

**Resolution Authorizing the Execution of the Memorandum of Understanding
Between
the North Carolina Department of Health and Human Services
and
Alamance County, North Carolina and the Alamance County Department of Social
Services**

Whereas, pursuant to N.C. Gen. Stat., 108A-74, an Act of the North Carolina General Assembly, the North Carolina Department of Health and Human Services has decreed that a Memorandum of Understanding (“MOU”) shall be signed by Alamance County; and

Whereas, this MOU sets forth unrealistic performance standards without provision of adequate tools and/or resources from the State and consideration of the actual limitations of Alamance County’s resources; and

Whereas, despite the fact that N.C. Gen. Stat., 108A-74 (a1)(3) provides and allows for the MOU to be *“standardized or may be tailored to address issues in specific jurisdictions.”*; the MOU has not been tailored to address the needs of Alamance County and each outcome measure and expectation is exactly the same for all 100 counties in North Carolina despite vast difference in resources, demands and demographics; and

Whereas, by definition the actions taken in the drafting of the MOU have produced an “unconscionable contract” as defined by the North Carolina Supreme Court in Brenner v. Little Red Sch. House Ltd., 302 N.C. 207,213,274 S.E.2nd, 210 (1981), in that Alamance County has been denied an opportunity for meaningful negotiation and there is unfair and uneven bargaining power exercised by the State through a contract of adhesion; and

Whereas, the MOU’s unrealistic performance standards create significant challenges in that Alamance, as a county of medium size, is greatly impacted by the slightest statistical deviation and, therefore, will require impossible levels of “perfection” to achieve the unrealistic performance standards; and

Whereas, the MOU is silent on the use of an impartial mediator to resolve disputes in findings as the result of audits and/or monitoring, and decrees that an unidentified Division Head within DHHS will mediate any disagreements, denying Alamance County an impartial mediator and/or alternative method to resolve disagreements; and

Whereas, the Department of Health and Human Services relies solely upon the NCFASD statewide system for both processing cases and data retrieval for determination of compliance, which is currently an unreliable case management and data system with defects that hinder accuracy and timely processing; and

Whereas, the limited resources available to the Alamance County are ever changing and are not consistent from fiscal year to fiscal year; and

Whereas, Alamance County Dept. of Social Services may be unable to meet performance expectations by circumstance beyond the Department's control.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED that because of the lack of consideration, the unequal bargaining power of the Memorandum by the State of North Carolina the Alamance County Manager and the Alamance County Dept. of Social Services Director may sign the Memorandum of Understanding contra proferentem and contra preferentem.

This the ____ day of July, 2018.

Chair

Vice Chair

Commissioner

Commissioner

Commissioner