



Town of Clayton
Regular Town Council Meeting Agenda
Monday, July 15, 2024 at 6:00 PM
Council Chambers, Town Hall
111 E. Second Street

THE PUBLIC MAY VIEW THE LIVE COUNCIL MEETING ON THE TOWN'S YOUTUBE CHANNEL:
<https://www.youtube.com/TownofClaytonNC>

1. CALL TO ORDER

- a. Call to Order
- b. Pledge of Allegiance
- c. Invocation

2. ADJUSTMENT OF THE AGENDA

- a. **POTENTIAL ACTION:** Approve or Adjust the Agenda

3. CONSENT AGENDA

- a. Minutes
 - June 17, 2024 - Regular Session
 - June 17, 2024 - Closed Session

Presenter: Heidi Holland, Town Clerk
[June 17, 2024 - Regular Session](#)
- b. Remote Participation Policy for Meetings of the Clayton Town Council
[Remote Participation Policy for Meetings of the Clayton Town Council](#)
- c. Resolution To Accept Public Utilities into The Town of Clayton Public Utility System for Maintenance – Carolina Overlook Phase 2 Road Improvements Water Line
[Resolution To Accept Public Utilities into The Town of Clayton Public Utility System for Maintenance – Carolina Overlook Phase 2 Road Improvements](#)
- d. Resolution To Accept Greenway into The Town of Clayton Greenway System for Maintenance – Highgate Development Phase 1-4 Greenway Trail
[Resolution To Accept Greenway into The Town of Clayton Greenway System for Maintenance –Highgate Development Phase 1-4 Greenway Trail](#)
- e. Resolution To Accept Greenways into The Town of Clayton Greenway System for Maintenance – Carolina Overlook Phase 1 Greenway Trail
[Resolution To Accept Greenways into The Town of Clayton Greenway System for Maintenance –Carolina Overlook Phase 1 Greenway Trail](#)
- f. Johnston County Emergency Services Interlocal Agreement for Provision of Fire Protection Services
Presenter: David Ranes, Fire Chief
[Johnston County Emergency Services Interlocal Agreement for Provision of Fire Protection Services](#)

- g. TOC Project # 2017-173-SDM - Final Acceptance of the Public Water and Sewer Utilities within Walton Farms Subdivision, Phases 10 & 11
[TOC Project # 2017-173-SDM - Final acceptance of the public water and sewer utilities within Walton Farms subdivision, Phases 10 & 11](#)
- h. Memorandum of Agreement Among The State of North Carolina's Division of Water Resources, The Lower Neuse Basin Association Permittees, and The Lower Neuse Basin Association
Presenter: James Blalock, UMC, Assistant Water Resources Director
[Memorandum of Agreement Among The State of North Carolina's Division of Water Resources, The Lower Neuse Basin Association Permittees, and The Lower](#)
- i. Resolution To Accept Public Utilities into The Town of Clayton Public Utility System for Maintenance – Ashcroft Section 2 Ph. 1A and Section 1 Ph. 8
[Resolution To Accept Public Utilities into The Town of Clayton Public Utility System for Maintenance – Ashcroft Section 2 Ph. 1A and Section 1 Ph. 8](#)
- j. Resolution To Accept Streets into The Town of Clayton Street System for Maintenance Walk at East Village Phase 2
[Resolution To Accept Streets into The Town of Clayton Street System for Maintenance Walk at East Village Phase 2](#)
- k. Municipal Records Retention and Disposition
Presenter: Heidi Holland, Town Clerk
[Municipal Records Retention and Disposition](#)

POTENTIAL ACTION:

Approve Consent Agenda as Presented

4. ADMINISTRATIVE ITEMS

- a. Clayton4U
Presenter: Nathanael Shelton, Communication Director

5. INTRODUCTIONS AND SPECIAL PRESENTATIONS

- a. National Intern Day Proclamation
Presenter: Council Member Williams to Present to Our Interns
[National Intern Day Proclamation](#)

6. PUBLIC HEARINGS

7. QUASI-JUDICIAL HEARING

8. OLD BUSINESS

9. NEW BUSINESS

- a. Lumos Master Encroachment Agreement
Presenter: Rich Cappola, Town Manager
[Lumos Master Encroachment Agreement](#)

POTENTIAL ACTION:

Motion to Approve Agreement

10. STAFF REPORTS

- a. Town Manager
- b. Town Attorney

- c. Town Clerk
- d. Other Staff

11. OTHER BUSINESS

- a. Informal Discussion & Public Comment
- b. Council Comments

12. CLOSED SESSION

13. ADJOURNMENT

- a. Adjourn

POTENTIAL ACTION: Motion To Adjourn

INFORMATION FOR THE PUBLIC

3. CONSENT AGENDA

Items on the consent agenda are considered routine in nature or have been thoroughly discussed at previous meetings. Any member of the Council may request to have an item removed from the consent agenda for further discussion.

7. QUASI-JUDICIAL HEARING

A quasi-judicial hearing resembles a court trial where testimony is presented. Citizens may give testimony in a quasi-judicial hearing after they have taken an oath. Town Council acts like a court of law and receives only sworn testimony and other credible evidence. In addition, the Town Council must make findings of fact based upon the evidence presented.

The Town Council refrains from "ex parte communication" about these cases, as the Town Council must make a decision based solely on the evidence presented at the hearing itself. Staff is available to assist with inquiries from citizens.

11. OTHER BUSINESS – INFORMAL DISCUSSION & PUBLIC COMMENT

RULES FOR PERSONS ADDRESSING TOWN COUNCIL

- During public hearings and public comment periods, each speaker will identify him/herself by giving his or her name and place of residence.
- Each speaker will be limited to speaking one time on any topic. When you are finished speaking, please step away from the podium and be seated.
- Each speaker will be limited to three (3) minutes and each group's representative will be limited to a maximum of five (5) total minutes. Each group is encouraged to designate a single spokesperson for their group.



Town of Clayton
Regular Town Council Meeting Minutes
Monday, June 17, 2024 at 6:00 PM
Council Chambers, Town Hall
111 E. Second Street

Council Present:

Mayor Jody McLeod
Council Member Porter Casey
Council Member Andria Archer
Mayor Pro Tem Michael Sims
Council Member Gretchen Williams
Council Member Ruth Anderson

Staff Present:

Rich Cappola, Town Manager
Jim Cauley, Town Attorney
Heidi Holland, Town Clerk
Dolores Gill, Deputy Town Manager
Lee Barbee, Deputy Town Manager
Robert McKie, Finance Director
Greg Tart, Police Chief
Nathanael Shelton, Communications Officer
Conrad Olmedo, Planning Director
Patrick Pierce, Economic Development Director,
Lauren Lambert, Special Events & Marketing Manager
Shannon Poole, Construction Project Administrator

Council Absent:

None

1. CALL TO ORDER

a. Call to Order

Mayor McLeod called the meeting to order at 6:02 p.m.

b. Pledge of Allegiance

Mayor McLeod led the Pledge of Allegiance.

c. Invocation

Mayor McLeod provided the Invocation.

2. ADJUSTMENT OF THE AGENDA

- a. Mr. Cappola adjusted the agenda as follows: add to Consent Agenda, 3k. COLA Fiscal Year 2024-2025 and a Closed Session 12a. to discuss a legal matter in accordance with NC GS 143-318.11(a)(3).

Approve or Adjust the Agenda

RESULT:	CARRIED 5-0
MOVER:	Porter Casey
SECONDER:	Michael Sims
YES:	Porter Casey, Andria Archer, Michael Sims, Gretchen Williams, and Ruth Anderson
NO:	None

3. CONSENT AGENDA

a. Minutes

- May 20, 2024 - Special Meeting
- May 20, 2024 - Regular Session
- May 20, 2024 - Closed Session
- June 3, 2024 - Work Session
- June 3, 2024 - Regular Session
- June 3, 2024 - Closed Session

Presenter: Heidi Holland, Town Clerk

b. Warranty Acceptance of Public Water and Sewer Utilities for Walton Farms, Phases 5 & 6

Presenter: Chris Rowland, Construction Project Admin.

c. HR Policies

Presenter: Kenya Walls, Human Resources Director

d. Approval for Town Manager to Execute Encroachment Agreement with North Carolina Railroad Company for the East Clayton Industrial Area Transmission Project. Permit number - #o_h-098+4968

Presenter: Louis Duffie, Asst. Program Manager

e. Removal of Advisory Board Members

Presenter: Heidi Holland, Town Clerk

f. Final Acceptance of Public Water and Sewer Utilities for Durham Street Townhomes: TOC Project 2019-36-SD

Presenter: Chris Rowland, Construction Project Admin.

g. Town of Clayton - Novo Nordisk Memorandum of Understanding

Presenter: Joshua Baird, PE, Water Resources Director

h. Contract For School Resource Officer Services

Presenter: Greg Tart, Police Chief

i. Water Resources Department - Certification Incentive Pay Policy

Presenter: James Blalock, UMC, Assistant Water Resources Director

j. NCDOT Road Closures for Special Events

Presenter: Amy Shearin, Community Events & Engagement Coordinator

k. COLA Fiscal Year 2024-2025

This was added as an adjustment to the agenda.

Approval of Consent Agenda as Presented

RESULT:	CARRIED 5-0
MOVER:	Michael Sims
SECONDER:	Ruth Anderson
YES:	Porter Casey, Andria Archer, Michael Sims, Gretchen Williams, and Ruth Anderson
NO:	None

4. ADMINISTRATIVE ITEMS

a. Clayton4U

Presenter: Nathanael Shelton, Communication Director

Mr. Shelton shared the latest episode of Clayton4U which spoke about how to get a library card.

b. Fireworks Update

Presenter: Lauren Lambert, Special Events & Marketing Manager and Amy Shearin, Community Events & Engagement Coordinator

Patrick Pierce and Ms. Lambert presented on this event. This event would be held on July 4 from 5:30 - 9:00 p.m. with fireworks being launched at 9:15 p.m. at Clayton High School. This year the Square-to-Square event would be combined with the firework show. Activities for this event would include a bike parade, snow cones, farmer's market, spray down, balloon animals, poetry fox, inflatables, rock climbing, and Epic Axe would be there. Council will be cutting watermelon. Food vendors would be in Town Square.

Ms. Lambert stated patrons would be able to view the fireworks outside of the school; there would be viewing locations throughout downtown. Shared was a map of road closures, viewing locations, and parking. Mr. Pierce stated they have worked with local businesses and close to a dozen businesses would be staying open late or have a viewing party.

Mayor McLeod stated it is important to explain why they could not be inside the high school. Mr. Pierce stated from a safety perspective it is in the best interest of public safety to not have the public within the school grounds.

Mayor Pro Tem Sims spoke about the weather last year, he asked if there was a plan for the weather this year. Mr. Pierce stated a weather plan would be posted on the website. Chief Tart stated there would be a full operations EOC set up and watching the weather would be part of this. Mr. Pierce stated they would continue to do outreach.

5. PUBLIC HEARINGS

6. INTRODUCTIONS AND SPECIAL PRESENTATIONS

a. National Parks and Recreation Month Proclamation

Presenter: Council Member Anderson to Read Proclamation and Present to Parks and Rec.

Council Member Anderson read the proclamation and presented this to the Parks and Recreation staff.

7. QUASI-JUDICIAL HEARING

8. OLD BUSINESS

- a. Budget Amendments - Yearend Closeout
Presenter: Robert McKie, Finance Director

Mr. McKie stated there are five budget amendments to ensure the Town is in compliance with the local government budget and fiscal control act. The first amendment is with the general fund and budgeting incremental revenues from interest income as well as some inspection fees. Those would be used to cover the renovation for the Human Resources department, elevator replacement along with some additional installation costs related to the Clarity software. For the capital budget ordinance, the 2021 GO bond projects, the residual balance is being transferred over to 2024 GO bonds project. Roughly \$1.5 million would be transferred over. Those funds were already budgeted on the 2024 GO bonds. The capital project budget ordinances are adopted at the detail line-item level so on the 2024 GO bonds park project, there are a couple line items for closing fees and professional services.

For the Sam's Branch Wastewater Reclamation project, the easement budget would be increased related to easement acquisition costs related to the ECIA forcemain project. For the Copper District, the budget would be realigned to add a detailed line-item for professional services.

Adoption of Ordinances #2024-06-01, #2024-06-02, #2024-06-03, #2024-06-04, and #2024-06-05

RESULT:	CARRIED 5-0
MOVER:	Andria Archer
SECONDER:	Michael Sims
YES:	Porter Casey, Andria Archer, Michael Sims, Gretchen Williams, and Ruth Anderson
NO:	None

9. NEW BUSINESS

- a. Agreement with NCDOT for Locally Administered Project Program funding for Clayton Connector and S. Robertson/Main Street Improvements Project HL-0129
Presenter: Shannon Poole, Engineering Technician

Ms. Poole stated this is for an agreement with NCDOT for a locally administered project. The agreement would be for the department to allocate federal funds for the design and right-of-way acquisition for the Clayton pedestrian connector project. That project would entail designing a connector at Kenmore across Amelia Church Road to the Greenway connector and to explore crossing the culvert and to bring pedestrian connection across 70 up Robertson, to Main Street and down to Moore. Those connections are a combination of some of the priority projects from the 2022 Pedestrian Plan which were submitted to CAMPO in 2022.

The Town has been awarded funds, the total allocation is \$1,250,000 with the Town's match at 30% and NCDOT match at 70%.

Approval of Agreement and Adoption of Resolution #2024-72

RESULT:	CARRIED 5-0
MOVER:	Michael Sims
SECONDER:	Porter Casey
YES:	Porter Casey, Andria Archer, Michael Sims, Gretchen Williams, and Ruth Anderson
NO:	None

10. STAFF REPORTS

a. Town Manager

Mr. Cappola discussed the Juneteenth event, this was the second year the Town held this event and he was happy with the attendance. He thanked Cultural Arts and other staff involved. He reminded everyone this Wednesday all Town facilities would be closed to observe Juneteenth.

b. Town Attorney

c. Town Clerk

d. Other Staff

11. OTHER BUSINESS

a. Informal Discussion & Public Comment

Diana Skinner, present of the Advisory Board for the Clayton Center for Active Aging was present to speak. This board is part of the Community and Senior Services which is a non-profit organization. Presented were statistics on the programs they offer. Participants are 50 years of age and older. Shared was the mission statement. The center operates out of three rooms and there is a total square footage of 3,407 which is 593 ft. less than the minimum 4,000 that is required by the State.

In May, the average daily attendance was 82, 1,811 people checked-in and registered 14 new participants. 82% of participants live in Clayton and there are 24 parking spaces which are shared with visitors, two being handicapped. Shared were some of the services offered. Shared was a packet of information for Council. She stated most of the programs offered are not geared to physical activity level for seniors that are 50 years and older. She stated they do not charge a fee for the programs. She stated more space is needed to service the increasing numbers of seniors moving to the area. She asked Council to consider partnering with this board to provide a larger facility.

Mayor McLeod asked of the 82% of participants, how many live in the city limits; he stated the Town's funding comes from taxpayers. She stated she did not have that breakdown. He stated Johnston County is who runs and funds the program. Ms. Skinner stated the program is funded through the General Assembly. She stated they also receive funding through fundraisers. She stated she does not know if Johnston County provides funding. There was further discussion on the funding. Mayor McLeod thanked her for being there tonight.

b. Council Comments

Mayor Pro Tem Sims stated he would like to recognize the Clayton American Legion. They were recognized by DOT for cleaning up. He stated it was good to see a civic club embrace the Town and he hopes other organizations would follow.

12. CLOSED SESSION

a.

The agenda was adjusted to add a closed session to discuss a legal matter in accordance with NC GS 143-318.11(a)(3).

Motion To Go Into Closed Session at 6:44 p.m.

RESULT:	CARRIED 5-0
MOVER:	Michael Sims
SECONDER:	Porter Casey
YES:	Porter Casey, Andria Archer, Michael Sims, Gretchen Williams, and Ruth Anderson
NO:	None

Motion To Return To Open Session at 7:06 p.m.

RESULT:	CARRIED 5-0
MOVER:	Andria Archer
SECONDER:	Michael Sims
YES:	Porter Casey, Andria Archer, Michael Sims, Gretchen Williams, and Ruth Anderson
NO:	None

13. ADJOURNMENT

a. Adjourn

With nothing further, the meeting was adjourned at 7:07 p.m.

