

# GUIDELINES FOR OPERATION AND IMPLEMENTATION OF ONE NORTH CAROLINA FUND GRANT PROGRAM (“the Program”)

*The following Guidelines for the Program are submitted for publication and comment by the Department of Commerce.*

*Hard copies of the Guidelines will be made available by the Public Affairs Office of the Department of Commerce to those persons requesting them. Electronic copies will be posted on the Department of Commerce website at the following location:*

<http://www.nccommerce.com/research-publications/incentive-reports>

*Public comments on the Guidelines will be accepted in oral and written form until 5:00 p.m. on Tuesday, March 29, 2016. Written comments are to be provided to the Commerce Finance Center by mail addressed to:*

*Commerce Finance Center  
N.C. Department of Commerce  
4301 Mail Service Center  
Raleigh, North Carolina 27699-4301*

*or by hand delivery addressed to:*

*Commerce Finance Center  
N.C. Department of Commerce  
Education Building  
301 North Wilmington Street  
Raleigh, North Carolina*

*or by e-mail delivery to the following address: [CFC@nccommerce.com](mailto:CFC@nccommerce.com)*

*An opportunity for oral comments will be provided as well. A public comment session will take place from 2:00 p.m. to 3:00 p.m. on Monday, March 21, 2016 in the Department of Commerce Fourth Floor Small Conference Room in the Education Building, 301 North Wilmington Street, Raleigh, North Carolina, and provide their oral comments.*

# GUIDELINES AND PROCEDURES FOR COMMITMENT OF FUNDS FROM THE ONE NORTH CAROLINA FUND

## 1.0 GENERAL ADMINISTRATION

### 1.1 Authority

The guidelines, criteria and procedures (“guidelines”) set forth herein are established pursuant to N.C. Gen. Stat. § 143B-437.73.

### 1.2 Scope and Purpose of Guidelines

These guidelines apply to funds appropriated or otherwise deposited, granted or allocated to the One North Carolina Fund.

They are designed to provide internal direction and guidance to state officials responsible for administering the Fund and negotiating the financial terms and arrangements under which moneys may be allocated from it.

### 1.3 Amendments

These guidelines may be amended from time to time, in consultation with the Governor’s Office, as the size and nature of the fund or the economic circumstances and condition of the State may warrant.

At least 20 days before the effective date of any nontechnical amendments to the guidelines, the Department of Commerce will publish the proposed guidelines on the Department’s Web site and provide notice to persons who have requested notice of proposed guidelines.

The Department will accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications.

A technical amendment is either:

- (a) An amendment that corrects a spelling or grammatical error; or
- (b) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment.

## 1.4 Administration

The Secretary of Commerce administers the One North Carolina Fund. Administrative support for the Fund will be provided by the Commerce Finance Center (“CFC”) or any successor division performing a comparable function.

## 2.0 FUND MISSION AND GUIDING PRINCIPLES

### 2.1 Purpose of Fund

The purposes of the fund include those set out in N.C. Gen. Stat. § 143B-437.70.

The State of North Carolina seeks to grow economically, to achieve uniformly regional prosperity throughout the state, and to differentiate itself in economic development by recruiting and expanding quality jobs in high value-added, knowledge-driven industries and retaining quality growing industries that support the communities of this state. The One North Carolina Fund plays a key role in that effort.

Pursuant to the terms of Part 2H of Article 10 of Chapter 143B of the General Statutes (“The Act”), the One North Carolina Fund shall be “allocated only to local governments for use in connection with securing commitments for the recruitment, expansion, or retention of new and existing businesses.”

“Moneys in the One North Carolina Fund shall be used for the following purposes only:

- (a) Installation or purchase of equipment.
- (b) Structural repairs, improvements, or renovations to existing buildings to be used for expansion.
- (c) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for existing buildings.
- (d) Construction of or improvements to new or existing water, sewer, gas, or electric utility

distribution lines or equipment for new or proposed buildings to be used for manufacturing and industrial operations.

- (e) Any other purposes specifically provided by an act of the General Assembly.

