission, concession or evidence of liability or wrongdoing or (2) a waiver or any limitation of any defense otherwise available to the Settling Distributors.

E. *Most-Favored-Nation Provision.*—Settling States.

1. If, after the Reference Date, any Settling Distributor enters into any settlement agreement with any Non-Settling State that resolves Claims similar in scope to the Claims released by a Settling State under this Agreement on overall payment terms that are more favorable to such Non-Settling State than the overall payment terms of the Agreement (after due consideration of relevant differences in population or other appropriate factors), then the Settling States, individually or collectively, may elect to seek review, pursuant to Section XIV.E.3, of the overall payment terms of this Agreement and the Non-Settling State agreement so that such Settling State(s) may obtain, with respect to that Settling Distributor, overall payment terms at least as favorable as those obtained by such Non-Settling State. "*Overall payment terms*" refers to consideration of all payment terms of the two agreements, taken together, including, but not limited to the amount of payments, the timing of payments, and conditions or contingencies on payments.

2. For any settlement with a Non-Settling State involving Released Claims that is entered into after the Reference Date, Settling Distributors shall provide the Enforcement Committee with a copy of the settlement agreement or relevant consent judgment within thirty (30) calendar days of the consummation of such settlement. The Enforcement Committee will promptly distribute such copy to all Settling States.

3. In the event that one or more Settling State(s) believes that the overall payment terms of an agreement by a Settling Distributor with a Non-Settling State are more favorable to the Non-Settling State, when compared based on the totality of the considerations set forth in Section XIV.E.1, the Settling State(s) and the Settling Distributor shall engage in the following process:

a. The Settling State(s) shall provide notice, within sixty (60) calendar days of the date on which a settlement agreement or consent judgment is provided to the Enforcement Committee, to the Settling Distributor of its (their) intent to seek revision of this Agreement to provide payment terms that are, on an overall basis, as favorable as those obtained by the Non-Settling State. Such notice shall be confidential and not disclosed publicly to the extent allowed by law and shall state, in detail, the basis for the State's (States') belief that it (they) is entitled to a revision of the Agreement.

b. The Settling Distributor shall, within thirty (30) calendar days, provide a response to the Settling State(s), explaining its position, in detail, as to whether the Settling State(s) is entitled to more favorable overall payment terms than those provided for in this Agreement.

c. In the event the Settling State(s) and Settling Distributor do not reach agreement as to the application of Section XIV.E.1, the Settling State(s) may petition the National Arbitration Panel to seek a ruling from the Panel as to the applicability of Section XIV.E.1, provided that the Settling State(s) may seek such review only if at least five (5) Settling States co-sign the petition. The Panel shall consider submissions and argument by the parties pursuant to the procedures set forth in Section VI.F.2.

d. The Settling State(s) and the Settling Distributor shall be bound by the determination of the National Arbitration Panel.

4. This Section XIV.E does not apply to, and there is no ability of any Settling State to seek or obtain revision of this Agreement based on, any Non-Settling State agreement with any Settling Distributor that is entered into with: (a) a Non-Settling State after a date sixty (60) calendar days prior to the scheduled start date of a trial between any Settling Distributor and the Non-Settling State or any severed or bifurcated portion thereof, provided that, where, in order to complete a settlement, a Non-Settling State and a Settling Distributor jointly request an adjournment of the scheduled start date of a trial within sixty (60) days of that date, this exception will apply as if the trial date had not been adjourned; (b) a Non-Settling State that previously litigated to judgment a case related to opioids against any manufacturer, distributor, or pharmacy; or (c) a Non-Settling State that has obtained any court order or judicial determination that grants judgment (in whole or in part) against any Settling Distributor. For avoidance of doubt, the National Arbitration Panel shall have no power to review agreements described in this paragraph.

5. This Section XIV.E does not apply to, and there is no ability of any Settling State to seek or obtain revision of this Agreement based on, any agreement between a Settling Distributor and (a) federally-recognized tribe(s) or (b) West Virginia subdivisions or (c) Non-Participating Subdivisions. This Section XIV.E will not apply to any agreement entered into more than eighteen (18) months after the Reference Date.

F. *Tax Cooperation and Reporting.*

1. Upon request by any Settling Distributor, the Settling States and Participating Subdivisions agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary for the Settling Distributors to establish the statements set forth in Section V.E.3 to the satisfaction of their tax advisors, their independent financial auditors, the Internal Revenue Service, or any other governmental authority, including as contemplated by Treasury Regulations Section 1.162-21(b)(3)(ii) and any subsequently proposed or finalized relevant regulations or administrative guidance.

2. Without limiting the generality of Section XIV.F.1, each Settling State and Participating Subdivision shall cooperate in good faith with any Settling Distributor with respect to any tax claim, dispute, investigation, audit, examination, contest, litigation, or other proceeding relating to this Agreement.

3. The Designated State, as defined in Section I.P as New York, on behalf of all Settling States and Participating Subdivisions, shall designate one of its officers or employees to act as the "appropriate official" within the meaning of Treasury Regulations Section 1.6050X-1(f)(1)(ii)(B) (the "*Appropriate Official*"). The Designated State shall direct and ensure that the Appropriate Official timely (a) files (i) at the time this Agreement becomes binding on the Parties, an IRS Form 1098-F in the form attached as Exhibit U, Exhibit V, and Exhibit W with respect to each of the Settling Distributors and (ii) any legally required returns or amended returns with any applicable governmental authority, or any returns requested by the respective Settling Distributors, and (b) provides to each of the Settling Distributors a copy of (i) the IRS Form 1098-F filed with respect to such Settling Distributor and (ii) any legally required written statement pursuant to any applicable law and any other document referred to in clause (a)(ii) above. Any such form, return, or statement shall be prepared and filed in a manner fully consistent with Section V.E.3.

4. The Settling States and Participating Subdivisions agree that any return, amended return, or written statement filed or provided pursuant to paragraph 3, and any similar document, shall be prepared and filed in a manner consistent with reporting each Settling Distributor's portion of the Global Settlement Amount as the "Total amount to be paid" pursuant to this Agreement in Box 1 of IRS Form 1098-F and each Settling Distributor's portion of the Compensatory Restitution Amount as "Restitution/remediation amount" in Box 2 of IRS Form 1098-F, as reflected in the attached Exhibit U, Exhibit V, and Exhibit W. If the Designated State or Appropriate Official shall be required to file any return, amended return, or written statement contemplated by this Section XIV.F other than an IRS Form 1098-F in the form attached as Exhibit U, Exhibit V, and Exhibit W, the Designated State shall direct and ensure that the Appropriate Official provides to each Settling Distributor a draft of such return, amended return, or written statement in respect of such Settling Distributor no later than sixty (60) calendar days prior to the due date thereof and shall accept and reflect any reasonable comments of such Settling Distributor on the return, amended return, or written statement in respect of such Settling Distributor.

5. For the avoidance of doubt, neither the Settling Distributors nor the Settling States and Participating Subdivisions make any warranty or representation to any Settling State, Participating Subdivision, or Releasor as to the tax consequences of the payment of the Compensatory Restitution Amount (or any portion thereof).

G. *No Third-Party Beneficiaries.* Except as expressly provided in this Agreement, no portion of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Settling State or Released Entity. No Settling State may assign or otherwise convey any right to enforce any provision of this Agreement.

H. *Calculation*. Any figure or percentage referred to in this Agreement shall be carried to seven decimal places.

I. *Construction*. None of the Parties and no Participating Subdivision shall be considered to be the drafter of this Agreement or of any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement. The headings of the provisions of this Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents or meaning of this Agreement.

J. *Cooperation*. Each Party and each Participating Subdivision agrees to use its best efforts and to cooperate with the other Parties and Participating Subdivisions to cause this Agreement and the Consent Judgments to become effective, to obtain all necessary approvals, consents and authorizations, if any, and to execute all documents and to take such other action as may be appropriate in connection herewith. Consistent with the foregoing, each Party and each Participating Subdivision agrees that it will not directly or indirectly assist or encourage any challenge to this Agreement or any Consent Judgment by any other person, and will support the integrity and enforcement of the terms of this Agreement and the Consent Judgments.

K. *Entire Agreement*. This Agreement, including its exhibits and any other attachments, embodies the entire agreement and understanding between and among the Parties and Participating Subdivisions relating to the subject matter hereof and supersedes (1) all prior agreements and understandings relating to such subject matter, whether written or oral and (2) all purportedly contemporaneous oral agreements and understandings relating to such subject matter.

L. *Execution*. This Agreement may be executed in counterparts and by different signatories on separate counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Agreement. One or more counterparts of this Agreement may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof. One or more counterparts of this Agreement may be signed by electronic signature.

M. *Good Faith and Voluntary Entry*. Each Party warrants and represents that it negotiated the terms of this Agreement in good faith. Each of the Parties and Participating Subdivisions warrants and represents that it freely and voluntarily entered into this Agreement without any degree of duress or compulsion. The Parties and Participating Subdivisions state that no promise of any kind or nature whatsoever (other than the written terms of this Agreement) was made to them to induce them to enter into this Agreement.

N. *Legal Obligations*. Nothing in this Agreement shall be construed as relieving any Settling Distributor of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions herein be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules. Except with respect to the Injunctive Relief Terms, in the event of a conflict between this Agreement and any requirement or requirements of federal, state, or local laws, such that a Settling Distributor cannot comply with this Agreement without violating such a requirement or requirements, the Settling Distributor

shall document such conflicts and notify the Attorney(s) General of the relevant Settling State(s) that it intends to comply with the requirement or requirements to the extent necessary to eliminate the conflict. With respect to the Injunctive Relief Terms, in the event of such a conflict, the procedures set forth in Section III.X of the Injunctive Relief Terms will be followed.

O. *No Prevailing Party.* The Parties and Participating Subdivisions each agree that they are not the prevailing party in this action, for purposes of any claim for fees, costs, or expenses as prevailing parties arising under common law or under the terms of any statute, because the Parties and Participating Subdivisions have reached a good faith settlement. The Parties and Participating Subdivisions each further waive any right to challenge or contest the validity of this Agreement on any ground, including, without limitation, that any term is unconstitutional or is preempted by, or in conflict with, any current or future law. Nothing in the previous sentence shall modify, or be construed to conflict with, Section XIV.M.

P. *Non-Admissibility.* The settlement negotiations resulting in this Agreement have been undertaken by the Parties and by certain representatives of the Participating Subdivisions in good faith and for settlement purposes only, and no evidence of negotiations or discussions underlying this Agreement shall be offered or received in evidence in any action or proceeding for any purpose. This Agreement shall not be offered or received in evidence in any action or proceeding for any purpose other than in an action or proceeding arising under or relating to this Agreement.

Q. *Notices.* All notices or other communications under this Agreement shall be in writing (including, but not limited to, electronic communications) and shall be given to the recipients indicated below:

For the Attorney(s) General:

Ashley Moody,
Attorney General
State of Florida
The Capitol,
PL-01
Tallahassee, FL 32399

Josh Stein, Attorney General
North Carolina Department of Justice
Attn: Daniel Mosteller
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For the Plaintiffs' Executive Committee:

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For Settling Distributors:

Copy to AmerisourceBergen Corporation's attorneys at:
Attn: Michael T. Reynolds
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mreynolds@cravath.com

Copy to Cardinal Health, Inc.'s attorneys at:
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Attn: Elaine P. Golin, Esq.
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Attn: JB Kelly, Esq.
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Copy to McKesson Corporation's attorneys at:
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Washington, D.C. 20001
tperrelli@jenner.com

Any Party or the Plaintiffs' Executive Committee may change or add the contact information of the persons designated to receive notice on its behalf by notice given (effective upon the giving of such notice) as provided in this Section XIV.P.

R. *No Waiver.* The waiver of any rights conferred hereunder shall be effective only if made by written instrument executed by the waiving Party or Parties. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, nor shall such waiver be deemed to be or construed as a waiver by any other Party.

S. *Preservation of Privilege.* Nothing contained in this Agreement or any Consent Judgment, and no act required to be performed pursuant to this Agreement or any Consent Judgment, is intended to constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection, or common interest/joint defense privilege, and each Party and Participating Subdivision agrees that it shall not make or cause to be made in any forum any assertion to the contrary.

T. *Successors.*

1. This Agreement shall be binding upon, and inure to the benefit of, the Settling Distributors and their respective successors and assigns.

2. A Settling Distributor shall not, in one (1) transaction or a series of related transactions, sell or transfer U.S. assets having a fair market value equal to twenty-five percent (25%) or more of the consolidated assets of such Settling Distributor (other than sales or transfers of inventories, or sales or transfers to an entity owned directly or indirectly by such Settling Distributor) where the sale or transfer is announced after the Reference Date, is not for fair consideration, and would foreseeably and unreasonably jeopardize such Settling Distributor's ability to make the payments under this Agreement that are due on or before the third Payment Date following the close of a sale or transfer transaction, unless the Settling Distributor obtains the acquiror's agreement that it will be either a guarantor of or successor to the percentage of that Settling Distributor's remaining Payment Obligations under this Agreement equal to the percentage of the

Settling Distributor's consolidated assets being sold or transferred in such transaction. Percentages under this section shall be determined in accordance with United States generally accepted accounting principles and as of the date of the Settling Distributor's most recent publicly filed consolidated balance sheet prior to the date of entry into the sale or transfer agreement at issue. This Section XIV.T shall be enforceable solely by the Enforcement Committee, and any objection under this Section XIV.T not raised within twenty (20) calendar days of the announcement of the relevant transaction is waived. Any dispute under this Section XIV.T shall be a National Dispute as described in Section VI.F.2 and must be raised exclusively with the National Arbitration Panel as described therein within twenty (20) calendar days of the announcement, and the sole remedy shall be an order enjoining the transaction.

3. A Settling Distributor shall not, in one (1) transaction or a series of related transactions, sell or transfer (other than sales or transfers to an entity owned directly or indirectly by such Settling Distributor) more than twenty-five percent (25%) of the distribution centers within its Full-Line Wholesale Pharmaceutical Distribution Business (as that term is defined in the Injunctive Relief Terms) where the sale or transfer is announced after the Reference Date, unless the Settling Distributor obtains the acquiror's agreement that it will be bound by the Injunctive Relief Terms.

U. *Modification, Amendment, Alteration.* After the Reference Date, any modification, amendment, or alteration of this Agreement by the Parties shall be binding only if evidenced in writing signed by the Settling Distributor to which the modification, amendment, or alteration applies, if the change applies to less than all Settling Distributors, along with the signatures of at least thirty-seven of those then serving Attorneys General of the Settling States along with a representation from each Attorney General that either: (1) the advisory committee or similar entity established or recognized by that Settling State (either pursuant to Section V.E.2.d, by a State-Subdivision Agreement, or by statute) voted in favor of the modification, amendment or alteration of this Agreement including at least one member appointed by the Participating Subdivisions listed on Exhibit G; or (2) in States without any advisory committee, that 50.1% (by population) of the Participating Subdivisions listed on Exhibit G expressed approval of the modification, amendment, or alteration of this Agreement in a writing.

V. *Termination.*

1. Unless otherwise agreed to by each of the Settling Distributors and the Settling State in question, this Agreement and all of its terms (except Section XIV.P and any other non-admissibility provisions, which shall continue in full force and effect) shall be canceled and terminated with respect to the Settling State, and the Agreement and all orders issued by the courts in the Settling State pursuant to the Agreement shall become null and void and of no effect if one or more of the following conditions applies:

a. a Consent Judgment approving this Agreement without modification of any of the Agreement's terms has not been entered as to the Settling State by a court of competent jurisdiction on or before one hundred eighty (180) calendar days after the Effective Date;

b. this Agreement or the Consent Judgment as to that Settling State has been disapproved by a court of competent jurisdiction to which it was presented for approval and/or entry (or, in the event of an appeal from or review of a decision of such a court to approve this Agreement and the Consent Judgment, by the court hearing such appeal or conducting such review), and the time to appeal from such disapproval has expired, or, in the event of an appeal from such disapproval, the appeal has been dismissed or the disapproval has been affirmed by the court of last resort to which such appeal has been taken and such dismissal or disapproval has become no longer subject to further appeal (including, without limitation, review by the United States Supreme Court); or

2. If this Agreement is terminated with respect to a Settling State for whatever reason pursuant to Section XIV.V.1, then:

a. an applicable statute of limitation or any similar time requirement (excluding any statute of repose) shall be tolled from the date the Settling State signed this Agreement until the later of the time permitted by applicable law or for one year from the date of such termination, with the effect that the Settling Distributors and the Settling State in question shall be in the same position with respect to the statute of limitation as they were at the time the Settling State filed its action; and

b. the Settling Distributors and the Settling State in question shall jointly move the relevant court of competent jurisdiction for an order reinstating the actions and claims dismissed pursuant to the terms of this Agreement governing dismissal, with the effect that the Settling Distributors and the Settling State in question shall be in the same position with respect to those actions and claims as they were at the time the action or claim was stayed or dismissed.

3. Unless each of the Settling Distributors and the Enforcement Committee agrees otherwise, this Agreement, with the exception of the Injunctive Relief Terms that have their own provisions on duration, shall terminate as to all Parties as of the Payment Date for Payment Year 18, *provided* that all Settling Distributors that as of that date are not Bankrupt Settling Distributors have performed their Payment obligations under the Agreement as of that date. If fewer than all Settling Distributors that as of that date are not Bankrupt Settling Distributors have performed their Payment obligations under the Agreement as of that date, then the Agreement shall terminate as of that date as to any Settling Distributor that has performed its Payment obligations under the Agreement and the Agreement (a) shall terminate as to each of the remaining Settling Distributors that as of that date is not a Bankrupt Settling Distributor at such time as each performs its Payment obligations under the Agreement and (b) shall terminate as to all Parties at such time as all Settling Distributors that are not Bankrupt Settling Distributors have performed their Payment obligations under the Agreement. Notwithstanding any other provision in this Section XIV.V.3 or in this Agreement, all releases under this Agreement will remain effective despite any termination under this Section XIV.V.3.

W. *Governing Law.* Except (1) as otherwise provided in this Agreement or (2) as necessary, in the sole judgment of the National Arbitration Panel, to promote uniformity of interpretation for matters within the scope of the National Arbitration Panel's authority, this Agreement shall be governed by and interpreted in accordance with the respective laws of the Settling State, without regard to the conflict of law rules of such Settling State, that is seeking to enforce the Agreement against Settling Distributor(s) or against which Settling Distributor(s) are seeking enforcement. Notwithstanding any other provision in this subsection on governing law, any disputes relating to the Settlement Fund Escrow shall be governed by and interpreted in accordance with the law of the state where the escrow agent has its primary place of business.

X. *Bankruptcy.* The following provisions shall apply if a Settling Distributor enters Bankruptcy (a Settling Distributor which does so and takes the actions, or is otherwise subjected to the actions, referred to in (i) and/or (ii) herein being referred to as a "*Bankrupt Settling Distributor*") and (i) the Bankrupt Settling Distributor's bankruptcy estate recovers, pursuant to 11 U.S.C. § 550, any payments made under this Agreement, or (ii) this Agreement is deemed executory and is rejected by such Settling Distributor pursuant to 11 U.S.C. § 365:

1. In the event that both a number of Settling States equal to at least seventy-five percent (75%) of the total number of Settling States and Settling States having aggregate Overall Allocation Percentages as set forth on Exhibit F equal to at least seventy-five percent (75%) of the total aggregate Overall Allocation Percentages assigned to all Settling States deem (by written notice to the Settling Distributors other than the Bankrupt Settling Distributor) that the financial obligations of this Agreement have been terminated and rendered null and void as to such Bankrupt Settling Distributor (except as provided in Section XIV.X.1.a) due to a material breach by such Bankrupt Settling Distributor, whereupon, with respect to all Settling States:

a. all agreements, all concessions, all reductions of Releasing Parties' Claims, and all releases and covenants not to sue, contained in this Agreement shall immediately and automatically be deemed null and void as to such Bankrupt Settling Distributor; the Settling States shall be deemed immediately and automatically restored to the same position they were in immediately prior to their entry into this Settlement Agreement in respect to such Bankrupt Settling Distributor and the Settling States shall have the right to assert any and all claims against such Bankrupt Settling Distributor in the Bankruptcy or otherwise, subject to any automatic stay, without regard to any limits or agreements as to the amount of the settlement otherwise provided in this Agreement; *provided*, *however*, that notwithstanding the foregoing sentence, (i) all reductions of Releasing Parties' Claims, and all releases and covenants not to sue, contained in this Agreement shall remain in full force and effect as to all persons or entities other than the Bankrupt Settling Distributor itself; and (ii) in the event a Settling State asserts any Released Claim against a Bankrupt Settling Distributor after the rejection and/or termination of this Agreement with respect to such Settling Distributor as described in this Section XIV.X.1.a and receives a judgment, settlement or distribution arising from such Released Claim, then the amount of any payments such Settling State has previously received from such Bankrupt Settling Distributor under this Agreement shall be applied to reduce the amount of any

such judgment, settlement or distribution (provided that no credit shall be given against any such judgment, settlement or distribution for any payment that such Settling State is required to disgorge or repay to the Bankrupt Settling Distributor's bankruptcy estate); and

b. the Settling States may exercise all rights provided under the federal Bankruptcy Code (or other applicable bankruptcy or non-bankruptcy law) with respect to their Claims against such Bankrupt Settling Distributor subject to all defenses and rights of the Bankrupt Settling Distributor.

JANSSEN SETTLEMENT AGREEMENT

This settlement agreement dated as of July 21, 2021 (the "*Agreement*") sets forth the terms of settlement between and among the Settling States, Participating Subdivisions, and Janssen (as those terms are defined below). Upon satisfaction of the conditions set forth in Sections II and VIII, this Agreement will be binding on the Settling States, Janssen, and Participating Subdivisions. This Agreement will then be filed as part of Consent Judgments in the respective courts of each of the Settling States, pursuant to the terms set forth in Section VIII.

I. Definitions

Unless otherwise specified, the following definitions apply:

1. "*Abatement Accounts Fund*" means a component of the Settlement Fund described in subsection VI.E.

2. "*Additional Restitution Amount*" means the amount available to Settling States listed in Exhibit N of $67,307,692.

3. "*Agreement*" means this agreement as set forth above, inclusive of all exhibits.

4. "*Alleged Harms*" means the alleged past, present, and future financial, societal, and related expenditures arising out of the alleged misuse and abuse of opioid products, non-exclusive examples of which are described in the documents listed on Exhibit A, that have allegedly arisen as a result of the physical and bodily injuries sustained by individuals suffering from opioid-related addiction, abuse, death, and other related diseases and disorders, and that have allegedly been caused by Janssen.

5. "*Allocation Statute*" means a state law that governs allocation, distribution, and/or use of some or all of the Settlement Fund amounts allocated to that State and/or its Subdivisions. In addition to modifying the allocation, as set forth in subsection VI.D.2, an Allocation Statute may, without limitation, contain a Statutory Trust, further restrict expenditure of funds, form an advisory committee, establish oversight and reporting requirements, or address other default provisions and other matters related to the funds. An Allocation Statute is not required to address all three (3) types of funds comprising the Settlement Fund or all default provisions.

6. "*Annual Payment*" means the total amount payable to the Settlement Fund by Janssen on the Payment Date each year in 2023 and onward, as calculated by the Settlement Fund Administrator pursuant to Section V. For the avoidance of doubt, this term does not include the Additional Restitution Amount or amounts paid pursuant to Section XI.

7. "*Appropriate Official*" means the official defined in subsection XIII.E.

8. "*Attorney Fee Fund*" means an account consisting of funds allocated to pay attorneys' fees and costs pursuant to the agreement on attorneys' fees and costs attached as Exhibit R.

9. "*Bar*" means either (1) a ruling by the highest court of the State or the intermediate court of appeals when not subject to further review by the highest court of the State in a State with a single intermediate court of appeals setting forth the general principle that no Subdivisions or Special Districts in the State may maintain Released Claims against Released Entities, whether on the ground of the Agreement (or the release in it) or otherwise; (2) a law barring Subdivisions and Special Districts in the State from maintaining or asserting Released Claims against Released Entities (either through a direct bar or through a grant of authority to release claims and that authority is exercised in full); or (3) a Settlement Class Resolution in the State with full force and effect. For the avoidance of doubt, a law or ruling that is conditioned or predicated upon payment by a Released Entity (apart from payments by Janssen incurred under the Agreement) shall not constitute a Bar.