Motion To Adjourn

RESULT:	CARRIED 5-0
MOVER:	Michael Sims
SECONDER:	Porter Casey
YES:	Porter Casey, Andria Archer, Michael Sims, Gretchen Williams, and Ruth Anderson
NO:	None

Duly adopted by the Town Council this 15th day of July 2024 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Heidi L. Holland, CMC, NCCMC
Town Clerk

June 17, 2024
Minutes



Regular Town Council Meeting Agenda Cover Sheet

Meeting Date

July 15, 2024

Agenda Location

CONSENT AGENDA

Item Title

Remote Participation Policy for Meetings of the Clayton Town Council

Suggested Action

Place on Consent Agenda

Strategic Priorities Alignment



☐
Think Clayton
(Administrative)



☐
Think Arts &
Culture



☐
Think
Downtown



☐
Think
Economic
Development



☐
Think Land
Use &
Housing



☐
Think
Mobility



☐
Think Parks,
Recreation
& Natural
Resources



☐
Think Public
Services &
Infrastructure

Public Hearing: No

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

☐ Public Hearing (Required by GS)

☐ Newspaper Notice (Required by GS)

☐ Public Forum/Input Session

☐ E-News Distribution

☐ Social Media

☐ Special Mailing

☐ Public Hearing (Not Required by GS)

☐ Newspaper Notice (Not Required by GS)

☐ Press Release

☐ Website

☐ Survey

☐ None Required

Summary

This policy was at the request of Council to adopt a remote participation policy that would allow a councilmember to participate remotely in official meetings of the Council.

Funding Source

N/A

Corresponding Documentation

[Resolution for Remote Participation Policy](#)

[Remote Participation Policy for Town Council](#)

[Remote Participation Policy Template](#)

Submitted By: Heidi Holland, Clerks

Reviewed By:

Heidi Holland, Town Clerk

Approved - Jul 03 2024

**TOWN OF CLAYTON
REMOTE PARTICIPATION POLICY FOR MEETINGS OF THE
CLAYTON TOWN COUNCIL**

BE IT RESOLVED by the Clayton Town Council to adopt the Remote Participation Policy for Meetings of the Clayton Town Council as attached:

Duly adopted this the 15th day of July 2024 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Heidi L. Holland, CMC, NCCMC
Town Clerk

REMOTE PARTICIPATION POLICY FOR MEETINGS OF THE CLAYTON TOWN COUNCIL

Except during a declared state of emergency*, it is the policy of the Town Council to require in-person attendance at all meetings of the Council except under the following limited circumstances: One (1) member of the Clayton Town Council (Councilmember) may participate remotely in briefings and official meetings of the Town Council, subject to the following rules and procedures:

1. Remote participation may be allowed only when a quorum of the Council is physically present at the meeting and the Councilmember participating remotely is not necessary to establish a quorum.
2. A Councilmember desiring to participate remotely shall notify the Mayor of his/her request in advance of the meeting date. Only one Councilmember may participate remotely at any given time. If more than one Councilmember requests to participate remotely, participation shall be determined by the Mayor based on the timing of the Mayor's receipt of the request, with requests having priority based on the order in which they were received.
3. Remote participation shall not be allowed during quasi-judicial hearings.
4. At the start of the official meeting and prior to participating in deliberations, the Mayor shall announce which Councilmember is participating remotely. Such Councilmember shall identify him/herself.
5. A Councilmember participating remotely shall be allowed to participate in all matters before the Council with the exception of quasi-judicial hearings. A Councilmember participating remotely shall be able to vote on all matters as allowed under this policy.
6. A Councilmember participating remotely shall be provided with all documents to be considered during the briefing session and the official meeting.
7. A Councilmember participating remotely shall participate via simultaneous and/or electronic communication and must be fully heard and, if practical, seen by other members of the Council and any other individuals in attendance at the official meeting. A Councilmember participating remotely must also be able to hear any and all discussions and comments by those physically present at the meeting. Use of telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another is necessary. If clear audio is not available, the Mayor may elect to disallow or discontinue the remote participation and may adjourn, recess or continue the meeting without the remote Councilmember.
8. A Councilmember participating remotely shall provide a voice vote which can be heard and recorded if participating by telephone and shall provide a voice and hand vote if participating by video.
9. A Councilmember participating remotely shall be deemed to be physically present for all purposes except for a failure to vote under N.C.G.S 1604-75. If a Councilmember is unable to be heard or if his/her participation is interrupted or terminated, the failure to vote shall be deemed to be excused.

***During a state of emergency, this policy is supplanted by the laws applicable to remote participation during such event.**



TOWN OF CLAYTON POLICY

Department: Administration

Effective: July 15, 2024

Policy Title: Remote Participation Policy for Meetings of the
Clayton Town Council
Version #ADMIN 2024-02

Supersedes:

Prepared By:
Attorney Jim Cauley

Approved By: Town Council ☒ or Town Manager ☐ Date: Select Approval Date

REMOTE PARTICIPATION POLICY FOR MEETINGS OF THE CLAYTON TOWN COUNCIL

Except during a declared state of emergency*, it is the policy of the Town Council to require in-person attendance at all meetings of the Council except under the following limited circumstances: One (1) member of the Clayton Town Council (Councilmember) may participate remotely in briefings and official meetings of the Town Council, subject to the following rules and procedures:

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3. Remote participation shall not be allowed during quasi-judicial hearings.
4. At the start of the official meeting and prior to participating in deliberations, the Mayor shall announce which Councilmember is participating remotely. Such Councilmember shall identify him/herself.
5. A Councilmember participating remotely shall be allowed to participate in all matters before the Council with the exception of quasi-judicial hearings. A Councilmember participating remotely shall be able to vote on all matters as allowed under this policy.
6. A Councilmember participating remotely shall be provided with all documents to be considered during the briefing session and the official meeting.

7. A Councilmember participating remotely shall participate via simultaneous and/or electronic communication and must be fully heard and, if practical, seen by other members of the Council and any other individuals in attendance at the official meeting. A Councilmember participating remotely must also be able to hear any and all discussions and comments by those physically present at the meeting. Use of telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another is necessary. If clear audio is not available, the Mayor may elect to disallow or discontinue the remote participation and may adjourn, recess or continue the meeting without the remote Councilmember.
8. A Councilmember participating remotely shall provide a voice vote which can be heard and recorded if participating by telephone and shall provide a voice and hand vote if participating by video.
9. A Councilmember participating remotely shall be deemed to be physically present for all purposes except for a failure to vote under N.C.G.S 1604-75. If a Councilmember is unable to be heard or if his/her participation is interrupted or terminated, the failure to vote shall be deemed to be excused.

***During a state of emergency, this policy is supplanted by the laws applicable to remote participation during such event.**



Regular Town Council Meeting Agenda Cover Sheet

Meeting Date

July 15, 2024

Agenda Location

CONSENT AGENDA

Item Title

Resolution To Accept Public Utilities into The Town of Clayton Public Utility System for Maintenance – Carolina Overlook Phase 2 Road Improvements water line.

Suggested Action

Place on Consent Agenda

Strategic Priorities Alignment

							
☐	☐	☐	☐	☐	☐	☐	☐
Think Clayton (Administrative)	Think Arts & Culture	Think Downtown	Think Economic Development	Think Land Use & Housing	Think Mobility	Think Parks, Recreation & Natural Resources	Think Public Services & Infrastructure

Public Hearing: No

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

- | | |
|--|--|
| ☐ Public Hearing (Required by GS) | ☐ Public Hearing (Not Required by GS) |
| ☐ Newspaper Notice (Required by GS) | ☐ Newspaper Notice (Not Required by GS) |
| ☐ Public Forum/Input Session | ☐ Press Release |
| ☐ E-News Distribution | ☐ Website |
| ☐ Social Media | ☐ Survey |
| ☐ Special Mailing | ☐ None Required |

Summary

Public Utilities (water), their easements, and applicable apparatuses are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications, and Design. The subject public utilities and pump station have been verified through testing and inspections to be installed per the Town’s Manual of Standards, Specifications, and Design and have been certified and approved by the appropriate regulatory agencies. Engineering staff recommends acceptance of the subject public utility infrastructure and entering the one-year warranty period.

Funding Source

N/A

Corresponding Documentation

[Carolina Overlook Road Widening UtilityAcceptanceResolution](#)

Submitted By: Michael Worner, Engineering

Reviewed By:

Joshua Baird, Water Resources Director	Approved - Jul 10 2024
Sam Johnson-Phillips, Deputy Town Clerk	Approved - Jul 10 2024
Heidi Holland, Town Clerk	Approved - Jul 10 2024

Resolution To Accept Public Utilities into The Town of Clayton Public Utility System for Maintenance – Carolina Overlook Phase 2 Road Improvements water line.

WHEREAS, public utilities (water and sewer), their easements, and applicable apparatuses are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications and Design; and

WHEREAS, Town of Clayton Engineering staff has inspected the public utility segments listed below on June 26, 2024, and recommends acceptance by Town Council for maintenance by the Town; and

WHEREAS, the public utility segments listed below have been certified and approved by the appropriate regulatory agencies; and

WHEREAS, the public utility segments listed below will be placed under a warranty period for one-year to monitor for construction deficiencies, such warranty period expiring on July 15, 2025 and

WHEREAS, prior to expiration of the one-year warranty period, Town of Clayton Engineering staff will perform a final inspection and notify the developer to correct all deficient items (if any); and

WHEREAS, upon correction of all deficient items (if any), the Town of Clayton Engineering staff will issue a final acceptance notice to the developer; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Clayton, North Carolina accept this list of public utilities and their apparatuses into the Town of Clayton Public Utility System.

SUBDIVISION	LOCATION DESCRIPTION	UTILITY TYPE AND SIZE	LENGTH
Carolina Overlook Road Widening and Realignment	Covered Bridge Rd.	12" Waterline	2839.00 LF
		Total:	2839.00LF

Duly adopted this on the 15th day of July 2024.

Jody McLeod
Mayor

ATTEST:

Heidi L. Holland, CMC, NCCMC
Town Clerk



Regular Town Council Meeting Agenda Cover Sheet

Meeting Date

July 15, 2024

Agenda Location

CONSENT AGENDA

Item Title

Resolution To Accept Greenway into The Town of Clayton Greenway System for Maintenance – Highgate Development Phase 1-4 Greenway Trail

Suggested Action

Place on Consent Agenda

Strategic Priorities Alignment



☐
Think Clayton
(Administrative)



☐
Think Arts &
Culture



☐
Think
Downtown



☐
Think
Economic
Development



☐
Think Land
Use &
Housing



☐
Think
Mobility



☐
Think Parks,
Recreation
& Natural
Resources



☐
Think Public
Services &
Infrastructure

Public Hearing: No

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

☐ Public Hearing (Required by GS)

☐ Newspaper Notice (Required by GS)

☐ Public Forum/Input Session

☐ E-News Distribution

☐ Social Media

☐ Special Mailing

☐ Public Hearing (Not Required by GS)

☐ Newspaper Notice (Not Required by GS)

☐ Press Release

☐ Website

☐ Survey

☐ None Required

Summary

Public greenways and rights-of-way are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications, and Design. The subject greenways have been verified through inspections to have been installed per the Town's Manual of Standards, Specifications, and Design. Engineering staff recommends acceptance of the subject greenways and entering the one-year warranty period.

Funding Source

N/A

Corresponding Documentation

[Highgate GreenwayAcceptanceResolution_warranty](#)

Submitted By: Michael Worner, Engineering

Reviewed By:

Joshua Baird, Water Resources Director	Approved - Jul 10 2024
Sam Johnson-Phillips, Deputy Town Clerk	Approved - Jul 10 2024
Heidi Holland, Town Clerk	Approved - Jul 10 2024

**Resolution To Accept Greenway into The Town of Clayton Greenway System for Maintenance –
Highgate Development Phase 1-4 Greenway Trail**

WHEREAS, public greenways are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications and Design; and

WHEREAS, Town of Clayton Engineering staff has inspected the greenway listed below and recommends acceptance by Town Council for maintenance by the Town; and

WHEREAS, the greenway segment listed below will be placed under a warranty period for one-year to monitor for construction deficiencies, such warranty period expiring on July 15, 2025; and

WHEREAS, prior to expiration of the one-year warranty period, Town of Clayton Engineering staff will perform a final inspection and notify the developer to correct all deficient items (if any); and

WHEREAS, upon correction of all deficient items (if any), the Town of Clayton Engineering staff will issue a final acceptance notice to the developer; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Clayton, North Carolina accept the greenway segment into the Town of Clayton Greenway System.

SUBDIVISION	Location	LENGTH
Highgate Development	All public greenway within Highgate Phase 1-4 development.	1.24 Miles
Highgate Development	Covered Bridge Rd	0.21 Miles
	Total:	1.45 Miles

Duly adopted this the 15th day of July 2024

Jody McLeod
Mayor

ATTEST:

Heidi L. Holland, NCCMC
Town Clerk



Regular Town Council Meeting Agenda Cover Sheet

Meeting Date

July 15, 2024

Agenda Location

CONSENT AGENDA

Item Title

Resolution To Accept Greenways into The Town of Clayton Greenway System for Maintenance – Carolina Overlook Phase 1 Greenway Trail

Suggested Action

Place on Consent Agenda

Strategic Priorities Alignment



☐
Think Clayton
(Administrative)



☐
Think Arts &
Culture



☐
Think
Downtown



☐
Think
Economic
Development



☐
Think Land
Use &
Housing



☐
Think
Mobility



☐
Think Parks,
Recreation
& Natural
Resources



☐
Think Public
Services &
Infrastructure

Public Hearing: No

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

☐ Public Hearing (Required by GS)

☐ Newspaper Notice (Required by GS)

☐ Public Forum/Input Session

☐ E-News Distribution

☐ Social Media

☐ Special Mailing

☐ Public Hearing (Not Required by GS)

☐ Newspaper Notice (Not Required by GS)

☐ Press Release

☐ Website

☐ Survey

☐ None Required

Summary

Public greenways and rights-of-way are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications, and Design. The subject greenways have been verified through inspections to have been installed per the Town's Manual of Standards, Specifications, and Design. Engineering staff recommends acceptance of the subject greenways and entering the one-year warranty period.

Funding Source

N/A

Corresponding Documentation

[Carolina Overlook Ph. 1_GreenwayAcceptanceResolution_warranty](#)

Submitted By: Michael Worner, Engineering

Reviewed By:

Joshua Baird, Water Resources Director	Approved - Jul 10 2024
Sam Johnson-Phillips, Deputy Town Clerk	Approved - Jul 10 2024
Heidi Holland, Town Clerk	Approved - Jul 10 2024

**Resolution To Accept Greenways into The Town of Clayton Greenway System for Maintenance –
Carolina Overlook Phase 1 Greenway Trail**

WHEREAS, public greenways are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications and Design; and

WHEREAS, Town of Clayton Engineering staff has inspected the greenway listed below and recommends acceptance by Town Council for maintenance by the Town; and

WHEREAS, the greenway segment listed below will be placed under a warranty period for one-year to monitor for construction deficiencies, such warranty period expiring on June 17, 2025; and

WHEREAS, prior to expiration of the one-year warranty period, Town of Clayton Engineering staff will perform a final inspection and notify the developer to correct all deficient items (if any); and

WHEREAS, upon correction of all deficient items (if any), the Town of Clayton Engineering staff will issue a final acceptance notice to the developer; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Clayton, North Carolina accept the greenway segment into the Town of Clayton Greenway System.

SUBDIVISION	Location/Street		LENGTH
Carolina Overlook Phase 1	Covered Bridge Rd	Station # 0+00 to 19+72	0.36 Mike
Carolina Overlook Phase 1	O'Neil St.	Station# 0+00 to 10+44	0.20 Mile
Total:			0.56 Mile

Duly adopted this the 15th day of July 2024

Jody McLeod
Mayor

ATTEST:

Heidi L. Holland, NCCMC
Town Clerk



Regular Town Council Meeting Agenda Cover Sheet

Meeting Date

July 15, 2024

Agenda Location

CONSENT AGENDA

Item Title

Johnston County Emergency Services Interlocal Agreement for Provision of Fire Protection Services

Presenter(s)

David Ranes, Fire Chief

Suggested Action

Place on Consent Agenda

Suggested Action (2): Approval of Agreement - Agreement requires council approval and signing by the Mayor.