The Fund is intended to provide the State of North Carolina with a flexible tool that can be used in situations in which North Carolina must respond quickly to enable job creation and/or retention and growth and expansion of economic infrastructure within its borders. It is intended to enable the state to respond quickly and effectively to the dynamic forces of the state's economy and to the nature of industrial recruitment and retention among the various states.

In performing this function, the Fund seeks to encourage, attract and retain sustainable investments and jobs to North Carolina communities, to stimulate state and local economies, and to provide resources to enable North Carolina communities to improve their economic development infrastructure, expand their tax base, and improve their general economic health and welfare.

Moneys allocated from this Fund are the result of negotiation and agreement between state and local governments and private businesses or industries. These guidelines are intended to provide direction to those responsible for administering the fund in negotiating the financial arrangements under which moneys will be disbursed.

## **2.2 Recipients of Moneys Allocated from Fund**

Moneys from the One North Carolina Fund will be allocated to local units of government for use in connection with efforts to secure commitments from and to enable businesses and industries to undertake new expansion or locate new operations in the state.

## **2.3 Entities in Default Barred From Receiving Funds**

Pursuant to the specific terms of N.C. Gen. Stat. § 143B-431.2, the Department of Commerce may not make a loan nor award a grant to any individual, organization, or governmental unit that is currently in default on any loan or grant previously made by the Department.

## **2.4 New and Existing Industry Projects to be Treated the Same**

For purposes of allocating moneys from the Fund, projects involving businesses or industries with an

existing presence in North Carolina that seek to expand operations or locate new operations in the state (existing businesses and industries) will be eligible for consideration and funding in the same manner and under the same criteria as projects involving businesses or industries with no existing presence in North Carolina (new businesses and industries).

## **2.5 Form of Financial Assistance Provided From Fund**

Financial assistance provided by the One North Carolina Fund will take the form of negotiated challenge grants, reflecting the long-standing practice of the Fund, the general needs of the economic development community and the terms of N.C. Gen. Stat. § 143B-437.72(c)(1).

## **2.6 Local Government Match Requirement**

Moneys will be allocated from the One North Carolina Fund to those local units of government that match the grants allocated to them in the following manner:

- (a) For a local government in a development tier one area, as defined in N.C. Gen. Stat. § 143B 437.08, the State shall provide no more than three dollars (\$3.00) for every one dollar (\$1.00) provided by the local government.
- (b) For a local government in a development tier two area, as defined in N.C. Gen. Stat. § 143B 437.08, the State shall provide no more than two dollars (\$2.00) for every one dollar (\$1.00) provided by the local government.
- (c) For a local government in a development tier three area, as defined in N.C. Gen. Stat. § 143B 437.08, the State shall provide no more than one dollar (\$1.00) for every one dollar (\$1.00) provided by the local government.

Local governments will be required to document their match. A local government's match may take a variety of different forms, including cash; fee waivers; in-kind services; donation of land, buildings or other assets; or provision of infrastructure.

A combination of the preceding different forms may be used to achieve a local match. The local government may establish all or part of its match by securing private commitments of assistance to the project.

Local funds used to match other non-CFC sources of funding may also be used to match funds from the One North Carolina Fund. Funds used to match other programs of the Commerce Finance Center, however,

may not be used to match grants from the One North Carolina Fund.

Guidelines for the local match requirement may be set out in more detail in the Local Government Application.

**2.7 Provisions to Ensure Performance and Recapture Funds**

It is the intent of this program to ensure accountability for funds disbursed under it. To that end, local units of government and businesses or industries associated with the program are to allow the State of North Carolina and the Department of Commerce, or its agents, access to all records necessary to confirm compliance with program guidelines and with terms of agreements negotiated and executed under them. Such agreements are to include provisions adequate to protect the state's interests in the funds and, as appropriate, to require return of funds in cases of failure to comply with performance standards agreed to between the parties.

**2.8 Relationship of Funding to Environmental Obligations**

The fact that the Department of Commerce may approve or endorse funding for an application for a particular project has no bearing on and in no way mitigates the obligation of the business or industry associated with that project to comply with existing state environmental statutes and regulations.

Release of grant funds is contingent on the company receiving all of its required environmental permits.