10. "*Case-Specific Resolution*" means either (1) a law barring specified Subdivisions or Special Districts from maintaining Released Claims against Released Entities (either through a direct bar or through a grant of authority to release claims and that authority is exercised in full); (2) a ruling by a court of competent jurisdiction over a particular Subdivision or Special District that has the legal effect of barring the Subdivision or Special District from maintaining any Released Claims at issue against Released Entities, whether on the ground of the Agreement (or the release in it) or otherwise; or (3) in the case of a Special District, a release consistent with Section IV below. For the avoidance of doubt, a law, ruling, or release that is conditioned or predicated upon a post-Effective Date payment by a Released Entity (apart from payments by Janssen incurred under the Agreement or injunctive relief obligations incurred by it) shall not constitute a Case-Specific Resolution.

11. "*Claim*" means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, parens patriae claim, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state or local common law, statute, regulation, guidance, ordinance or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including but not limited to any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert

fees, consultant fees, fines, penalties, expenses, costs or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

12. "*Claim Over*" means a Claim asserted by a Non-Released Entity against a Released Entity on the basis of contribution, indemnity, or other claim-over on any theory relating to a Non-Party Covered Conduct Claim asserted by a Releasor.

13. "*Compensatory Restitution Amount*" means the aggregate amount of payments by Janssen hereunder other than amounts paid as attorneys' fees and costs or identified pursuant to subsection VI.B.2 as being used to pay attorneys' fees and investigation costs or litigation costs.

14. "*Consent Judgment*" means a state-specific consent judgment in a form to be agreed upon by the Settling States, Participating Subdivisions, and Janssen prior to the Initial Participation Date that, among other things, (1) approves this Agreement and (2) provides for the release set forth in Section IV, including the dismissal with prejudice of any Released Claims that the Settling State has brought against Released Entities.

15. "*Court*" means the respective court for each Settling State to which the Agreement and the Consent Judgment are presented for approval and/or entry as to that Settling State, or the Northern District of Ohio for purposes of administering the Attorney Fee Fund and any related fee and cost agreements.

16. "*Covered Conduct*" means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the Reference Date (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) relating in any way to (a) the discovery, development, manufacture, packaging, repackaging, marketing, promotion, advertising, labeling, recall, withdrawal, distribution, delivery, monitoring, reporting, supply, sale, prescribing, dispensing, physical security, warehousing, use or abuse of, or operating procedures relating to any Product, or any system, plan, policy, or advocacy relating to any Product or class of Products, including but not limited to any unbranded promotion, marketing, programs, or campaigns relating to any Product or class of Products; (b) the characteristics, properties, risks, or benefits of any Product; (c) the reporting, disclosure, non-reporting or non-disclosure to federal, state or other regulators of orders for any Product placed with any Released Entity; (d) the selective breeding, harvesting, extracting, purifying, exporting, importing, applying for quota for, procuring quota for, handling, promoting, manufacturing, processing, packaging, supplying, distributing, converting, or selling of, or otherwise engaging in any activity relating to, precursor or component Products, including but not limited to natural, synthetic, semi-synthetic or chemical raw materials, starting materials, finished

active pharmaceutical ingredients, drug substances, or any related intermediate Products; or (e) diversion control programs or suspicious order monitoring related to any Product.

17. "*Designated State*" means New York.

18. "*Effective Date*" means the date sixty (60) days after the Reference Date.

19. "*Enforcement Committee*" means a committee consisting of representatives of the Settling States and of the Participating Subdivisions. Exhibit B contains the organizational bylaws of the Enforcement Committee. Notice pursuant to subsection XIII.O shall be provided when there are changes in membership or contact information.

20. "*Global Settlement Abatement Amount*" means the abatement amount of $4,534,615,385.

21. "*Global Settlement Amount*" means $5 billion, which shall be divided into the Global Settlement Abatement Amount, the Additional Restitution Amount, and the Global Settlement Attorney Fee Amount.

22. "*Global Settlement Attorney Fee Amount*" means the attorney fee amount of $398,076,923.

23. "*Incentive A*" means the incentive payment described in subsection V.E.4.

24. "*Incentive B*" means the incentive payment described in subsection V.E.5.

25. "*Incentive C*" means the incentive payment described in subsection V.E.6.

26. "*Incentive D*" means the incentive payment described in subsection V.E.7.

27. "*Incentive Payment Final Eligibility Date*" means, with respect to a Settling State, the date that is the earliest of (1) three years after the Effective Date; (2) the date of completion of opening statements in a trial of any action brought by a Subdivision in that State that includes a Released Claim against a Released Entity when such date is more than two (2) years after the Effective Date; or (3) two (2) years after the Effective Date in the event a trial of an action brought by a Subdivision in that State that includes a Released Claim against a Released Entity began after the Initial Participation Date but before two (2) years after the Effective Date.

28. "*Initial Participating Subdivision*" means a Subdivision that meets the requirements set forth in subsection VII.D.

29. "*Initial Participation Date*" means the date one hundred twenty (120) days after the Preliminary Agreement Date, unless it is extended by written agreement of Janssen and the Enforcement Committee.

30. "*Initial Year Payment*" means the total amount payable to the Settlement Fund by Janssen on each of the two Payment Dates in 2022, as calculated by the Settlement Fund Administrator pursuant to Section V. For the avoidance of doubt, this term does not include the Additional Restitution Amount or amounts paid pursuant to Section XI.

31. "*Injunctive Relief Terms*" means the terms described in Section III and set forth in Exhibit P.

32. "*Janssen*" means Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.

33. "*Later Litigating Special District*" means a Special District (or Special District official asserting the right of or for the Special District to recover for alleged harms to the Special District and/or the people thereof) that is not a Litigating Special District and that files a lawsuit bringing a Released Claim against a Released Entity, or that adds such a claim to a pre-existing lawsuit, after the Preliminary Agreement Date. It may also include a Litigating Special District whose claims were resolved by a judicial Bar or Case-Specific Resolution which is later revoked following the execution date of this Agreement, when such Litigating Special District takes any affirmative step in its lawsuit other than seeking a stay or removal.

34. "*Later Litigating Subdivision*" means a Subdivision (or Subdivision official asserting the right of or for the Subdivision to recover for alleged harms to the Subdivision and/or the people thereof) that is not a Litigating Subdivision and that files a lawsuit bringing a Released Claim against a Released Entity, or that adds such a claim to a pre-existing lawsuit, after the Trigger Date. It may also include a Litigating Subdivision whose claims were resolved by a judicial Bar or Case-Specific Resolution which is later revoked following the execution date of this Agreement, when such Litigating Subdivision takes any affirmative step in its lawsuit other than seeking a stay or removal.

35. "*Later Participating Subdivision*" means a Participating Subdivision that meets the requirements of subsection VII.E but is not an Initial Participating Subdivision.

36. "*Litigating Special District*" means a Special District (or Special District official) that brought any Released Claims against any Released Entities on or before the Preliminary Agreement Date that were not separately resolved prior to that date. A list of Litigating Special Districts will be agreed to by the parties and attached hereto as of the Preliminary Agreement Date.

37. "*Litigating Subdivision*" means a Subdivision (or Subdivision official asserting the right of or for the Subdivision to recover for alleged harms to the Subdivision and/or the people thereof) that brought any Released Claim against any Released Entity prior to the Trigger Date that were not separately resolved prior to that

Trigger Date. A Prior Litigating Subdivision shall not be considered a Litigating Subdivision. Exhibit C is an agreed list of the Litigating Subdivisions. Exhibit C will be updated (including with any corrections) periodically, and a final version of Exhibit C will be attached hereto as of the Reference Date.

38. "*National Arbitration Panel*" means the panel described in subsection XII.F.

39. "*National Disputes*" means the disputes described in subsection XII.F.

40. "*Non-Litigating Special District"* means a Special District that is neither a Litigating Special District nor a Later Litigating Special District.

41. "*Non-Litigating Subdivision*" means a Subdivision that is neither a Litigating Subdivision nor a Later Litigating Subdivision.

42. "*Non-Participating Subdivision*" means a Subdivision that is not a Participating Subdivision.

43. "*Non-Party Covered Conduct Claim*" means a Claim against any Non-Released Entity involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity).

44. "*Non-Party Settlement*" means a settlement by any Releasor that settles any Non-Party Covered Conduct Claim and includes a release of any Non-Released Entity.

45. "*Non-Released Entity*" means an entity that is not a Released Entity.

46. "*Non-Settling State*" means a State that is not a Settling State.

47. "*Opioid Remediation*" means care, treatment, and other programs and expenditures (including reimbursement for past such programs or expenditures except where this Agreement restricts the use of funds solely to future Opioid Remediation) designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of the opioid abuse crisis, including on those injured as a result of the opioid abuse crisis. Exhibit E provides a non-exhaustive list of expenditures that qualify as being paid for Opioid Remediation. Qualifying expenditures may include reasonable related administrative expenses.

48. "*Overall Allocation Percentage*" means a Settling State's percentage as set forth in Exhibit F. The aggregate Overall Allocation Percentages of all States (including Settling States and Non-Settling States) shall equal 100%.

49. "*Participating Special District*" means a Special District that executes a release consistent with Section IV below and meets the requirements for becoming a Participating Special District under Section VII.

50. "*Participating Subdivision*" means a Subdivision that meets the requirements for becoming a Participating Subdivision under Section VII. Participating Subdivisions include both Initial Participating Subdivisions and Later Participating Subdivisions. Subdivisions eligible to become Participating Subdivisions are listed in Exhibit G. A Settling State may add additional Subdivisions to Exhibit G at any time prior to the Initial Participation Date.

51. "*Participation Tier*" means the level of participation in this Agreement as determined pursuant to subsection VIII.C using the criteria set forth in Exhibit H.

52. "*Parties*" means Janssen and the Settling States (each, a "*Party*").

53. "*Payment Date*" means the date on which Janssen makes its payments pursuant to Section V and Exhibit M.

54. "*Payment Year*" means the calendar year during which the applicable Initial Year Payments or Annual Payments are due pursuant to subsection V.B. Payment Year 1 is 2022, Payment Year 2 is 2023 and so forth. References to payment "for a Payment Year" mean the Initial Year Payments or Annual Payment due during that year. References to eligibility "for a Payment Year" mean eligibility in connection with the Initial Year Payments or Annual Payment due during that year.

55. "*Preliminary Agreement Date*" means the date on which Janssen gives notice to the Settling States and MDL PEC of its determination that a sufficient number of States have agreed to be Settling States. This date shall be no more than fourteen (14) days after the end of the notice period to States, unless it is extended by written agreement of Janssen and the Enforcement Committee.

56. "*Primary Subdivision*" means a Subdivision that has a population of 30,000 or more. A list of Primary Subdivisions in each State is provided in Exhibit I.

57. "*Prior Litigating Subdivision*" means a Subdivision (or Subdivision official asserting the right of or for the Subdivision to recover for alleged harms to the Subdivision and/or the people thereof) that brought any Released Claim against any Released Entity prior to the Trigger Date and all such Released Claims were separately settled or finally adjudicated prior to the Trigger Date; *provided, however*, that if the final adjudication was pursuant to a Bar, such Subdivision shall not be considered a Prior Litigating Subdivision. Notwithstanding the prior sentence, Janssen and the State of the relevant Subdivision may agree in writing that such Subdivision shall not be considered a Prior Litigating Subdivision.

58. "*Product*" means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. It also includes: 1) the following when used in combination with opioids or opiates: benzodiazepine, carisoprodol, zolpidem, or gabapentin; and 2) a combination or

"cocktail" of any stimulant or other chemical substance prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. For the avoidance of doubt, "Product" does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates. "Product" includes but is not limited to any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, naloxone, naltrexone, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, any variant of these substances, or any similar substance. "Product" also includes any natural, synthetic, semi-synthetic or chemical raw materials, starting materials, finished active pharmaceutical ingredients, drug substances, and any related intermediate products used or created in the manufacturing process for any of the substances described in the preceding sentence.

59. "*Reference Date*" means the date on which Janssen is to inform the Settling States and MDL PEC of its determination whether there is sufficient resolution of claims and potential claims at the Subdivision level to go forward with the settlement. The Reference Date shall be thirty (30) days after the Initial Participation Date, unless it is extended by written agreement of Janssen and the Enforcement Committee.

60. "*Released Claims*" means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct occurring prior to the Reference Date. Without limiting the foregoing, "Released Claims" include any Claims that have been asserted against the Released Entities by any Settling State or any of its Litigating Subdivisions or Litigating Special Districts in any federal, state or local action or proceeding (whether judicial, arbitral, or administrative) based on, arising out of or relating to, in whole or in part, the Covered Conduct, or any such Claims that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by a State, any of its Subdivisions or Special Districts, or any Releasors (whether or not such State, Subdivision, Special District, or Releasor has brought such action or proceeding). Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to the Agreement, whether or not such claims relate to Covered Conduct. The Parties intend that "Released Claims" be interpreted broadly. This Agreement does not release Claims by private individuals. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law. Released Claims is also used herein to describe Claims brought by a Later Litigating Subdivision or other non-party Subdivision or Special District that would have been Released Claims if they had been brought by a Releasor against a Released Entity.

61. "*Released Entities*" means Janssen and (1) all of Janssen's past and present direct or indirect parents, subsidiaries, divisions, predecessors, successors, assigns, including Noramco, Inc. and Tasmanian Alkaloids PTY. LTD.; (2) the past and present direct or indirect subsidiaries, divisions, and joint ventures, of any of the foregoing; (3) all of Janssen's insurers (solely in their role as insurers with respect

to the Released Claims); (4) all of Janssen's, or of any entity described in subsection (1), past and present joint ventures; and (5) the respective past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, agents, and employees of any of the foregoing (for actions that occurred during and related to their work for, or employment with, Janssen). Any person or entity described in subsections (3)-(5) shall be a Released Entity solely in the capacity described in such clause and shall not be a Released Entity with respect to its conduct in any other capacity. For the avoidance of doubt, the entities listed in Exhibit Q are not Released Entities; *and provided further* that any joint venture partner of Janssen or Janssen's subsidiary is not a Released Entity unless it falls within subsections (1)-(5) above. A list of Janssen's present subsidiaries and affiliates can be found at https://johnsonandjohnson.gcs-web.com/static-files/f61ae5f3-ff03-46c1-bfc9-174947884db2. Janssen's predecessor entities include but are not limited to those entities listed on Exhibit J. For the avoidance of doubt, any entity acquired, or joint venture entered into, by Janssen after the Reference Date is not a Released Entity.

62. "*Releasors*" means (1) each Settling State; (2) each Participating Subdivision; and (3) without limitation and to the maximum extent of the power of each Settling State's Attorney General and/or Participating Subdivision to release Claims, (a) the Settling State's and Participating Subdivision's departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in their official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, water districts, law enforcement districts, emergency services districts, school districts, hospital districts and other Special Districts in a Settling State, and (c) any person or entity acting in a parens patriae, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to a Settling State or Subdivision in a Settling State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Subdivision. In addition to being a Releasor as provided herein, a Participating Subdivision shall also provide the Subdivision Settlement Participation Form or the Election and Release Form referenced in Section VII providing for a release to the fullest extent of the Participating Subdivision's authority, which shall be attached as an exhibit to the Agreement. Each Settling State's Attorney General represents that he or she has or has obtained (or will obtain no later than the Initial Participation Date) the authority set forth in the Representation and Warranty subsection of Section IV.

63. "*Revocation Event*" means with respect to a Bar, Settlement Class Resolution, or Case-Specific Resolution, a legislative amendment or a revocation, rescission, reversal, overruling, or interpretation that in any way limits the effect of such Bar,

Settlement Class Resolution, or Case-Specific Resolution on Released Claims or any other action or event that otherwise deprives the Bar, Settlement Class Resolution or Case-Specific Resolution of force or effect in any material respect.

64. "*Settlement Class Resolution*" means a class action resolution in a court of competent jurisdiction in a Settling State with respect to a class of Subdivisions and Special Districts in that State that (1) conforms with that Settling State's statutes, case law, and/or rules of procedure regarding class actions; (2) is approved and entered as an order of a court of competent jurisdiction in that State and has become final as defined in "State-Specific Finality"; (3) is binding on all Non-Participating Subdivisions and Special Districts in that State (other than opt outs as permitted under the next sentence); (4) provides that all such Non-Participating Subdivisions or Special Districts may not bring Released Claims against Released Entities, whether on the ground of the Agreement (or the releases herein) or otherwise; and (5) does not impose any costs or obligations on Janssen other than those provided for in the Agreement, or contain any provision inconsistent with any provision of the Agreement. If applicable state law requires that opt-out rights be afforded to members of the class, a class action resolution otherwise meeting the foregoing requirements shall qualify as a Settlement Class Resolution unless Subdivisions collectively representing more than 1% of the total population of all of that State's Subdivisions listed in Exhibit G opt out. In seeking certification of any Settlement Class, the applicable State and Participating Subdivisions shall make clear that certification is sought solely for settlement purposes and shall have no applicability beyond approval of the settlement for which certification is sought. Nothing in this Agreement constitutes an admission by any Party that class certification would be appropriate for litigation purposes in any case.

65. "*Settlement Fund*" means the interest-bearing fund established under the Agreement into which all payments by Janssen are made other than amounts paid as attorneys' fees and costs or identified pursuant to subsection VI.B.2 as being used to pay attorneys' fees and costs. The Settlement Fund comprises the Abatement Accounts Fund, State Fund, and Subdivision Fund.

66. "*Settlement Fund Administrator*" means the entity that determines the Annual Payments (including calculating Incentive Payments pursuant to Section V) and any amounts subject to suspension or offset pursuant to Sections V and IX), determines the Participation Tier, and administers and distributes amounts into the Settlement Fund. The duties of the Settlement Fund Administrator shall be governed by this Agreement. Prior to the Initial Participation Date, the Parties shall agree to selection and removal processes for and a detailed description of the Settlement Fund Administrator's duties, including a detailed mechanism for paying the Settlement Fund Administrator's fees and costs, all of which shall be appended to the Agreement as Exhibit L.

67. "*Settlement Fund Escrow*" means the interest-bearing escrow fund established pursuant to this Agreement to hold disputed or suspended payments made under this Agreement.

68. "*Settlement Payment Schedule*" means the schedule of payments attached to this Agreement as Exhibit M. A revised Settlement Payment Schedule will be substituted for Exhibit M after any offsets, reductions, or suspensions under Sections V and IX are determined.

69. "*Settling State*" means any State that has entered the Agreement.

70. "*Special District*" means a formal and legally recognized sub-entity of a State that is authorized by State law to provide one or a limited number of designated functions, including but not limited to school districts, fire districts, healthcare & hospital districts, and emergency services districts. Special Districts do not include sub-entities of a State that provide general governance for a defined area that would qualify as a Subdivision.

71. "*State*" means any state of the United States of America, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Additionally, the use of non-capitalized "state" to describe something (e.g., "state court") shall also be read to include parallel entities in commonwealths, territories, and the District of Columbia (e.g., "territorial court").

72. "*State Fund*" means a component of the Settlement Fund described in subsection VI.C.

73. "*State-Specific Finality*" means, with respect to the Settling State in question:

    a. the Agreement and the Consent Judgment have been approved and entered by the Court as to Janssen, including the release of all Released Claims against Released Entities as provided in this Agreement;

    b. for all lawsuits brought by the Settling State against Released Entities for Released Claims, either previously filed or filed as part of the entry of the Consent Judgment, the Court has stated in the Consent Judgment or otherwise entered an order finding that all Released Claims against Released Entities asserted in the lawsuit have been resolved by agreement; and

    c. (1) the time for appeal or to seek review of or permission to appeal from the approval and entry as described in subsection (a) hereof and entry of such order described in subsection (b) hereof has expired; or (2) in the event of an appeal, the appeal has been dismissed or denied, or the approval and entry described in (a) hereof and the order described in subsection (b) hereof have been affirmed in all material respects (to the extent challenged in the appeal) by the court of last resort to which such appeal has been taken and such dismissal or affirmance has become no

longer subject to further appeal (including, without limitation, review by the United States Supreme Court).

74. "*State-Subdivision Agreement*" means an agreement that a Settling State reaches with the Subdivisions in that State regarding the allocation, distribution, and/or use of funds allocated to that State and to Participating Subdivisions in that State. A State-Subdivision Agreement shall be effective if approved pursuant to the provisions of Exhibit O or if adopted by statute. Preexisting agreements addressing funds other than those allocated pursuant to this Agreement shall qualify if the approval requirements of Exhibit O are met. A State and its Subdivisions may revise, supplement, or refine a State-Subdivision Agreement if approved pursuant to the provisions of Exhibit O or if adopted by statute.

75. "*Statutory Trust*" means a trust fund established by state law to receive funds allocated to a State's Abatement Accounts Fund and restrict their expenditure to Opioid Remediation purposes subject to reasonable administrative expenses. A State may give a Statutory Trust authority to allocate one or more of the three Settlement Funds, but this is not required.

76. "*Subdivision*" means a formal and legally recognized sub-entity of a State that provides general governance for a defined area, including a county, parish, city, town, village, or similar entity. Unless otherwise specified, "Subdivision" includes all functional counties and parishes and other functional levels of sub-entities of a State that provide general governance for a defined area. Historic, non-functioning sub-entities of a State (such as Connecticut counties) are not Subdivisions, unless the entity has filed a lawsuit that includes a Released Claim against a Released Entity in a direct, parens patriae, or any other capacity. For purposes of this Agreement, the term Subdivision does not include Special Districts. A list of Subdivisions by state will be agreed to prior to any Subdivision sign-on period.

77. "*Subdivision Allocation Percentage*" means for Subdivisions in a Settling State that are eligible to receive an allocation from the Subdivision Fund pursuant to subsection VI.C or subsection VI.D, the percentage as set forth in Exhibit G. The aggregate Subdivision Allocation Percentage of all Subdivisions receiving a Subdivision Allocation Percentage in each State shall equal 100%. Immediately upon the effectiveness of any State-Subdivision Agreement, Allocation Statute, Statutory Trust, or voluntary redistribution allowed by subsection VI.D.3 (or upon the effectiveness of an amendment to any State-Subdivision Agreement, Allocation Statute, Statutory Trust, or voluntary redistribution allowed by subsection VI.D.3) that addresses allocation from the Subdivision Fund, or upon any, whether before or after the Initial Participation Date, Exhibit G will automatically be amended to reflect the allocation from the Subdivision Fund pursuant to the State-Subdivision Agreement, Allocation Statute, Statutory Trust, or voluntary redistribution allowed by Section V.D.3. The Subdivision Allocation Percentages contained in Exhibit G may not change once notice is distributed pursuant to subsection VII.A, except upon the effectiveness of any State-

Subdivision Agreement, Allocation Statute, Statutory Trust, or voluntary redistribution allowed by subsection VI.D.3 (or upon the effectiveness of an amendment to any State-Subdivision Agreement, Allocation Statute, Statutory Trust, or voluntary redistribution allowed by subsection VI.D.3) that addresses allocation from the Subdivision Fund. For the avoidance of doubt, no Subdivision not listed on Exhibit G shall receive an allocation from the Subdivision Fund and no provision of this Agreement shall be interpreted to create such an entitlement.

78. "*Subdivision Fund*" means a component of the Settlement Fund described in subsection VI.C.

79. "*Subdivision Settlement Participation Form*" means the form attached as Exhibit K that Participating Subdivisions must execute and return to the Settlement Fund Administrator, and which shall (1) make such Participating Subdivisions signatories to this Agreement, (2) include a full and complete release of any and of such Subdivision's claims, and (3) require the prompt dismissal with prejudice of any Released Claims that have been filed by any such Participating Subdivision.

80. "*Threshold Motion*" means a motion to dismiss or equivalent dispositive motion made at the outset of litigation under applicable procedure. A Threshold Motion must include as potential grounds for dismissal, any applicable Bar or the relevant release by a Settling State or Participating Subdivision provided under this Agreement and, where appropriate under applicable law, any applicable limitations defense.

81. "*Trigger Date*" means, in the case of a Primary Subdivision, the Reference Date, or, in the case of all other Subdivisions, the Preliminary Agreement Date.

II. Participation by States and Condition to Preliminary Agreement

A. *Notice to States*. On July 22, 2021 this Agreement shall be distributed to all States. The States' Attorneys General shall then have a period of thirty (30) days to decide whether to become Settling States. States that determine to become Settling States shall so notify the National Association of Attorneys General and Janssen and shall further commit to obtaining any necessary additional State releases prior to the Reference Date. This notice period may be extended by written agreement of Janssen and the Enforcement Committee.