Strategic Priorities Alignment



☐
Think Clayton
(Administrative)



☐
Think Arts &
Culture



☐
Think
Downtown



☐
Think
Economic
Development



☐
Think Land
Use &
Housing



☐
Think
Mobility



☐
Think Parks,
Recreation
& Natural
Resources



☐
Think Public
Services &
Infrastructure

Public Hearing: No

Applicable General Statute Number: 160A-460

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

☐ Public Hearing (Required by GS)

☐ Public Hearing (Not Required by GS)

☐ Newspaper Notice (Required by GS)

☐ Newspaper Notice (Not Required by GS)

- ☐ Public Forum/Input Session
- ☐ E-News Distribution
- ☐ Social Media
- ☐ Special Mailing

- ☐ Press Release
- ☐ Website
- ☐ Survey
- ☒ None Required

Summary

This ILA renews the agreement between the Town of Clayton and Johnston County for providing emergency fire, first responder and technical rescue services to the unincorporated areas of Johnston County within the Claytex Fire Insurance District. This ILA outlines criteria that the Clayton Fire Department must adhere to, in order to receive compensation for these services. This ILA is scheduled to become effective July 1, 2024 and expires June 30, 2025.

Background/History

This is a long standing agreement, where the Clayton Fire Department has historically provided fire/first responder/technical rescue coverage to the Claytex Fire Insurance District. The Town receives compensation through the fire tax for the district.

Recommendation

Staff recommends that Council approve the renewal of this ILA between the Town and Johnston County.

Funding Source

N/A

Corresponding Documentation

[Interlocal Agreement](#)

[Overview Letter](#)

[Aid Agreement for Fire Protection](#)

[Appendix B](#)

Submitted By: David Ranes, Fire Department

Reviewed By:

David Ranes, Fire Chief

Rich Cappola, Town Manager

Heidi Holland, Town Clerk

Approved - Jun 27 2024

Approved - Jul 10 2024

Approved - Jul 10 2024

JOHNSTON COUNTY EMERGENCY SERVICES

120 S. Third Street | PO Box 530 | Smithfield, NC 27577



Kevin Hubbard
Emergency Services Director

Main Office Phone: (919) 989-5050 | Fax: (919) 989-5052

NORTH CAROLINA JOHNSTON COUNTY

INTERLOCAL AGREEMENT FOR PROVISION OF FIRE PROTECTION SERVICES

This Agreement (sometimes referred to as "Contract"), made and entered into this the first day of July, 2024, by and between County of Johnston, a political subdivision of the State of North Carolina, hereinafter referred to as the "County," and the Town of Clayton, a body politic and corporate of the State of North Carolina, hereinafter referred to as the "Town" or "Contractor";

WHEREAS, the Town and the County are authorized pursuant to N.C. General Statute § 160A-460, *et seq.*, to enter into an interlocal agreement; and

WHEREAS, the Town and the County wish to enter into such an agreement by which the County will assess and collect a special fire tax and the Town will provide certain fire protection services as described herein.

Now therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties hereto contract and agree as follows:

- 1) The County agrees that it will cause to be assessed or levied a special fire tax within statutory limits and will collect said fire tax on an ad valorem basis on property within the Claytex Fire Insurance District (hereinafter the "District").
- 2) The Town shall submit in writing to the Johnston County Fire Marshal an adopted budget approved by the Town by the established deadline each year.
- 3) "Fire Department" as used herein refers to the Town, acting by and through its Fire Department.
- 4) Funds collected by the County as a result of said special fire tax shall be distributed to the town in accordance with the approved Claytex Fire Service District rate for FY24 levied per hundred dollars valuation of all real property and personal property in the Claytex Fire Insurance District, plus the supplemental funding amount assigned to the Fire Department, both of which are shown in the Johnston County Fire Service Supplemental Funding Matrix attached hereto as Exhibit 1 and the provisions established by the Johnston County Finance Office.
- 5) Fire Protection Service District (N.C. General Statute 153A-301) funds levied and collected by the County and paid to the Fire Department by the County shall be used exclusively for fire department operations to provide fire protection and emergency services in the District, whether within or outside the Town's corporate boundaries, and other areas of response as dispatched and to meet the standards established by this Agreement.
- 6) The Fire Department will furnish fire protection and related emergency services pursuant to the standards set forth by the North Carolina Department of Insurance, County, and all other pertinent federal, state, and local laws and regulations within the Fire District (sometimes referred to herein as "primary service area") and shall provide the necessary equipment, personnel, and those things necessary for furnishing such protection in the District. The

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Emergency Services Director

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District is defined in the map of the Fire Insurance District on record with the Clerk to the Johnston County Board of Commissioners and in the GIS/Land Records Management of Johnston County. The services shall be in accordance with minimum standards set forth in this Agreement and all future amendments adopted in accordance with paragraph 19 of this Agreement. The Fire Department shall furnish said fire protection without charge to all persons and property located in the District in an efficient and competent manner. This provision shall not prohibit the Fire Department from recouping costs and expenses from incidents or from entering into contracts with the Federal, State, or local governments or utility companies for the provision of emergency protection services for a fee, or from applying for and/or receiving any donations, grants, or contributions of any kind, whether governmental or private.

- a. The Fire Department shall provide fire protection and related emergency services from the following location(s); having been inspected by the North Carolina Office of State Marshal and determined to meet or exceed the minimum requirements for a rated and certified district:
 - i. Station 1
 1. 325 W Horne Street
Clayton, NC 27520
 - ii. Station 2
 1. 800 NC Highway 42 E
Clayton, NC 27527
- 7) Fire Department agrees that County has the right to inspect all books and accounts of Fire Department at any time. Said inspection shall be conducted by the Johnston County Board of Commissioners through the Johnston County Fire Marshal, the Johnston County Finance Officer, or other designees of the Johnston County Board of Commissioners. The Fire Department shall furnish all applicable materials and financial statements for the purpose of the annual audit conducted by the Town in conformity with General Accepted Accounting Principles or other comprehensive basis of accounting. The Town shall follow the applicable statutory procedures for letting of public contracts for fire apparatus, equipment, and construction as may be amended by the North Carolina Legislature from time to time. Fire Department shall maintain an accurate inventory of any property with a purchase price of \$5,000.00 or greater purchased in whole or in part with County Fire District funds for the purpose of providing and furnishing fire protection services to the Fire District pursuant to this Agreement.
- 8) If any condition of this Agreement is not being fulfilled by Fire Department to the satisfaction of County, in County's sole discretion, the Johnston County Finance Officer has the right to withhold any and all funds to be paid to Fire Department under this Agreement at any time and until such time as the Fire Department complies with the terms of this Agreement. If Fire Department refuses or fails to provide fire protection services, facilities, or functions as contemplated under this Agreement and to the sole satisfaction of County, the Johnston County Fire Marshal shall investigate the cause of said refusal or failure. During the investigation by the Johnston County Fire Marshal, County may withhold any and all funds due and payable to Fire Department. If the investigation by the Johnston County Fire Marshal determines that Fire Department has refused or failed to perform the duties and obligations of it as required herein, and certifies the results of the investigation to the County Manager, the County Manager may instruct the Finance Officer to withhold any and all funds to be aid to Fire Department under this Agreement until a resolution regarding the refusal or

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failure to perform is reached by the parties. If a resolution is unable to be reached by the parties, County, in its sole discretion, may withhold any and all funds to be paid to Fire Department under this Agreement, terminate this Agreement for cause, or take any other such action as County deems necessary to protect the citizens of the District. Fire Department's failure to file reports required of it to any Federal, State, or local authority shall be grounds for County to terminate this Agreement with Fire Department for cause. If this Agreement is terminated by County for cause, Fire Department shall be liable to County for any and all funds appropriated and paid to Fire Department during the fiscal year in which the termination occurs. Additionally, Fire Department shall not be relieved of its obligations to County under paragraph (7) of this Agreement. Nothing herein shall affect Fire Department's ultimate rights to payments, or County's responsibility for payments, as outlined herein for services actually rendered by Fire Department prior to the effective date of any termination. Nothing herein shall prevent County and Fire Department, in the event of a termination of this Agreement for any reason, from entering into an agreement to provide services beyond the effective date of any such termination.

- 9) The Fire Department shall obtain and keep in force during the term of this contract the following minimum insurance coverage:
 - a. Worker's Compensation: Coverage for all paid and volunteer workers meeting the statutory requirements of the State of North Carolina;
 - b. Comprehensive General Liability, Malpractice, and Errors and Omissions: Coverage with minimum limits of \$1,000,000.00 per occurrence, \$1,000,000.00 aggregate combined single minimum for bodily injury liability and property damage liability;
 - c. Business Auto Policy: Coverage with minimum limits of \$1,000,000.00 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired, and non-owned vehicles and employee non-ownership.
 - d. Management or Directors and Officers Liability: Coverage with minimum limits of \$1,000,000.00 per claim and \$2,000,000.00 aggregate.
 - e. Umbrella Liability: Coverage with a minimum limit of \$1,000,000.00 with underlying coverage of auto liability, general liability, employer's liability, and \$1,000,000.00 aggregate.
 - f. County as an Additional Insured: County of Johnston shall be named as an additional insured on all policies of insurance required hereunder. Fire Department shall furnish County a certificate of insurance annually.
 - g. Indemnity Agreement: Fire Department shall and hereby agrees to indemnify and save harmless County, from any and all liability and expenses, including attorney's fees, court costs, and other costs incurred by County caused by the negligent acts or omissions of Fire Department, its volunteers, agents and employees.
 - h. Nothing contained herein shall be construed as a waiver of immunity by the County.
- 10) The Fire Department shall provide services within the District (N.C. General Statute 153A-233) and maintain a minimum of a 9S/E rating or better with the North Carolina Department of Insurance, Office of State Fire Marshal. The Fire Department, shall continuously comply with all applicable laws, ordinances, and State regulations. Fire Department shall submit to the Johnston County Fire Marshal a written plan outlining how it will maintain or upgrade its current insurance rating when requested by the Johnston County Fire Marshal.

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- 11) The Fire Department shall use reporting software supplied by Johnston County. The following information is required to be reported in the reporting software to be used for compiling reports: 1. Incident; 2. Staff; 3. Hydrants Testing and Maintenance; 4. Training. Fire Incident Reports shall be completed, utilizing the software provided by County, by the 10th day of the month showing completion of the reports for the previous month. The Fire Department shall keep all reports and records on site at Contractor's principal place of business for at least five years from the creation date. All mandatory State and County reports and rosters shall be submitted to the appropriate authority by the requested deadline.
- 12) The Fire Department shall provide annually to the Johnston County Fire Marshal's Office a current and complete roster of members of the Fire Department to include contact numbers for the Chief and Assistant Chief(s).
- 13) The Fire Department agrees to provide automatic and mutual aid services to other emergency services providers in Johnston County. The Fire Department understands that other agencies will maintain their own liability policies and be responsible for their own expenses. The Fire Department further agrees that it will be responsible for its own expenses while responding to a request for mutual aid to another agency within the county. The current automatic aid agreement is included in Appendix A of this contract.

In areas where the fire district has been extended to six miles, the Fire Department agrees to maintain agreements with adjoining districts to respond with a minimum of one apparatus capable of transporting a minimum of 1,000 gallons of water to all alarms involving reported structure fires. This apparatus will be dispatched simultaneously with the department within whose district the incident occurs.
- 14) The Fire Department shall obtain a criminal history record check of applicants to and current members of Fire Department in accordance with N.C.G.S. Sect 143B-943 and applicable North Carolina law, as may be amended from time to time.
- 15) The following minimal performance standards are agreed upon by the County, Town, and the Fire Department and are part of this contract:
 - a. The Fire Department shall comply with the procedures for radio communications and established protocols for the dispatch of emergencies as defined by the Johnston County Communications Center Protocols.
 - b. The Fire Department officer in charge at all fire scenes shall attempt to determine the origin and cause of every fire. When the officer in charge cannot determine the origin and cause of the fire, or where significant injury or death occurs related to the fire, or if the cause is suspected to be of an incendiary nature, the officer in charge shall request assistance from the Johnston County Fire Marshal's Division.
 - c. The Fire Department shall keep all records on site for minimum period of five (5) years. These records include all those "Records and Documents" required to be maintained in order to meet and/or retain 9S classification, as published in that memo entitled "Requirements to Meet the 9S Rating for Initial Certification/Re-Inspection of Fire Departments in North Carolina," or any superseding memorandum or directive,

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published by the Office of the State Fire Marshal. All State and County required reports and rosters shall be submitted by the requested deadlines.

- d. The Fire Department shall adopt a standard operating guideline that addresses the number of firefighters required on all types of fire calls. A current, valid copy of the Contractor's guideline shall be kept on file with the Johnston County Fire Marshal. The Fire Department shall place at least four (4) personnel on the scene to operate at least one (1) pumper on all structure fire calls.
- a. The Fire Department shall have the minimum standard training requirements, as established by the State of North Carolina, for providing fire, rescue, and emergency management services. The Fire Department shall maintain training levels in accordance with National Incident Management System (NIMS) directives.
- e. The Fire Department shall participate in at least two (2) or more county wide mutual aid trainings each year.
- f. The Fire Department shall develop a pre-fire incident survey and update it annually for all commercial buildings within the Fire Protection Service District. Facilities that should be given priority are those buildings displaying NFPA 704 placards, as well as hazardous, institutional, and assembly occupancies. The Fire Department agrees to cooperate with local fire code enforcement officials to determine hazards and occupancies. Upon request, the Johnston County Fire Marshal or his designee shall assist the Fire Department in developing pre-fire incident surveys for buildings within the Johnston County Fire Marshal's fire code enforcement service area.
- g. If pressurized fire hydrants are located within the fire district, the Fire Department shall adhere to the guidelines established by the Johnston County Public Utilities Department for the flowing of hydrants. The Fire Department shall immediately report any malfunctions or damage to hydrants to the entity owning the water system. The Fire Department shall conduct fire hydrant testing and maintenance on not less than an annual basis. Testing shall ensure that every wet and dry fire hydrant in the Fire Protection Service District is flushed and checked for accessibility, functionality, visibility, and operation. Records of fire hydrant tests and maintenance conducted by the Fire Department shall be completed and maintained in compliance with the North Carolina Rating System.
- h. The Fire Department shall follow the Johnston County Emergency Operations Plan when responding to an emergency or disaster.
- i. During a declared State of Emergency affecting the County, the Fire Department shall assist, within the limits of its personnel and equipment and capabilities and with deference to its primary service area, to the extent possible with the following services: 1) Debris removal from roadways; 2) Traffic Control; 3) Alert and notification; 4) Search and rescue; 5) Evacuation; and 6) other life saving and property protection measures as necessary. Request for additional assistance outside the primary service area shall be directed to the Fire Chief or designee. All operations shall be in accordance with the Johnston County Emergency Operations Plan.

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- j. The Fire Department should have a public fire/life safety education program or similar activities for, at a minimum, educating persons regarding life safety from fire.
- k. When determining the need and location of additional facilities (fire stations, etc.), the Fire Department shall participate in a planning process involving the County Fire Marshal which evaluates, at a minimum, the needs of the department, the effects on property owners, the effects on insurance grading, and the impacts on adjoining fire districts. The Fire Department shall follow the procedure outlined in the Johnston County Fire Service Station Location Request Policy. The policy is attached as Exhibit 2 of this contract.
- l. Each Fire Department may elect to voluntarily participate in certain services. Each department that provides these services shall be contracted or franchised for the operation of such service, pursuant to the rules set forth by the Johnston County Board of Commissioners. If the Fire Department has chosen to participate in any of these programs, the agreements can be found as Appendices of this contract:

SERVICE

Aid Agreement for Fire Protection
Medical Services
Rescue Services
Cardiac Arrest Assistance Agreement

APPENDIX

A
B
C

- 16) This agreement shall become effective the first day of July 2024, and remain in effect until June 30, 2025, subject to the continued legal existence of the District and the Fire Department, and further subject to the termination provisions of paragraph 8 and 18 hereof.
- 17) This agreement may not be transferred or assigned by the Town, nor may the services contracted for herein be sub-contracted to other parties unless approved by the Johnston County Board of Commissioners.
- 18) This contract may be terminated by either party upon advance notification to the other party by certified mail at least sixty (60) days prior to termination.
- 19) Either party may propose an amendment to this agreement by submitting the amendment in writing at least sixty (60) days in advance of the amendment's proposed effective date. Amendments to this agreement must be approved by both the County and the Town prior to becoming effective.
- 20) If any part of this Contract is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that part shall be deemed a separate, distinct and independent provision, and the holding shall not affect the validity of the remaining portions of this Contract.
- 21) This contract is not intended to serve for the benefit of any third party. The rights and obligations contained herein belong exclusively to the entities that are parties hereto and no third party shall rely upon anything contained herein as a benefit to that third party.