**2.9 Overdue Tax Debts**

Companies with overdue tax debts to the State of North Carolina, as defined in N.C. Gen. Stat. § 105-243.1, are not eligible for grants until the debts are paid.

**2.10 Specific Legislative Direction**

To the extent the General Assembly's allocation of moneys to the Fund directs a use or process different than those set out in these guidelines, the General Assembly's direction controls and supersedes these guidelines.

**3.0 PROCEDURE FOR COMMITMENT, AWARD AND DISBURSEMENT OF FUNDS**

**3.1 Assignment of Employees of North Carolina Economic Development Partnership of North Carolina, Inc. ("Partnership").**

Projects appropriate for funding may be brought to the attention of the Governor and the Department of Commerce in a variety of different ways. As a general rule, when a project is first identified, it should be assigned to an economic developer with the Partnership ("Partnership Economic Developer").

**3.2 Assistance to Potential Applicants**

(a) The Partnership Economic Developer will work with the potential Applicant to evaluate the nature of the project in advance of any application, including an evaluation of whether the project is likely to satisfy the Fund requirements. If aspects of the project appear likely to render it ineligible, the Partnership Economic Developer will inform the potential applicant of that fact prior to its submission of an application.

(b) The Partnership Economic Developer will ensure that the potential applicant receives a printed copy, or is made aware of how it may obtain an electronic copy, of these criteria, the statute governing the Fund and any other information pertinent to the Fund that may be available to the public.

(c) Once the Partnership Economic Developer has gained sufficient information regarding the project, he or she will also discuss the nature and status of the project with the Commerce Finance Center and/or the Secretary to assess the status of the Fund.. Based on these discussions, the Partnership Economic Developer will advise the potential applicant on the prospects for a grant from the Fund for the particular project.

(d) Whenever working with a potential applicant to evaluate a project and its possible eligibility or ineligibility for a grant, the Partnership Economic Developer will inform the potential applicant that only the Secretary can make decisions with respect to the award of grants, and that no other person or entity, including the Partnership Economic Developer or the Partnership, has the authority to make binding commitments or approve a grant.

**3.3 Step Two: Formal Application**

Local units of government seeking moneys from the One North Carolina Fund are required to submit a formal application to the Commerce Finance Center. The application will provide information gathered from various sources including the local government, the business or industry associated with the project, and the Partnership Economic Developer assigned to the project.

The application is designed to aid the Secretary of Commerce in making an assessment whether the project will promote the retention and expansion of existing business and industry within the State or the recruitment and attraction of new business and industry to the State, whether the business or industry intends to undertake a significant effort to establish or expand in North Carolina, whether the project will stimulate economic activity and create new jobs for the citizens of the State, whether the project is one for which a grant would be necessary to enhance the competitiveness of North Carolina's business and industrial recruitment and retention efforts and needed to enable the project to go forward in the state, and whether the project is consistent with Fund guidelines and N.C. Gen. Stat. § 143B-437.70 *et seq.* It is designed to aid in the evaluation and negotiation of financial arrangements under which moneys from the Fund may be allocated.

The application will solicit information regarding the project, including, among other things, information necessary to confirm the local match, detailed information relating to the project (including projected investment amounts, timing and numbers of any new full time jobs to be created and/or retained, average wages for all full time jobs at the facility, health insurance to be provided), the financial condition of the business or industry associated with the project, information concerning other states competing for the project and incentives offered, and information regarding the impact of the project.

The forms that make up the application should be submitted to the Department of Commerce at least 30 days prior to the date by which a decision on the grant request is needed. A full and complete application, including all necessary supporting documentation, should be submitted and approved prior to a formal project announcement.

Applications not submitted in the proper timeframe and applications not properly completed may be denied for that reason by the Department of Commerce.

In the event a company announces its intention to go forward with a project prior to a formal award by the Governor of any grant from the One North Carolina Fund, the Department of Commerce may treat such action as a basis for rejecting any application associated with the project.