B. *Condition to Preliminary Agreement*. Following the notice period set forth in subsection II.A above, Janssen shall determine on or before the Preliminary Agreement Date whether, in its sole discretion, enough States have agreed to become Settling States to proceed with notice to Subdivisions as set forth in Section VII below. If Janssen determines that this condition has been satisfied, and that notice to the Litigating Subdivisions should proceed, it will so notify the Settling States by providing notice to the Enforcement Committee and Settlement Fund Administrator on the Preliminary Agreement Date. If Janssen determines that this condition has not been satisfied, it will so

notify the Settling States by providing notice to the Enforcement Committee and Settlement Fund Administrator, and this Agreement will have no further effect and all releases and other commitments or obligations contained herein will be void.

C. *Later Joinder by States*. After the Preliminary Agreement Date, a State may only become a Settling State with the consent of Janssen, in its sole discretion. If a State becomes a Settling State more than sixty (60) days after the Preliminary Agreement Date, but on or before January 1, 2022, the Subdivisions and Special Districts in that State that become Participating Subdivisions and Participating Special Districts within ninety (90) days of the State becoming a Settling State shall be considered Initial Participating Subdivisions or Initial Participating Special Districts. A State may not become a Settling State after January 1, 2022.

III. Injunctive Relief

A. *Entry of Injunctive Relief.* As part of the Consent Judgment, the Parties agree to the injunctive relief terms attached as Exhibit P.

IV. Release

A. *Scope.* As of the Effective Date, the Released Entities will be released and forever discharged from all of the Releasors' Released Claims. Each Settling State (for itself and its Releasors) and Participating Subdivision (for itself and its Releasors) will, on or before the Effective Date, absolutely, unconditionally, and irrevocably covenant not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of each Settling State and its Attorney General to release claims. The Release shall be a complete bar to any Released Claim.

B. *Claim Over and Non-Party Settlement.*

1. *Statement of Intent.* It is the intent of the Parties that:

   a. Released Entities should not seek contribution or indemnification (other than pursuant to an insurance contract) from other parties for their payment obligations under this Settlement Agreement;

   b. the payments made under this Settlement Agreement shall be the sole payments made by the Released Entities to the Releasors involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity);

   c. Claims by Releasors against non-Parties should not result in additional payments by Released Entities, whether through contribution, indemnification or any other means; and

d. the Settlement meets the requirements of the Uniform Contribution Among Joint Tortfeasors Act and any similar state law or doctrine that reduces or discharges a released party's liability to any other parties.

e. The provisions of this subsection IV.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissals provided for herein are made in good faith.

2. *Contribution/Indemnity Prohibited*. No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner, provided that a Released Entity shall be relieved of this prohibition with respect to any entity that asserts a Claim-Over against it. For the avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

3. *Non-Party Settlement*. To the extent that, on or after the Reference Date, any Releasor enters into a Non-Party Settlement, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include), unless prohibited from doing so under applicable law, in the Non-Party Settlement a prohibition on contribution or indemnity of any kind substantially equivalent to that required from Janssen in subsection IV.B.2, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.

4. *Claim-Over*. In the event that any Releasor obtains a judgment with respect to Non-Party Covered Conduct against a Non-Released Entity that does not contain a prohibition like that in subsection IV.B.3, or any Releasor files a Non-Party Covered Conduct Claim against a non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement as provided in subsection IV.B.3, and such Non-Released Entity asserts a Claim-Over against a Released Entity, that Releasor and Janssen shall take the following actions to ensure that the Released Entities do not pay more with respect to Covered Conduct to Releasors or to Non-Released Entities than the amounts owed under this Settlement Agreement by Janssen:

a. Janssen shall notify that Releasor of the Claim-Over within sixty (60) days of the assertion of the Claim-Over or sixty (60) days of the Effective Date of this Settlement Agreement, whichever is later;

b. Janssen and that Releasor shall meet and confer concerning the means to hold Released Entities harmless and ensure that it is not required to pay

more with respect to Covered Conduct than the amounts owed by Janssen under this Settlement Agreement;

c. That Releasor and Janssen shall take steps sufficient and permissible under the law of the State of the Releasor to hold Released Entities harmless from the Claim-Over and ensure Released Entities are not required to pay more with respect to Covered Conduct than the amounts owed by Janssen under this Settlement Agreement. Such steps may include, where permissible:

(1) Filing of motions to dismiss or such other appropriate motion by Janssen or Released Entities, and supported by Releasors, in response to any claim filed in litigation or arbitration;

(2) Reduction of that Releasor's Claim and any judgment it has obtained or may obtain against such Non-Released Entity by whatever amount or percentage is necessary to extinguish such Claim-Over under applicable law, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non-Released Entity;

(3) Placement into escrow of funds paid by the Non-Released Entities such that those funds are available to satisfy the Claim-Over;

(4) Return of monies paid by Janssen to that Releasor under this Settlement Agreement to permit satisfaction of a judgment against or settlement with the Non-Released Entity to satisfy the Claim-Over;

(5) Payment of monies to Janssen by that Releasor to ensure it is held harmless from such Claim-Over, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non-Released Entity;

(6) Credit to Janssen under this Settlement Agreement to reduce the overall amounts to be paid under the Settlement Agreement such that it is held harmless from the Claim-Over; and

(7) Such other actions as that Releasor and Janssen may devise to hold Janssen harmless from the Claim Over.

d. The actions of that Releasor and Janssen taken pursuant to paragraph (c) must, in combination, ensure Janssen is not required to pay more with respect to Covered Conduct than the amounts owed by Janssen under this Settlement Agreement.

e. In the event of any dispute over the sufficiency of the actions taken pursuant to paragraph (c), that Releasor and Janssen may seek review by

the National Arbitration Panel, provided that, if the parties agree, such dispute may be heard by the state court where the relevant Consent Judgment was filed. The National Arbitration Panel shall have authority to require Releasors to implement a remedy that includes one or more of the actions specified in paragraph (c) sufficient to hold Released Entities fully harmless. In the event that the panel's actions do not result in Released Entities being held fully harmless, Janssen shall have a claim for breach of this Settlement Agreement by Releasors, with the remedy being payment of sufficient funds to hold Janssen harmless from the Claim-Over. For the avoidance of doubt, the prior sentence does not limit or eliminate any other remedy that Janssen may have.

5. To the extent that the Claim-Over is based on a contractual indemnity, the obligations under subsection IV.B.4 shall extend solely to a Non-Party Covered Conduct Claim against a pharmacy, clinic, hospital or other purchaser or dispenser of Products, a manufacturer that sold Products, a consultant, and/or a pharmacy benefit manager or other third-party payor. Janssen shall notify the Settling States, to the extent permitted by applicable law, in the event that any of these types of Non-Released Entities asserts a Claim-Over arising out of contractual indemnity against it.

C. *General Release*. In connection with the releases provided for in the Agreement, each Settling State (for itself and its Releasors) and Participating Subdivision expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

> **General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Settling State (for itself and its Releasors) and Participating Subdivision hereby expressly waives and fully, finally, and forever settles, releases, and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Settling States' decision to enter into the Agreement or the Participating Subdivisions' decision to participate in the Agreement.

D. *Res Judicata*. Nothing in the Agreement shall be deemed to reduce the scope of the res judicata or claim preclusive effect that the settlement memorialized in the Agreement,

and/or any Consent Judgment or other judgment entered on the Agreement, gives rise to under applicable law.

E. *Representation and Warranty.* The signatories hereto on behalf of their respective Settling States and its Participating Subdivisions expressly represent and warrant that they will obtain on or before the Effective Date (or have obtained) the authority to settle and release, to the maximum extent of the State's power, all Released Claims of (1) their respective Settling States; (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts; (3) any of their respective Settling State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or revocation of a pharmaceutical distribution license; and (4) any Participating Subdivisions. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor. Also, for the purposes of clause (3), a release from a State's Governor is sufficient to demonstrate that the appropriate releases have been obtained.

F. *Effectiveness*. The releases set forth in the Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the Releasors. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the Settlement Fund or any portion thereof, or by the enactment of future laws, or by any seizure of the Settlement Fund or any portion thereof.

G. *Cooperation*. Releasors (i) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (ii) will reasonably cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims.

H. *Non-Released Claims.* Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release or limit any criminal liability, Claims for any outstanding liability under any tax or securities law, Claims against parties who are not Released Entities, Claims by private individuals and any claims arising under the Agreement for enforcement of the Agreement.

V. Monetary Relief and Payments

A. **Structure of Payments**

1. All payments under this Section V shall be made into the Settlement Fund, except that where specified, they shall be made into the Settlement Fund Escrow. The Settlement Fund shall be allocated and used only as specified in Section VI.

2. Janssen shall pay into the Settlement Fund the sum of Four Billion, Five Hundred Thirty-Four Million, Six Hundred Fifteen Thousand, Three Hundred Eighty-Five

Dollars ($4,534,615,385) minus (1) the offsets and credits specified in subsection V.C below, (2) any unearned incentive payments under subsection V.E below, and (3) any adjustments under Section IX below.

3. The payments to the Settlement Fund shall be divided into base and incentive payments as provided in subsections V.D and V.E below.

B. **Payment Process**

1. Except as otherwise provided in this Agreement, Janssen shall make two Initial Year Payments and nine (9) Annual Payments. The Initial Year Payments will consist of base payments. The first Annual Payment shall consist of incentive payments and subsequent Annual Payments shall each consist of base and incentive payments. The amount of all Initial Year Payments and Annual Payments shall be determined by the Settlement Fund Administrator applying Section V and Exhibit M. The Payment Date for the first Initial Year Payment shall be no later than ninety (90) days after the Effective Date. The Payment Date for the second Initial Year Payment shall be no later than July 15, 2022. The Payment Date for the first Annual Payment shall be no later than one year and sixty days following the Effective Date; the Payment Date for the second Annual Payment shall be no later than two years and sixty days following the Effective Date, and so forth, until all Annual Payments are made.

2. All data relevant to the determination of each such payment shall be submitted to the Settlement Fund Administrator sixty (60) days prior to the Payment Date for each payment. Prior to the Initial Participation Date, the Parties will include an exhibit to the Agreement setting forth in detail the process for submitting such data to the Settlement Fund Administrator prior to each Payment Date. The Settlement Fund Administrator shall then determine the Initial Year Payment or Annual Payment and the amount to be paid to each Settling State and its Participating Subdivisions, consistent with the provisions in Exhibit L, by:

   a. determining, for each Settling State, the amount of base and incentive payments to which the State is entitled by applying the criteria in this Section;

   b. applying any reductions, suspensions, or offsets required by Sections V and IX; and

   c. determining the total amount owed by Janssen to all Settling States and Participating Subdivisions.

3. The Settlement Fund Administrator shall then allocate the Initial Year Payment or Annual Payment pursuant to Section VI among the Settling States, among the separate types of funds for each Settling State (if applicable), and among the Participating Subdivisions.

4. As soon as possible, but no later than fifty (50) days prior to the Payment Date for each payment and following the determination described in subsection V.B.2, the Settlement Fund Administrator shall give notice to Janssen, the Settling States, and the Enforcement Committee of the amount of the Initial Year Payment or Annual Payment, the amount to be received by each Settling State, the amount to be received by the separate types of funds for each Settling State (if applicable), and the amount to be received by each Settling State's Participating Subdivisions.

5. Within twenty-one (21) days of the notice provided by the Settlement Fund Administrator, any party may dispute, in writing, the calculation of the Initial Year Payment or Annual Payment, or the amount to be received by a Settling State and/or its Participating Subdivisions. Such disputing party must provide a written notice of dispute to the Settlement Fund Administrator, the Enforcement Committee, any affected Settling State, and Janssen identifying the nature of the dispute, the amount of money that is disputed, and the Settling State(s) affected.

6. Within twenty-one (21) days of the sending of a written notice of dispute, any affected party may submit a response, in writing, to the Settlement Fund Administrator, the Enforcement Committee, any affected Settling State, and Janssen identifying the basis for disagreement with the notice of dispute.

7. If no response is filed, the Settlement Fund Administrator shall adjust the amount calculated consistent with the written notice of dispute, and Janssen shall pay the adjusted amount as the Initial Year Payment or Annual Payment on the Payment Date. If a written response to the written notice of dispute is timely sent to the Settlement Fund Administrator, the Settlement Fund Administrator shall notify Janssen of the preliminary amount to be paid, which shall be the greater of the amount originally calculated by the Settlement Fund Administrator or the amount that would be consistent with the notice of dispute, *provided*, *however* that in no circumstances shall the preliminary amount to be paid be higher than the maximum amount of base and incentive payments for that payment as set forth in Exhibit M. For the avoidance of doubt, a transfer of suspended payments from the Settlement Fund Escrow does not count toward determining whether the amount to be paid is higher than the maximum amount of base and incentive payments for that payment as set forth in Exhibit M.

8. The Settlement Fund Administrator shall place any disputed amount of the preliminary amount paid by Janssen into the Settlement Fund Escrow and shall disburse any undisputed amount to each Settling State and its Participating Subdivisions receiving direct allocations within fifteen (15) days of the Payment Date or at such later time as directed by each Settling State.

9. Disputes described in this subsection (other than those for which no response is filed under subsection V.B.6) shall be resolved in accordance with the terms of Section XII.

10. The process described in this subsection V.B shall also apply to accelerated payments made pursuant to Incentive A under subsection V.E.4.

11. For the avoidance of doubt, Subdivisions not listed on Exhibit G shall not receive an allocation from the Subdivision Fund.

C. **Offsets for Non-Settling States and Credits**

1. An offset equal to Four Billion, Five Hundred Thirty-Four Million, Six Hundred Fifteen Thousand, Three Hundred Eighty-Five Dollars ($4,534,615,385) times the percentage allocation assigned to each Non-Settling State in Exhibit F shall be deducted from the total amount to be paid by Janssen to the Settlement Fund under subsection V.A.2 above.

2. In addition to the offset, a credit of Two Hundred and Seventy Million Dollars ($270,000,000) shall be deducted from the maximum Settlement Fund amount to be paid by Janssen under subsection V.A.2 above and applied to the payment amounts as specified by Exhibit M. For the avoidance of doubt, the base payments and maximum incentive payment amounts shown on Exhibit M already reflect the deduction of the offset.

3. Notwithstanding any other provision of this Agreement or any other agreement, in the event that: (1) Janssen enters into an agreement with any Settling State that resolves with finality such Settling State's Claims consistent with Section IV of this Agreement and such agreement has an effective date prior to the Effective Date of this Agreement (such agreement, a "State-Specific Agreement") and (2) pursuant to the terms of the State-Specific Agreement, any payments, or any portion thereof, made by Janssen thereunder are made in lieu of any payments (for the avoidance of doubt, including the Additional Restitution Amount), or any portion thereof, to be made under this Agreement and Janssen makes such a payment pursuant to the State-Specific Agreement, then Janssen will reduce any payments allocable to such Settling State (whether made to the Settlement Fund Escrow or the Settlement Fund) made pursuant to this Agreement to the extent such amount was already paid pursuant to the terms of the State-Specific Agreement. This provision includes but is not limited to any corresponding amounts already paid to the Qualified Settlement Fund established under the Agreement between Janssen and the State of New York dated June 25, 2021.

4. Non-Settling States shall not be eligible for any payments or have any rights in connection with this Agreement. Accordingly, the stated maximum dollar amounts of the payments specified in Exhibit M are reduced by the aggregate Overall Allocation Percentage of Non-Settling States as set forth in Exhibit F.

D. **Base Payments**

1. Janssen shall make base payments into the Settlement Fund totaling One Billion, Nine Hundred Forty-Two Million, Three Hundred Forty-Six Thousand, One Hundred Fifty-Five Dollars ($1,942,346,155) minus the offsets and credits

specified in subsection V.C above. The base payments will be paid in accordance with the payment schedule specified by Exhibit M, subject to potential acceleration and potential deductions as provided herein.

2. The base payments will be allocated by Settling State proportionate to each Settling State's assigned percentages in Exhibit F, adjusted for any Non-Settling States.

3. If a State qualifies for Incentive A (described below), Janssen will accelerate the base payment schedule so that the State receives its Payment Year 1-4 base payment allocations and full Payment Year 1-4 Incentive A payment amounts within ninety (90) days of notice, on or after the Effective Date, of the Bar's implementation. Payment Year 5-10 payments are made annually and cannot be accelerated.

4. The exemplar payment schedule in Exhibit M does not account for deductions for offsets or unearned incentives, which will be separately calculated for each payment.

E. **Incentive Payments**

1. Janssen shall make incentive payments into the Settlement Fund potentially totaling up to Two Billion, Three Hundred Twenty-Two Million, Two Hundred Sixty-Nine Thousand, Two Hundred Thirty Dollars ($2,322,269,230), consisting of $2,109,038,461 for Incentive A (or, alternatively up to $2,109,038,461 for combined Incentives B and C if Incentive A is not achieved) and $213,230,769 for Incentive D, prior to being adjusted for credits if every State is a Settling State and were to satisfy the requirements specified below to earn its maximum incentive amount. The incentive payments will be paid in accordance with the payment schedule in Exhibit M, subject to potential acceleration and potential deductions as provided herein.

2. The maximum incentive amount for any Settling State shall be $2,322,269,230 times the percentage allocation assigned that Settling State in Exhibit F.

3. A Settling State may qualify to receive incentive payments in addition to base payments if, as of the Incentive Payment Final Eligibility Date, it meets the incentive eligibility requirements specified below. Settling States may qualify for incentive payments in four ways. If a Settling State qualifies for "Incentive A," it will become entitled to receive the maximum Incentive A payment allocable to the State as stated in subsection V.E.1. If a Settling State does not qualify for Incentive A, it can alternatively qualify for "Incentive B" and/or "Incentive C." A Settling State can qualify for "Incentive D" regardless of whether it qualifies for another incentive payment. The Incentive Payment Final Eligibility Date is not relevant to Incentive D.

4. *Incentive A: Accelerated Incentive Payment for Full Participation.*

a. A Settling State shall receive an accelerated Incentive A payment allocable to the State for full participation as described in subsection V.E.4.b.

b. A State qualifies for Incentive A by: (1) complete participation in the form of releases consistent with Section IV above from all Litigating Subdivisions and Litigating Special Districts, Non-Litigating Subdivisions with population over 10,000, and Non-Litigating Covered Special Districts (as defined in subsection V.E.7.e); (2) a Bar; or (3) a combination of approaches in clauses (1)-(2) that achieves the same level of resolution of Subdivision and Special District claims (e.g., a law barring future litigation combined with full joinder by Litigating Subdivisions and Litigating Special Districts). For purposes of Incentive A, a Subdivision or Special District is considered a "Litigating Subdivision" or "Litigating Special District" if it has brought Released Claims against Released Entities on or before the Reference Date; all other Subdivisions and Special Districts are considered "Non-Litigating." For purposes of Incentive A, Non-Litigating Special Districts shall not include a Special District with any of the following words or phrases in its name: mosquito, pest, insect, spray, vector, animal, air quality, air pollution, clean air, coastal water, tuberculosis, and sanitary.

c. Qualification for Incentive A entitles the qualifying Settling State to expedited payment of base payments and incentive payments for Payment Years 1-4, which Janssen shall pay into the Settlement Fund within ninety (90) days after receiving notice from the Settlement Fund Administrator that a State has qualified for Incentive A, but in no event less than ninety (90) days from the Effective Date. Base and incentive payments for Payment Years 5-10 will not be expedited.

d. If a Settling State qualifies for Incentive A after receiving an incentive payment under Incentives B or C, described below, the Settling State's payments under Incentive A will equal the remainder of its total Incentive A payments less any payments previously received under Incentives B or C. A Settling State that receives all of its maximum incentive allocation under Incentive A shall not receive additional incentive payments under Incentives B or C.

e. A Settling State that is not eligible for Incentive A as of the Incentive Payment Final Eligibility Date shall not be eligible for Incentive A for that Payment Year or any subsequent Payment Years.

5. *Incentive B: Early Participation or Released Claims by Litigating Subdivisions and Litigating Special Districts.*

a. If a Settling State does not qualify for Incentive A, it may still qualify to receive up to 60% of its total potential Incentive A payment allocation under Incentive B.

b. A Settling State can qualify for an Incentive B payment if Litigating Subdivisions and Litigating Special Districts collectively representing at least 75% of the Settling State's litigating population are either Participating Subdivisions or have their claims resolved through Case-Specific Resolutions.

(1) A Settling State's litigating population is the sum of the population of all Litigating Subdivisions and Litigating Special Districts. A Settling State's litigating population shall include all Litigating Subdivisions and Litigating Special Districts whose populations overlap in whole or in part with other Litigating Subdivisions and Litigating Special Districts, for instance in the case of a Litigating Special District, city, or township contained within a county.

(2) For example, if a Litigating Special District and a city that is a Litigating Subdivision are located within a county that is a Litigating Subdivision, then each of their individual populations would be added together to determine the total litigating population. Special District populations shall be counted in the manner set forth in subsection XIII.B. If each qualifies as a Litigating Subdivision or Litigating Special District and the county has a population of 10, the City has a population of 8, and the Special District has a population of 1, the total litigating population would be 19.

c. The following time periods apply to Incentive B payments:

(1) Period 1: Zero to two hundred ten (210) days after the Effective Date.

(2) Period 2: Two hundred eleven (211) days to one year after the Effective Date.

(3) Period 3: One year and one day to two years after the Effective Date.

d. Within Period 1: If Litigating Subdivisions and Litigating Special Districts collectively representing at least 75% of a Settling State's litigating population are Participating Subdivisions or have their claims resolved through Case-Specific Resolutions during Period 1, a sliding scale will determine the share of the funds available under Incentive B, with a

maximum of 60% of the Settling State's total potential incentive payment allocation available. Under that sliding scale, if Litigating Subdivisions and Litigating Special Districts collectively representing 75% of a Settling State's litigating population become Participating Subdivisions or achieve Case-Specific Resolution status by the end of Period 1, a Settling State will receive 50% of the total amount available to it under Incentive B. If more Litigating Subdivisions and Litigating Special Districts become Participating Subdivisions or achieve Case-Specific Resolution status, the Settling State shall receive an increased percentage of the total amount available to it under Incentive B as shown in the table below.

Participation or Case-Specific Resolution Levels (As percentage of litigating population)	**Incentive B Award** (As percentage of total amount available to State under Incentive B)
75%	50%
76%	52%
77%	54%
78%	56%
79%	58%
80%	60%
85%	70%
90%	80%
95%	90%
100%	100%

e. Within Period 2: If a Settling State did not qualify for an Incentive B payment in Period 1, but Litigating Subdivisions and Litigating Special Districts collectively representing at least 75% of the Settling State's litigating population become Participating Subdivisions or achieve Case-Specific Resolution status by the end of Period 2, then the Settling State qualifies for 75% of the Incentive B payment it would have qualified for in Period 1.

f. Within Period 3: If a Settling State did not qualify for an Incentive B payment in Periods 1 or 2, but Litigating Subdivisions and Litigating Special Districts collectively representing at least 75% of the Settling State's litigating population become Participating Subdivisions or achieve Case-Specific Resolution status by the end of Period 3, then the Settling State qualifies for 50% of the Incentive B payment it would have qualified for in Period 1.

g. A Settling State that receives the Incentive B payment for Periods 1 and/or 2 can receive additional payments if it secures participation from additional Litigating Subdivisions and Litigating Special Districts (or Case-Specific Resolutions of their claims) during Periods 2 and/or 3.

Those additional payments would equal 75% (for additional participation or Case-Specific Resolutions during Period 2) and 50% (for additional participation or Case-Specific Resolutions during Period 3) of the amount by which the increased litigating population levels would have increased the Settling State's Incentive B payment if they had been achieved in Period 1.

h. If Litigating Subdivisions and Litigating Special Districts that have become Participating Subdivisions or achieved Case-Specific Resolution status collectively represent less than 75% of a Settling State's litigating population by the end of Period 3, the Settling State shall not receive any Incentive B payment.

i. If there are no Litigating Subdivisions or Litigating Special Districts in a Settling State, and that Settling State is otherwise eligible for Incentive B, that Settling State will receive its full allocable share of Incentive B.

j. Incentives earned under Incentive B shall accrue after each of Periods 1, 2, and 3. After each period, the Settlement Fund Administrator shall conduct a look-back to assess which Settling States vested an Incentive B payment in the preceding period. Based on the look-back, the Settlement Fund Administrator will calculate the incentives accrued under Incentive B for the period; *provided* that the percentage of Incentive B for which a Settling State is eligible as of the Incentive Payment Final Eligibility Date shall cap its eligibility for that Payment Year and all subsequent Payment Years.