JOHNSTON COUNTY EMERGENCY SERVICES

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- 22) The terms and provisions herein contained constitute the entire agreement by and between the County and the Town and shall supersede all previous communications, representations, or agreements, either oral or written between the parties hereto with respect to the subject matter hereof.
- 23) **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained in this contract shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever; or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Fire Department to the County that may arise under the law or under the terms of this Agreement.
- 24) **IRAN DIVESTMENT AND DIVESTMENT FROM COMPANIES BOYCOTTING ISRAEL.** By signing this agreement Contractor certifies that as of the date of execution they are not listed on the Final Divestment List created by the NC Office of State Treasurer pursuant to NCGS 147 Article 6E, Iran Divestment Act, Iran Divestment Act Certification. Contractor shall not utilize any subcontractor that is identified on the Final Divestment List. Any organization defined under NCGS 147-86.80(2), Divestment from Companies Boycotting Israel, shall not engage in business totaling more than \$1,000 with any company or business that boycotts Israel. A list of companies that boycott Israel is maintained by the NC Office of State Treasurer, pursuant to NCGS 147-86.81(a)(1). Any company listed as boycotting Israel is not eligible to do business with any State agency or political subdivision of the State.
- 25) **E-VERIFY.** Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
- 26) **NOTICES:** All notices or other communications which shall be made pursuant hereto shall be in writing and shall be deemed to be given and received (a) when hand delivered to the address stated below, (b) three (3) days after being mailed to the address stated below, postage prepaid by certified or registered mail of the United States, return receipt requested to the address set forth below:

TO FIRE DEPARTMENT:

Town of Clayton Fire Department
Post Office Box 879
Clayton, NC 27520
Attn: Fire Chief

TO COUNTY:

Johnston County Emergency Services
Post Office Box 530 (mail)
2875 US-70 BUS (physical)
Smithfield, North Carolina 27577
Attn: Johnston County Fire Marshal

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With copy to:

County of Johnston
Post Office Box 1049 (mail)
Courthouse 206-B
207 E. Johnston Street (physical)
Smithfield, North Carolina 27577
Attn: County Attorney

- 27) Either party to this Contract may change its designated person or designated address at any time and from time to time by giving notice of such change to the other party in the manner set forth above.

**JOHNSTON COUNTY
EMERGENCY SERVICES**

120 S. Third Street | PO Box 530 | Smithfield, NC 27577



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Emergency Services Director

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IN TESTIMONY WHEREOF, the County has caused this instrument to be executed by the Chairman of the Board of County Commissioners and attested by the Clerk to the Board of County Commissioners, and **Town of Clayton** has caused this instrument to be signed in its name by its Mayor, attested by its Clerk, all by the authorization of their respective Boards duly given.

Johnston County Board of County Commissioners

By: _____
Chairman: R.S. (Butch) Lawter, Jr.

Attest:

Clerk

Town of Clayton

By: _____
Mayor

Attest:

Clerk

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

By: _____
J. Chad McLamb, Finance Officer

JOHNSTON COUNTY EMERGENCY SERVICES

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June 13, 2024

Town of Clayton Fire Department
325 W Horne St
Clayton, NC 27520

Dear Chief Ranes:

The changes outlined below have been made to our fire service contract for the dates of July 1, 2024 to June 30, 2025. You or your designee received a copy of the proposed 2024-2025 contract at the May 30th Chief Association Meeting in the Emergency Operations Center. **The current contract will expire on June 30, 2024, coinciding with the execution of this new contract.**

Summary of Changes to 2024-2025 Fire Protection Contract

- Throughout – Updated 2023-2024 to 2024-2025 as appropriate.
- Section 1 – Changed language to omit the need to consult with the local fire tax board as the Johnston County Fire Protection Service District (FPSD) tax rate will be set by the Johnston County Board of Commissioners. Reminder that the individual tax boards were dissolved during the creation of the Johnston County FPSD.
- Section 2 - Language was edited to reflect changes where the local fire tax board would not need to request a tax rate for the district. Fire Departments will need to submit a budget approved by their local governing board. Previous contract required a proposed budget to be submitted.
- Section 3
 - a) Language changed to reflect the funding process that was outlined in the fire service strategic plan so that funding is based on the current tax rate (approved FY24) of the service district plus supplemental funding amount generated by the Funding Matrix.
 - b) Language deleted due to Funding Matrix now being incorporated into the Johnston County Fire Protection Service District tax rate.
- Section 4 – Language deleted, Funding Matrix now being incorporated into the Johnston County Fire Protection Service District tax rate.
- Section 5 - Language updated from Fire Protection Service District to Fire Insurance District.

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- o Paragraph reference was changed from 19 to 20.
 - o a) Included language specifying location of approved and certified fire station locations within Johnston County.
- Section 11 - Updated appropriate verbiage from Statues to Statutes. Omitted language due to redundancy.
- Section 16
 - o b) Added "or where significant injury or death occurs related to the fire,"
 - o l) Added language referencing Fire Station Location Request Policy.

NOTE: Interlocal/Municipal Contract items may be numbered differently, but the changes are the same.

Enclosed, you will find two copies of your 2024-2025 fire contract for your department's approval signatures. Please examine this document and notify me immediately if there are any questions or discrepancies. The following actions are required of your agency

1. Sign Page 8 of the contract document as designated for approval (two signatures).
2. **Return the signed documents to our office once signed.**

Once approved with all signatures, one of the original signed documents will be returned to you. Again, if you have any questions, please do not hesitate to call me.

Sincerely,

Ryan L. Parker

Ryan L. Parker
Fire Division Chief/Fire Marshal

Enclosures

AID AGREEMENT FOR FIRE PROTECTION

NORTH CAROLINA

JOHNSTON COUNTY

This Aid Agreement for Fire Protection ("Agreement") is made and entered into this the 1st day of June, 2022 by and between the Town of Benson, Town of Clayton, Town of Selma, Town of Smithfield, and Town of Zebulon, all municipal corporations and the 50-210 Community Fire Department, Inc., Antioch Fire Department, Incorporated, Bentonville Volunteer Fire Department, Inc., Bethany Rural Fire Department of Johnston County, Inc., Blackman's Crossroads Volunteer Fire Department, Inc., Brogden Rural Fire Department, Inc., Cleveland Fire Department, Incorporated, Corinth-Holder Volunteer Fire Department, Inc., Elevation Fire Department, Incorporated, Four Oaks Volunteer Fire Department, Inc., Garner Volunteer Fire/Rescue Incorporated, Kenly Volunteer Fire Department, Inc., Meadow Volunteer Fire Department, Inc., Micro Volunteer Fire Department, Inc., Nahunta Volunteer Fire Department, Inc., Newton Grove Fire & Rescue, Inc., North Side Fire & Rescue Inc., Oakland Volunteer Fire Department, Inc., Pine Level Volunteer Fire Department, Inc., Princeton Volunteer Fire Department, Incorporated, Strickland Crossroads Fire Department, Incorporated, West Johnston Fire Department, Incorporated, Wilson's Mills Fire and Rescue Department, all corporations existing under the laws of the State of North Carolina.

WITNESSETH:

THAT, WHEREAS, the General Assembly of North Carolina did enact into law an act to authorize mutual aid assistance between fire departments whereby full authority may be exercised for fire departments to send firefighters and apparatus beyond the territorial limits which they normally serve, said act having been codified as Section 58-83-1 of the General Statutes of North Carolina;

WHEREAS, the purpose of this agreement is to provide each of the parties hereto, through their mutual cooperation, a pre-determined plan by which each of them might render aid to the other in case of conflagration, holocaust, civil disorder, natural disaster, or other emergency, any of which demand fire services to a degree beyond the existing capabilities of either party.

WHEREAS, it is deemed to be in the public interest for parties hereto to enter into an agreement for aid assistance in fire protection and in order to increase fire defenses and to assure proper fire control, as well as providing reserves needed to assure the community of adequate fire protection;

AID AGREEMENT FOR FIRE PROTECTION

WHEREAS, by action of the governing bodies creating and supporting aforesaid fire departments, this agreement for mutual and reciprocal aid assistance was duly authorized;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and between and among the parties hereto, it is hereby agreed as follows:

- 1) Should it become necessary to activate the terms of this agreement as herein set forth, due to conflagration, holocaust, civil disorder, natural disaster, or other emergency, the chief of either fire department shall have the implicit authority, upon notification of one of the parties to the other that such an emergency does, in fact, exist and that aid is needed, to order available apparatus, equipment and manpower into action to assist the requesting party as may be required.
- 2) It shall be the responsibility of the chief of the fire department of the responding party to ensure that all personnel responding to the request for assistance are responsible persons and that the conduct and actions of said personnel shall be the responsibility of the party sending assistance.
- 3) Each party to this agreement shall assume all liability and responsibility for damage to its own apparatus and/or equipment. The party responding shall also assume all liability and responsibility for any damage caused by its own apparatus while responding to or returning from a specific location.
- 4) The party responding under the terms of this agreement shall assume no responsibility or liability for property damaged or destroyed at the actual scene of any disorder, holocaust, conflagration, natural disaster, or other emergency due to firefighter and rescue operations, fire control tactics and strategy or other operations as may be required or ordered; said liability and responsibility shall rest solely with the party requesting such aid and within whose boundaries the property shall exist, or the incident occur.
- 5) The party who requests aid shall in no way be deemed liable or responsible for the personal property of the members of the fire department of the responding party which may be lost, stolen or damaged while performing their duties under the response terms herein.
- 6) Each party to this agreement shall assume all costs of salaries, wages, bonuses or other compensation for its own personnel that responds for duty under the terms of this agreement and shall assume all costs involving the use of apparatus, equipment, tools used specifically in response to the request for aid and shall make no charge for such use to the party requesting assistance;

AID AGREEMENT FOR FIRE PROTECTION

however, any special extinguishing agents used by the responding party from its own supply shall be paid for by the party requesting the aid upon receipt of an itemized statement of costs for such extinguishing agents.

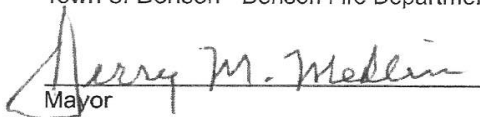
- 7) Upon receipt of a request for assistance by the officer of the fire department from the requesting party, and upon a determination by the officer of the fire department of the responding party that the request be honored without impairing the capacity to provide fire protection within its own jurisdiction, the officer of the responding fire department may take such steps as necessary to furnish apparatus, manpower and assistance to the requesting party as he/she deems appropriate. Such response shall remain solely the decision of the officer of the fire department of the responding party. Neither party to this agreement shall be bound to dispatch apparatus, equipment or personnel to the assistance of the other but every effort should be made to furnish such assistance if, in the judgment of the officer of the fire department of either party, such dispatch would not impose upon his/her own respective community a serious impairment to the fire defenses and fire protection.
- 8) The fire chief, officer-in-charge, or incident commander of the fire department in whose community or fire district where the emergency exists should in all instances be in command of the emergency as to the aspects of strategy, fire control tactics and overall direction of the operations.
- 9) Either party may, at any time, terminate this agreement, through its respective fire chief, upon the serving of a thirty-day written notice to the fire chief of the other party.
- 10) When fire department personnel are sent to respond to a request for aid pursuant to this agreement, the jurisdiction, authority, rights, privileges and immunities, including coverage under worker's compensation laws, which they have in their normal service area shall be also enjoyed by them outside their normal service area when said personnel are acting within the scope of their authority or in the course of their employment and pursuant to the terms of this agreement until completion of the entire incident, it being the intent of this agreement to preserve all authority, rights, privileges and immunities to the full extent allowed by N.C. Gen. Stat. § 58-83-1.

AID AGREEMENT FOR FIRE PROTECTION

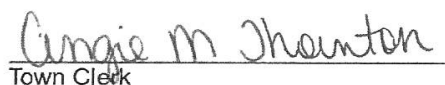
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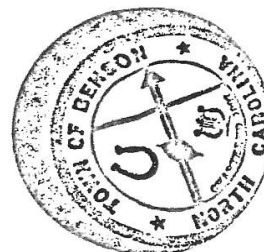
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Town of Benson - Benson Fire Department


Mayor

ATTEST:


Town Clerk

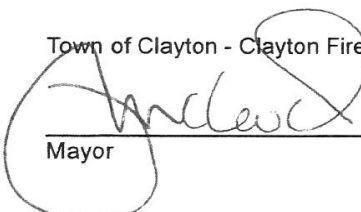


AID AGREEMENT FOR FIRE PROTECTION

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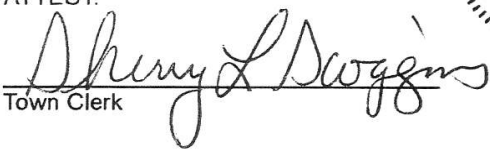
Town of Clayton - Clayton Fire Department



Mayor



ATTEST:



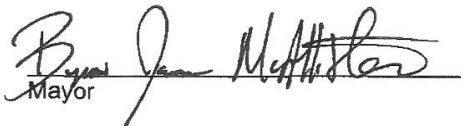
Town Clerk

AID AGREEMENT FOR FIRE PROTECTION

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Town of Selma - Selma Fire Department


Mayor

ATTEST:


Town Clerk



AID AGREEMENT FOR FIRE PROTECTION

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Town of Smithfield - Smithfield Fire Department


Mayor



ATTEST:

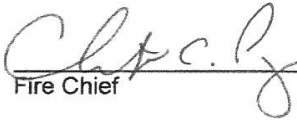
Town Clerk

AID AGREEMENT FOR FIRE PROTECTION

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Town of Zebulon - Zebulon Fire Department



Fire Chief

ATTEST:



Town Clerk

AID AGREEMENT FOR FIRE PROTECTION

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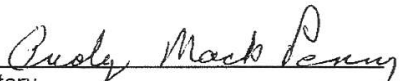
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50-210 Community Fire Department, Inc.



President

ATTEST:



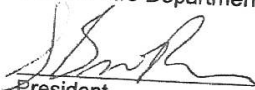
Secretary

AID AGREEMENT FOR FIRE PROTECTION

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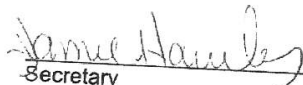
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Antioch Fire Department, Inc.



President

ATTEST:



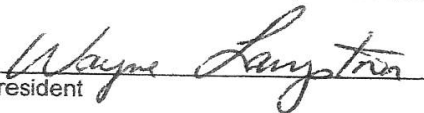
Secretary

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Bentonville Volunteer Fire Department, Inc.


President

ATTEST:

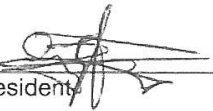

Secretary

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Bethany Rural Fire Department of Johnston County, Inc.



President

ATTEST:



Secretary

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Blackman's Crossroads Volunteer Fire Department, Inc.



President

ATTEST:



Secretary

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Brogden Rural Fire Department, Inc.

Clarence F. Norris Jr.
President

ATTEST:

Randy B. White
Secretary

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Cleveland Fire Department, Inc.



President

ATTEST:



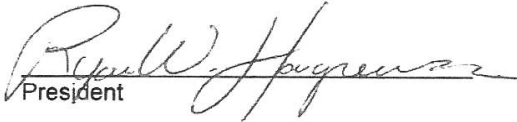
Secretary

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Corinth Holder Volunteer Fire Department, Inc.


President

ATTEST:

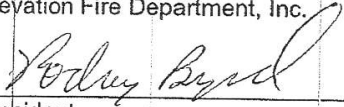

Secretary

AID AGREEMENT FOR FIRE PROTECTION

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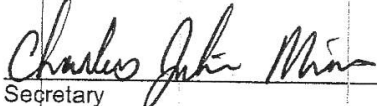
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Elevation Fire Department, Inc.