### **3.4 Step Three: Governor's Letter**

If an application for a grant is approved, a letter will be prepared for the Governor's signature formally announcing an award of a specified dollar amount. The award of any grant funds will be contingent upon the local unit of government and the business or industry entering into satisfactory written agreements with each other and the Department of Commerce and the ultimate performance of the business or industry and local government under the terms of these agreements. Disbursement of any funds to the local government will ordinarily be in increments over time and will be contingent upon submission of proper documentation of the necessary performance.

In the Governor's absence and at the direction of his Office, the Secretary of Commerce may prepare and send the letter in question.

### **3.5 Step Four: Execution of Appropriate Contracts**

The appropriate contracts for a grant will be (1) a satisfactory Company Performance Agreement between the local unit of government and the business or industry, in a form consistent with the terms of N.C. Gen. Stat. § 143B-437.72(b) and including the performance criteria necessary for funds to be released or expended and (2) a satisfactory Local Government Grant Agreement between the local unit of government and the Department of Commerce in a form consistent with the terms of N.C. Gen. Stat. § 143B-437.72(c). The Department of Commerce will have basic forms for these agreements, although performance criteria for specific agreements will vary.

In an appropriate case and consistent with the terms of N.C. Gen. Stat. § 143B-437.72, the Secretary may recommend alternative structures under which the funds may be made available to local governments for direct expenses on public infrastructure needs for a project. In such cases, a business or industry may be required to enter into an agreement assuring performance and assuming responsibility for repaying the grant in the event in the event performance criteria are not satisfied.

### **3.6 Step Five: Submission of Proof of Performance**

Funds should ordinarily be disbursed from the One North Carolina Fund in 25% increments based on incremental progress toward the specified performance criteria. For the funds to be disbursed, the local unit of government must ensure that proof is submitted to the Commerce Finance Center that the performance criteria for a particular installment of funds have been met, including documentation that any required jobs have been created and/or retained. The local unit of government must also ensure that the uses to which the funds will be put are verified and consistent with those purposes for which funds may be granted under these Guidelines and the Act. If the appropriate performance criteria have been met, a check will be issued for an installment.

**3.7 Step Six: Confirmation of Receipt, Deposit and Disbursement**

When funds are actually applied by the local government, the local government must then submit proof of receipt, deposit, and proper disbursement of the funds.

**3.8 Procedures to be Applied Consistently**

The general procedure outlined in these Guidelines is intended to be applied consistently to all projects. Significant deviations in procedure should occur only when, in the exercise of discretion and considering the particular and unusual circumstances, it is concluded that the best interests of the State and the purposes of the Fund will be advanced. Such deviations should be noted when they occur.

**3.9 Alternative Allocation Structures**

The Governor may, in extraordinary cases, approve alternative structures for allocating moneys from the Fund. These may include, for example, the allocation of an amount from the Fund to a local government to be used for public infrastructure necessary for a company to undertake a project in North Carolina, or the award and allocation of funds based on factors such as increased investment, increased wages and job retention. In such cases, the structure of the allocation shall be reflected in the necessary agreements specifying performance criteria and authorizing the award of the grant and release of funds, consistent with the terms of N.C. Gen. Stat. § 143B-437.70 *et seq.*

**4.0 INFORMATION REQUESTED FOR ALLOCATION DECISIONS**

**4.1 Information to be Collected**

The information to be collected in the process of application for grants from the One North Carolina Fund may include:

- (a) The average wage for the group of new full time jobs being created and/or retained.
- (b) The average wage for the full time jobs at the entire facility.
- (c) Confirmation that any new jobs used as a basis for computing the allocation of moneys from the Fund are in fact net new jobs to the business or industry's operations in the state and are not jobs or positions transferred from operations in one part of the state to another.
- (d) Timing of any new jobs to be created.
- (e) Confirmation and details of health insurance provided for employees at the facility.
- (f) Nature of business activity associated with the project.
- (g) Types, amounts, and timing of the business or industry's financial investment in the project.
- (h) Details relating to job transfer and plant closings. If the business or industry has previously announced the closing of a facility that is still in operation at the time of the agreement, but scheduled to close in the near future, details regarding how the facility and expansion are related must be provided.
- (i) Information necessary to assess the economic strength, capacity and sustainability of the business or industry associated with the project.
- (j) Information relating to the environmental record and practices of the business or industry associated with the project.
- (k) Information regarding local incentives offered.
- (l) Information regarding incentives offered by any other states or countries competing for the project.
- (m) Additional information needed to evaluate the criteria for allocating funds to particular projects set out in Section 6.0.