6. *Incentive C: Early Participation of Subdivisions*

a. If a Settling State does not qualify for Incentive A, it may still qualify to receive up to 40% of its total potential Incentive A payment allocation under Incentive C, which has two parts.

(1) Part 1: Under Incentive C, Part 1, a Settling State can receive up to 75% of its Incentive C allocation. A Settling State can qualify for a payment under Incentive C, Part 1 only if Primary Subdivisions (whether Litigating Primary Subdivisions or Non-Litigating Primary Subdivisions as of the Reference Date) representing at least 60% of the Settling State's Primary Subdivision population become Participating Subdivisions or achieve Case-Specific Resolution status.

(2) A Settling State's Primary Subdivision population is the sum of the population of all Primary Subdivisions (whether Litigating Primary Subdivisions or Non-Litigating Primary Subdivisions as of the Reference Date). Because Subdivisions include Subdivisions whose populations overlap in whole or in part with other

Subdivisions, for instance in the case of a city or township contained within a county, the Settling State's Primary Subdivision population is greater than Settling State's total population. (Special Districts are not relevant for purposes of Incentive C calculations.)

(3) A sliding scale will determine the share of the funds available under Incentive C, Part 1 to Settling States meeting the minimum 60% threshold. Under that sliding scale, if a Settling State secures participation or Case-Specific Resolutions from Primary Subdivisions representing 60% of its total Primary Subdivision population, it will receive 40% of the total amount potentially available to it under Incentive C, Part 1. If a Settling State secures participation or Case-Specific Resolutions from Primary Subdivisions representing more than 60% of its Primary Subdivision population, the Settling State shall be entitled to receive a higher percentage of the total amount potentially available to it under Incentive C, Part 1, on the scale shown in the table below. If there are no Primary Subdivisions, and that Settling State is otherwise eligible for Incentive C, that Settling State will receive its full allocable share of Incentive C, Part 1.

Participation or Case-Specific Resolution Levels (As percentage of total Primary Subdivision population)	**Incentive C Award** (As percentage of total amount available to State under Incentive C, Part 1)
60%	40%
70%	45%
80%	50%
85%	55%
90%	60%
91%	65%
92%	70%
93%	80%
94%	90%
95%	100%

b. Part 2: If a Settling State qualifies to receive an incentive under Incentive C, Part 1, the State can also qualify to receive an additional incentive amount equal to 25% of its total potential Incentive C allocation by securing 100% participation of the ten (10) largest Subdivisions by population in the Settling State. (Special Districts are not relevant for purposes of this calculation.) If a Settling State does not qualify for any amount under Incentive C, Part 1, it cannot qualify for Incentive C, Part 2.

c. Incentives earned under Incentive C shall accrue on an annual basis up to three years after the Effective Date. At one, two, and three years after the

Effective Date, the Settlement Fund Administrator will conduct a look-back to assess which Subdivisions had agreed to participate or had their claim resolved through a Case-Specific Resolution that year. Based on the look-back, the Settlement Fund Administrator will calculate the incentives accrued under Incentive C for the year; *provided* that the percentage of Incentive C for which a Settling State is eligible as of the Incentive Payment Final Eligibility Date shall cap its eligibility for that Payment Year and all subsequent Payment Years.

7. *Incentive D: Release of Payments if No Qualifying Special District Litigation.*

a. $213,230,769 shall be available for potential Incentive D payments according to the terms specified in this subsection V.E.7.

b. If, within five years of the Reference Date, a Covered Special District files litigation against any Released Entity, Janssen shall, within thirty (30) days of Janssen being served, provide notice of the litigation to the Settling State in which the Covered Special District sits, which shall file a motion to intervene in the litigation and use its best efforts to obtain either dismissal of the litigation in cooperation with Janssen, or a release consistent with Section IV of the Special District's Claims.

c. A Settling State shall receive its allocation of the Incentive D payment if, within five years after the Effective Date (the "look-back date"), no Covered Special District within the Settling State has filed litigation which has survived a Threshold Motion and remains pending as of the look-back date, unless the dismissal after the litigation survived the Threshold Motion is conditioned or predicated upon payment by a Released Entity (apart from payments by Janssen incurred under the Agreement or injunctive relief obligations incurred by it).

d. Prior to the look-back date, a Released Entity shall not enter into a settlement with a Covered Special District unless the State in which the Covered Special District sits consents to such a settlement or unreasonably withholds consent of such a settlement.

e. "*Covered Special Districts*" are school districts, healthcare/hospital districts, and fire districts, subject to the following population thresholds:

(1) For school districts, the K-12 student enrollment must be 25,000 or 0.12% of a State's population, whichever is greater;

(2) For fire districts, the district must cover a population of 25,000, or 0.20% of a State's population if a State's population is greater than 18 million. If not easily calculable from state data sources and agreed to between the State and Janssen, a fire district's population is calculated by dividing the population of the county or counties a

fire district serves by the number of fire districts in the county or counties.

(3) For healthcare/hospital districts, the district must have at least 125 hospital beds in one or more hospitals rendering services in that district.

VI. Allocation and Use of Settlement Funds

A. *Components of Settlement Fund*. The Settlement Fund shall be comprised of an Abatement Accounts Fund, a State Fund, and a Subdivision Fund for each Settling State. The payments under Section V into the Settlement Fund shall be initially allocated among those three (3) sub-funds and distributed and used as provided below or as provided for by a State-Subdivision Agreement (or other State-specific allocation of funds). Unless otherwise specified herein, payments placed into the Settlement Fund do not revert back to Janssen.

B. *Use of Settlement Payments*.

1. It is the intent of the Parties that the payments disbursed from the Settlement Fund to Settling States and Participating Subdivisions listed in Exhibit G be for Opioid Remediation, subject to limited exceptions that must be documented in accordance with subsection VI.B.2. In no event may less than 86.5% of Janssen's maximum amount of payments pursuant to Sections V, X, and XI over the entirety of all Payment Years (but not any single Payment Year) be spent on Opioid Remediation.

2. While disfavored by the Parties, a Settling State or Participating Subdivision listed on Exhibit G may use monies from the Settlement Fund (that have not been restricted by this Agreement solely to future Opioid Remediation) for purposes that do not qualify as Opioid Remediation. If, at any time, a Settling State or a Participating Subdivision listed on Exhibit G uses any monies from the Settlement Fund for a purpose that does not qualify as Opioid Remediation, such Settling State or Participating Subdivision shall identify such amounts and report to the Settlement Fund Administrator and Janssen how such funds were used, including if used to pay attorneys' fees, investigation costs, litigation costs, or costs related to the operation and enforcement of this Agreement, respectively. It is the intent of the Parties that the reporting under this subsection VI.B.2 shall be available to the public. For the avoidance of doubt, (a) any amounts not identified under this subsection VI.B.2 as used to pay attorneys' fees, investigation costs, or litigation costs shall be included in the "Compensatory Restitution Amount" for purposes of subsection VI.F and (b) Participating Subdivisions not listed on Exhibit G or Participating Special Districts that receive monies from the Settlement Fund indirectly may only use such monies from the Settlement Fund for purposes that qualify as Opioid Remediation.

C. *Allocation of Settlement Fund.* The allocation of the Settlement Fund allows for different approaches to be taken in different states, such as through a State-Subdivision Agreement. Given the uniqueness of States and their Subdivisions, Settling States and Participating Subdivisions are encouraged to enter into State-Subdivision Agreements in order to direct the allocation of their portion of the Settlement Fund. As set out below, the Settlement Fund Administrator will make an initial allocation to three (3) state-level sub-funds. The Settlement Fund Administrator will then, for each Settling State and its Participating Subdivisions listed on Exhibit G, apply the terms of this Agreement and any relevant State-Subdivision Agreement, Statutory Trust, Allocation Statute, or voluntary redistribution of funds as set out below before disbursing the funds.

1. Base Payments. The Settlement Fund Administrator will allocate base payments under subsection V.D among the Settling States in proportion to their respective Overall Allocation Percentages. Base payments for each Settling State will then be allocated 15% to its State Fund, 70% to its Abatement Accounts Fund, and 15% to its Subdivision Fund. Amounts may be reallocated and will be distributed as provided in subsection VI.D.

2. Incentive Payments. The Settlement Fund Administrator will treat incentive payments under subsection V.E on a State-specific basis. Incentive payments for which a Settling State is eligible under subsection V.E will be allocated 15% to its State Fund, 70% to its Abatement Accounts Fund, and 15% to its Subdivision Fund. Amounts may be reallocated and will be distributed as provided in subsection VI.D.

3. Application of Adjustments. If a reduction, offset, or suspension under Section IX applies with respect to a Settling State, the reduction, offset, or suspension shall be applied proportionally to all amounts that would otherwise be apportioned and distributed to the State Fund, the Abatement Accounts Fund, and the Subdivision Fund for that State.

4. Settlement Fund Administrator. Prior to the Initial Participation Date, Janssen and the Enforcement Committee will agree to a detailed mechanism consistent with the foregoing for the Settlement Fund Administrator to follow in allocating, apportioning, and distributing payments, which shall be appended hereto as Exhibit L.

5. Settlement Fund Administrator Costs. Any costs and fees associated with or arising out of the duties of the Settlement Fund Administrator as described in Exhibit L with regard to Janssen's payments to the Settlement Fund shall be paid out of interest accrued on the Settlement Fund and from the Settlement Fund should such interest prove insufficient.

D. *Settlement Fund Reallocation and Distribution.* As set forth below, within a particular Settling State's account, amounts contained in the Settlement Fund sub-funds may be reallocated and distributed per a State-Subdivision Agreement or other means. If the

apportionment of amounts is not addressed and controlled under subsections VI.D.1-2, then the default provisions of subsection VI.D.4 apply. It is not necessary that a State-Subdivision Agreement or other means of allocating funds pursuant to subsections VI.D.1-2 address all of the Settlement Fund sub-funds. For example, a Statutory Trust might only address disbursements from a Settling State's Abatement Accounts Fund.

1. Distribution by State-Subdivision Agreement. If a Settling State has a State-Subdivision Agreement, amounts apportioned to that State's State Fund, Abatement Accounts Fund, and Subdivision Fund under subsection VI.C shall be reallocated and distributed as provided by that agreement. Any State-Subdivision Agreement entered into after the Preliminary Agreement Date shall be applied only if it requires: (1) that all amounts be used for Opioid Remediation, except as allowed by subsection VI.B.2, and (2) that at least 70% of amounts be used solely for future Opioid Remediation (references to "future Opioid Remediation" include amounts paid to satisfy any future demand by another governmental entity to make a required reimbursement in connection with the past care and treatment of a person related to the Alleged Harms). For a State-Subdivision Agreement to be applied to the relevant portion of an Initial Year Payment or an Annual Payment, notice must be provided to Janssen and the Settlement Fund Administrator at least sixty (60) days prior to the Payment Date.

2. Distribution by Allocation Statute. If a Settling State has an Allocation Statute and/or a Statutory Trust that addresses allocation or distribution of amounts apportioned to such State's State Fund, Abatement Accounts Fund, and/or Subdivision Fund and that, to the extent any or all such sub-funds are addressed, requires (1) all amounts to be used for Opioid Remediation, except as allowed by subsection VI.B.2, and (2) at least 70% of all amounts to be used solely for future Opioid Remediation, then, to the extent allocation or distribution is addressed, the amounts apportioned to that State's State Fund, Abatement Accounts Fund, and Subdivision Fund under subsection VI.C shall be allocated and distributed as addressed and provided by the applicable Allocation Statute or Statutory Trust. For the avoidance of doubt, an Allocation Statute or Statutory Trust need not address all three (3) sub-funds that comprise the Settlement Fund, and if the applicable Allocation Statute or Statutory Trust does not address distribution of all or some of these three (3) sub-funds, the applicable Allocation Statute or Statutory Trust does not replace the default provisions in subsection VI.D.4 of any such unaddressed fund. For example, if an Allocation Statute or Statutory Trust that meets the requirements of this subsection VI.D.2 only addresses funds restricted to abatement, then the default provisions in this Agreement concerning allocation among the three (3) sub-funds comprising the Settlement Fund and the distribution of the State Fund and Subdivision Fund for that State would still apply, while the distribution of the applicable State's Abatement Accounts Fund would be governed by the qualifying Allocation Statute or Statutory Trust.

3. Voluntary Redistribution. A Settling State may choose to reallocate all or a portion of its State Fund to its Abatement Accounts Fund. A Participating Subdivision listed on Exhibit G may choose to reallocate all or a portion of its

allocation from the Subdivision Fund to the State's Abatement Accounts Fund or to another Participating Subdivision or Participating Special District. For a voluntary redistribution to be applied to the relevant portion of an Initial Year Payment or an Annual Payment, notice must be provided to the Settling Distributors and the Settlement Fund Administrator at least sixty (60) days prior to the Payment Date.

4. Distribution in the Absence of a State-Subdivision Agreement, Allocation Statute, or Statutory Trust. If subsections VI.D.1-2 do not apply, amounts apportioned to that State's State Fund, Abatement Accounts Fund, and Subdivision Fund under subsection VI.C shall be distributed as follows:

   a. Amounts apportioned to that State's State Fund shall be distributed to that State.

   b. Amounts apportioned to that State's Abatement Accounts Fund shall be distributed consistent with subsection VI.E. Each Settling State shall submit to the Settlement Fund Administrator a designation of a lead state agency or other entity to serve as the single point of contact for that Settling State's funding requests from the Abatement Accounts Fund and other communications with the Settlement Fund Administrator. The designation of an individual entity is for administrative purposes only and such designation shall not limit funding to such entity or even require that such entity receive funds from this Agreement. The designated entity shall be the only entity authorized to request funds from the Settlement Fund Administrator to be disbursed from that Settling State's Abatement Accounts Fund. If a Settling State has established a Statutory Trust then that Settling State's single point of contact may direct the Settlement Fund Administrator to release the State's Abatement Accounts Fund to the Statutory Trust.

   c. Amounts apportioned to that State's Subdivision Fund shall be distributed to Participating Subdivisions in that State listed on Exhibit G per the Subdivision Allocation Percentage listed in Exhibit G. Subsection VII.I shall govern amounts that would otherwise be distributed to Non-Participating Subdivisions listed in Exhibit G.

   d. Special Districts shall not be allocated funds from the Subdivision Fund, except through a voluntary redistribution allowed by subsection VI.D.3. A Settling State may allocate funds from its State Fund or Abatement Accounts Fund for Special Districts.

5. Restrictions on Distribution. No amounts may be distributed from the Subdivision Fund contrary to Section VII, *i.e.*, no amounts may be distributed directly to Non-Participating Subdivisions or to Later Participating Subdivisions in excess of what is permissible under subsection VII.E. Amounts allocated to the Subdivision Fund that cannot be distributed by virtue of the preceding sentence shall be distributed

into the sub-account in the Abatement Accounts Fund for the Settling State in which the Subdivision is located, unless those payments are redirected elsewhere by a State-Subdivision Agreement described in subsection VI.D.1 or by an Allocation Statute or a Statutory Trust described in subsection VI.D.2.

E. *Provisions Regarding Abatement Accounts Fund.*

1. State-Subdivision Agreement, Allocation Statute, and Statutory Trust Fund Provisions. A State-Subdivision Agreement, Allocation Statute, or Statutory Trust may govern the operation and use of amounts in that State's Abatement Accounts Fund so long as it complies with the requirements of subsection VI.D.1 or VI.D.2 as applicable, and all direct payments to Subdivisions comply with subsections VII.E-H.

2. Absence of a State-Subdivision Agreement, Allocation Statute, or Statutory Trust. In the absence of a State-Subdivision Agreement, Allocation Statute, or Statutory Trust that addresses distribution, the Abatement Accounts Fund will be used solely for future Opioid Remediation and the following shall apply with respect to a Settling State:

a. *Regional Remediation.*

(1) At least 50% of distributions for remediation from a State's Abatement Accounts Fund shall be annually allocated and tracked to the regional level. A Settling State may allow the Advisory Committee established pursuant to subsection VI.E.2.d to define its regions and assign regional allocations percentages. Otherwise, a Settling State shall (1) define its initial regions, which shall consist of one (1) or more Subdivisions and which shall be designated by the State agency with primary responsibility for substance abuse disorder services employing, to the maximum extent practical, existing regions established in that State for opioid abuse treatment or other public health purposes; and (2) assign initial regional allocation percentages to the regions based on the Subdivision Allocation Percentages in Exhibit G and an assumption that all Subdivisions listed on Exhibit G will become Participating Subdivisions.

(2) This minimum regional expenditure percentage is calculated on the Settling State's initial Abatement Accounts Fund allocation and does not include any additional amounts a Settling State has directed to its Abatement Accounts Fund from its State Fund, or any other amounts directed to the fund. A Settling State may dedicate more than 50% of its Abatement Accounts Fund to the regional expenditure and may annually adjust the percentage of its Abatement Accounts Fund dedicated to regional expenditures as long as the percentage remains above the minimum amount.

(3) The Settling State (1) has the authority to adjust the definition of the regions, and (2) may annually revise the percentages allocated to each region to reflect the number of Subdivisions in each region that are Non-Participating Subdivisions.

b. *Subdivision Block Grants*. Certain Subdivisions listed on Exhibit G shall be eligible to receive regional allocation funds in the form of a block grant for future Opioid Remediation. A Participating Subdivision listed on Exhibit G eligible for block grants is a county or parish (or in the case of States that do not have counties or parishes that function as political subdivisions, a city) that (1) does not contain a Litigating Subdivision or a Later Litigating Subdivision for which it has the authority to end the litigation through a release, bar, or other action; (2) either (i) has a population of 400,000 or more or (ii) in the case of California has a population of 750,000 or more; and (3) has funded or otherwise managed an established health care or treatment infrastructure (e.g., health department or similar agency). Each Subdivision listed on Exhibit G eligible to receive block grants shall be assigned its own region.

c. *Small States*. Notwithstanding the provisions of subsection VI.E.2.a, Settling States with populations under four (4) million that do not have existing regions described in subsection VI.E.2.a shall not be required to establish regions. However, such a Settling State that contains one (1) or more Subdivisions listed on Exhibit G eligible for block grants under subsection VI.E.2.b shall be divided regionally so that each block-grant eligible Subdivision listed on Exhibit G is a region and the remainder of the state is a region.

d. *Advisory Committee*. The Settling State shall designate an Opioid Settlement Remediation Advisory Committee (the "*Advisory Committee*") to provide input and recommendations regarding remediation spending from that Settling State's Abatement Accounts Fund. A Settling State may elect to use an existing advisory committee or similar entity (created outside of a State-Subdivision Agreement or Allocation Statute); provided, however, the Advisory Committee or similar entity shall meet the following requirements:

(1) Written guidelines that establish the formation and composition of the Advisory Committee, terms of service for members, contingency for removal or resignation of members, a schedule of meetings, and any other administrative details;

(2) Composition that includes at least an equal number of local representatives as state representatives;

(3) A process for receiving input from Subdivisions and other communities regarding how the opioid crisis is affecting their

communities, their abatement needs, and proposals for abatement strategies and responses; and

(4) A process by which Advisory Committee recommendations for expenditures for Opioid Remediation will be made to and considered by the appropriate state agencies.

3. Abatement Accounts Fund Reporting. The Settlement Fund Administrator shall track and assist in the report of remediation disbursements as agreed to among the Parties.

F. *Nature of Payment.* Janssen, the Settling States, the Participating Subdivisions, and the Participating Special Districts, acknowledge and agree that notwithstanding anything to the contrary in this Agreement, including, but not limited to, the scope of the Released Claims:

1. Janssen has entered into this Agreement to avoid the delay, expense, inconvenience, and uncertainty of further litigation;

2. The Settling States, the Participating Subdivisions, and the Participating Special Districts sought compensatory restitution (within the meaning of 26 U.S.C. § 162(f)(2)(A)) as damages for the Alleged Harms allegedly suffered by the Settling States and Participating Subdivisions;

3. By executing this Agreement the Settling States, the Participating Subdivisions, and the Participating Special Districts certify that: (a) the Compensatory Restitution Amount is no greater than the amount, in the aggregate, of the Alleged Harms allegedly suffered by the Settling States and Participating Subdivisions; and (b) the portion of the Compensatory Restitution Amount received by each Settling State or Participating Subdivision is no greater than the amount of the Alleged Harms allegedly suffered by such Settling State or Participating Subdivision;

4. The payment of the Compensatory Restitution Amount by Janssen constitutes, and is paid for, compensatory restitution (within the meaning of 26 U.S.C. § 162(f)(2)(A)) for alleged damage or harm (as compensation for alleged damage or harm arising out of alleged bodily injury) allegedly caused by Janssen;

5. The Compensatory Restitution Amount is being paid as compensatory restitution (within the meaning of 26 U.S.C. § 162(f)(2)(A)) in order to restore, in whole or in part, the Settling States and Participating Subdivisions to the same position or condition that they would be in had the Settling States and Participating Subdivisions not suffered the Alleged Harms;

6. For the avoidance of doubt: (a) no portion of the Compensatory Restitution Amount represents reimbursement to any Settling State, Participating Subdivision, Participating Special District, or other person or entity for the costs of any investigation or litigation, (b) the entire Compensatory Restitution Amount

is properly characterized as described in subsection VI.F, and (c) no portion of the Compensatory Restitution Amount constitutes disgorgement or is properly characterized as the payment of statutory or other fines, penalties, punitive damages, other punitive assessments, or attorneys' fees; and

7. New York, on behalf of all Settling States, Participating Subdivisions, and Participating Special Districts (the "Form 1098-F Filer") shall complete and file Form 1098-F with the Internal Revenue Service on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the order entering this Agreement becomes binding. On the Form 1098-F, the Form 1098-F Filer shall identify the entire Compensatory Restitution Amount received by the Form 1098-F Filer as remediation/restitution. The Form 1098-F Filer shall also, on or before January 31 of the year following the calendar year in which the order entering this Agreement becomes binding, furnish Copy B of such Form 1098-F (or an acceptable substitute statement) to Janssen.

VII. Participation by Subdivisions and Special Districts

A. *Notice.* No later than fifteen (15) days after the Preliminary Agreement Date, the Settling States, with the cooperation of Janssen, shall send individual written notice of the opportunity to participate in this Agreement and the requirements of participation to all Subdivisions in the Settling States of this Agreement that are (1) Litigating Subdivisions or (2) Non-Litigating Subdivisions listed on Exhibit G as eligible to become Participating Subdivisions. Janssen's share of costs of the written notice to such Subdivisions shall be advanced by Janssen and deducted from its initial settlement payment. Notice shall also be provided simultaneously to counsel of record for Litigating Subdivisions and Non-Litigating Subdivisions listed on Exhibit G as eligible to become Participating Subdivisions. The Settling States, with the cooperation of Janssen, will also provide general notice reasonably calculated to alert Non-Litigating Subdivisions listed on Exhibit G in the Settling States to this Agreement, the opportunity to participate in it and the requirements for participation. Such notice may include publication and other standard forms of notification, as well as notice to national state and county organizations such as the National Association of Counties and the National League of Cities. The notice will include that the deadline for becoming an Initial Participating Subdivision is the Initial Participation Date. Nothing contained herein shall preclude a Settling State from providing further notice to or otherwise contacting any of its Subdivisions about becoming a Participating Subdivision, including beginning any of the activities described in this paragraph prior to the Preliminary Agreement Date.

B. *Requirements for Becoming a Participating Subdivision: Non-Litigating Subdivisions.* A Non-Litigating Subdivision in a Settling State that is listed on Exhibit G may become a Participating Subdivision by returning an executed Subdivision Settlement Participation Form specifying (1) that the Subdivision agrees to the terms of this Agreement pertaining to Subdivisions, (2) that the Subdivision releases all Released Claims against all Released Entities, (3) that the Subdivision agrees to use monies it receives, if any, from the Settlement Fund pursuant to the applicable requirements of Section VI, and (4) that the Subdivision submits to the jurisdiction of the court where the Consent Judgment is filed

for purposes limited to that court's role under the Agreement. The required Subdivision Settlement Participation Form is attached as Exhibit K.