President

ATTEST:



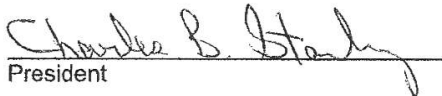
Secretary

AID AGREEMENT FOR FIRE PROTECTION

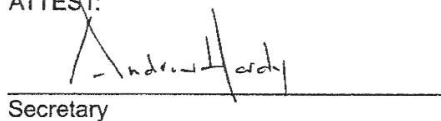
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Four Oaks Volunteer Fire Department, Inc.


President

ATTEST:

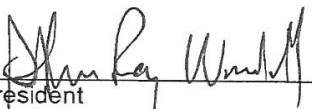

Secretary

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Garner Volunteer Fire/Rescue, Inc.



President

ATTEST:



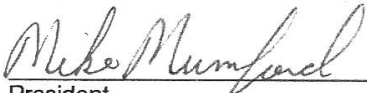
Secretary

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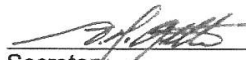
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Kenly Volunteer Fire Department, Inc.



President

ATTEST:



Secretary

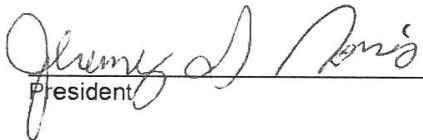


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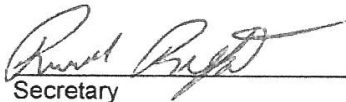
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Meadow Volunteer Fire Department, Inc.



President

ATTEST:



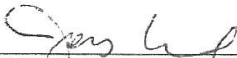
Secretary

AID AGREEMENT FOR FIRE PROTECTION

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Micro Volunteer Fire Department, Inc.



President

ATTEST:



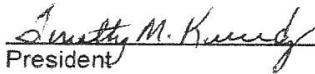
Secretary

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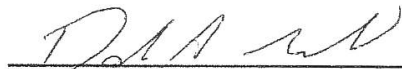
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Nahunta Volunteer Fire Department, Inc.



President

ATTEST:



Secretary

AID AGREEMENT FOR FIRE PROTECTION

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Newton Grove Fire and Rescue, Inc.



President

ATTEST:



Secretary

AID AGREEMENT FOR FIRE PROTECTION

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North Side Fire and Rescue, Inc.


President

ATTEST:

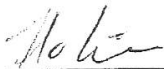

Secretary

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Oakland Volunteer Fire Department, Inc.



President

ATTEST:



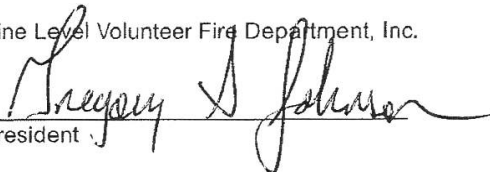
Secretary

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Pine Level Volunteer Fire Department, Inc.



President

ATTEST:



Secretary

AID AGREEMENT FOR FIRE PROTECTION

- 11) When any party contained in this agreement is providing automatic aid to another party, it is agreed to respond with a minimum of one piece of fire apparatus capable of carrying a minimum of 1,000 gallons of water or most appropriate resource as requested along with three qualified interior firefighters.

IN WITNESS WHEREOF, the municipal corporation have caused this instrument to be signed in its corporate name by its Mayors, attested by its Town Clerks and its corporate seal affixed, and, the corporations, have likewise caused this instrument to be signed in its corporate name by its President, attested by its secretary and its corporate seal affixed, all on the day and year first above written, and this agreement is executed in duplicate.

Princeton Volunteer Fire Department, Incorporated



President

ATTEST: 

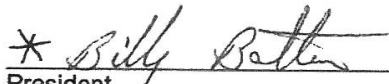
Secretary

AID AGREEMENT FOR FIRE PROTECTION

- 11) When any party contained in this agreement is providing automatic aid to another party, it is agreed to respond with a minimum of one piece of fire apparatus capable of carrying a minimum of 1,000 gallons of water along with qualified interior firefighters or most appropriate resource as requested.

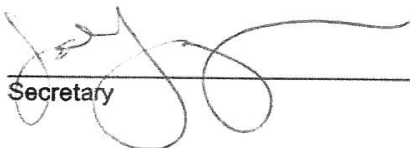
IN WITNESS WHEREOF, the municipal corporation have caused this instrument to be signed in its corporate name by its Mayors, attested by its Town Clerks and its corporate seal affixed, and, the corporations, have likewise caused this instrument to be signed in its corporate name by its President, attested by its secretary and its corporate seal affixed, all on the day and year first above written, and this agreement is executed in duplicate.

Strickland Crossroads Fire Department, Inc.

* 

President

ATTEST:



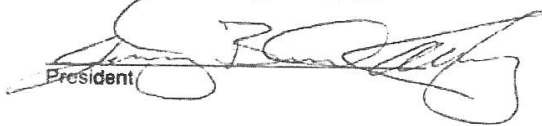
Secretary

AID AGREEMENT FOR FIRE PROTECTION

- 11) When any party contained in this agreement is providing automatic aid to another party, it is agreed to respond with a minimum of one piece of fire apparatus capable of carrying a minimum of 1,000 gallons of water along with qualified interior firefighters or most appropriate resource as requested.

IN WITNESS WHEREOF, the municipal corporation have caused this instrument to be signed in its corporate name by its Mayors, attested by its Town Clerks and its corporate seal affixed, and, the corporations, have likewise caused this instrument to be signed in its corporate name by its President, attested by its secretary and its corporate seal affixed, all on the day and year first above written, and this agreement is executed in duplicate.

West Johnston Fire Department, Inc.


President

ATTEST:

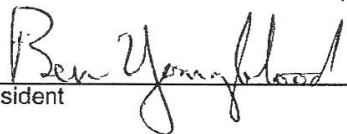

Secretary

AID AGREEMENT FOR FIRE PROTECTION

- 11) When any party contained in this agreement is providing automatic aid to another party, it is agreed to respond with a minimum of one piece of fire apparatus capable of carrying a minimum of 1,000 gallons of water along with qualified personnel or most appropriate resource as requested.

IN WITNESS WHEREOF, the municipal corporation have caused this instrument to be signed in its corporate name by its Mayors, attested by its Town Clerks and its corporate seal affixed, and, the corporations, have likewise caused this instrument to be signed in its corporate name by its President, attested by its secretary and its corporate seal affixed, all on the day and year first above written, and this agreement is executed in duplicate.

Wilson's Mills Fire and Rescue Department

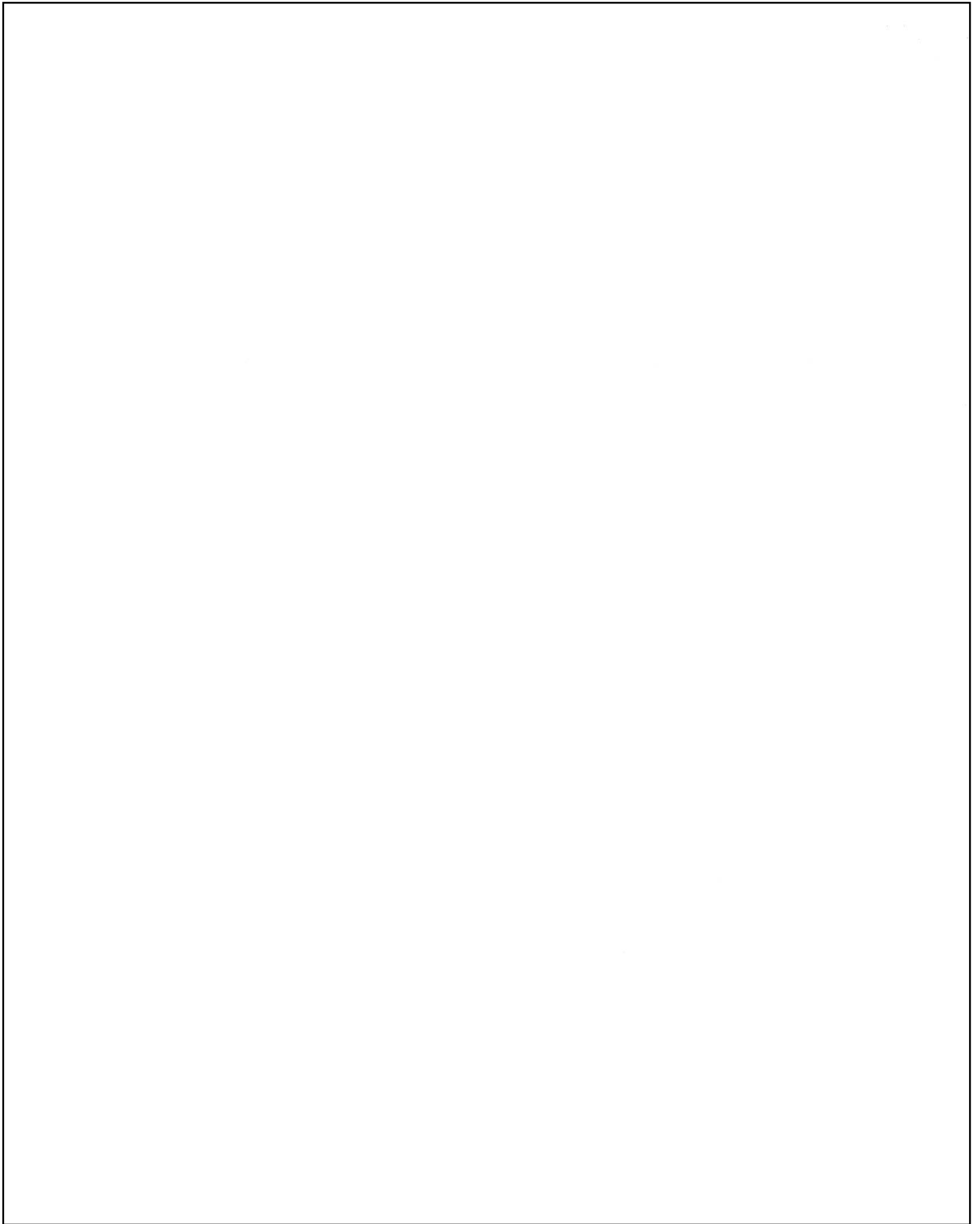


President

ATTEST:



Secretary



**JOHNSTON COUNTY
EMERGENCY SERVICES**

120 S. Third Street | PO Box 530 | Smithfield, NC 27577



Kevin Hubbard,
Emergency Services Director

Main Office Phone: (919) 989-5050 | Fax: (919) 989-5052

APPENDIX B

NORTH CAROLINA
JOHNSTON COUNTY

FIRE DEPARTMENT MEDICAL RESPONDER AGREEMENT

WHEREAS, Johnston County and all emergency medical providers desire to promote better medical care for its constituency; and,

WHEREAS, that in cases of severe life-threatening illness and/or trauma, the intervention of trained personnel at the earliest possible time can greatly enhance the chances of recovery by the victim; and,

WHEREAS, Fire Departments agreeing to participate in the Fire Department Based Medical First Response Program have been approved by the Johnston County Emergency Services Department for that purpose;

THEREFORE, let it be resolved that Clayton Fire Department – Town of Clayton agrees to become a participating party in the Johnston County Fire Department Based Medical First Response Program and that the following provisions and conditions will be in force and that the parties to this understanding agree to abide by the following:

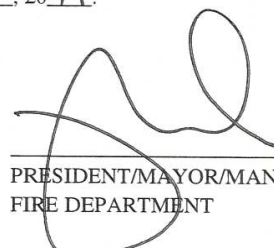
- A. The Fire Department will organize and maintain a medical responder unit that will comply with the applicable terms of the Johnston County Emergency Services EMS Division Fire Department Based Medical First Response Program Guidelines.
- B. The Fire Department will operate at the Johnston County First Responder, NC EMR or NC EMT certification level, as approved by the Johnston County EMS System per the Johnston County Emergency Services EMS Division Fire Department Based Medical First Response Program Guidelines.
- C. The Fire Department will properly document all relevant incident information into the provided Johnston County Records Management software.

This Agreement will be in effect from 7/1/19 until such time as either party terminates the agreement upon sixty (60) days written notice to withdraw.

Executed this the 3rd day of JUNE, 2019.



DIRECTOR
JOHNSTON CO. EMERGENCY SERVICES



PRESIDENT/MAYOR/MANAGER/CHIEF
FIRE DEPARTMENT

JOHNSTON COUNTY EMERGENCY SERVICES

120 S. Third Street | PO Box 530 | Smithfield, NC 27577



Kevin Hubbard,
Emergency Services Director

Main Office Phone: (919) 989-5050 | Fax: (919) 989-5052

APPENDIX C

NORTH CAROLINA
JOHNSTON COUNTY

RESCUE SERVICES AGREEMENT

WHEREAS, Johnston County and the Johnston County Fire Departments desire to provide and promote the highest level of emergency services possible for Johnston County; and,

WHEREAS, the Fire Department is currently under contract with Johnston County to provide fire protection and emergency services and is a participant in the Johnston County Mutual Aid Agreement; and,

WHEREAS, the Fire Department voluntarily agrees to accept additional emergency duties for its designated geographic area; and,

NOW THEREFORE, let it be resolved that Clayton Fire Department – Town of Clayton agrees to become a participating party in the program(s) indicated below:

☒ EXTRICATION SERVICES PROVIDER

☐ LIGHT RESCUE PROVIDER (as outlined by N.C. Assoc. of Rescue and EMS)

☐ MEDIUM RESCUE PROVIDER (as outlined by N.C. Assoc. of Rescue and EMS)

☒ HEAVY RESCUE PROVIDER (as outlined by N.C. Assoc. of Rescue and EMS)

☐ WATER RESCUE – DIVE RESCUE PROVIDER (as outlined by N.C. Assoc. of Rescue and EMS)

☐ WATER RESCUE – OPEN WATER (STILL WATER) RESCUE PROVIDER (as outlined by N.C. Assoc. of Rescue and EMS)

☒ Confined Space Rescue (as outlined by N.C. Assoc. of Rescue and EMS)

☒ High Angle Rescue (as outlined by N.C. Assoc. of Rescue and EMS)

☒ Trench Rescue (as outlined by N.C. Assoc. of Rescue and EMS)

AND THEREFORE, let it be resolved that the following provisions and conditions will be in force and that the parties to this understanding agree to abide by the following:

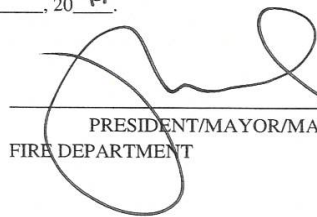
- A. The Fire Department will maintain the necessary equipment to provide the service(s) indicated above.
- B. The Fire Department will ensure that members involved are properly trained to provide the services(s) indicated above.
- C. The Fire Department will be available for response twenty-four hours daily to the extent possible, realizing that the number of responders may be limited.

This Agreement will be in effect from 7/1/19 until such time as either party terminates the agreement upon sixty (60) days written notice to withdraw.

Executed this the 30th day of JUNE, 2019.



DIRECTOR
JOHNSTON CO. EMERGENCY SERVICES



PRESIDENT/MAYOR/MANAGER/CHIEF
FIRE DEPARTMENT

**JOHNSTON COUNTY
EMERGENCY SERVICES**

120 S. Third Street | PO Box 530 | Smithfield, NC 27577



Kevin Hubbard,
Emergency Services Director

Main Office Phone: (919) 989-5050 | Fax: (919) 989-5052

NORTH CAROLINA JOHNSTON COUNTY

CARDIAC ARREST ASSISTANCE AGREEMENT

WHEREAS, Johnston County and all emergency service providers desire to promote better care for its constituency; and,

WHEREAS, that in cases of cardiac arrest, the intervention of trained personnel at the earliest possible time can greatly enhance the chances of recovery by the victim; and,

WHEREAS, the Fire Department is currently under contract with Johnston County to provide fire protection and emergency services and is a participant in the Johnston County Mutual Aid Agreement; and,

WHEREAS, the Fire Department voluntarily agrees to accept additional emergency duties for its designated geographic area; and,

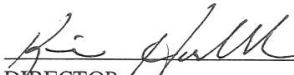
NOW THEREFORE, let it be resolved that Clayton Fire Department – Town of Clayton agrees to be dispatched to and to provide personnel for assistance with management of cardiac arrest emergencies.