- (n) Such other information as the Governor and/or the Secretary may deem necessary.

#### **4.2 Ability to Request Additional Information**

The Governor or the Secretary may require additional information to be provided from a local unit of government or from a business or industry beyond that which may be contained in the application forms or specified in these guidelines.

#### **4.3 Failure to Provide Information**

Failure to provide information requested, as well as failure to provide requested information in sufficient detail, may serve as grounds for rejecting an application.

### **5.0 ALLOCATION DECISIONS**

#### **5.1 Review Procedure**

The Department of Commerce will review a formal application and make a recommendation on funding to the Governor. The review in question will be conducted by the Secretary of Commerce, who may draw upon the expertise and assistance of the Assistant Secretary of Economic Development, the Director of the Commerce Finance Center and the General Counsel. The Secretary may also consult such other members of his staff as he deems necessary to develop recommendations. The Secretary will make his recommendation to the Governor who renders the final decision on allocation prior to sending the Governor's Letter.

### **6.0 CRITERIA FOR ALLOCATING FUNDS TO PROJECTS**

#### **6.1 Threshold Statutory Criteria For Awarding Funds**

Moneys from the Fund shall be awarded to local governments for those economic development projects that promote the retention and expansion of existing business and industry within the State or the recruitment and attraction of new business and industry to the State and that stimulate economic activity and provide jobs for the citizens of the State.

Moneys from the Fund shall be used in connection with projects for which participation by the state government is needed for the project to go forward or be undertaken in the state and for which it is necessary to enhance the effectiveness of North Carolina's industrial recruitment and retention efforts.

#### **6.2 Health Benefits**

For a project to be eligible for a grant from the Fund, it should provide the level of health insurance benefits required by N.C. Gen. Stat. § 105-129.83(d) (or any successor statute performing a similar function) at the time of application.

The projected wages and health insurance for the project should meet the appropriate wage and health insurance standard at the time of application, and the actual jobs should meet that wage and health insurance standard provided by the Department when finally created.

Exceptions to this criterion may be approved only by the Governor and only in exceptional cases involving factors such as an unusually strong benefits package, unusually severe economic hardship, and/or unusual circumstances of local or regional distress.

#### **6.3 Net New Jobs**

For a project creating new jobs to be eligible to receive and retain a grant from the Fund, any new jobs used as the basis for an application should be net new positions to the company's operations in the state and not jobs transferred from any existing North Carolina operations of the company or a related entity.

#### **6.4 Factors to be Considered in Allocation and Award Decisions**

In exercising the discretion required to negotiate, award and allocate grants from the One North Carolina Fund, the following criteria may be considered:

##### **(a) Economic Impact of Project**

In evaluating a project under this criterion, the following factors are among those that may be considered:

- (1) Impact on gross regional product and gross state product.
- (2) Costs and benefits of the project to the state, including the expected return on investment made in the project by the state.
- (3) Number of direct jobs that will be created and/or retained by the

project, the wages of those jobs, and the total payroll for the project.

- (4) Number of induced, short-term, project-related jobs expected to be generated by the project as well as the number of long-term permanent jobs expected to be created indirectly in the economy as a result of the project.
- (5) Dollar value of the investment, including the size of investment in real versus personal property and expected depreciation rates.
- (6) Economic circumstances of the county and region, including the extent to which the project will serve to mitigate unemployment.
- (7) To the extent not otherwise addressed in other factors, the expected time frame during which the project is expected to payback in state tax revenues the amount of any grants paid out under the One North Carolina Fund.
- (8) To the extent not otherwise addressed in other factors, the economic demands the project is expected to place upon the community or communities in which it will locate.

**(b) Strategic Importance of the Project to the State, Region or Locality**

In evaluating a project under this criterion, the following factors are among those that may be considered:

- (1) Nature of business activity associated with the project.
- (2) Extent to which the project builds or enhances a business or industrial cluster.
- (3) Extent to which project falls within a classification of business and industry that the Department of

Commerce regards as a target for growth and expansion in the state.