C. *Requirements for Becoming a Participating Subdivision: Litigating Subdivisions/Later Litigating Subdivisions*. A Litigating Subdivision or Later Litigating Subdivision in a Settling State may become a Participating Subdivision by returning an executed Subdivision Settlement Participation Form to the Settlement Fund Administrator and upon prompt dismissal of its legal action. A Settling State may require each Litigating Subdivision in that State to specify on the Subdivision Settlement Participation Form whether its counsel has waived any contingency fee contract with that Participating Subdivision and intends to seek fees according to Exhibit R. The Settlement Fund Administrator shall provide quarterly reports of this information to the parties organized by Settling State. Except for trials begun before the Initial Participation Date, a Litigating Subdivision or a Later Litigating Subdivision may not become a Participating Subdivision after the completion of opening statements in a trial of a legal action it brought that includes a Released Claim against a Released Entity.

D. *Initial Participating Subdivisions.* A Subdivision qualifies as an Initial Participating Subdivision if it meets the applicable requirements for becoming a Participating Subdivision set forth in subsections VII.B or VII.C by the Initial Participation Date. Provided however, all Subdivision Settlement Participation Forms shall be held by the Settlement Fund Administrator until Janssen provides the notice in subsection VIII.B that it intends to proceed with the settlement, at which time the obligations created by such forms become effective.

E. *Later Participating Subdivisions.* A Subdivision that is not an Initial Participating Subdivision may become a Later Participating Subdivision by meeting the applicable requirements for becoming a Participating Subdivision after the Initial Participation Date and agreeing to be subject to the terms of a State-Subdivision Agreement (if any) or any other structure adopted or applicable pursuant to subsections VI.D or VI.E. The following provisions govern what a Later Participating Subdivision can receive (but do not apply to Initial Participating Subdivisions):

1. A Later Participating Subdivision shall not receive any share of any base or incentive payments paid to the Subdivision Fund that were due before it became a Participating Subdivision.

2. A Later Participating Subdivision that becomes a Participating Subdivision after July 15, 2022 shall receive 75% of the share of future base or incentive payments that it would have received had it become a Later Participating Subdivision before that date (unless the Later Participating Subdivision is subject to subsections VII.E.3 or VII.E.4 below).

3. A Later Participating Subdivision that, after the Initial Participation Date, maintains a lawsuit for a Released Claim(s) against a Released Entity and has judgment entered against it on every such Claim before it became a Participating Subdivision (other than a consensual dismissal with prejudice) shall receive 50%

of the share of future base or incentive payments that it would have received had it become a Later Participating Subdivision prior to such judgment; *provided, however*, that if the Subdivision appeals the judgment and the judgment is affirmed with finality before the Subdivision becomes a Participating Subdivision, the Subdivision shall not receive any share of any base payment or incentive payment.

4. A Later Participating Subdivision that becomes a Participating Subdivision while a Bar or Case-Specific Resolution involving a different Subdivision exists in its State shall receive 25% of the share of future base or incentive payments that it would have received had it become a Later Participating Subdivision without such Bar or Case-Specific Resolution.

F. *No Increase in Payments*. Amounts to be received by Later Participating Subdivisions shall not increase the payments due from Janssen.

G. *Ineligible Subdivisions.* Subdivisions in Non-Settling States and Prior Litigating Subdivisions are not eligible to be Participating Subdivisions.

H. *Non-Participating Subdivisions*. Non-Participating Subdivisions shall not directly receive any portion of any base or incentive payments, including from the State Fund and direct distributions from the Abatement Accounts Fund; however, a Settling State may choose to fund future Opioid Remediation that indirectly benefits Non-Participating Subdivisions.

I. *Unpaid Allocations to Later Participating and Non-Participating Subdivisions*. Any base payment and incentive payments allocated pursuant to subsection VI.D to a Later Participating or Non-Participating Subdivision that cannot be paid pursuant to this Section VII, will be allocated to the Abatement Accounts Fund for the Settling State in which the Subdivision is located, unless those payments are redirected elsewhere by a State-Subdivision Agreement or by a Statutory Trust.

J. *Requirements for Becoming a Participating Special District: Non-Litigating Special Districts*. A Non-Litigating Special District may become a Participating Special District by either executing a release consistent with Section IV or by having its claims extinguished by operation of law or released by a Settling State.

K. *Requirements for Becoming a Participating Special District: Litigating Special Districts/Later Litigating Special Districts.* A Litigating Special District or Later Litigating Special District in a Settling State may become a Participating Special District by either executing a release consistent with Section IV and upon prompt dismissal of its legal action or by having its claims extinguished by operation of law or released by a Settling State.

L. *Initial Participating Special Districts*. A Special District qualifies as an Initial Participating Special District if it meets the applicable requirements for becoming a Participating Special District by the Initial Participation Date.

M. *Later Participating Special Districts.* A Special District that is not an Initial Participating Special District may become a Later Participating Special District by meeting the applicable requirements for becoming a Participating Special District after the Initial Participation Date and agreeing to be subject to the terms of any agreement reached by the applicable Settling State with Initial Participating Special Districts. A Later Participating Special District shall not receive any share of any base or incentive payments paid to the Settlement Fund that were due before it became a Participating Special District.

VIII. Condition to Effectiveness of Agreement and Filing of Consent Judgment

A. *Determination to Proceed With Settlement.* Janssen will determine on or before the Reference Date whether there has been a sufficient resolution of the Claims of the Litigating Subdivisions in the Settling States (through participation under Section VII, Case-Specific Resolution(s), and Bar(s)) to proceed with this Agreement. The determination shall be in the sole discretion of Janssen and may be based on any criteria or factors deemed relevant by Janssen.

B. *Notice by Janssen.* On or before the Reference Date, Janssen shall inform the Settling States and MDL PEC of its determination pursuant to subsection VIII.A. If Janssen determines to proceed, the Parties will proceed to file the Consent Judgments. If Janssen determines not to proceed, this Agreement will have no further effect and all releases (including those given by Participating Subdivisions) and other commitments or obligations contained herein will be void.

C. *Determination of the Participation Tier.*

1. On the Reference Date, provided that Janssen determines to proceed with this Agreement, the Settlement Fund Administrator shall determine the Participation Tier. The criteria used to determine the Participation Tier are set forth in Exhibit H. Any disputes as to the determination of the Participation Tier shall be decided by the National Arbitration Panel.

2. The Participation Tier shall be redetermined by the Settlement Fund Administrator annually as of the Payment Date, beginning with Payment Year 1, pursuant to the criteria set forth in Exhibit H.

3. After Payment Year 3, the Participation Tier cannot move higher, unless this restriction is waived by Janssen.

4. In the event that a Participation Tier redetermination moves the Participation Tier higher, and that change is in whole or in part as a result of the post-Reference Date enactment of a Bar and there is later a Revocation Event with respect to that Bar, then on the next Payment Date that is at least one hundred eighty (180) days after the Revocation Event, the Participation Tier shall move down to the Participation Tier that would have applied had the Bar never been enacted, unless the Bar is reinstated or all Subdivisions affected by the Revocation Event become Participating Subdivisions within one hundred eighty (180) days of the

Revocation Event. This is the sole circumstance in which, on a nationwide basis, the Participation Tier can move down.

5. In the event that there is a post-Reference Date Revocation Event with respect to a Bar that was enacted in a Settling State prior to the Reference Date, then, on the next Payment Date that is at least one hundred eighty (180) days after the Revocation Event, unless the Bar is reinstated or all Subdivisions affected by the Revocation Event become Participating Subdivisions within one hundred eighty (180) days of the Revocation Event, the Participation Tier shall decrease – solely for the State in which the Revocation Event occurred – to the Participation Tier commensurate with the percentage of Litigating Subdivisions in that State that are Participating Subdivisions and the percentage of Non-Litigating Subdivisions that are both Primary Subdivisions and Participating Subdivisions, according to the criteria set forth in Exhibit H, except that the calculations shall be performed as to that State alone. For the avoidance of doubt and solely for the calculation in this subparagraph, the Settling States Column of Exhibit H shall play no role. This is the sole circumstance in which one Settling State will have a different Participation Tier than other Settling States.

6. The redetermination of the Participation Tier under subsection VIII.C.2 shall not affect payments already made or suspensions or offsets already applied.

IX. Potential Payment Adjustments

A. *Later Litigating Subdivisions.*

1. If a Later Litigating Subdivision in a Settling State with a population above 10,000 brings a lawsuit or other legal proceeding against Released Entities asserting Released Claims, Janssen shall, within thirty (30) days of the lawsuit or other legal proceeding being served on Janssen, provide notice of the lawsuit or other legal proceeding to the Settlement Fund Administrator and the Settling State in which the Later Litigating Subdivision sits and provide the Settling State an opportunity to intervene in the lawsuit or other legal proceeding. A Released Entity shall not enter into a settlement with a Later Litigating Subdivision unless the State in which the Later Litigating Subdivision sits consents to such a settlement or unreasonably withholds consent to such a settlement.

2. If no Participation Tier applies and the Later Litigating Subdivision's lawsuit or other legal proceeding survives a Threshold Motion before Janssen makes its last settlement payment to the Settling State, the following shall apply:

   a. Janssen will, from the date of the entry of the order denying the Threshold Motion and so long as the lawsuit or other legal proceeding is pending, be entitled to a suspension of the following payments it would otherwise owe the Settling State in which the Later Litigating Subdivision is located: (1) all remaining incentive payments to the relevant state; and (2) the last two scheduled base payments, if not already paid (the "Suspended Payments").

b. For each Payment Year that Janssen is entitled to a suspension of payments, the Settlement Fund Administrator shall calculate the Suspended Payments applicable to the next Payment due from Janssen. The Suspended Payments shall be paid into the Settlement Fund Escrow account.

3. If a Participation Tier applies at the time the Threshold Motion is denied, Janssen will be entitled to a suspension of the following percentages of Suspended Payments depending on the applicable Tier—75% for Tier 1, 50% for Tier 2, 35% for Tier 3, and 25% for Tier 4. Otherwise, the requirements of subsection IX.A.2 apply.

4. If the Released Claim is resolved with finality without requirement of payment by a Released Entity, the placement of any remaining balance of the Suspended Payments into the Settlement Fund Escrow shall cease and the Settlement Fund Administrator shall immediately transfer amounts in the Settlement Fund Escrow on account of the suspension to the Settling State at issue and its Participating Subdivisions listed on Exhibit G. The lawsuit will not cause further suspensions unless the Released Claim is reinstated upon further review, legislative action, or otherwise.

5. If the Released Claim is resolved with finality on terms requiring payment by a Released Entity (*e.g.*, if the lawsuit in which the Released Claim is asserted results in a judgment against Janssen or a settlement with Janssen), the Settlement Fund Administrator will transfer the amounts in the Settlement Fund Escrow on account of the suspension to Janssen necessary to satisfy 75% of the payment obligation of the Released Entity to the relevant Later Litigating Subdivision. The Settlement Fund Administrator shall immediately transfer any remaining balance in the Settlement Fund Escrow on account of the suspension to the Settling State at issue and its Participating Subdivisions listed on Exhibit G. If the amount to be transferred to Janssen exceeds the amounts in the Settlement Fund Escrow on account of the suspension, Janssen shall receive a dollar-for-dollar offset for the excess amount against its obligation to pay any remaining payments that would be apportioned to the Settling State at issue and to its Participating Subdivisions listed on Exhibit G.

B. *Settlement Class Resolution Opt Outs.* If a Settling State is eligible for Incentive A on the basis of a Settlement Class Resolution, and a Primary Subdivision that opted out of the Settlement Class Resolution maintains a lawsuit asserting a Released Claim against a Released Entity, the following shall apply. If the lawsuit asserting a Released Claim either survives a Threshold Motion or has an unresolved Threshold Motion fewer than sixty (60) days prior to the scheduled start of a trial involving a Released Claim, and is resolved with finality on terms requiring payment by the Released Entity, Janssen shall receive a dollar-for-dollar offset for the amount paid against its obligation to make remaining Incentive A payments that would be apportioned to that State or Participating Subdivisions listed on Exhibit G. For the avoidance of doubt, an offset shall not be

applicable under this subsection if it is applicable under subsection IX.A with respect to the Subdivision at issue.

C. *Revoked Bar, Settlement Class Resolution, or Case-Specific Resolution.*

1. If Janssen made a payment as a result of the existence of a Bar, Settlement Class Resolution, or Case-Specific Resolution in a Settling State, and that Bar, Settlement Class Resolution, or Case-Specific Resolution is subject to a Revocation Event, Janssen shall receive a dollar-for-dollar offset against its obligation to make remaining payments that would be apportioned to that State or Participating Subdivisions listed on Exhibit G. This offset will be calculated as the dollar amount difference between (1) the total amount of incentive payments paid by Janssen during the time the Bar, Settlement Class Resolution, or Case-Specific Resolution subject to the Revocation Event was in effect, and (2) the total amount of Incentive Payments that would have been due from Janssen during that time without the Bar, Settlement Class Resolution, or Case-Specific Resolution subject to the Revocation Event being in effect. The amount of incentive payments that would have been due, referenced in (2) above, will be calculated based on considering any Subdivision that provides a release within one hundred eighty (180) days after the Revocation Event as having been a Participating Subdivision (in addition to all other Participating Subdivisions) during the time that the Bar, Settlement Class Resolution, or Case-Specific Resolution subject to the Revocation Event was in effect. If a Revocation Event causes a Settling State to no longer qualify for Incentive D, the Settling State shall return to Janssen all payments made under Incentive D.

2. Notwithstanding anything to the contrary in paragraph 1 above, if a Bar or Case-Specific Resolution is reinstated by the Settling State, either through the same or different means as the initial Bar or Case-Specific Resolution, Janssen's right to an offset is extinguished and any amounts withheld to offset amounts paid on account of the revoked, rescinded, reversed, or overruled Bar or Case-Specific Resolution shall be returned to the Settling State, less and except any incentive payments that would have been paid during the period in which the Bar or Case-Specific Resolution was revoked, rescinded, reversed, or overruled.

X. Additional Restitution Amount

A. *Additional Restitution Amount*. Pursuant to the schedule set forth below and subject to the reduction specified in subsection X.B below, Janssen shall pay an Additional Restitution Amount to the Settling States listed in Exhibit N. Such funds shall be paid on the schedule set forth on Exhibit M on the Payment Date for each relevant Payment Year to such Settling States as allocated by the Settlement Fund Administrator pursuant to Exhibit N.

Payment Year 1	$15,384,615.38
Payment Year 2	$26,923,076.92

Payment Year 3 $25,000,000.00

B. *Reduction of Additional Restitution Amount*. In the event that any Non-Settling State appears on Exhibit N, the amounts owed by Janssen pursuant to this Section X shall be reduced by the allocation set forth on Exhibit N for any such Non-Settling States.

C. *Use of Funds*. All funds paid as an Additional Restitution Amount shall be part of the Compensatory Restitution Amount, shall be used for Opioid Remediation, except as allowed by subsection VI.B.2, and shall be governed by the same requirements as specified in subsection VI.F.

XI. Plaintiffs' Attorneys' Fees and Costs

A. The Agreement on Attorneys' Fees, Expenses and Costs is set forth in Exhibit R and incorporated herein by reference. The Agreement on the State Outside Counsel Fee Fund and Agreement on the State Cost Fund Administration are set forth in Exhibit U and Exhibit S, respectively, and are incorporated herein by reference.

XII. Enforcement and Dispute Resolution

A. *Enforceability*. The terms of the Agreement and Consent Judgment applicable to or in a Settling State will be enforceable solely by that Settling State and Janssen. Settling States or Participating Subdivisions shall not have enforcement rights with respect either to the terms of this Agreement that apply only to or in other States or to any Consent Judgment entered into by another Settling State. Participating Subdivisions shall not have enforcement rights against Janssen with respect to the Agreement or any Consent Judgment except as to payments that would be allocated to the Subdivision Fund or Abatement Accounts Fund pursuant to Section VI; *provided, however*, that each Settling State shall allow Participating Subdivisions in that State to notify it of any perceived violations of the Agreement or Consent Judgment.

B. *Jurisdiction*. Janssen consents to the jurisdiction of the court in which the Consent Judgment is filed, limited to resolution of disputes identified in subsection XII.F.2 for resolution in the court in which the Consent Judgment is filed.

C. *Specific Terms Dispute Resolution.*

1. Any dispute that is addressed by the provisions set forth in the Injunctive Relief terms in Exhibit P shall be resolved as provided therein.

2. In the event Janssen believes the 86.5% threshold established in subsection VI.B.1 is not being satisfied, any Party may request that Janssen and the Enforcement Committee meet and confer regarding the use of funds under subsection VI.B.1. The completion of such meet-and-confer process is a precondition to further action regarding any such dispute. Further action concerning subsection VI.B.1 shall: (i) be limited to Janssen seeking to reduce its Annual Payments by no more than 5% of the difference between the actual amount of Opioid Remediation and the 86.5% threshold established in subsection VI.B.1; (ii) only reduce Annual

Payments to those Settling States and its Participating Subdivisions that are below the 86.5% threshold established in subsection VI.B.1; and (iii) not reduce Annual Payments restricted to future Opioid Remediation.

D. *State-Subdivision Enforcement.*

1. A Participating Subdivision shall not have enforcement rights against a Settling State in which it is located with respect to the Agreement or any Consent Judgment except: (1) as provided for in a State-Subdivision Agreement, Allocation Statute, or Statutory Trust with respect to intrastate allocation; or (2) in the absence of a State-Subdivision Agreement, Allocation Statute, or Statutory Trust, as to allegations that: (a) the Settling State's use of Abatement Accounts Fund monies were not used for uses similar to or in the nature of those uses contained in Exhibit E; or (b) a Settling State failed to pay funds directly from the Abatement Accounts Fund to a Participating Subdivision eligible to receive a block grant pursuant to subsection VI.E.2.b.

2. A Settling State shall have enforcement rights against a Participating Subdivision located in its territory: (1) as provided for in a State-Subdivision Agreement, Allocation Statute, or Statutory Trust; or (2) in the absence of a State-Subdivision Agreement, Allocation Statute, or Statutory Trust, as to allegations that the uses of Abatement Accounts Fund monies by Participating Subdivisions listed on Exhibit G were not for uses similar to or in the nature of those uses contained in Exhibit E.

3. As between Settling States and Participating Subdivisions, the above rights are contractual in nature and nothing herein is intended to limit, restrict, change, or alter any other existing rights under law.

E. *Subdivision Payment Enforcement.* A Participating Subdivision shall have the same right as a Settling State pursuant to subsection XII.F.4.a(4) to seek resolution of any failure by Janssen to make its required base and/or incentive payments in a Payment Year.

F. *Other Dispute Resolution Terms.*

1. Except as provided in subsection XII.C, the parties to a dispute shall promptly meet and confer in good faith to resolve any dispute. If the parties cannot resolve the dispute informally, and unless otherwise agreed in writing, they shall follow the remaining provisions of this subsection XII.F to resolve the dispute.

2. Except as provided in subsections XII.C and XII.F.4, disputes not resolved informally shall be resolved in either the court that entered the relevant Consent Judgment or, if no Consent Judgment was entered, a state or territorial court with jurisdiction located wherever the seat of state government is located. State court proceedings shall be governed by the rules and procedures of the forum. For the avoidance of doubt, disputes to be resolved in state court include, but are not limited to, the following:

a. disputes concerning whether expenditures qualify for Opioid Remediation;

b. disputes between a Settling State and Participating Subdivisions located in such Settling State as provided by subsection XII.D, except to the extent the State-Subdivision Agreement provides for other dispute resolution mechanisms. For the avoidance of doubt, disputes between a Settling State and any Participating Subdivision shall not be considered National Disputes;

c. whether this Agreement and relevant Consent Judgment are binding under state law;

d. the extent of the Attorney General's or other participating entity's authority under state law, including the extent of the authority to release claims;

e. whether the requirements of a Bar, a Case-Specific Resolution, State-Specific Finality, Later Litigating Subdivision, Litigating Subdivision, or a Threshold Motion have been met; and

f. all other disputes not specifically identified in subsections XII.C and XII.F.4.

3. Any Party may request that the National Arbitration Panel provide an interpretation of any provision of the settlement that is relevant to the state court determination, and the National Arbitration Panel shall make reasonable best efforts to supply such interpretation within the earlier of thirty (30) days or the time period required by the state court proceedings. Any Party may submit that interpretation to the state court to the extent permitted by, and for such weight provided by, the state court's rules and procedures. If requested by a Party, the National Arbitration Panel shall request that its interpretation be accepted in the form of an amicus curiae brief, and any attorneys' fees and costs for preparing any such filing shall be paid for by the requesting Party.

4. National Disputes involving a Settling State, Participating Subdivision, and/or Janssen shall be resolved by a National Arbitration Panel.

a. "*National Disputes*" are disputes that are exceptions to subsection XII.F.2's presumption of resolution in state courts because they involve issues of interpretation of Agreement terms applicable to all Settling States without reference to a particular State's law. Disputes between a State and any Participating Subdivisions shall not be considered National Disputes. National Disputes are limited to the following:

(1) the amount of offset and/or credit attributable to Non-Settling States and Tribes;

(2) issues involving the scope and definition of "Product";

(3) interpretation and application of the terms "Covered Conduct" and "Released Entities";

(4) disputes over a given year's payment or the payment of the Additional Restitution Amount to all Settling States (for the avoidance of doubt, disputes between a Settling State and Janssen over the amounts owed to only that State shall not be considered National Disputes);

(5) questions regarding the performance and/or removal of the Settlement Fund Administrator;

(6) disputes involving liability of successor entities;

(7) disputes that require a determination of sufficient Subdivision and Special District participation to qualify for Incentives A, B, C, or D, as well as disputes over qualification for Participation Tiers;

(8) disputes that require interpretation of Agreement terms (i) that concretely affect four (4) or more Settling States; and (ii) do not turn on unique definitions and interpretations under State law; and

(9) any dispute subject to resolution under subsection XII.F.2 but for which all parties to the dispute agree to arbitration before the National Arbitration Panel under the provisions of this subsection XII.F.4.

b. The "*National Arbitration Panel*" shall be comprised of three (3) neutral arbitrators. One (1) arbitrator shall be chosen by Janssen, one (1) arbitrator shall be chosen by the Enforcement Committee with due input from Participating Subdivisions, and the third arbitrator shall be agreed upon by the first two (2) arbitrators. The membership of the National Arbitration Panel is intended to remain constant throughout the term of this Agreement, but in the event that replacements are required, the retiring arbitrator shall be replaced by the party that selected him/her.

(1) The National Arbitration Panel shall make reasonable best efforts to decide all matters within one hundred eighty (180) days of filing, and in no event shall it take longer than one (1) year.

(2) The National Arbitration Panel shall conduct all proceedings in a reasonably streamlined process consistent with an opportunity for the parties to be heard. Issues shall be resolved without the need for live witnesses where feasible, and with a presumption in favor of remote participation to minimize the burdens on the parties.

(3) To the extent allowed under state law, a Settling State, Participating Subdivision, and (at any party's request) the National

Arbitration Panel may certify to an appropriate state court any question of state law. The National Arbitration Panel shall be bound by a final state court determination of such a certified question. The time period for the arbitration shall be tolled during the course of the certification process.

(4) The arbitrators will give due deference to any authoritative interpretation of state law, including any declaratory judgment or similar relief obtained by a Settling State, Participating Subdivision, or Janssen on a state law issue.

(5) The decisions of the National Arbitration Panel shall be binding on Settling States, Participating Subdivisions, Janssen, and the Settlement Fund Administrator. In any proceeding before the National Arbitration Panel involving a dispute between a Settling State and Janssen whose resolution could prejudice the rights of a Participating Subdivision(s) or Participating Special District(s) in that Settling State, such Participating Subdivision(s) or Participating Special District(s) shall be allowed to file a statement of view in the proceeding.

c. Nothing herein shall be construed so as to limit or otherwise restrict a State from seeking injunctive or other equitable relief in state court to protect the health, safety, or welfare of its citizens.

d. Each party shall bear its own costs in any arbitration or court proceeding arising under this subsection XII.F. The costs for the arbitrators on the National Arbitration Panel shall be divided and paid equally by the disputing sides for each individual dispute, *e.g.*, a dispute between Janssen and Setting States/Participating Subdivisions shall be split 50% by Janssen and 50% by the Settling States/Participating Subdivisions that are parties to the dispute; a dispute between a Settling State and a Participating Subdivision shall be split 50% by the Settling State and 50% by any Participating Subdivisions that are party to the dispute.