AND THEREFORE, let it be resolved that the following provisions and conditions will be in force and that the parties to this understanding agree to abide by the following:

- A. The Fire Department will maintain the necessary equipment to provide this service.
- B. The Fire Department will ensure that members involved are properly trained and certified to provide this service, specifically including certification in providing cardio-pulmonary resuscitation.
- C. The Fire Department will be available for response twenty-four hours daily to the extent possible, realizing that the number of responders may be limited.
- D. The Fire Department will properly document all relevant incident information into the provided Johnston County Records Management software.

This Agreement will be in effect from 7/1/19 until such time as either party terminates the agreement upon sixty (60) days written notice to withdraw.

Executed this the 3rd day of June, 2019.



DIRECTOR
JOHNSTON CO. EMERGENCY SERVICES



PRESIDENT/MAYOR/MANAGER/CHIEF
FIRE DEPARTMENT



Regular Town Council Meeting Agenda Cover Sheet

Meeting Date

July 15, 2024

Agenda Location

CONSENT AGENDA

Item Title

TOC Project # 2017-173-SDM - Final acceptance of the public water and sewer utilities within Walton Farms subdivision, Phases 10 & 11.

Suggested Action

Adoption of Resolution

Strategic Priorities Alignment



☐
Think Clayton
(Administrative)



☐
Think Arts &
Culture



☐
Think
Downtown



☐
Think
Economic
Development



☐
Think Land
Use &
Housing



☐
Think
Mobility



☐
Think Parks,
Recreation
& Natural
Resources



☒
Think Public
Services &
Infrastructure

Public Hearing: No

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

☐ Public Hearing (Required by GS)

☐ Newspaper Notice (Required by GS)

☐ Public Forum/Input Session

☐ E-News Distribution

☐ Social Media

☐ Special Mailing

☐ Public Hearing (Not Required by GS)

☐ Newspaper Notice (Not Required by GS)

☐ Press Release

☐ Website

☐ Survey

☐ None Required

Summary

Public Utilities (water and sewer), their easements, and applicable apparatuses are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications, and Design. The subject public utilities have been verified through testing and inspections to be installed per the Town’s Manual of Standards, Specifications, and Design and have been certified and approved by the appropriate regulatory agencies. Engineering staff recommends final acceptance of the subject public utility infrastructure.

Funding Source

N/A

Corresponding Documentation

[Ph 10 & 11 Utility Final Acc Resolution 6-6-24](#)

Submitted By: Chris Rowland, Engineering

Reviewed By:

Joshua Baird, Water Resources Director	Approved - Jul 10 2024
Sam Johnson-Phillips, Deputy Town Clerk	Approved - Jul 10 2024
Heidi Holland, Town Clerk	Approved - Jul 10 2024

**RESOLUTION TO ACCEPT PUBLIC UTILITIES INTO THE TOWN OF CLAYTON PUBLIC UTILITY SYSTEM
FOR MAINTENANCE – WALTON FARMS, PHASES 10 & 11**

WHEREAS, public utilities (water and sewer), their easements, and applicable apparatuses are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications and Design; and

WHEREAS, the public utility segments listed below have been certified and approved by the appropriate regulatory agencies; and

WHEREAS, the public utility segments listed below were placed under a warranty period for one-year to monitor for construction deficiencies, which has subsequently expired and;

WHEREAS, Town of Clayton Engineering staff has inspected the public utility segments listed below on and recommends final acceptance by Town Council for operation and maintenance by the Town and;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Clayton, North Carolina accept this list of public utilities and their apparatuses into the Town of Clayton Public Utility System.

SUBDIVISION	LOCATION DESCRIPTION	UTILITY TYPE AND SIZE	LENGTH
Walton Farms	Phelps Street	6" Waterline	800
Walton Farms	Strug Street	6" Waterline	102
Walton Farms	Thorpe Street	6" Waterline	160
Walton Farms	Favre Street	6" Waterline	130
TOTAL			1,192 LF

Duly adopted this the 15th day of July 2024.

Jody McLeod
Mayor

ATTEST:

Heidi L. Holland, NCCMC
Town Clerk



Regular Town Council Meeting Agenda Cover Sheet

Meeting Date

July 15, 2024

Agenda Location

CONSENT AGENDA

Item Title

Memorandum of Agreement Among The State of North Carolina's Division of Water Resources, The Lower Neuse Basin Association Permittees, and The Lower Neuse Basin Association

Presenter(s)

James Blalock, UMC Assistant Water Resources Director

Suggested Action

Adoption of Resolution

Strategic Priorities Alignment



☐
Think Clayton
(Administrative)



☐
Think Arts &
Culture



☐
Think
Downtown



☐
Think
Economic
Development



☐
Think Land
Use &
Housing



☐
Think
Mobility



☐
Think Parks,
Recreation
& Natural
Resources



☒
Think Public
Services &
Infrastructure

Public Hearing: No

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

- ☐ Public Hearing (Required by GS)
- ☐ Newspaper Notice (Required by GS)
- ☐ Public Forum/Input Session
- ☐ E-News Distribution
- ☐ Social Media

- ☐ Public Hearing (Not Required by GS)
- ☐ Newspaper Notice (Not Required by GS)
- ☐ Press Release
- ☐ Website
- ☐ Survey

☐ Special Mailing

☒ None Required

Summary

The Town has been a member of the Lower Neuse River Basin (LNBA) since 1997, the LNBA was formed in 1994 to collect water quality data from the Neuse River and to substantiate the value of the sampling. All NPDES permits require upstream/downstream sampling from their discharge points, the LNBA has made it possible for the sample points to be more strategic in location so that a true representation of the water quality of the river is analyzed. Being a member of this association also helps the Town with it's NPDES permit limits by allowing them to vary from what our permit states. Should we leave this association, we would then be required to sample the river upstream and downstream of our location three times a week, and we would have to meet lower limits (that are in our permit) on contaminants such as phosphorus. Staff recommend continuing membership within the partnership and request Town Council approve and authorize the Town Manager to sign the MOA.

Funding Source

N/A

Corresponding Documentation

[LNBA DWR MOA 2024-2029 draft 4-24-2024](#)

[2024-76 MOA LNBA resolution](#)

Submitted By: James Blalock, Public Works/Operations

Reviewed By:

Joshua Baird, Water Resources
Director

Approved - Jul 10 2024

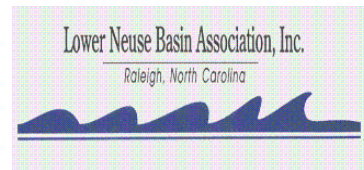
Rich Cappola, Town Manager

Approved - Jul 10 2024

Heidi Holland, Town Clerk

Approved - Jul 10 2024

**Memorandum of Agreement
Among
The State of North Carolina's Division of Water Resources,
The Lower Neuse Basin Association Permittees,
and
The Lower Neuse Basin Association**



**Effective:
August 1, 2024 through July 31, 2029**

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) is entered into this 1st day of August 2024, by and among the NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY'S DIVISION OF WATER RESOURCES (DWR), the NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) DISCHARGERS in the Lower Neuse River Basin who have voluntarily executed this MOA (LNBA PERMITTEES), and the LOWER NEUSE BASIN ASSOCIATION (LNBA), a non-profit corporation whose members include the LNBA PERMITTEES (see Table 1).

WITNESSETH, THAT,

Whereas, the LNBA Permittees have instream (e.g., upstream and downstream) monitoring requirements in their respective NPDES permits pursuant to Federal and State law.

Whereas, the DWR has obligations to collect water quality data, which it uses for various purposes, including but not limited to enforcement, regulatory, scientific, and educational purposes.

Whereas, DWR has discretion in determining instream sampling locations in the context of NPDES permitting.

Whereas, the LNBA Permittees are willing to combine their resources to provide for a more efficient and effective method for instream monitoring to meet the requirements of their respective NPDES permits.

Whereas, all parties to this MOA benefit from the collection of instream water quality data in the Lower Neuse River Basin.

NOW, THEREFORE, in consideration of mutual benefits that will accrue to each party, the parties agree as follows:

Purpose:

- The purpose of this MOA is to:
 - 1) facilitate the collection of instream water quality data for parameters that are of interest to all parties to this MOA;
 - 2) facilitate the collection of instream water quality data at preferred sampling locations (i.e., to reduce duplicative sampling locations and to sample at locations that would otherwise not be sampled) which are mutually agreeable to the both parties;
 - 3) facilitate the collection of instream water quality data at frequencies that provide useful information to all parties to this MOA;
 - 4) leverage the resources available to the parties of this MOA for instream sampling; and
 - 5) provide all parties with consistent instream water quality data for the Neuse Basin.

General Provisions:

- This MOA only applies to the collection and submission of instream water quality monitoring data for the parameters, locations, and frequencies identified in Table 2.
- Nothing in this MOA precludes DWR from requesting LNBA Permittees or LNBA to take additional samples. Similarly, there is nothing in this MOA that precludes LNBA Permittees or LNBA to voluntarily conduct and submit sampling data to DWR in addition to what is set forth in Table 2, including hardness and emerging contaminants.

- This MOA does not relieve LNBA Permittees from complying with other NPDES permit requirements, including influent and effluent monitoring requirements, or other Federal and State laws, including State water quality standards.
- By signing this MOA, the LNBA PERMITTEES authorize the LNBA to act as their agent and on their behalf in collecting and submitting instream monitoring data to DWR for the parameters listed in Table 2.
- The LNBA PERMITTEES are exempted from instream water quality monitoring for certain parameters *as specified in their individual NPDES permits*. If there is any discrepancy or conflict between this MOA and an LNBA Permittee's NPDES permit, the LNBA Permittee's NPDES permit shall prevail.

Collection of instream water quality data:

- The LNBA and its agents shall perform the collection and analyses of the instream water quality monitoring data for the parameters, locations and frequencies specified in Table 2 of this MOA.
- The LNBA will contract for the performance of the monitoring activities with a laboratory appropriately certified by DWR for the required laboratory and field analysis.
- The LNBA and its agents shall comply with the requirements and protocols set forth in Tables 3 and 4 located in Appendix A.

Submission of (monthly) instream water quality data to DWR:

- The LNBA shall submit the monitoring results to DWR on behalf of LNBA PERMITTEES.
- The LNBA shall submit the water quality data to the DWR within 90 days of the end of the month in which the sampling was performed to the Coalition Coordinator at coalitioncoordinator@deq.nc.gov.
- The LNBA or its agents shall submit the water quality data to the DWR in a format set forth in Table 5 located in Appendix B of this MOA and preferably in Microsoft® Excel.
- The LNBA shall archive all data for five (5) years.
- The LNBA PERMITTEES may provide comments to DWR on data and work submitted by LNBA to DWR.
- Failure by the LNBA PERMITTEES or the LNBA or their agents to collect or analyze the water quality data as described in this MOA, or to provide data to the DWR in the required format, may result in the termination of this MOA by the DWR and the return to individual upstream and downstream monitoring requirements, as specified in the individual NPDES permits for each of the LNBA PERMITTEES.
- Special and/or additional data collected (i.e., hardness) at a designated monitoring station concurrently with the regularly scheduled samples, should be submitted to the Coalition Coordinator

Annual Report:

- The LNBA shall submit an annual written report that summarizes the previous calendar year's sampling activities.
- The LNBA shall submit the annual report no later than April 30th each year that this MOA is in effect and shall comply with the requirements set forth in Appendix B.
- The LNBA shall submit the annual report to the DWR Coalition Coordinator at 1621 Mail Service Center, Raleigh, NC 27699-1621 or electronically at coalitioncoordinator@deq.nc.gov.

Signatures for all Submissions to DWR:

- The LNBA Chair shall sign annual reports submitted to DWR pursuant to this MOA.

Special Circumstances effecting sampling:

- Stream sampling under this MOA may be suspended or discontinued under the following circumstances:
 - 1) If flow conditions in the receiving waters and/or extreme weather conditions will result in a substantial risk of injury to the person(s) collecting samples; or
 - 2) If environmental conditions, such as a dry stream, prevent sample collection.
- If sampling is suspended or discontinued for any reason, the LNBA shall provide a written explanation to DWR explaining why sampling was not performed. The written explanation shall be submitted to the DWR Coalition Coordinator with LNBA's monthly data submittal (electronic submittal is authorized).
- If sampling is suspended or discontinued under the provisions above, LNBA shall resume stream sampling as soon as possible.

Modification:

- This MOA may be modified by the written consent of the DWR and the LNBA. Either DWR or the LNBA may determine that it is necessary to request changes in monitoring frequency, parameters, and/or sampling locations. Any changes to sampling parameters, locations, or frequencies shall be made by a written amendment to this MOA agreed to by the DWR, the LNBA PERMITTEES, and the LNBA. The amendment shall be signed by the LNBA chair and by the DWR Director. Such amendments may be entered into at any time.

New Parties to this MOA:

- The following additional NPDES permit dischargers may enter into this MOA subsequent to the effective date hereof:
 - 1) Dischargers who receive a NPDES permit within the Lower Neuse River Basin, or
 - 2) Dischargers who have NPDES permits within the Lower Neuse River Basin but are not parties to this Agreement.
- The addition of such dischargers to this MOA may be made only with the consent of the DWR, the LNBA PERMITTEES, and the LNBA and shall require a written amendment to this MOA signed by the LNBA chairperson, by the DWR, and by an authorized representative of any such discharger who wishes to enter into the MOA. The DWR will not unreasonably withhold consent to the addition of a discharger to the MOA. The DWR will consider modification of the existing

monitoring program described in this MOA for the addition of a NPDES permit discharger to the MOA. Such amendments may be made at any time that this MOA is in effect. The LNBA PERMITTEES included in this MOA are listed in Table 1.

Term:

- This MOA shall be effective upon the signature until July 31, 2029 unless extended by the consent of both the DWR Director and the LNBA.

Withdraw/Termination as between DWR and LNBA:

- Upon sixty (60) days written notice, the DWR or the LNBA may terminate this MOA for any reason. Upon termination of this MOA, the monitoring requirements contained in the individual NPDES permit for each LNBA PERMITTEE shall become effective immediately.

Withdraw/Termination as between DWR and individual LNBA Permittees:

- An individual permit holder may withdraw and cancel its participation in this MOA by providing sixty (60) days written notice to the LNBA, and sixty (60) days written notice to the DWR Coalition Coordinator, the appropriate DWR Regional Office(s), and the DWR Water Quality Permitting Section. The monitoring requirements contained in the individual NPDES permit shall become effective upon the termination date specified in the notice.
- The withdrawal of an individual LNBA Permittee shall require a written amendment to this MOA signed by the LNBA chair and the DWR Director.
- In the event a LNBA NPDES permit holder terminates or cancels its participation in this MOA or its membership in the LNBA is terminated for any reason, the LNBA may request that DWR review the monitoring plan described in this MOA for a possible reduction in sampling effort and/or requirements.

No limitation on use of the data:

- There are no limitations on DWR's, LNBA, or LNBA Permittee's use of the data collected under this MOA.

Entire Agreement:

- This MOA constitutes the entire agreement between the parties and supersedes all previous agreements.

Incorporation:

- Appendices A and B are attached to and incorporated into this MOA.

Savings Clause:

- Should any part of this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, invalidation of the affected portion shall not invalidate the remaining portions of the Agreement and they shall remain in full force and effect.

Remedies for Breach:

- The only remedy for breach of this MOA is an action for specific performance or injunction.

IN WITNESS WHEREOF, the parties have caused the execution of this instrument by authority duly given, to be effective as of the date executed by the DWR.