- (4) Ability of the project to attract follow-on investment in the state by suppliers and vendors.
- (5) Extent to which the project serves to maintain and grow jobs in the state in a business undergoing an internal restructuring or “rationalization” process.
- (6) Extent to which the project mitigates unemployment in distressed areas.
- (7) Extent to which the project can be expected to contribute significantly to and support the local community.
- (8) Degree to which project can be identified as at risk of being developed or located in another state and degree to which use of moneys from the Fund plays a role in any final decision to develop or locate the project in North Carolina.

**(c) Quality of Jobs**

In evaluating a project under this criterion, the following factors are among those that may be considered:

- (1) Wage level and status of the jobs to be created and/or retained.
- (2) Quality and value of benefits offered by the company (e.g., child care benefits, health and dental benefits, 401(k) plans, defined benefit plans, etc.)
- (3) Potential for employee advancement.
- (4) The extent of training programs offered by the company.
- (5) Sustainability of the jobs in future.

**(d) Quality of Industry and Project**



In evaluating a project under this criterion, the following factors are among those that may be considered:

- (1) Nature of the project and project's relationship to the larger business of the company.
- (2) Nature of the industrial classification of the project and of the company undertaking it.
- (3) Long-term prospects for growth at the project site or sites.
- (4) Long-term prospects for growth of company and industry within the United States.
- (5) Financial stability of company associated with the project.

**(e) Environmental Impact of Project**

In evaluating a project under this criterion, the following factors are among those that may be considered:

- (1) Nature of business to be conducted at site.
- (2) Ability of project to satisfy state, federal and local environmental laws and regulations.

Special consideration may be given to companies that locate or expand in rural areas or areas that have experienced sudden and severe economic disruptions, projects that will create an unusually large number of jobs, companies that have agreed to negotiate special hiring arrangements for lower income persons in connection with a project; projects that bring an exceptional new technology to the state, and projects involving a company that is a recognized national or international leader in its industry.

A Bergman Evaluation System Form should be completed for each project. It should be included with materials to be considered when making a recommendation and considered as part of a final decision to award funds.

**7.0 TERMS TO BE INCLUDED IN CONTRACTUAL ARRANGEMENTS**

**7.1 Company Performance Agreement**

The basic form of a Company Performance Agreement between a local unit of government and a business or industry associated with a particular project will be prescribed by the Department of Commerce and will include those terms required by N.C. Gen. Stat. § 143B-437-72(b). In addition, it may contain the following:

- (a) A commitment to create and/or retain the agreed-upon level of jobs, pay any agreed-upon salary, and create and any required investment at the agreed-upon location in North Carolina within the specified time period.
- (b) Any requirements that the business or industry maintain existing jobs in the state.
- (c) The conditions with which the business or industry must comply to receive the benefits of grants made to local units of government under the Fund.
- (d) The terms under which a business or industry will be deemed to have met or failed to meet the terms of a commitment.
- (e) The terms and procedure by which any previously disbursed funds may be recaptured by the unit of local government or the State under circumstances in which the business or industry has ultimately failed to meet its commitments.
- (f) The number of jobs that must be sustained beyond any initial period of time in which they must be created and the lengths of time those jobs must be sustained to receive funds or to avoid an obligation to reimburse the Fund.
- (g) An obligation to provide proof of any new jobs created, existing jobs retained, and/or new investment made.
- (h) A right on the part of the State or local unit of government to inspect all records that may be used to confirm compliance with terms of any agreements.
- (i) An acknowledgement that participation by the State in making the grant is necessary to enable the project to be undertaken or go forward in North Carolina.

- (j) An agreement that the funds received may be used only to offset statutorily authorized expenses.
- (k) A disbursement schedule for the funds that is proportional to performance.

As a general rule, a business or industry that creates and/or maintains jobs or makes investments as part of this program will be required to do so within a three year period and to maintain at least 90% of the jobs for a period of between one to two years following the time at which the grant is closed out by the Department. Longer terms may be required in appropriate cases.