5. Prior to initiating an action to enforce pursuant to this subsection XII.F, the complaining party must:

a. Provide written notice to the Enforcement Committee of its complaint, including the provision of the Consent Judgment and/or Agreement that the practice appears to violate, as well as the basis for its interpretation of the disputed provision. The Enforcement Committee shall establish a reasonable process and timeline for obtaining additional information from the involved parties; *provided, however*, that the date the Enforcement Committee establishes for obtaining additional information from the parties shall not be more than forty-five (45) days following the notice.

The Enforcement Committee may advise the involved parties of its views on the complaint and/or seek to resolve the complaint informally.

b. Wait to commence any enforcement action until thirty (30) days after the date that the Enforcement Committee establishes for obtaining additional information from the involved parties.

6. If the parties to a dispute cannot agree on the proper forum for resolution of the dispute under the provisions of subsections XII.F.2 or XII.F.4, a committee comprising the Enforcement Committee and sufficient representatives of Janssen such that the members of the Enforcement Committee have a majority of one (1) member will determine the forum where the dispute will be initiated within twenty-eight (28) days of receiving notification of the dispute relating to the proper forum. The forum identified by such committee shall be the sole forum for determining where the dispute shall be heard, and the committee's identification of such forum shall not be entitled to deference by the forum selected.

G. *No Effect.* Nothing in this Agreement shall be interpreted to limit the Settling State's Civil Investigative Demand ("CID") or investigative subpoena authority, to the extent such authority exists under applicable state law and the CID or investigative subpoena is issued pursuant to such authority, and Janssen reserves all of its rights in connection with a CID or investigative subpoena issued pursuant to such authority.

XIII. Miscellaneous

A. *No Admission.* Janssen does not admit liability or wrongdoing. Neither this Agreement nor the Consent Judgments shall be considered, construed, or represented to be (1) an admission, concession, or evidence of liability or wrongdoing or (2) a waiver or any limitation of any defense otherwise available to Janssen.

B. *Population of Subdivisions*. The population figures for Subdivisions shall be the published U.S. Census Bureau's population estimates for July 1, 2019, released May 2020. These population figures shall remain unchanged during the term of this Agreement.

C. *Population of Special Districts*. For any purpose in this Agreement in which the population of a Special District is used, other than the use of "Covered Special District": (a) School Districts' population will be measured by the number of students enrolled who are eligible under the Individuals with Disabilities Education Act ("*IDEA*") or Section 504 of the Rehabilitation Act of 1973; (b) Health Districts' and Hospital Districts' population will be measured at 25% of discharges; and (c) all other Special Districts' (including Fire Districts' and Library Districts') population will be measured at 10% of the population served.

D. *Population Associated with Sheriffs*. For any purpose in this Agreement in which the population associated with a lawsuit by a sheriff is used, the population will be measured at 20% of the capacity of the jail(s) operated by the sheriff.

E. *Tax Reporting and Cooperation.*

1. Upon request by Janssen, the Settling States, Participating Subdivisions, and Participating Special Districts agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary for Janssen to establish the statements set forth in subsection VI.E.3 to the satisfaction of their tax advisors, their independent financial auditors, the Internal Revenue Service, or any other governmental authority, including as contemplated by Treasury Regulations Section 1.162-21(b)(3)(ii) and any subsequently proposed or finalized relevant regulations or administrative guidance.

2. Without limiting the generality of subsection VI.C.1, each Settling State, Participating Subdivision, and Participating Special District shall cooperate in good faith with Janssen with respect to any tax claim, dispute, investigation, audit, examination, contest, litigation, or other proceeding relating to this Agreement.

3. The Designated State, on behalf of all Settling States, Participating Subdivisions, and Participating Special Districts, shall designate one of its officers or employees to act as the "appropriate official" within the meaning of Treasury Regulations Section 1.6050X-1(f)(1)(ii)(B) (the "Appropriate Official").

4. For the avoidance of doubt, neither Janssen nor the Settling States, Participating Subdivisions, and Participating Special Districts make any warranty or representation to any Settling jurisdiction or Releasor as to the tax consequences of the payment of the Compensatory Restitution Amount (or any portion thereof).

F. *No Third-Party Beneficiaries.* Except as expressly provided in this Agreement, no portion of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Settling State or Released Entity. No Settling State may assign or otherwise convey any right to enforce any provision of this Agreement.

G. *Calculation.* Any figure or percentage referred to in this Agreement shall be carried to seven decimal places.

H. *Construction.* None of the Parties and no Participating Subdivision shall be considered to be the drafter of this Agreement or of any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement. The headings of the provisions of this Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents or meaning of this Agreement.

I. *Cooperation.* Each Party and each Participating Subdivision agrees to use its best efforts and to cooperate with the other Parties and Participating Subdivisions to cause this Agreement and the Consent Judgments to become effective, to obtain all necessary approvals, consents and authorizations, if any, and to execute all documents and to take such other action as may be appropriate in connection herewith. Consistent with the foregoing, each Party and each Participating Subdivision agrees that it will not directly or indirectly assist or encourage any challenge to this Agreement or any Consent Judgment

by any other person, and will support the integrity and enforcement of the terms of this Agreement and the Consent Judgments.

J. *Entire Agreement*. This Agreement, its exhibits and any other attachments, including the attorneys' fees and cost agreement in Exhibit R, embodies the entire agreement and understanding between and among the Parties and Participating Subdivisions relating to the subject matter hereof and supersedes (1) all prior agreements and understandings relating to such subject matter, whether written or oral and (2) all purportedly contemporaneous oral agreements and understandings relating to such subject matter.

K. *Execution*. This Agreement may be executed in counterparts and by different signatories on separate counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Agreement. One or more counterparts of this Agreement may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof. One or more counterparts of this Agreement may be signed by electronic signature.

L. *Good Faith and Voluntary Entry*. Each Party warrants and represents that it negotiated the terms of this Agreement in good faith. Each of the Parties and signatories to this Agreement warrants and represents that it freely and voluntarily entered into this Agreement without any degree of duress or compulsion. The Parties state that no promise of any kind or nature whatsoever (other than the written terms of this Agreement) was made to them to induce them to enter into this Agreement.

M. *No Prevailing Party*. The Parties each agree that they are not the prevailing party in this action, for purposes of any claim for fees, costs, or expenses as prevailing parties arising under common law or under the terms of any statute, because the Parties have reached a good faith settlement. The Parties each further waive any right to challenge or contest the validity of this Agreement on any ground, including, without limitation, that any term is unconstitutional or is preempted by, or in conflict with, any current or future law.

N. *Non-Admissibility*. The settlement negotiations resulting in this Agreement have been undertaken by the Parties and by certain representatives of the Participating Subdivisions in good faith and for settlement purposes only, and no evidence of negotiations or discussions underlying this Agreement shall be offered or received in evidence in any action or proceeding for any purpose. This Agreement shall not be offered or received in evidence in any action or proceeding for any purpose other than in an action or proceeding arising under or relating to this Agreement.

O. *Notices*. All notices or other communications under this Agreement shall be in writing (including but not limited to electronic communications) and shall be given to the recipients indicated below:

1. For the Attorney(s) General:

Ashley Moody,
Attorney General
State of Florida
The Capitol,
PL-01
Tallahassee, FL 32399

Josh Stein, Attorney General
North Carolina Department of Justice
Attn: Daniel Mosteller
PO Box 629
Raleigh, NC 27602
Dmosteller@ncdoj.gov

2. For the Plaintiffs' Executive Committee:

Paul F. Farrell
Farrell Law
P.O. Box 1180
Huntington, WV 25714-1180

Jayne Conroy
Simmons Hanly Conroy LLC
112 Madison Avenue, 7th Floor
New York, NY 10016-7416
JConroy@simmonsfirm.com

Joseph F. Rice
Motley Rice LLC
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
jrice@motleyrice.com

Peter Mougey
Levin Papantonio Rafferty
316 South Baylen St.
Pensacola, FL 32502
pmougey@levinlaw.com

Paul J. Geller
Robbins Geller Rudman & Dowd LLP
120 East Palmetto Park Road
Boca Raton, FL 33432
PGeller@rgrdlaw.com

3. For Janssen:

Charles C. Lifland
O'Melveny & Myers LLP
400 South Hope Street, 18th Floor Los Angeles, CA 90071
Phone: (213) 430-6000
clifland@omm.com

Daniel R. Suvor
O'Melveny & Myers LLP
400 South Hope Street, 18th Floor Los Angeles, CA 90071
Phone: (213) 430-6000
dsuvor@omm.com

Any Party or the Plaintiffs' Executive Committee may change or add the contact information of the persons designated to receive notice on its behalf by notice given (effective upon the giving of such notice) as provided in this subsection.

P. *No Waiver*. The waiver of any rights conferred hereunder shall be effective only if made by written instrument executed by the waiving Party or Parties. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, nor shall such waiver be deemed to be or construed as a waiver by any other Party.

Q. *Preservation of Privilege.* Nothing contained in this Agreement or any Consent Judgment, and no act required to be performed pursuant to this Agreement or any Consent Judgment, is intended to constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection, or common interest/joint defense privilege, and each Party agrees that it shall not make or cause to be made in any forum any assertion to the contrary.

R. *Successors*. This Agreement shall be binding upon, and inure to the benefit of, Janssen and its respective successors and assigns. Janssen shall not sell the majority of its voting stock or substantially all its assets without obtaining the acquiror's agreement that it will constitute a successor with respect to Janssen's obligations under this Agreement.

S. *Modification, Amendment, Alteration*. After the Reference Date, any modification, amendment, or alteration of this Agreement by the Parties shall be binding only if evidenced in writing signed by Janssen along with the signatures of at least thirty-seven (37) of those then-serving Attorneys General of the Settling States along with a representation from each Attorney General that either: (1) the advisory committee or similar entity established or recognized by that Settling State (either pursuant to subsection VI.E.2, by a State-Subdivision Agreement, or by statute) voted in favor of the modification, amendment, or alteration of this Agreement including at least one Participating Subdivision-appointed member; or (2) in States without any advisory committee, that 50.1% of the Participating Subdivisions by population expressed approval of the modification, amendment, or alteration of this Agreement in writing.

Provided, however, in the event the modification, amendment, or alteration relates to injunctive relief, interstate allocation between the Settling States, intrastate allocation in a particular Settling State, or fees or costs of Settling States and Participating Subdivisions, then every Settling State and each Participating Subdivision affected by that modification, amendment, or alteration must assent in writing. Provided further that, in the event the modification, amendment, or alteration relates to injunctive relief, then such amendment, modification, or alteration of injunctive relief against Janssen will not be effective unless and until any Consent Judgment is modified by a court of competent jurisdiction, except as otherwise provided by the Injunctive Terms.

T. *Termination.*

1. Unless otherwise agreed to by Janssen and the Settling State in question, this Agreement and all of its terms (except subsection XIII.N and any other non-admissibility provisions, which shall continue in full force and effect) shall be canceled and terminated with respect to the Settling State, and the Agreement and all orders issued by the courts in the Settling State pursuant to the Agreement shall become null and void and of no effect if one or more of the following conditions applies:

    a. A Consent Judgment approving this Agreement without modification of any of the Agreement's terms has not been entered as to the Settling State by a court of competent jurisdiction on or before one hundred eighty (180) days after the Effective Date; or

    b. This Agreement or the Consent Judgment as to that Settling State has been disapproved by a court of competent jurisdiction to which it was presented for approval and/or entry (or, in the event of an appeal from or review of a decision of such a court to approve this Agreement and the Consent Judgment, by the court hearing such appeal or conducting such review), and the time to appeal from such disapproval has expired, or, in the event of an appeal from such disapproval, the appeal has been dismissed or the disapproval has been affirmed by the court of last resort to which such appeal has been taken and such dismissal or disapproval has become no longer subject to further appeal (including, without limitation, review by the United States Supreme Court).

2. If this Agreement is terminated with respect to a Settling State and its Participating Subdivisions for whatever reason pursuant to subsection XIII.T.1, then:

    a. An applicable statute of limitation or any similar time requirement (excluding any statute of repose) shall be tolled from the date the Settling State signed this Agreement until the later of the time permitted by applicable law or for one year from the date of such termination, with the effect that Janssen and the Settling State in question shall be in the same

position with respect to the statute of limitation as they were at the time the Settling State filed its action; and

b. Janssen and the Settling State and its Participating Subdivisions in question shall jointly move the relevant court of competent jurisdiction for an order reinstating the actions and claims dismissed pursuant to the terms of this Agreement governing dismissal, with the effect that Janssen and the Settling State and its Participating Subdivisions in question shall be in the same position with respect to those actions and claims as they were at the time the action or claim was stayed or dismissed.

3. Unless Janssen and the Enforcement Committee agree otherwise, this Agreement, with the exception of the Injunctive Relief Terms that have their own provisions on duration, shall terminate as to all Parties as of the Payment Date for Payment Year 9, *provided* that Janssen has performed its payment obligations under the Agreement as of that date. Notwithstanding any other provision in this Agreement, all releases under this Agreement will remain effective despite any termination under this paragraph.

U. *Governing Law.* Except (1) as otherwise provided in the Agreement or (2) as necessary, in the sole judgment of the National Arbitration Panel, to promote uniformity of interpretation for matters within the scope of the National Arbitration Panel's authority, this Agreement shall be governed by and interpreted in accordance with the respective laws of the Settling State, without regard to the conflict of law rules of such Settling State, that is seeking to enforce the Agreement against Janssen or against which Janssen is seeking enforcement. Notwithstanding any other provision in this subsection on governing law, any disputes relating to the Settlement Fund Escrow shall be governed by and interpreted in accordance with the law of the state where the escrow agent has its primary place of business.

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3302)

Agenda Item Title: Amended Item- Discussion Regarding Employee Holiday Wages

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Discussion

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3281)

Agenda Item Title: Consideration of Lease Agreement with the North Carolina Department of Agriculture and Consumer Services for Forest Service Office.

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF CURRITUCK

THIS LEASE AGREEMENT (hereinafter "Lease"), made and entered into as of the last date set forth in the notary acknowledgements below by and between**, Currituck County,** hereinafter designated as Lessor, and the **STATE OF NORTH CAROLINA** through the North Carolina Department of Agriculture & Consumer Services hereinafter designated as Lessee;

W I T N E S S E T H:

THAT WHEREAS, authority to approve and execute this lease agreement was delegated to the Department of Administration by resolution adopted by the Governor and Council of State on the 1st day of September, 1981; and as amended on September 8, 1999 and December 7th, 1999, and April 1, 2003

WHEREAS, the Department of Administration has delegated to the Department of Agriculture the authority to execute this lease agreement by a memorandum dated the 26th day of March, 1982; and as amended on the 26th day of December, 2016: and

WHEREAS, the parties hereto have mutually agreed to the terms of this lease agreement as hereinafter set out,

NOW THEREFORE, in consideration of the rental hereinafter agreed to be paid and the terms and conditions hereinafter set forth, Lessor does hereby let and lease unto Lessee and Lessee hereby takes and leases from Lessor for and during the period of time and subject to the terms and conditions hereinafter set out certain space in the**,** County of Currituck, North Carolina, more particularly described as follows:

Being approximately 400 net square feet of office space and 129 SF of Storage Space located Freestanding County Owned Building Located at 125 College Way, Room 106, Barco, NC 27917 (Attached Exhibit A), Currituck County, North Carolina and further described as follows:

Department of Agiculture and Consumer Services
(Forest Service)

THE TERMS AND CONDITIONS OF THIS LEASE AGREEMENT ARE AS FOLLOWS:

1. The term of this lease shall be for a period of **Three (3) years**, commencing on the **1st day of December, 2021**, or as soon thereafter as the leased premises are ceded to the Lessee and terminating on the **30th day of November, 2024.**

2. During the term of the lease, the Lessee shall pay to the Lessor as rental for said premises the sum of **$ One** Dollar per annum, which sum shall be paid for the term of the lease. The Lessee agrees to pay the aforesaid rental to Lessor at the address specified, or, to such other address as the Lessor may designate by a notice in writing at least fifteen (15) days prior to the due date.

3. Lessor agrees to furnish to the Lessee, as a part of the consideration for this lease, the following services and utilities to the satisfaction of the Lessee.

    a. Heating facilities, air conditioning facilities, adequate electrical facilities, adequate lighting fixtures and sockets, hot and cold water facilities, and adequate toilet facilities.

    b. Lessor to provide required fire extinguishers and servicing, pest control, and outside trash disposal including provisions for the handling of recyclable items such as aluminum cans, cardboard and paper. Maintenance of lawns, parking areas (including snow removal) and common areas is required.

    c. Parking

    d. The Lessor covenants that the leased premises are generally accessible to persons with disabilities. This shall include access into the premises from the parking areas (where applicable), into the premises via any common areas of the building and access to an accessible restroom.

    e. All stormwater fees.

    f. Any fire or safety inspection fees.

    g. Lessor furnishes telephone, NCFS pays electrical utilities.

    h. All land transfer tax/fees imposed by the County or City in which the space is located.

    i. The number of keys to be provided to Lessee for each lockset shall be reasonably determined by Lessee prior to occupancy and said keys shall be furnished by Lessor to Lessee at no cost to Lessee.

    j. Maintenance of lawns, sidewalks, paved areas (this includes snow and debris removal), disposal of trash and common areas are required.

    k. All other terms and conditions of the signed "Proposal to Lease to the State of North Carolina" Form PO-28 and "Specifications for Non-advertised Lease."

4. During the lease term, the Lessor shall keep the leased premises in good repair and tenantable condition, to the end that all facilities are kept in an operative condition. Maintenance shall include, but is not limited to furnishing and replacing electrical light fixture ballasts, air conditioning and ventilating equipment filter pads, if applicable, and broken glass. In case Lessor shall, after notice in writing from the Lessee in regard to a specified condition, fail, refuse, or neglect to correct said condition, or in the event of an emergency constituting a hazard to the health or safety of the Lessee's employees, property, or invitees, it shall then be lawful for the Lessee in addition to any other remedy the Lessee may have, to make such repair at its own cost and to deduct the amount thereof from the rent that may then be thereafter become due hereunder. The Lessor reserves the right to enter and inspect the leased premises, at reasonable times, and to make necessary repairs to the premises.

5. It is understood and agreed that Lessor shall, at the beginning of said lease term as hereinabove set forth, have the leased premises in a condition satisfactory to Lessee, including repairs, painting, partitioning, remodeling, plumbing and electrical wiring suitable for the purposes for which the leased premises will be used by Lessee.

6. The Lessee shall have the right during the existence of this lease, with the Lessor's prior consent, to make alterations, attach fixtures and equipment, and erect additions, structures or signs in or upon the leased premises. Such fixtures, additions, structures or signs so placed in or upon or attached to the leased premises under this lease or any prior lease of which this lease is an extension or renewal shall be and remain the property of the Lessee and may be removed therefrom by the Lessee prior to the termination of this lease or any renewal or extension thereof, or within a reasonable time thereafter. The Lessee shall have no duty to remove any improvement or fixture placed by it on the premises or to restore any portion of the premises altered by it. In the event Lessee elects to remove his improvements or fixtures and such removal causes damage or injury to the demised premises, Lessee will repair only to the extent of any such damage or injury.

7. If the said premises be destroyed by fire or other casualty without fault of the Lessee, this lease shall immediately terminate and the rent shall be apportioned to the time of the damage. In case of partial destruction or damage by fire or other casualty without fault of the Lessee, so as to render the premises untenantable in whole or in part, there shall be an apportionment of the rent until the damage has been repaired. During such period of repair, Lessee shall have the right to obtain similar office space at the expense of Lessee or the Lessee may terminate the lease by giving fifteen (15) days written notice to the Lessor.

8. Lessor shall be liable to Lessee for any loss or damages suffered by Lessee which are a direct result of the failure of Lessor to perform an act required by this lease, and provided that Lessor could reasonably have complied with said requirement.

9. Upon termination of this lease, the Lessee will peaceably surrender the leased premises in as good order and condition as when received, reasonable use and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this lease, excepted.

10. The Lessor agrees that the Lessee, upon keeping and performing the covenants and agreements herein contained, shall at all times during the existence of this lease peaceably and quietly have, hold, and enjoy the leased premises free from the adverse claims of any person.

11. The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance. No modification of any provision hereof and no cancellation or surrender thereof shall be valid unless in writing and signed and agreed to by both parties.

12. Any hold over after the expiration of the said term or any extension thereof, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable; however, either party shall give not less than sixty (60) days written notice to terminate the tenancy.

13. The parties to this lease agree and understand that the continuation of this lease agreement for the term period set forth herein, or any extension or renewal thereof, is dependent upon and subject to the appropriation, allocation or availability of funds for this purpose to the agency of the Lessee responsible for payment of said rental. The parties to this lease also

agree that in the event the agency of the Lessee or that body responsible for the appropriations of said funds, in its sole discretion, determines, in view of its total local office operations that available funding for the payment of rents are insufficient to continue the operation of its local offices on the premise leased herein, it may choose to terminate the lease agreement set forth herein by giving Lessor written notice of said termination, and the lease agreement shall terminate immediately without any further liability to Lessee.

14. All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows: To the Lessor at **153 Courthouse Road, Suite 204, Currituck, NC 27929,** the Lessee at **North Carolina Department of Agriculture & Consumer Services Attn: Real Property Agent, 1001 Mail Service Center, Raleigh, North Carolina 27699-1001.** Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

15. Lessee shall not assign this lease or sublet any part of the Leased Premises without the written consent of the Lessor.

16. Lessor agrees that the Lessee's decision to self insure satisfies all insurance requirements of this lease applicable to the Lessee.

17. The State of North Carolina is an immune sovereign and is not ordinarily subject to suit. However, the State has enacted the North Carolina Tort Claims Act, pursuant to which the State may be liable for the torts of its officers and employees, within the terms of the Act. Accordingly, the Lessee will be primarily liable for any claims within the coverage of the Tort Claims Act.

18. Although Lessor is under no obligation to provide internet service to Lessee pursuant to this lease, if Lessor does make internet service available to Lessee, Lessee shall require its employees and agents who use said service to abide by Currituck County's internet use policies.

19. N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

IN TESTIMONY WHEREOF, this lease has been executed by the parties hereto, in duplicate originals, as of the date first above written.

LESSEE:

STATE OF NORTH CAROLINA

By:_____
Andrew A. Meier
Director
NCDA&CS Property & Construction Division

STATE OF NORTH CAROLINA

COUNTY OF _____:

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that **Andrew A. Meier** personally came before me this day and acknowledged the due execution by him of the foregoing instrument as Director of Property and Construction Division for the North Carolina Department of Agriculture and Consumer Services, in accordance with the authority vested in him and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the ____ day of _____, 20___.

_____
Notary Public

Printed Name: _____

My Commission expires _____

LESSOR:

Currituck County

By: _____
Signature

_____
Print Name and Title

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, personally came before me this day and acknowledge the due execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the ____day of _____, 20___.