**DIVISION OF WATER
RESOURCES**

By: _____
Richard E. Rogers, Jr.
Director
Division of Water Resources

Date: _____

**LOWER NEUSE BASIN
ASSOCIATION**

By: _____
Charles Smithwick
Chair
Lower Neuse Basin Association

Date: _____

DRAFT

Table 1 – LNBA Permittees – This page is being updated

NPDES Permit Number	LNBA Permittees Ownership and Facility	Authorized Representative and Title	Authorized Representative Signature	Signature Date
NC0003417	Duke Energy Progress - Lee Steam Plant	Jeffery D. Hines General Manager	<i>Signature on file</i>	<i>date on file</i>
NC0003760	E.I. DuPont - Kinston Plant	George Xanakis Plant Manager	<i>Signature on file</i>	<i>date on file</i>
NC0020389	Town of Benson - Benson WWTP	Tim Robbins Town Manager	<i>Signature on file</i>	<i>date on file</i>
NC0020842	Town of Snow Hill - Snow Hill WWTP	Todd Whaley Interim Town Manager	<i>Signature on file</i>	<i>date on file</i>
NC0021253	City of Havelock - Havelock WWTP	Frank Bottorff City Manager	<i>Signature on file</i>	<i>date on file</i>
NC0021644	Town of LaGrange - LaGrange WWTP	John Craft Town Manager	<i>Signature on file</i>	<i>date on file</i>
NC0023906	City of Wilson - Wilson WWTP	Jimmy Pridgen Water Reclamation Manager	<i>Signature on file</i>	<i>date on file</i>
NC0023949	City of Goldsboro - Goldsboro WWTP	Tomothy M. Salmon City Manager	<i>Signature on file</i>	<i>date on file</i>
NC0024236	City of Kinston - Regional WWTF	Rhonda Barwick Director of Public Services	<i>Signature on file</i>	<i>date on file</i>
NC0025348	City of New Bern - New Bern WWTP	Mark Stephens City Manager	<i>Signature on file</i>	<i>date on file</i>
NC0025453	Town of Clayton - Little Creek WWTP	Adam Lindsay Town Manager	<i>Signature on file</i>	<i>date on file</i>
NC0029033	City of Raleigh - Neuse River WWTP	John Kiviniemi Wastewater & Reuse Superintendent	<i>Signature on file</i>	<i>date on file</i>
NC0029572	Town of Farmville - Farmville WWTP	David Hodgkins Town Manager	<i>Signature on file</i>	<i>date on file</i>
NC0030716	Johnston County - Central Johnston County WWTP	Rick J. Hester County Manager	<i>Signature on file</i>	<i>date on file</i>
NC0030759	City of Raleigh - Smith Creek WWTP	John Kiviniemi Wastewater & Reuse Superintendent	<i>Signature on file</i>	<i>date on file</i>
NC0032077	Contentnea Metropolitan Sewerage District - Contentnea MSD WWTP	Charles M Smithwick Jr. District Manager	<i>Signature on file</i>	<i>date on file</i>
NC0048879	Town of Cary - North WWTP	Paul Ray North Cary Facility Manager	<i>Signature on file</i>	<i>date on file</i>
NC0064050	Town of Apex - Apex WRF	Drew Havens Town Manager	<i>Signature on file</i>	<i>date on file</i>
NC0064891	Town of Kenly - Kenly Regional WWTP	Michael Douglas Town Manager	<i>Signature on file</i>	<i>date on file</i>
NC0065102	Town of Cary - South WWTP	Jarrod Buchanan South Cary Facility Manager	<i>Signature on file</i>	<i>date on file</i>
NC0066150	Town of Fuquay-Varina – Brighton Forest Subdivision WWTP	Jay T. Meyers Public Utilities Director	<i>Signature on file</i>	<i>date on file</i>
NC0066516	Town of Fuquay Varina - Terrible Creek WWTP	Jay T. Meyers Public Utilities Director	<i>Signature on file</i>	<i>date on file</i>
NC0079316	City of Raleigh - Little Creek WWTP	John Kiviniemi Wastewater & Reuse Superintendent	<i>Signature on file</i>	<i>date on file</i>
NC0084735	Johnston County - Johnston County WTP	Rick J. Hester County Manager	<i>Signature on file</i>	<i>date on file</i>

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Table 2
LNBA Sampling Stations, Parameters, & Frequencies

Station Number	Location Description	Station Comments	Latitude	Longitude	County	Region	8 Digit HUC	Stream Class	Index	¹ Field Measurements	² Nutrients	Lab Turbidity	TSS	Chl-a	Fecal Coliform
J2230000	Smith Crk at SR 2045 Burlington Mill Rd nr Wake Forest	DWR benthic and fish station.	35.9182	-78.5348	Wake	RRO	03020201	C NSW	27-23-(2)	M+2SM	M	M	M		M
J2330000	Neuse Riv at SR 2215 Buffalo Rd nr Neuse	dns Smith Crk WWTP	35.8479	-78.5302	Wake	RRO	03020201	C NSW	27-(22.5)	M+2SM	M	M	M		M
J3310000	Crabtree Crk at SR 2921 N. Raleigh Blvd at Raleigh	dns confluence of Pigeon House Branch	35.8040	-78.6081	Wake	RRO	03020201	C NSW		M+2SM	M	M	M		M
J3970000	Walnut Crk at SR 2551 Barwell Rd nr Raleigh	DWR benthic and fish station	35.7493	-78.5345	Wake	RRO	03020201	C NSW	27-34-(4)	M+2SM	M	M	M		M
J4050000	Neuse Riv at SR 2555 Auburn Knightdale Rd nr Raleigh	ups Neuse River WWTP	35.7266	-78.5139	Wake	RRO	03020201	C NSW	27-(22.5)	M+2SM	M	M	M		M
J4080000	Poplar Crk at SR 2049 Bethlehem Rd nr Knightdale	last bridge before Neuse	35.7309	-78.4776	Wake	RRO	03020201	C NSW	27-35	M+2SM	M	M	M		M
J4115000	Marks Crk at Neuse Rvr Trail nr Archer Lodge	City of Raleigh sampling & monitoring program	35.6933	-78.4387	Johnston	RRO	03020201	C NSW	27-38	M+2SM	M	M	M		M
J4130000	Neuse Riv at SR 1700 Covered Bridge Rd nr Archers Lodge	dns Neuse River WWTP, ups Little Creek (Clayton) WWTP	35.6749	-78.4364	Johnston	RRO	03020201	WS-V NSW	27-(36)	M+2SM	M	M	M		M
J4170000	Neuse Riv at NC 42 nr Clayton	dns Little Crk WWTP, DWR benthic station, USGS gage	35.6473	-78.4056	Johnston	RRO	03020201	WS-IV NSW	27-(38.5)	M+2SM	M	M	M		M
J4370000	Neuse Riv at US 70 Bus at Smithfield	dns Johnston County WTP, DWR AMS Station	35.5128	-78.3498	Johnston	RRO	03020201	WS-IV NSW		M+2SM	M	M	M		M
J4414000	Swift Crk at SR 1152 Holly Springs Rd nr Macedonia	ups Lake Wheeler, DWR benthic and fish station, USGS gage	35.7187	-78.7527	Wake	RRO	03020201	WS-III NSW	27-43-(1)	M+2SM	M	M	M		M
J4500000	Swift Crk at Indian Crk discharge nr Garner	City of Raleigh sampling & monitoring program	35.6476	-78.6041	Wake	RRO	03020201	C NSW		M+2SM	M	M	M		M
J4510500	Swift Crk at SR 1525 Cornwallis Road nr Clayton	City of Raleigh sampling & monitoring program	35.5999	-78.5356	Johnston	RRO	03020201	C NSW		M+2SM	M	M	M		M
J4511000	White Oake Ck at NC 42 nr Clayton	City of Raleigh sampling &	35.6176	-78.5281	Johnston	RRO	03020201	C NSW		M+2SM	M	M	M		M

Station Number	Location Description	Station Comments	Latitude	Longitude	County	Region	8 Digit HUC	Stream Class	Index	¹ Field Measurements	² Nutrients	Lab Turbidity	TSS	Chl-a	Fecal Coliform
		monitoring program													
J4520000	Swift Crk at SR 1562 Steel Bridge Rd nr Smithfield	City of Raleigh sampling & monitoring program	35.5515	-78.4600	Johnston	RRO	03020201	C NSW		M+2SM	M	M	M		M
J4580000	Swift Crk at SR 1501 Swift Creek Rd nr Smithfield	Replaced J4590000 4/1/12.	35.5442	-78.3970	Johnston	RRO	03020201	C NSW	27-43-(8)	M+2SM	M	M	M		M
J4690000	Middle Crk at SR 1152 Holly Springs Rd nr Holly Springs	ups Cary South WWTP, dns Apex WWTP	35.6609	-78.8042	Wake	RRO	03020201	C NSW	27-43-15-(1)	M+2SM	M	M	M		M
J4868000	Middle Crk at SR 1375 Lake Wheeler Rd nr Banks	dns Cary South WWTP, ups Terrible Crk WWTP discharge	35.6356	-78.7279	Wake	RRO	03020201	C NSW	27-43-15-(4)	M+2SM	M	M	M		M
J4980000	Middle Crk at SR 1006 Old Stage Rd nr Willow Springs	dns of Terrible Crk WWTP	35.6091	-78.6866	Wake	RRO	03020201	C NSW	27-43-15-(4)	M+2SM	M	M	M		M
J5002000	Middle Crk off SR 1517 Old Sanders Hse nr Edmonson	City of Raleigh sampling & monitoring program	35.5626	-78.5756	Johnston	RRO	03020201	C NSW		M+2SM	M	M	M		M
J5010000	Middle Crk at NC 210 near Smithfield	ups of Neuse Riv	35.5075	-78.4013	Johnston	RRO	03020201	C NSW	27-43-15-(4)	M+2SM	M	M	M		M
J5170000	Black Crk at SR 1162 Black Creek Rd nr Four Oaks	ups Holts Lake, ups Neuse Riv, USGS gage	35.4693	-78.4568	Johnston	RRO	03020201	C NSW	27-45-(2)	M+2SM	M	M	M		M
J5250000	Neuse Riv at SR 1201 Richardson Bridge Rd nr Cox Mill	dns Johnston Cty WWTP, ups Duke Energy and Goldsboro WWTP, DWR benthic station	35.3741	-78.1962	Johnston	RRO	03020201	WS-IV NSW	27-(49.5)	M+2SM	M	M	M		M
J5390000	Hannah Crk at SR 1158 Allens Crossroads Dr nr Benson	ups Benson WWTP	35.3868	-78.5110	Johnston	RRO	03020201	C NSW	27-52-6	M+2SM	M	M	M		M
J5390800	Hannah Crk at SR 1227 Ivey Rd nr Benson	dns Benson WWTP	35.4025	-78.4952	Johnston	RRO	03020201	C NSW	27-52-6	M+2SM	M	M	M		M
J5410000	Mill Crk at SR 1200 nr Cox Mill	dns concentrated agricultural area	35.3420	-78.2162	Johnston	RRO	03020201	C NSW	27-52-(1)	M+2SM	M	M	M		M
J5500000	Falling Crk at SR 1219 Old Grantham Rd nr Grantham	dns concentrated agricultural area	35.3224	-78.1282	Wayne	WaRO	03020201	WS-IV NSW	27-54-(3.5)	M+2SM	M	M	M		M
J5620000	Little Riv at SR 2333 Smithfield Rd nr Zebulon	possible future site of E. Wake reservoir (City of Raleigh drinking water)	35.8577	-78.3665	Wake	RRO	03020201	WS-II HQW NSW	27-57-(1)	M+2SM	M	M	M		M

Station Number	Location Description	Station Comments	Latitude	Longitude	County	Region	8 Digit HUC	Stream Class	Index	¹ Field Measurements	² Nutrients	Lab Turbidity	TSS	Chl-a	Fecal Coliform
J5685000	Little Riv at Weaver Rd nr Bagley	ups Kenly Regional WWTP	35.5791	-78.1723	Johnston	RRO	03020201	WS-V NSW		M+2SM	M	M	M		M
J5750000	Little Riv at SR 2339 Bagley Rd nr Lowell Mill	dns Kenly	35.5613	-78.1594	Johnston	RRO	03020201	WS-V NSW	27-57-(8.5)	M+2SM	M	M	M		M
J5790000	Buffalo Ck at SR 2358 Lake Glad Rd at Wendell	City of Raleigh sampling & monitoring program	35.7697	-78.3769	Wake	RRO	03020201	C NSW		M+2SM	M	M	M		M
J5930000	Little Riv at NC 581 nr Cherry Hospital	DWR benthic station	35.3930	-78.0258	Wayne	WARO	03020201	C NSW	27-57-(22)	M+2SM	M	M	M		M
J6010950	Walnut Crk at SR 1730 Saint Johns Church Rd nr Walnut Crk	significant tributary	35.2817	-77.8686	Wayne	WARO	03020202	C NSW	27-68	M+2SM	M	M	M		M
J6024000	Neuse Riv at SR 1731 nr Seven Springs	dns Goldsboro	35.2290	-77.8460	Wayne	WARO	03020202	C NSW	27-(56)	M+2SM	M	M	M		M
J6044400	Bear Crk at SR 1603 Washington St nr LaGrange	Ups concentrated agricultural area	35.3137	-77.8153	Lenoir		03020202	C SW NSW		M+2SM	M	M	M		M
J6044500	Bear Crk at SR 1311 Bear Creek Rd nr Kinston	DWR benthic and fish station	35.2489	-77.7843	Lenoir	WARO	03020202	WS IV Sw NSW	27-72-(5)	M+2SM	M	M	M		M
J6055000	Mosley Crk at SR 1327 Willey Measley Rd nr LaGrange	dns LaGrange WWTP	35.3119	-77.7313	Lenoir	WARO	03020202	C Sw NSW	27-77-2	M+2SM	M	M	M		M
J6150000	Neuse Riv at NC 11 at Kinston	DWR ambient station, ups Kinston WWTPs, USGS gage	35.2587	-77.5835	Lenoir	WARO	03020202	C NSW	27-(75.7)	M+2SM	M	M	M		M
J6250000	Neuse Riv at NC 55 nr Graingers	dns both Kinston WWTPs, ups DuPont	35.2957	-77.4962	Lenoir	WARO	03020202	C NSW	27-(75.7)	M+2SM	M	M	M		M
J6410000	Little Crk at NC 97 at Zebulon	ups Little Creek (Raleigh) WWTP	35.8279	-78.3025	Wake	RRO	03020203	C NSW	27-86-2-4	M+2SM	M	M	M		M
J6450000	Little Crk at NC 39 at Zebulon	dns Little Creek (Raleigh) WWTP	35.8125	-78.2681	Wake	RRO	03020203	C NSW	27-86-2-4	M+2SM	M	M	M		M
J6500000	Moccasin Crk at SR 1131 Antioch Church Rd nr Conner	ups Buckhorn Res.	35.7301	-78.1895	Wilson	RRO	03020203	C NSW	27-86-2	M+2SM	M	M	M		M
J6680000	Turkey Crk at SR 1101 Claude Lewis Rd nr Middlesex	ups Buckhorn Res.	35.7519	-78.1597	Nash	RRO	03020203	C NSW	27-86-3-(1)	M+2SM	M	M	M		M
J6765000	Contentnea Crk at Willow Springs Dr	ups Wilson WWTP, dns Wiggins Mill	35.6838	-77.9410	Wilson		03020203	C SW NSW		M+2SM	M	M	M		M

Station Number	Location Description	Station Comments	Latitude	Longitude	County	Region	8 Digit HUC	Stream Class	Index	¹ Field Measurements	² Nutrients	Lab Turbidity	TSS	Chl-a	Fecal Coliform
	nr Dixie	Reservoir													
J6890000	Contentnea Crk at SR 1622 Evansdale Rd nr Wilson	dns Wilson WWTP	35.6429	-77.8902	Wilson	RRO	03020203	C Sw NSW	27-86-(7)	M+2SM	M	M	M		M
J7210000	Contentnea Crk at NC 58 nr Stantonsburg	DWR benthic station	35.5861	-77.8111	Wilson	RRO	03020203	C Sw NSW	27-86-(7)	M+2SM	M	M	M		M
J7240000	Toisnot Swamp at SR 1539 Sand Pit Rd nr Stantonsburg	major trib to Contentnea Crk	35.5976	-77.7947	Wilson	RRO	03020203	C Sw NSW	27-86-11-(5)	M+2SM	M	M	M		M
J7325000	Nahunta Swamp at NC 58 nr Contentnea	major trib to Contentnea Crk	35.5081	-77.7455	Greene	WARO	03020203	C Sw NSW	27-86-14	M+2SM	M	M	M		M
J7330000	Contentnea Crk at US 13 at Snow Hill	ups Snow Hill WWTP	35.4585	-77.6753	Greene	WARO	03020203	C Sw NSW	27-86-(7)	M+2SM	M	M	M		M
J7690000	Little Contentnea Crk at SR 1218 Chinquapin Rd nr Farmville	ups Farmville WWTP	35.5881	-77.5416	Pitt	WARO	03020203	C Sw NSW	27-86-26	M+2SM	M	M	M		M
J7740000	Little Contentnea Crk at SR 1110 Highway 903 at Scuffleton	ups of Contentnea Crk, discontinued USGS gage	35.4567	-77.4854	Pitt	WARO	03020203	C Sw NSW	27-86-26	M+2SM	M	M	M		M
J7850000	Neuse Riv at SR 1470 Maple Cypress Rd nr Fort Barnwell	dns Contentnea Crk and Contentnea Crk WWTP, ups New Bern WWTP, USGS gage, DWR ambient station; AMS sampled at boat dock; CMP station samples from bridge	35.3139	-77.3030	Craven	WARO	03020202	C Sw NSW	27-(85)	M+2SM	M	M	M	M	M
J8870000	Trent Riv at E Front St at New Bern	confluence of Neuse and Trent Rivers	35.1016	-77.0371	Craven	WARO	03020204	SB Sw NSW	27-101-(39)	M+2SM	M ³	M	M	M ³	M

1. Field Measurements include: Temperature, Dissolved Oxygen, pH, and Conductivity. M=Monthly, M+2SM=Monthly with twice monthly summer sampling, Q=Quarterly. Summer includes the months of May, June, July, August and September. Twice monthly samples are to be collected at least ten days apart except when extenuating conditions arise.
2. Nutrient sampling includes: Ammonia as N (NH₃), Nitrate/Nitrite as N (NO₂/NO₃), Total Kjeldahl Nitrogen (TKN), and Total Phosphorus as P (TP).
3. Nutrient and Chlorophyll-a samples shall be collected as a composite sample within the photic zone (photic zone = twice secchi depth).