## 7.2 Local Government Grant Agreement

The basic form of a Local Government Grant Agreement between a local unit of government and the Department of Commerce will be prescribed by the Department of Commerce and will include those terms required by N.C. Gen. Stat. § 143B-437-72(c). In addition, it may contain the following:

- (a) An agreement to comply with the terms of the local unit of government's application.
- (b) An agreement to take all steps necessary to ensure and establish to the Department that required levels of jobs and investments are made and that no grant funds are disbursed by the local unit of government until any necessary performance criteria have been met.
- (c) An agreement to recapture all disbursed funds to which the local unit of government has the right to be reimbursed.
- (d) An agreement to otherwise reimburse the Department for any funds improperly disbursed.
- (e) An agreement to permit the Department access to all records necessary to evaluate compliance with the program guidelines and all agreements executed under them.
- (f) A commitment by the local government to provide matching funds in exchange for the grant.
- (g) A disbursement schedule for the funds that is proportional to performance.

## 7.2 Other Contractual Arrangements

To the extent consistent with N.C. Gen. Stat. § 143B-437-70 *et seq.*, the Secretary may structure such other contractual arrangements as may be necessary to effectuate grants to local governments for direct expenses by the local government on public infrastructure needs for a project in which a business or industry may be required to assure performance and assume responsibility for repaying the grant in the event in the event performance criteria are not satisfied.

## 8.0 DISBURSEMENT OF FUNDS

### 8.1 Quarterly Dispersal

Ordinarily, local units of government that receive grants from the One North Carolina Fund will receive those funds over a period of three years following the date of the Governor's Letter in four increments as each quarter (25%) of the total number of required new jobs for which funds were allocated are created or other performance requirements are met.

Deviations in this schedule should occur only when, in the exercise of discretion and considering the particular and unusual circumstances, it is concluded that the best interests of the State and the purposes of the Fund will be advanced. Any such deviation should be reflected in the necessary agreements.

### 8.2 Proof of Required Job Creation and/or Retention

Before funds are disbursed, the Department of Commerce must be provided with proof that any required jobs have been created and/or retained.

This proof should take two forms.

First, the business or industry must attest that any jobs created are net new positions for the company's operations in the state and that any jobs created and/or retained are not jobs transferred from any existing North Carolina operations of the company.

Second, the business or industry must provide documentary proof that it has experienced the increase in jobs and/or met its requirements for retaining jobs in North Carolina.

### 8.3 Forms of Documentary Proof

For funding to be released for projects involving a business or industry with a *single facility* in North Carolina, a copy of that business or industry's Employer's Quarterly Tax and Wage Report (Form

NCUI 101 filed with the Division of Employment Security of the Department of Commerce) must be submitted to the Department of Commerce. If this form is discontinued or modified, a successor form performing a comparable function must be submitted.

For funding to be released for projects involving a business or industry with *multiple facilities* in North Carolina, a copy of that business or industry's Multiple Worksite Report (Form BLS 3020 filed with the Division of Employment Security of the Department of Commerce) must be submitted to the Department of Commerce. If this form is discontinued or modified, a successor form performing a comparable function must be submitted.

Where funding is provided for a project involving a business or industry that is *expanding* existing North Carolina operations, a copy of the business or industry's most recent relevant report to the Division of Employment Security of the Department of Commerce *prior to the expansion* must be submitted to the Department of Commerce, in addition the quarterly reports required thereafter.

The Department of Commerce may request further proof of performance in a particular case when, in the exercise of its judgment, such proof is needed to confirm performance.

#### **8.4 Proof of Required Job Creation and/or Retention to Precede Disbursement by Department**

The preceding documentation must be received before each installment of funding will be disbursed to the local unit of government.

#### **8.5 Local Government's Responsibilities in Disbursement**

The local unit of government is responsible for any further disbursement of the funds, in a timely fashion and consistent with the Local Government Budget and Fiscal Control Act. The unit of government must account to the Department of Commerce for its receipt, deposit and disbursement of the funds in question.

#### **8.6 Alternative Allocation Structures**

In extraordinary cases where the Governor has approved an alternative allocation structure, disbursement of funds shall occur according to the terms of agreements governing the grants.