_____
Notary Public

Printed Name: _____

My Commission expires _____

THE STATE OF NORTH CAROLINA SHALL NOT BE RESPONSIBLE FOR ANY EXPENSES INCURRED BY THE PROPOSER IN THE PREPARATION OF THIS PROPOSAL. THE STATE RESERVES THE RIGHT TO REJECT ANY PROPOSAL FOR ANY REASON IT DEEMS WARRANTED. **FAXED OR E-MAILED PROPOSALS ARE NOT ACCEPTABLE.**

PROPOSAL TO LEASE TO THE STATE OF NORTH CAROLINA - PO-28

1. NAME OF LESSOR: Currituck County	2. LESSOR'S AGENT: County Manager

INDICATE EACH LESSOR'S BUSINESS CLASSIFICATION AS APPLICABLE: ☐ A. PROPRIETORSHIP ☐B. PARTNERSHIP ☐ C. CORPORATION ☒ D. GOVERNMENTAL ☐ E. NON-PROFIT ☐ F. *** (HUB) HISTORICALLY UNDERUTILIZED BUSINESSES ☐ G. OTHER: TAX I.D. #

MAILING ADDRESS: 153 Courthouse Road	MAILING ADDRESS:
CITY: Currituck ZIP: 27929	CITY: ZIP:
PHONE#: 252-232-2075 FAX#:	PHONE#: 252-232-0300 FAX#:
E-MAIL: sandee.salimbene@currituckcountync.gov	E-MAIL:

3. SPACE LOCATION:(including building name, floors involved & suite or room numbers unless entire floor)
Public Safety Bldg., 125 College Way, Room 106, Barco, NC 27917 (including Rooms 106, 106A, 106B, & 106C)

STREET ADDRESS	CITY	COUNTY	ZIP CODE
125 College Way	Barco	Currituck	27917

4. ATTACH FLOOR PLAN TO SCALE SHOWING THE SIZE AND LAYOUT OF SPACE OFFERED)

5. GROSS SQUARE FOOTAGE BEFORE NET USAGE COMPUTED	A. OFFICE	B. WAREHOUSE	C. OTHER
	400		129

6. All proposals must be submitted on the basis of net square footage as defined on reverse side of this sheet and in Specifications (PO-27)

A. DESIRED PROPOSAL (See PO-27 Items VI and XII-A)

TYPE OF SPACE	TOTAL NET SQ. FT.	ANNUAL RENTAL	ANNUAL RENT PER SQ. FT.	UTILITIES	JANITOR. SERVICES	WATER / SEWER	REQUIRED PARKING SPACES
OFFICE	400						
WAREHOUSE							
OTHER	129						
TOTALS	529	1.00		XXXX	XXXX	XXXX	XXXX

Lessor will provide ( ) employee parking spaces in above proposal at no additional charge to the State. (See explanation in PO-27 Item VI - Parking)

Comments:

ERRORS BY PROPOSERS IN CALCULATING NET SQUARE FOOTAGE WILL REDUCE THE ANNUAL RENTAL WITHOUT CHANGING THE PROPOSED RATE PER SQUARE FOOT IN THE PROPOSAL

B. OPTIONAL ALTERNATE PROPOSAL NO. 1 (See PO-27 ITEMS VI AND XII-B)

(FOR PROPOSALS NOT INCLUDINING UTILITIES AND/OR JANITORIAL SERVICES)

TYPE OF SPACE	TOTAL NET SQ. FT.	ANNUAL RENTAL	ANNUAL RENT PER SQ. FT.	UTILITIES	JANITOR. SERVICES	WATER / SEWER	
OFFICE							
WAREHOUSE							
OTHER							
TOTALS				XXXX	XXXX	XXXX	

Lessor will provide ( ) clientele parking spaces and ( ) employee parking spaces

Comments:

7. LEASE TERM : _____ YEARS BEGINNING DATE: December 2021

8. RENEWAL OPTIONS, IF ANY: TERMS AND CONDITIONS: every 3 years

*** MAXIMUM OF 3 YEARS TO INCLUDE TERM AND OPTIONS***

NOTE: RATES THAT INCLUDE INDETERMINABLE PERCENTAGE INCREASES, SUCH AS UNCAPPED CPI INCREASES ETC., ARE NOT ACCEPTABLE DURING EITHER THE INITIAL TERM OR ANY RENEWAL PERIOD(S)

The State of North Carolina supports the use of products and materials having recycled content in renovation and construction. The proposed building must have facilities for handling materials to be recycled such as plastics, aluminum, waste paper and cardboard.

THE PROPOSED BUILDING MUST BE COMPLETELY FREE OF ANY HAZARDOUS ASBESTOS OR HAZARDOUS LEAD PAINT THROUGHOUT THE STATE'S TENANCY.

Is the proposed building free of hazardous asbestos?	***YES*** ☐	***NO*** ☐
Is the proposed building free of hazardous lead paint?	**YES** ☐	**NO** ☐

DEPARTMENT:	DIVISION:
CITY:	SQUARE FEET: AGENT:

(2/6/2017)

LESSOR:

- ALL LEASES MUST HAVE ORIGINAL SIGNATURES OF LESSOR

9. ADDITIONAL INFORMATION

10. Does this space comply with local and State Building safety and zoning codes specifically including OSHA provisions for the handicapped and applicable sections of the State Building Code Volumes I-V?

☐ YES ☐ NO ☐ PARTIALLY

EXPLAIN IF OTHER THAN "YES" IS CHECKED ABOVE:

11. This proposal is made in compliance with the specifications furnished by the Department of _____. I realize that the State reserves the right to reject this proposal for any reason it deems warranted. This proposal is good until_____. I ACKNOWLEDGE AND FURTHER AFFIRM THAT I am aware of and familiar with the Americans with Disabilities Act of 1990 (42 United States Code, Section 12101 et seq.) and if the above firm is awarded the contract, it will comply with the provisions of said Act.

I am aware that annual per square foot rental rate(s) which include indeterminable percentage increase(s) such as uncapped Consumer Price Index increases etc., are not acceptable during either the initial term or any renewal period(s):

_____

****(HUB) HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) CONSIST OF MINORITY, WOMEN AND DISABLED BUSINESS FIRMS THAT ARE AT LEAST FIFTY-ONE PERCENT OWNED AND OPERATED BY AN INDIVIDUAL(S) OF THE AFOREMENTIONED CATEGORIES. ALSO INCLUDED IN THIS CATEGORY ARE DISABLED BUSINESS ENTERPRISES AND NON-PROFIT WORK CENTERS FOR THE BLIND AND SEVERELY DISABLED.*

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of this proposal, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

_____
Printed Name of Lessor

_____ _____
Signature of Lessor Date

MAILING /DELIVERY INSTRUCTIONS

Contact: _____ **Email:** _____
Department/Division: NC Department of Agriculture & Consumer Services, _____
Mailing Address: NCD&CS, Property & Construction Division, 1001 Mail Service Center, Raleigh, North Carolina 27699-1001

ENVELOPE SHOULD BE MARKED:

(a) Lease proposal Enclosed
(b) Name of State Agency involved.

NOTE: Net square footage is a term meaning the area to be leased for occupancy by State Personnel and/or equipment. To determine net square footage:
1. Compute the inside area of the space by measuring from the normal inside finish of exterior walls or the roomside finish of fixed corridor and shaft walls, or the center of tenant separating partitions.
2. Deduct from the Inside area the following:
   *a. Toilets and lounges
   *b. Entrance and elevator lobbies
   *c. Corridors
   d. Stairwells
   e. Elevators and escalator shafts
   f. Building equipment and service areas
   g. Stacks, shafts, and **interior columns**
   h. Other space not usable for State purposes

*Deduct if space is not for exclusive use by the State. Multiple State leases require a, b, and c to be deducted. The State Property Office may make adjustments for areas deemed excessive for State use.

DEPARTMENT:	DIVISION:
CITY:	SQUARE FEET: AGENT:
CUT-OFF FOR RECEIVING PROPOSALS IS 4:00 PM DATE:	
FORM (PO-28)	*(2/6/2017)*

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3284)

Agenda Item Title: Second Amendment to License Agreement for Placement of the Communications Facility on Currituck County-Owned Tower.

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Consideration of the Second Amendment to License Agreement for Placement of the Communications Facility on Currituck County-Owned Tower located in Ocean Hill.

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

Licensee Site Name: Ocean Hill
Licensee Location #: 259081

SECOND AMENDMENT TO LICENSE AGREEMENT FOR PLACEMENT OF COMMUNICATIONS FACILITY ON CURRITUCK COUNTY-OWNED TOWER

THIS SECOND AMENDMENT TO LICENSE AGREEMENT FOR PLACEMENT OF COMMUNICATIONS FACILITY ON CURRITUCK COUNTY-OWNED TOWER (the "**Second** Amendment") is made and shall be effective, as of the last date of the signatures below ("Effective Date"), between the **COUNTY OF CURRITUCK**, ("County") and **CELLCO PARTNERSHIP** d/b/a Verizon Wireless ("Licensee"). County and Licensee (or their predecessors in interest) entered into that certain License Agreement for Placement of Communications Facility on Currituck County-Owned Tower dated December 31, 2015, as may have been previously amended and/or assigned (the "Agreement"), pursuant to which Licensee is leasing from County a portion of that certain property located at 1099 Ocean Trail, in the City of Corolla, County of Currituck, State of North Carolina, as more particularly described in the Lease. County and Licensee may be referenced in this Second Amendment individually as a "Party" or collectively as the "Parties."

In consideration of the mutual covenants and promises contained in this Second Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to amend the Agreement as follows:

1. Licensee shall be allowed to make the equipment additions or removals necessary to configure Licensee's equipment as shown on Attachment A, attached hereto. For all purposes under the Agreement as amended hereby, the descriptions and specifications of Licensee's equipment set forth in the Agreement, including, without limitation, any equipment descriptions and specifications with respect to Licensee's equipment set forth in any schedules, exhibits or attachments to the Agreement, are hereby deleted and replaced with the specifications of Licensee's equipment described in Attachment A, attached hereto.

2. Unless otherwise provided herein, all defined terms shall have the same meaning as ascribed to such terms in the Agreement.

3. In the event of any conflict or inconsistency between the terms of this Second Amendment and the Agreement, the terms of this Second Amendment shall govern and control.

4. Except as otherwise provided for in this Second Amendment, the Agreement shall remain in full force and effect in accordance with the original terms of the Agreement.

[SIGNATURE PAGE TO FOLLOW]

Licensee Site Name: Ocean Hill
Licensee Location #: 259081

IN WITNESS WHEREOF, this Second Amendment is effective and entered into as of the date last written below:

COUNTY:

CURRITUCK COUNTY

By:_____

Name:_____

Title:_____

Date:_____

LICENSEE:

CELLCO PARTNERSHIP
d/b/a Verizon Wireless

By: _____
Name: _____
Title: _____
Date: _____

Licensee Site Name: Ocean Hill
Licensee Location #: 259081

ATTACHMENT A

SPECIFICATIONS

1. (8) antennas
2. (8) RRHs
3. (4) diplexers
4. (2) OVPs
5. (2) Fiber lines
6. (4) Coax lines
7. Antennas mounted at the 100’ centerline of the water tank

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3288)

Agenda Item Title: Resolution in support of Individual Freedom Over Personal Vaccinations Status

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

RESOLUTION IN SUPPORT OF INDIVIDUAL FREEDOM OVER PERSONAL VACCINATION STATUS

WHEREAS, the freedom to make personal health choices is one of the most fundamental human rights protected under the Bill of Rights of the United States Constitution; and

WHEREAS, informed consent is the bedrock of ethical practice in medicine, consisting of three essential elements: access to complete information, patient comprehension, and voluntariness; and

WHEREAS, private and governmental entities across the United States and around the world are mandating COVID-19 vaccination, coupled with punitive restrictions on freedom, commerce, employment and medical care for non-compliance; and

WHEREAS, there are various reasons why Americans choose not to be vaccinated, including, but not limited to, established medical conditions, previous infection and recovery, preference for therapeutics; robust immune systems; prevention of potential adverse events; religious beliefs; intolerance to vaccine ingredients; previous anaphylactic and other reactions; and

WHEREAS, during the 2021 legislative session House Bill 572," No Vaccine Mandate by EU Rule, or Agency" passed the North Carolina House of Representatives; and

WHEREAS, during the 2021 legislative session House Bill 686," An Act Prohibiting State and Local Government Retribution Regarding Refusal of Vaccines" is currently in committee; and

WHEREAS, on September 9, 2021, despite his promise to the contrary, President Biden directed the Occupational Safety and Health Administration rule adoption for mandated vaccinations and/ or testing requirements for businesses with over 100 employees; and

NOW, THEREFORE, BE IT RESOLVED by the Currituck County Board of Commissioners that the board upholds the United States Constitution and fully supports the individual freedom to choose whether to be vaccinated or unvaccinated and, while recognizing the historical efficacy of proven vaccines in public health, rejects policies of mandatory vaccination regardless of Food and Drug Administration approval, rejects proposals for statewide, nationwide, or global " vaccine passports," " health passes" or similar policies. The board further thanks and supports members of the North Carolina General Assembly, local government officials and other elected officials for their continued

efforts to ensure that individual freedom to be vaccinated or unvaccinated without penalty or discrimination is fully protected.

ADOPTED this 6th day of December, 2021.

_____
Michael H. Payment, Chairman
Board of Commissioners

ATTEST:

_____
Samantha Evans, Deputy Clerk

(COUNTY SEAL)

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3287)

Agenda Item Title: Resolution Requesting Appropriation of Additional State Funds to Reduce Impacts of COVID-19 Related to Family Violence Expenses

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

RESOLUTION REQUESTING APPROPRIATION OF ADDITIONAL STATE FUNDS TO REDUCE IMPACTS OF COVID-19 RELATED FAMILY VIOLENCE EXPENSES

WHEREAS, counties in the State of North Carolina are receiving Coronavirus Local Fiscal Recovery Funds from the federal American Rescue Plan Act (ARPA); and

WHEREAS, these funds are designated to be spent on public health emergencies and any negative economic impacts with respect to COVID-19, and/or to provide premium pay to essential workers, and/or to supplement general revenue loss sustained, and/or to invest in eligible projects related to water, sewer, and broadband infrastructure; and

WHEREAS, area social services agencies have seen an increase of child abuse and neglect, elder abuse and neglect as well as domestic violence reports in the wake of the COVID-19 pandemic as individuals have begun to resume their daily routines; and

WHEREAS, the financial impact of the increased caseload has been significant to counties; and

WHEREAS, the State of North Carolina appropriates monies to assist counties with some of the costs associated with family violence and abuse case work; and

WHEREAS, the amount of funding to counties is determined by the State of North Carolina; and

WHEREAS, counties are unable to use the ARPA monies appropriated to offset these expenses.

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

Section 1. Believing that all persons in the county and State of North Carolina should be afforded adequate protection and services regardless of local fiscal constraints, Currituck County requests that the North Carolina General Assembly act

to increase local appropriations for social services specifically for child abuse, elder abuse and domestic violence case expenses.

Section 2. The Clerk to the Board of Commissioners shall forward a copy of this resolution to all North Carolina counties.

ADOPTED this 6th day of December, 2021.

_____
Michael H. Payment, Chairman
Board of Commissioners

ATTEST:

_____
Samantha Evans, Deputy Clerk (COUNTY SEAL)

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3286)

Agenda Item Title: Resolution Opposing Proposed Shrimp Fishery Management Plan Amendment 2

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

RESOLUTION OPPOSING PROPOSED SHRIMP FISHERY MANAGEMENT PLAN AMENDMENT 2

WHEREAS, the Currituck County Board of Commissioners is advised of relevant issues with detrimental effect on the Currituck County recreational and commercial fishermen; and

WHEREAS, members of the county's local fishing community, some of whom are recreational fishermen and head boat operators familiar with the North Carolina fisheries, are concerned about proposed Shrimp Fishery Management Plan Amendment 2; and

WHEREAS, the Currituck County Board of Commissioners is also concerned about proposed Shrimp Fishery Management Plan Amendment 2 based in part on the following:

- The North Carolina Division of Marine Fisheries' ("NCDMF") recommendations include area closures to shrimp trawling in State coastal waters of almost 69,000 acres.
- The many close-shore areas that will be closed will require shrimpers go further into open waters where weather and rough seas could make conditions life-threatening for smaller vessels.
- A large percentage of our shrimp trawl fleet is composed of boats less than 50 feet.
- The areas recommended for closures are not where finfish tend to spawn; they are connecting areas between nurseries.
- The recommended options were not made available to the public by the NCDMF until Monday, November 1st, allowing limited time for public comment.
- The potential benefits of the area closures are unquantifiable, but the devastating economic impacts to small vessel owners are undeniable.
- The proposed amendment will have devastating impacts to the fishing economies of Currituck County and could potentially destroy the county's fishing heritage and put local fishermen out of business; and

WHEREAS, shrimp are the most consumed seafood in the United States, and:

- Health experts are continually telling citizens of the United States to eat more seafood;
- Nearly 90% of the shrimp consumed in the United States is estimated to be imported;
- The United States Department of Agriculture inspects only 1-2% of imported seafood;

- North Carolina is an important source of shrimp for consumers;
- Shrimp are sustainably fished in North Carolina;
- Trawling is the main way shrimp are harvested to provide for consumers;
- North Carolina is one of the few States that has commercial fisheries for three species ofshrimp (brown, pink, and white);
- North Carolina has had an important shrimp trawl fishery for many years; and

WHEREAS, the Currituck County Board of Commissioners supports fishery management that incorporates the whole body of available evidence and considers the biology of the fish, environmental conditions, prior management actions, and uncertainties about the data.

NOW, THEREFORE, BE IT RESOLVED by the Currituck County Board of Commissioners that Currituck County reaffirms its commitment to North Carolina's fishing industry and opposes Shrimp Fishery Management Plan Amendment 2 or any other action that would cause harm to the county's recreational and commercial fishermen.

BE IT FURTHER RESOLVED that the Currituck County Board of Commissioners directs the Clerk to the Board to submit this Resolution to the North Carolina Fisheries Advisory Committee as public comment in opposition to Shrimp Fishery Management Plan Amendment 2.

ADOPTED, the 6th day of December, 2021.

_____

Michael H. Payment, Chairman
Board of Commissioners

ATTEST:

_____

Samantha Evans, Deputy Clerk

(COUNTY SEAL)

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3289)

Agenda Item Title: Contract to Audit Accounts-Amended

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

LGC-205 Amendment

AMENDMENT TO CONTRACT TO AUDIT ACCOUNTS

Rev. 10/2021

Whereas — Primary Government Unit: Currituck County

and — Discretely Presented Component Unit (DPCU) (if applicable): N/A

and — Auditor: Carr, Riggs & Ingram LLC

entered into a contract in which the Auditor agreed to audit the accounts of the Primary Government Unit and DPCU (if applicable)

for Fiscal Year Ending: 06/30/21 and originally due on Audit Report Due Date: 10/31/21

hereby agree that it is now necessary that the contract be modified as follows.

☑ Modification to date

☐ Modification to fee

Original due date	Modified due date
10/31/21	12/31/21
Original fee	Modified fee

Reason(s) for Contract Amendment

Primary (choose 1)	Other (choose 0-2)	
○	☐	Change in scope
○	☐	Issue with unit staff/turnover
◉	☐	Issue with auditor staff/workload
○	☐	Third-party financial statements not prepared by agreed-upon date
○	☐	Unit did not have bank reconciliations complete for the audit period
○	☐	Unit did not have reconciliations between subsidiary ledgers and general ledger complete
○	☐	Unit did not post previous years adjusting journal entries resulting in incorrect beginning balances in the general ledger
○	☐	Unit did not have information required for audit complete by the agreed-upon time
○	☐	Delay in component unit reports
○	☐	Software - implementation issue
○	☐	Software - system failure
○	☐	Software - ransomware/cyberattack
○	☐	Natural or other disaster
○	☐	Other (please explain)

Plan to Prevent Future Late Submissions

If the amendment is submitted to extend the due date, please indicate the steps the unit and auditor will take to prevent late filing of audits in subsequent years. Indicate NA if this is an amendment due to a change in cost only.

The audit staff was delayed in starting its fieldwork due to COVID exposure. We do not anticipate this delay to effect future audits.

Additional Information

Please provide any additional explanation or details regarding the contract modification.

By their signatures on the following pages, the Auditor, the Primary Government Unit, and the DPCU (if applicable), agree to these modified terms.

LGC-205 Amended **AMENDMENT TO CONTRACT TO AUDIT ACCOUNTS** Rev. 10/2021

SIGNATURE PAGE

AUDIT FIRM

Audit Firm* Carr, Riggs & Ingram LLC	
Authorized Firm Representative* (typed or printed) Madonna Stafford, CPA	Signature* Madonna Stafford
Date* 11/30/2021	Email Address mstafford@cricpa.com

GOVERNMENTAL UNIT

Governmental Unit* Currituck County	
Date Primary Government Unit Governing Board Approved **Amended** Audit Contract* (If required by governing board policy)	
Mayor/Chairperson* (typed or printed) Michael H. Payment	Signature*
Date	Email Address mike.payment@currituckcountync.gov

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

GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE
ONLY REQUIRED IF FEES ARE MODIFIED IN THE AMENDED CONTRACT

(Pre-audit certificate not required for 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* Sandra Hill	Signature*
Date of Pre-Audit Certificate*	Email Address* sandra.hill@currituckcountync.gov

SIGNATURE PAGE – DPCU
(complete only if applicable)

DISCRETELY PRESENTED COMPONENT UNIT

DPCU N/A	
Date DPCU Governing Board Approved **Amended** Audit Contract (If required by governing board policy)	
DPCU Chairperson (typed or printed) N/A	Signature
Date	Email Address N/A

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

DPCU – PRE-AUDIT CERTIFICATE
ONLY REQUIRED IF FEES ARE MODIFIED IN THE AMENDED CONTRACT

(Pre-audit certificate not required for 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 N/A

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3297)

Agenda Item Title: Project Ordinance- Historic Corolla Park Playground

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

COUNTY OF CURRITUCK
CAPITAL PROJECT ORDINANCE

BE IT ORDAINED by the Currituck County Board of Commissioners, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

SECTION 1. The project authorized is design and construction of playground on the Historic Corolla Park property.

SECTION 2. The following amounts are appropriated for the project:

Historic Corolla Park Playground	$	750,000
	$	750,000

SECTION 3. The following funds are available to complete this project:

Transfer from Occupancy Tax	$	750,000
	$	750,000

SECTION 4. The Finance Director is hereby directed to report, on a quarterly basis, on the financial status of each project element delineated in Section 2 above.

SECTION 5. SPECIAL APPROPRIATIONS AND RESTRICTIONS

The Budget Officer is hereby authorized to transfer appropriations within the fund as contained herein under the following conditions:

a. He may transfer amounts between object line items within the fund up to One Thousand dollars ($1,000).

SECTION 6. CONTRACTUAL OBLIGATIONS

The County Manager is hereby authorized to execute contractual documents under the following conditions:

a. He may execute contracts for construction or repair projects which do not require formal competitive bid procedures.

b. He may execute contracts for (1) purchases of apparatus, supplies, and materials, or equipment which are within the budgeted departmental appropriations; (2) leases of personal property for a duration of one year or less and within budgeted

departmental appropriations; and (3) services which are within budgeted departmental appropriations.

c. He may execute contracts, as the lessor or lessee of real property, which are of a duration of one year or less which are within the budgeted departmental appropriations.

SECTION 7. USE OF BUDGET ORDINANCE

The Budget Officer and the Finance Director shall use this capital project ordinance for administration of the budget and for the accounting system.

ADOPTED this 6th day of December 2021.

Michael Payment, Chairman
Board of Commissioners

ATTEST:

Samantha Evans
Deputy Clerk to the Board

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3296)

Agenda Item Title: Budget Amendments

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute? No

Manager Recommendation:

Number 20220044

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 6th of December 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

Account Number	Account Description	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
50442-590001	Connect Corolla Parking Project		$ 15,115
50442-590002	Connecting Corolla Bike Path		2,035,031
50442-590003	Connecting Corolla East Side Walkway		14,232
50442-590005	Connecting Corolla Albacore Sidewalk		158,538
50448-590000	Restroom - 2016 Whalehead		250,000
50510-590002	Shooting Range		236,195
50512-590000	Incinerator		156,546
50512-594500	Contract Services - Animal Shelter		2,196,120
50512-596100	Professional Services - Animal Shelter		262,427
50550-592007	Parallel Taxiway 36237.8.6.1		1,273,334
50550-592009	Rehab Taxiway A 36244.10.3.1		179,330
50550-592010	Airport - Matching Funds		160,132
50550-592011	Taxiway 36244.10.4.1		510,670
50550-592012	COA Taxi/Apron 36244.10.5.1		110,030
50550-592013	Airfield Improvements 36237.8.10.1		166,667
50550-592014	Airport Taxi/Apron 36244.10.5.2		441,562
50550-592016	Airport Fuel Upgrades 36237.8.10.1		103,055
50550-592017	S Parallel Taxi 36244.10.6.1		2,154,069
50550-592018	Corp Area Apron 36237.8.13.1		107,336
50550-592019	Corp Apron Ph II 86237.8.12.1		885,905
50795-590005	Veteran's Park Dock Improvements		687,614
50795-594500	Soccer Fields		2,734,629
50795-594600	Baseball/Softball Fields		5,736,663
50796-590012	Carova Park FY 2018		18,552
50848-587051	T T - School Construction Fund		2,250,000
50848-587067	T T - Moyock Central Sewer		378,000
50848-592003	Community Parks		2,449,000
50442-588000	Connecting Corolla Contingencies	$ 202,983	
50390-495015	T F - Occupancy Tax	9,792,110	
50390-495010	T F - Operating Fund		707,405
50390-495040	T F - Capital Improvements		69,485
50390-495042	T F - Transfer Tax Capital Fund	9,479,714	
50330-447500	Park Grant	249,905	
50330-448000	State Aid to Airports	5,392,689	
50330-449900	Miscellaneous Grants	2,000	
50380-481000	Investment earnings	724,401	
50390-495051	T F - School Construction Fund	603,840	
		$ 26,447,642	$ 26,447,642

Explanation: County Government Facilities Fund (50) - To close out County Governmental construction projects that have been completed in prior years.

Net Budget Effect: County Governmental Facilities Fund (50) - No change to overall fund balance.

Number 20220044

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 6th of December 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

Account Number	Account Description	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
10511-545000	Contract Services	$ 6,000	
10320-411000	Article 39 Sales Tax		$ 6,000
		$ 6,000	$ 6,000

Explanation: Detention Center (10511) - Increase appropriations for extraordinary inmate medical bill.

Net Budget Effect: Operating Fund (10) - Increased by $6,000.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Number 20220045

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 6th of December 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

Account Number	Account Description	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
10541-531000	Fuel	$ 1,000	
10541-514600	Public Education		$ 1,000
		$ 1,000	$ 1,000

Explanation: County Fire Services (10541) - Transfer budgeted funds for fuel for the remainder of this fiscal year.

Net Budget Effect: Operating Fund (10) - No change.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Number 20220046

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 6th of December 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

Account Number	Account Description	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
51848-592004	Griggs HVAC replacement - June 2018		$ 59,020
51848-592006	Griggs - HVAC A Wing South		$ 115,000
51848-592007	Griggs - Roof replacement Center Wing		$ 113,250
51848-592008	Griggs - Roof replacement A Wing South		$ 80,000
51848-592009	Griggs - Roof replacement A Wing North		$ 80,000
51848-590001	Jarvisburg - HVAC April 2019		$ 32,250
51848-594003	MMS - Energy Mgmt Upgrade June 2018		$ 40,000
51848-593005	KIES - HVAC June 2016		$ 27,570
51848-596001	Shawboro - HVAC April 2019		$ 18,225
51848-595007	CCHS HVAC Dec 2017		$ 30,500
51848-595008	CCHS Energy Mgmt June 2018		$ 40,000
51380-425001	Lottery Proceeds	$ 635,815	
		$ 635,815	$ 635,815

Explanation: School Multi-year Construction (51848) - To close out completed school projects funded with lottery proceeds.

Net Budget Effect: School Multi-year Construction Fund (51) - No changes to overall fund balance.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Number 20220047

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 6th of December 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

Account Number	Account Description	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
220548-506000	Health Insurance	$ 4,000	
220548-516015	Repairs & Maintenance - Knotts Island		$ 4,000
		$ 4,000	$ 4,000

Explanation: Knotts Island Fire Services (220548) - Transfer funds from lapsed health insurance expense to repairs & maintenance for tank monitor level for fire suppression system at the Knotts Island Fire Department.

Net Budget Effect: Knotts Island Fire District (220) - No change.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Number 20220048

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 6th of December 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

Account Number	Account Description	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
10510-590000	Capital Outlay	$ 50,000	
10340-450420	Beach Parking Permits		$ 50,000
		$ 50,000	$ 50,000

Explanation: Sheriff (10510) - Increase appropriations to replace one of the Jeeps used primarily for monitoring the 4 X 4 area.

Net Budget Effect: Operating Fund (10) - No change.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Number 20220049

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 6th of December 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

Account Number	Account Description	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
50448-590002	Historic Corolla Park Playground	$ 750,000	
50390-495015	T F - Occupancy Tax Fund		$ 750,000
		$ 750,000	$ 750,000

Explanation: County Governmental Facilities (50448) - Increase appropriations to provide funding for a playground at Historic Corolla Park.

Net Budget Effect: Operating Fund (10) - Increased by $50,000.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Number 20220050

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 6th of December 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

Account Number	Account Description	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
26535-590535	Capital - 911 Grant Funds	$ 290,955	
26330-445000	Emergency Management Grants		$ 290,955
50531-590000	Capital Outlay	$ 646,486	
50390-495042	T F - Transfer Tax Capital Fund		$ 646,486
42450-587050	T T - Co Govt Facilities Fund	$ 646,486	
42320-414000	Land Transfer Tax		$ 646,486
		$ 1,583,927	$ 1,583,927

Explanation: County Governmental Construction - Public Safety Building (50531) - Increase appropriations to fund the 911 equipment for the Public Safety building. This amendment will cover quote dated 11/29/21 from Motorola Solutions for $817,826.25, Path and Site Survey services for $44,615.38 and $75,000 contingency. This will be funded through Land Transfer Tax and a grant from the Emergency Telephone System (PSAP) fund.

Net Budget Effect: Transfer Tax Capital Fund (42) - Increased by $646,486.
County Governmental Construction (50) - Increased by $646,486.
Emergency Telephone System (26) - Increased by $290,955.

Minute Book # _____, Page # _____

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Clerk to the Board

Number 20220051

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 6th of December 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

Account Number	Account Description	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
10330-431000	DSS Administration		$ 5,065
10390-499900	Appropriated Fund Balance	$ 5,065	
10760-519504	Low Income Water Assistance Program	$ 25,328	
10330-430005	Low Income Water Assistance Program		$ 25,328
		$ 30,393	$ 30,393

Explanation: Public Assistance (10760) - Increase appropriations to record federal funding for Low Income Household Water Assistance Program (LIHWAP).

Net Budget Effect: Operating Fund (10) - Increased by $25,328.

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Clerk to the Board

CURRITUCK COUNTY
NORTH CAROLINA

November 15, 2021
Minutes – Regular Meeting of the Board of Commissioners

WORK SESSION-5:00 PM

1. Moyock Wastewater Treatment Plant

The Currituck County Board of Commissioners met at 5:00 PM in the Historic Courthouse conference room for a Work Session to discuss the Moyock Wastewater Treatment Plant.

Interim County Manager/County Attorney Ike McRee reminded the Board of previous work session discussion regarding the plant's failure to meet treatment limits as required by the North Carolina Department of Environmental Quality.

County Engineer, Eric Weatherly provided an update on the current treatment plant operation plan and suggested replacing the system and expanding it to 300,000 gallons and Finance Director, Sandra Hill reviewed anticipated revenues and estimated expenses. The financial impacts related to the costs for replacement and potential expansion of the plant were discussed, as were the potential impacts to customer rates.

Commissioners voiced concerns over the potential for tax increases due to shifting funds from other capital projects to repair or replace the plant and timeline of selling the system.

Board members discussed whether the County continue to operate the plant or to sell to a private sewer provider. Concerned with potential costs, the Board felt there was need for further discussion to make a final determination on the plant. A work session to discuss further was scheduled.

There was no further discussion and the work session concluded at 5:55PM.

6:00 PM CALL TO ORDER

The Currituck County Board of Commissioners held a regular meeting at 6:00 PM in the Board Meeting Room of the Historic Courthouse, 153 Courthouse Road, Currituck, North Carolina.

Attendee Name	Title	Status	Arrived
Michael H. Payment	Chairman	Present	
Paul M. Beaumont	Vice Chairman	Present	
J. Owen Etheridge	Commissioner	Present	
Mary "Kitty" Etheridge	Commissioner	Present	
Selina S. Jarvis	Commissioner	Present	
Kevin E. McCord	Commissioner	Present	
Bob White	Commissioner	Present	

Chairman Payment called the meeting to order and announced the earlier work session discussion on Moyock Wastewater Treatment Plant.

A) Invocation & Pledge of Allegiance

Commissioner Beaumont offered the Invocation and led the Pledge of Allegiance.

B) Approval of Agenda

Commissioner White moved for approval. Commissioner Jarvis seconded the motion. The motion carried, 7-0.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Bob White, Commissioner
SECONDER:	Selina S. Jarvis, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

PUBLIC COMMENT

Please limit comments to matters other than those appearing on this agenda as a Public Hearing. Public comments are limited to 3 minutes.

Chairman Payment opened the Public Comment period.

No one signed up nor wished to speak and the Public Comment period was closed.

COMMISSIONER'S REPORT

Commissioner McCord provided information on the County's upcoming Christmas Parade, December 3, 2021, at 7:00 PM at the Currituck Cooperative Extension Center in Barco.

Commissioner Paul Beaumont requested for the service men and women deployed during the holiday season to be kept in your prayers.

Chairman Mike Payment expressed gratitude for family and the community. He stressed safety through the holiday season.

Commissioner Bob White reiterated thoughts and prayers for the troops that are deployed.

Commissioner Selina Jarvis announced that College of the Albemarle (COA) was selected as one of the 150 community colleges to apply for the Prestigious Aspen Prize and are one of six from North Carolina. She welcomed Mr. Thomas Smith to the COA staff as the North Carolina Community College System President to the Currituck campus.

Commissioners wished a Happy Thanksgiving to all of our citizens.

COUNTY MANAGER/COUNTY ATTORNEY REPORTS

Interim County Manager/County Attorney Ike McRee, requested Board direction to re-advertise the Human Resource Director position with a salary that will be equivalent with qualifications and experience. He informed the Board that the position may require an increase to the pay grade and salary classification of the position for successful candidates and more human resource experience. Board direction is to move forward.

NEW BUSINESS

A. Sole Source Resolution for Purchase of Consoles from Motorola Solutions

Interim County Manager/County Attorney Ike McRee discussed the resolution for purchasing of consoles. Motorola is the vendor provider and acquiring the equipment will start the first phase of relocating the center of Communications to the new facility in the public safety zone.

Commissioner White moved for approval. Commissioner Owen Etheridge seconded the motion. The motion carried, 7-0.

COUNTY OF CURRITUCK

RESOLUTION AUTHORIZING THE PURCHASE OF DISPATCH CONSOLE OPERATOR POSITIONS FROM MOTOROLA SOLUTIONS, INC. THROUGH SOLE SOURCE PURCHASE PURSUANT TO N.C. GEN. STAT. §143-129(e)(6)

WHEREAS, N.C. Gen. Stat. §143-129(e)(6) authorizes a unit of local government to purchase apparatus, supplies, materials or equipment when standardization or compatibility is an overriding consideration; and

WHEREAS, proper functioning of the county's public safety radio system requires replacement dispatch console operator positions compatible with existing systems equipment; and

WHEREAS, as the sole and exclusive distributor of the MCC 7500E Dispatch Console in the State of North Carolina, Motorola Solutions, Inc. is the only entity capable of providing the county with dispatch console operator positions compatible with current public safety radio system equipment and operational systems; and

WHEREAS, the County has been using Motorola Solutions, Inc. to construct, develop and upgrade its system; and

WHEREAS, the County needs replacement dispatch consoles and Motorola Solutions, Inc. is supplier of compatible consoles; and

WHEREAS, Motorola Solutions, Inc. is supplying the County with seven (7) MCC 7500E dispatch console operator positions at a cost of $425,487.90 and installation of seven (7) positions at a cost of $310,223.55; and

WHEREAS, the total cost for the County for the purchase and installation is $735,711.45.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for Currituck County, North Carolina as follows:

Section 1. The County of Currituck is authorized to enter into a contract in the amount of $735,711.15 with Motorola Solutions, Inc. for the sole source purchase of MCC 7500E Dispatch Console Operator Positions in accordance with the sole source provision requirements set forth by N.C. Gen. Stat. §143-129(e)(6). Further, the County Manager is authorized to execute the agreement with Motorola Solutions, Inc. for the acquisition apparatus, materials, and equipment acquisition described in this resolution and the proposed contract.

Section 2. This resolution shall be effective upon its adoption.

This the ____ day of _____ 2021.

ATTEST:

_____
Michael H. Payment, Chairman
Board of Commissioners

_____
Clerk to the Board of Commissioners

(COUNTY SEAL)

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Bob White, Commissioner
SECONDER:	J. Owen Etheridge, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

B) Board Appointments

1. Planning Board

Chairman Payment nominated Mike Corbell to serve as his appointment to the Planning Board. Commissioner McCord seconded the nomination. The nominee was approved, 7-0.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Michael H. Payment, Chairman
SECONDER:	Kevin E. McCord, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

C) Consent Agenda

Commissioner White moved for approval of the Consent Agenda. Commissioner Mary Etheridge seconded the motion. The motion carried, 7-0.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Bob White, Commissioner
SECONDER:	Mary "Kitty" Etheridge, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

1. Budget Amendment

		Debit		Credit
		Decrease Revenue or		Increase Revenue or
Account Number	Account Description	Increase Expense		Decrease Expense
55818-594002	Coinjock Canal Redundancy	$ 35,000		
55390-495610	T F - Mainland Water System Dev Fees			$ 35,000
610818-587055	T T - Mainland Water Construction	$ 35,000		
610360-472000	Water System Developmental Fees			$ 35,000
		$ 70,000		$ 70,000
Explanation:	Mainland Water Construction (55848); Mainland Water Developmental Fees (610818) - Increase appropriations for redundant water line at the Coinjock Canal. This will match the low bid from McPherson Enterprizes Plumbing and Trenching Inc of $258,366 and includes a 10% contingency for any additional permits or fees that may be required.			
Net Budget Effect:	Mainland Water Construction Fund (55) - Increased by $35,000.			
	Mainland Water System Developmental Fees (610) - Increased by $35,000.			

		Debit		Credit
		Decrease Revenue or		Increase Revenue or
Account Number	Account Description	Increase Expense		Decrease Expense
10380-487000	Donations - DSS			$ 32,285.00
10760-585000	Donations - DSS	$ 32,285.00		
		$ 32,285		$ 32,285
Explanation:	Social Services County Assistance (10760) - Carry-forward DSS donations from prior fiscal years.			
Net Budget Effect:	Operating Fund (10) - Increased by $32,285.			

Communication: Approval of Minutes- 11/15/21 (Approval of Minutes-11/15/21 & SM 11/29/21)

		Debit	Credit
		Decrease Revenue or	Increase Revenue or
Account Number	Account Description	Increase Expense	Decrease Expense
10775-516200	Vehicle Maintenance	$ 1,500.00	
10775-553000	Dues & Subscriptions	$ 300.00	
10775-561300	Instructor Fees		$ 1,800.00
		$ 1,800.00	$ 1,800.00
Explanation:	Senior Center (10775) - Transfer budgeted funds for unanticipated bus repair for the Title IIID program.		
Net Budget Effect:	Operating Fund (10) - No change.		

		Debit	Credit
		Decrease Revenue or	Increase Revenue or
Account Number	Account Description	Increase Expense	Decrease Expense
26330-445000	911 Funding Grants		$ 436,255.00
26535-590535	Capital Outlay - 911 Reconsideration Funds	$ 436,255.00	
		$ 436,255.00	$ 436,255.00
Explanation:	Emergency Telephone System Fund (26535) - Increase appropriations for funding allowed through the reconsideration process by the NC 911 Board for PSAP furniture, radios, CAD workstations and a UPS.		
Net Budget Effect:	Emergency Telephone System Fund (26) - Increased by $436,255.		

		Debit	Credit
		Decrease Revenue or	Increase Revenue or
Account Number	Account Description	Increase Expense	Decrease Expense
10660-514800	Fees Paid to Officials		$ 3,000.00
10660-516200	Vehicle Maintenance	$ 3,000.00	
		$ 3,000.00	$ 3,000.00
Explanation:	Community Development - Planning (10660) - Transfer budgeted funds for vehicle maintenance needed in the Planning department.		
Net Budget Effect:	Operating Fund (10) - No change.		

Communication: Approval of Minutes- 11/15/21 (Approval of Minutes-11/15/21 & SM 11/29/21)

				Debit		Credit
				Decrease Revenue or		Increase Revenue or
Account Number		Account Description		Increase Expense		Decrease Expense
10510-503500		Temporary Services		$ 18,000.00		
10510-502000		Salaries				$ 18,000.00
				$ 18,000.00		$ 18,000.00
Explanation:	Sheriff (10510) - Transfer budgeted funds for temporary services in the Sheriff's department to cover position vacancies.					
Net Budget Effect:	Operating Fund (10) - No change.					

2. Job Description Revisions

3. Salary Classification Chart Revisions

4. Adoption of the 2021 Local Government Agencies General Records Retention & Disposition Schedule

5) Approval Of Minutes- 11/1/21 & SM 10/25/21

1. Minutes from November 1, 2021

2. Special Meeting Minutes from October 27, 2021.

CLOSED SESSION

Chairman White moved to enter Closed Session pursuant to G.S. 143-318.11(a)(6) to discuss personnel matters.

1. Closed Session pursuant to G.S. 143-318.11 (a) (6) to discuss personnel matters.

Commissioner Jarvis seconded the motion. The motion carried, 7-0, and Commissioners entered Closed Session.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Bob White, Commissioner
SECONDER:	Selina S. Jarvis, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

ADJOURN

Motion to Adjourn Meeting

The Board returned from Closed Session and had no further business. Commissioner Mary Etheridge moved to adjourn and Commissioner Jarvis seconded the motion. The motion carried, 7-0, and the meeting of the Board of Commissioners adjourned at 7:15 PM.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Mary "Kitty" Etheridge, Commissioner
SECONDER:	Selina S. Jarvis, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

CURRITUCK COUNTY
NORTH CAROLINA

November 29, 2021
Minutes – Special Meeting of the Board of Commissioners

5:00 CALL TO ORDER

The Board of Commissioners met at 5:00 PM for a Special Meeting in the Historic Courthouse Board Meeting Room, 153 Courthouse Rd, Currituck, North Carolina, for the following purposes:

- Consideration of Lease Agreement with the North Carolina Department of Agriculture and Consumer Services for Forest Service Office.
- Discussion of the Moyock Regional Wastewater Treatment Plant.
- Discussion of County Manager Search and Recruitment.
- Consideration of any other matters that may be considered and acted upon at a regular meeting.

Attendee Name	Title	Status	Arrived
Michael H. Payment	Chairman	Present	
Paul M. Beaumont	Vice Chairman	Present	
J. Owen Etheridge	Commissioner	Present	
Mary "Kitty" Etheridge	Commissioner	Present	
Selina S. Jarvis	Commissioner	Present	
Kevin E. McCord	Commissioner	Present	
Bob White	Commissioner	Present	

Chairman Payment called the meeting to order.

A) Approval of Agenda

Commissioner White moved for approval of the agenda. Commissioner Jarvis seconded the motion. The motion carried, 7-0, and the agenda was approved.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Bob White, Commissioner
SECONDER:	Selina S. Jarvis, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

NEW BUSINESS

A. Discussion of the Moyock Regional Wastewater Treatment Plant

The Board of Commissioners met at 5:00 PM in the Board Meeting Room of the Historic Courthouse to discuss the County's options for operation of the Moyock Regional Wastewater Treatment Plant. County Manager/County Attorney, Ike McRee, recalled previous work session discussion when the Board was asked to consider whether the County will continue to operate the wastewater plant or sell to a private operator. The Board expressed concerns regarding cost and projected timeline. A history of challenges with the design and operation of the plant were discussed, as were concerns with impacts on customer rates, commercial development, and residential growth.

Mr. McRee discussed options that may be available such as selling the wastewater treatment plant, public private partnership or construction of the new facility. He presented an email from the county's engineers Hazen & Sawyer regarding encounters with utility system delivery methods by the private sector, a case study and draft asset sale and purchase agreement from Carteret County's recent and ongoing process to sell its water system and information regarding the requirements of public-private partnerships.

Chairman Payment expressed concern for prior commitments to individuals and what recourse may take place in the process to sell. Mr. McRee informed the Board that the county is unable to add additional flow to the current plant at this time and any prior commitments cannot be resolved immediately. The state has disallowed any further flow into the plant until it is reconstructed. Mr. McRee stated that in his opinion there is no legal recourse against the county because the statutory provision states the county is not liable for failure.

Commissioners Jarvis, expressed concerns for Currituck County citizens and what happens when the private sector does not maintain the system properly and the county is unable to assist. Commissioner Mary Etheridge echoed Commissioner Jarvis's concerns. Larry Lombardi, Economic Development Director, stated a sale would affect the County's ability to provide incentives to potential businesses.

Commissioner McCord maintained his position to sell the wastewater plant.

Chairman Payment called a recess at 6:00PM. The Board reconvened at 6:06PM.

During discussion, the Board's consensus was to move to 300,000 gallon capacity and the Board directed staff to collect more data regarding the process of public private partnerships before moving forward with the county funding the Moyock Regional Wastewater Plant project or sell of system. The Board will hold a Work Session for further discussion on December 20, 2021 at the regular scheduled Board meeting.

RESULT:	**CONTINUED TO FUTURE MEETING**	**Next: 12/20/2021 6:00 PM**

B. Discussion of County Manager Search and Recruitment

Vice-Chairman Beaumont discussed the five proposals received for executive search services for the position of County Manager.

Mr. Beaumont motioned to award the contract to Development and Associates with a not to exceed amount of $25,000.00. Commissioner White seconded the motion. The motion carried 7-0.

		Debit		Credit
		Decrease Revenue or		Increase Revenue or
Account Number	Account Description	Increase Expense		Decrease Expense
10420-561000	Professional Services	25,000		
10320-411000	Article 39 Sales Tax - Local Option			25,000
		$ 25,000		$ 25,000
Explanation:	Governing Body (10420) - Increase appropriations to provide funding for professional services to contract with a firm to search for a County Manager.			
Net Budget Effect:	Operating Fund (10) - Increased by $25,000.			

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Paul M. Beaumont, Vice Chairman
SECONDER: Bob White, Commissioner
AYES: Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

C) Consent Agenda

County Manager/County Attorney Ike McRee recommended the consent agenda items move to the next meeting on December 6, 2021.

1. **Consideration of Lease Agreement with the Department of Agriculture and Consumer Services for North Carolina Forest Service Office.**

ADJOURN

The Board had no further business. Commissioner Mary Etheridge moved to adjourn. The motion was seconded by Commissioner White. The motion carried, 7-0, and the meeting of the Board of Commissioners concluded at 6:35 PM.

Motion to Adjourn Meeting

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Mary "Kitty" Etheridge, Commissioner
SECONDER:	Bob White, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

Currituck County
Agenda Item Summary Sheet

Agenda ID Number – (ID # 3290)

Agenda Item Title: Budget Amendment- TDA

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

Number TDA20220009

BUDGET AMENDMENT

The Currituck County Board of Commissioners sitting as the Tourism Development Authority, at a meeting on the 6th day of December 2021 , passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

		Debit	Credit
Account Number	Account Description	Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
15447-545004	Corolla Wild Horse Fund	$ 11,750	
15320-415000	Occupancy Tax		$ 11,750
		$ 11,750	$ 11,750

Explanation: Tourism Related Expenses (15447) - Increase appropriations to repaid Corolla Wild Horse fencing damaged by fall storms.

Net Budget Effect: Occupancy Tax Fund (15) - Increased by $11,750.

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Clerk to the Board

Attachment: Dec 6_TDA_DO NOT CHANGE (Budget Amendment- TDA)

Number TDA20220010

BUDGET AMENDMENT

The Currituck County Board of Commissioners sitting as the Tourism Development Authority, at a meeting on the 6th day of December 2021 , passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

Account Number	Account Description	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
15448-502000	Salaries	$ 28,693	
15448-505000	FICA	$ 2,195	
15448-506000	Health Insurance	$ 9,299	
15448-50700	Retirement	$ 5,233	
15448-561900	Administration		$ 45,420
		$ 45,420	$ 45,420

Explanation: Historic Corolla Park (15448) - Transfer budgeted funds from the WRC Administration to salaries to hire one Education Specialist - Wildlife Center to start January 1, 2022 and an second Education Specialist - Wildlife Center to start April 1, 2022.

Net Budget Effect: Occupancy Tax Fund (15) - No change.

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Clerk to the Board

Number TDA20220011

BUDGET AMENDMENT

The Currituck County Board of Commissioners sitting as the Tourism Development Authority, at a meeting on the 6th day of December 2021 , passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

		Debit	Credit
Account Number	Account Description	Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
15442-526200	Promotions		$ 12,520
15442-559000	Capital Outlay	$ 12,100	
15442-511010	Data Transmission	$ 420	
		$ 12,520	$ 12,520

Explanation: Tourism Promotions (15442) - Transfer budgeted funds to repair two mobile stages and for additional data transmission fees.

Net Budget Effect: Occupancy Tax Fund (15) - No change.

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Clerk to the Board

Number TDA20220012

BUDGET AMENDMENT

The Currituck County Board of Commissioners sitting as the Tourism Development Authority, at a meeting on the 6th day of December 2021 , passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

Account Number	Account Description	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
15447-587050	T T - Co Govt Facilities Fund	$ 750,000	
15320-415000	Occupancy Tax		$ 750,000
		$ 750,000	$ 750,000

Explanation: Tourism Related Expenses (15447) - Increase appropriations to fund design and construction of playground at Historic Corolla Park.

Net Budget Effect: Occupancy Tax Fund (15) - Increased by $750,000.

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Clerk to the Board