APPENDIX A
SAMPLE COLLECTION AND ANALYSIS

Sample Collection Procedures

Sample collection shall be performed by trained personnel employed by NC DWR-certified laboratories in accordance with the DWR Monitoring Coalition Program Field Monitoring Guidance Document (November 2017) and subsequent documents. The Field Monitoring Guidance Document can be found on the web at: <http://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-sciences-home-page/ecosystems-branch/monitoring-coalition-program>. Alternate collection procedures require the approval of the DWR Coalition Coordinator prior to use.

Laboratory Analysis

All laboratory analyses shall be performed at a DWR-certified laboratory using approved methods as prescribed by section 40 of the Code of Federal Regulations part 136 (40 CFR part 136) or other methods certified by the DWR Laboratory Certification Branch (<http://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-sciences-home-page/laboratory-certification-branch>) or the Director of DWR. 40 CFR Part 136 can be accessed on the web at <http://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-sciences-home-page/laboratory-certification-branch/rules-regulations>.

Reporting levels will be at least as stringent as the reporting levels used by the DWR Laboratory. For guidance purposes Table 3 lists target reporting levels for each parameter based on the reporting levels of the DWR Laboratory. The lowest possible analytical limits for all the parameters should be pursued.

TABLE 3
DWR Laboratory Reporting Limits

Parameters	Target Reporting Level	Comments
Water Temperature		Resolution to 0.1 degree Celsius
Dissolved Oxygen		Report results to the nearest 0.1 mg/L.
pH		Report results to the nearest 0.1 pH units.
Specific Conductivity		Report results to the nearest whole $\mu\text{mho}/\text{cm}$ at 25 °C.
Turbidity	1.0 NTU	
TSS	6.2 mg/L	
Fecal Coliform	1 colony/100 mL	At least 3 dilutions should be used to achieve optimum colony counts per membrane filter of 20-60 colonies.
Chlorophyll <i>a</i>	1 $\mu\text{g}/\text{L}$	Report Chlorophyll <i>a</i> values free from pheophytin and other chlorophyll pigments. Analysis by HPLC is not approved by DWR.
Ammonia (NH ₃ as N)	0.02 mg/L	Address distillation requirement. See 40CFR136 Table II footnote.
Nitrate + Nitrite as N	0.02 mg/L	
Total Kjeldahl Nitrogen as N	0.20 mg/L	
Total Phosphorus as P	0.02 mg/L	
Hardness	1.0 mg/L	

Data Qualification Codes

When reporting data, the DWR's data qualifier codes must be used to provide additional information regarding data quality and interpretation. The current set of qualifier codes to be used is provided in Table 4. Review the data remark codes at least annually and utilize the most current set, as codes are subject to change. Contact the Coalition Coordinator for a current copy of the codes.

Table 4
Data Qualification Codes for Use with Coalition Data

Symbol	Definition
A	Value reported is the mean (average) of two or more determinations. This code is to be used if the results of two or more discrete and separate samples are averaged. These samples shall have been processed and analyzed independently (e.g. field duplicates, different dilutions of the same sample). This code is not required for BOD, coliform or acute/chronic metals reporting since averaging multiple results for these parameters is fundamental to those methods or manner of reporting. 1 The reported value is an average, where at least one result is qualified with a "U". The PQL is used for the qualified result(s) to calculate the average.
B	Results based upon colony counts outside the acceptable range and should be used with caution. This code applies to microbiological tests and specifically to membrane filter (MF) colony counts. It is to be used if less than 100% sample was analyzed and the colony count is generated from a plate in which the number of colonies exceeds the ideal ranges indicated by the method. These ideal ranges are defined in the method as: <i>Fecal coliform or Enterococcus bacteria: 20-60 colonies Total coliform bacteria: 20-80 colonies</i> 1 Countable membranes with less than 20 colonies. Reported value is estimated or is a total of the counts on all filters reported per 100 ml. 2 Counts from all filters were zero. The value reported is based on the number of colonies per 100 ml that would have been reported if there had been one colony on the filter representing the largest filtration volume (reported as a less than "<" value). 3 Countable membranes with more than 60 or 80 colonies. The value reported is calculated using the count from the smallest volume filtered and reported as a greater than ">" value. 4 Filters have counts of both >60 or 80 and <20. Reported value is estimated or is a total of the counts on all filters reported per 100 ml. 5 Too many colonies were present; too numerous to count (TNTC). TNTC is generally defined as >150 colonies. The numeric value represents the maximum number of counts typically accepted on a filter membrane (60 for fecal or enterococcus and 80 for total), multiplied by 100 and then divided by the smallest filtration volume analyzed. This number is reported as a greater than value. 6 Estimated Value. Blank contamination evident. 7 Many non-coliform or non-enterococcus colonies or interfering non-coliform or non-enterococcus growth present. In this competitive situation, the reported value may under- represent actual density. Note: A "B" value shall be accompanied by justification for its use denoted by the numbers listed above (e.g., B1, B2, etc.). Note: A "J2" should be used for spiking failures.
C	Total residual chlorine was present in sample upon receipt in the laboratory; value is estimated. Generally, applies to cyanide, phenol, NH3, TKN, coliform, and organics.

Symbol	Definition
G	A single quality control failure occurred during biochemical oxygen demand (BOD) analysis. The sample results should be used with caution. 1 The dissolved oxygen (DO) depletion of the dilution water blank exceeded 0.2 mg/L. 2 The bacterial seed controls did not meet the requirement of a DO depletion of at least 2.0 mg/L and/or a DO residual of at least 1.0 mg/L. 3 No sample dilution met the requirement of a DO depletion of at least 2.0 mg/L and/or a DO residual of at least 1.0 mg/L. 4 Evidence of toxicity was present. This is generally characterized by a significant increase in the BOD value as the sample concentration decreases. The reported value is calculated from the highest dilution representing the maximum loading potential and should be considered an estimated value. 5 The glucose/ glutamic acid standard exceeded the range of 198 ± 30.5 mg/L. 6 The calculated seed correction exceeded the range of 0.6 to 1.0 mg/L. 7 Less than 1 mg/L DO remained for all dilutions set. The reported value is an estimated greater than value and is calculated for the dilution using the least amount of sample. 8 Oxygen usage is less than 2 mg/L for all dilutions set. The reported value is an estimated less than value and is calculated for the dilution using the most amount of sample. 9 The DO depletion of the dilution water blank produced a negative value. The cBOD value is greater than the BOD value. Note: A "G" value shall be accompanied by justification for its use denoted by the numbers listed above (e.g., G1, G2, etc.).
J	Estimated value; value may not be accurate. This code is to be used in the following instances: 1 Surrogate recovery limits have been exceeded. 2 The reported value failed to meet the established quality control criteria for either precision or accuracy. 3 The sample matrix interfered with the ability to make any accurate determination. 4 The data is questionable because of improper laboratory or field protocols (e.g., composite sample was collected instead of grab, plastic instead of glass container, etc.). 5 Temperature limits exceeded (samples frozen or $>6^{\circ}\text{C}$) during transport or not verifiable (e.g., no temperature blank provided): non-reportable for NPDES compliance monitoring. 6 The laboratory analysis was from an unpreserved or improperly chemically preserved sample. The data may not be accurate. 7 This qualifier is used to identify analyte concentration exceeding the upper calibration range of the analytical instrument/method. The reported value should be considered estimated. 8 Temperature limits exceeded (samples frozen or $>6^{\circ}\text{C}$) during storage, the data may not be accurate. 9 The reported value is determined by a one-point estimation rather than against a regression equation. The estimated concentration is less than the laboratory PQL and greater than the laboratory method detection limit. 10 Unidentified peak; estimated value. 11 The reported value is determined by a one-point estimation rather than against a regression equation. The estimated concentration is less than the laboratory PQL and greater than the instrument noise level. This code is used when an MDL has not been established for the analyte in question. 12 The calibration verification did not meet the calibration acceptance criterion for field parameters. Note: A "J" value shall be accompanied by justification for its use denoted by the numbers listed above (e.g., J1, J2, etc.). A "J" value shall not be used if another code applies (e.g., N, V, M).
M	Sample and duplicate results are "out of control". The sample is non-homogenous (e.g., VOA soil). The reported value is the lower value of duplicate analyses of a sample.

Symbol	Definition
N	Presumptive evidence of presence of material; estimated value. This code is to be used if: 1 The component has been tentatively identified based on mass spectral library search. 2 There is an indication that the analyte is present, but quality control requirements for confirmation were not met (i.e., presence of analyte was not confirmed by alternate procedures). 3 This code shall be used if the level is too low to permit accurate quantification, but the estimated concentration is less than the laboratory PQL and greater than the laboratory method detection limit. This code is not routinely used for most analyses. 4 This code shall be used if the level is too low to permit accurate quantification, but the estimated concentration is less than the laboratory practical quantitation limit and greater than the instrument noise level. This code is used when an MDL has not been established for the analyte in question. 5 The component has been tentatively identified based on a retention time standard.
Q	Holding time exceeded. These codes shall be used if the value is derived from a sample that was received, prepared and/or analyzed after the approved holding time restrictions for sample preparation and analysis. The value does not meet NPDES requirements. 1 Holding time exceeded prior to receipt by lab. 2 Holding time exceeded following receipt by lab.
P	Elevated PQL due to matrix interference and/or sample dilution.
S	Not enough sample provided to prepare and/or analyze a method-required matrix spike (MS) and/or matrix spike duplicate (MSD).
U	Indicates that the analyte was analyzed for, but not detected above the reported PQL. The number value reported with the "U" qualifier is equal to the laboratory's PQL*.
UU	Indicates that the analyte was not detected by a screen analysis. The number value reported with the "UU" qualifier is equal to the laboratory's PQL. The number value was determined by a one-point estimation at the PQL, rather than against a regression equation.
V	Indicates the analyte was detected in both the sample and the associated blank. Note: The value in the blank shall not be subtracted from the associated samples. 1 The analyte was detected in both the sample and the method blank. 2 The analyte was detected in both the sample and the field blank.
X	Sample not analyzed for this constituent. This code is to be used if: 1 Sample not screened for this compound. 2 Sampled, but analysis lost or not performed-field error. 3 Sampled, but analysis lost or not performed-lab error. Note: an "X" value shall be accompanied by justification for its use by the numbers listed.
Y	Elevated PQL due to insufficient sample size.
Z	The sample analysis/results are not reported due to: 1 Inability to analyze the sample. 2 Questions concerning data reliability. Note: The presence or absence of the analyte cannot be verified.
Supporting Definitions listed below	
MDL	A Method Detection Limit (MDL) is defined as the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the true value is greater than zero and is determined in accordance with 40 CFR Part 136, Appendix B.
ML	Minimum Levels are used in some EPA methods. A Minimum Level (ML) is the lowest level at which the entire analytical system must give a recognizable signal and acceptable calibration point for the analyte. It is equivalent to the concentration of the lowest calibration standard, assuming that all method - specified sample weights, volumes, and cleanup procedures have been employed. The ML is calculated by multiplying the MDL by 3.18 and rounding the result to the nearest factor of 10 multiple (i.e., 1, 2, or 5). For example, MDL = 1.4 mg/L; ML = 1.4 mg/L x 3.18 = 4.45 rounded to the nearest factor of 10 multiple (i.e., 5) = 5.0 mg/L.

Supporting Definitions listed below

PQL	The Practical Quantitation Limit (PQL) is defined as the lowest concentration that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions. PQLs are subjectively set at some multiple of typical MDLs for reagent water (generally 3 to 10 times the MDL depending upon the parameter or analyte and based on the analyst's best professional judgement, the quality and age of the instrument and the nature of the samples) rather than explicitly determined. PQLs may be nominally chosen within these guidelines to simplify data reporting and, where applicable, are generally equal to the concentration of the lowest non-zero standard in the calibration curve. PQLs are adjusted for sample size, dilution and % moisture. For parameters that are not amenable to MDL studies, the PQL may be defined by the sample volume and buret graduations for titrations or by minimum measurement values set by the method for method-defined parameters (e.g., BOD requires a minimum DO depletion of 2.0 mg/L, fecal coliform requires a minimum plate count of 20 cfu, total suspended residue requires a minimum weight gain of 2.5 mg, etc.). Additionally, some EPA methods prescribe Minimum Levels (MLs) and the lab may set the PQL equal to this method-stated ML. Determination of PQL is fully described in the laboratory's analytical Standard Operating Procedure (SOP) document.
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*PQL, The Practical Quantitation Limit (PQL), is defined as the lowest level achievable among laboratories within specified limits during routine laboratory operation. The Practical Quantitation Limit (PQL) is "about three to five times the method detection limit (MDL) and represents a practical and routinely achievable detection level with a relatively good certainty that any reported value is reliable." (APHA, AWWA, WEF. 1992. Standard Methods for the Examination of Water and Wastewater, 18th ed.)

** Data remarks are current as of May 4, 2018.

APPENDIX B
DATA FORMAT AND REPORTING REQUIREMENTS

Data Format for Monthly submittals:

Table 5 provides the format of a data submittal spreadsheet. **It is very important that the format of the headings and the number and order of columns is consistent among all monthly submissions.** Do not use commas, tabs, or other common file delimiters anywhere in the submittal spreadsheet table. Do not add, delete, or hide any rows or columns. The first row should contain the column headings only. Column headings must include appropriate information on measurement units (e.g., mg/L, µg/L, cfu/100mL, etc.). The second row must contain the method code. The DWR station number (e.g., B6140000) must be provided as identified in the MOA. The comment column is used for describing pertinent information related to the sampling event or specific samples. Ensure that there are no missing values for station, date, time, and depth. Place all remark codes in a separate column, as demonstrated in Table 5. If there is no result for a particular parameter, leave the cell blank. Delete duplicate rows for stations that were not sampled (e.g., stations sampled twice in summer months). Screen all data for inappropriate or improbable values, such as a pH of 21.2 SU.

Annual Report:

The LNBA will be required to submit an annual report by April 30th for each year the MOA is in effect. The annual report will formally summarize all data collection activities in the past calendar year and contain at least the following elements:

- Monitoring Station List to include station number, station description, county, accurate coordinates (in decimal degrees to 4 decimal places), stream classification, and 8-digit hydrologic unit code (HUC).
- List of all certified laboratories that conducted work for the coalition in the past year; identify time frames for all laboratories and analysis methods used during the year; and summarize any laboratory certification issues for individual parameters.
- A list of active LNBA members with authorized representative updates, contact names, email addresses, and phone numbers. Identify the facility name and permit number.
- A list of members whom became inactive during the year and their permit numbers.
- A summary of all quality assurance and quality control issues and any field audits conducted.
- A summary of any significant issues, special studies, or projects.
- Description of any required data collection that was missed, with an explanation.
- Suggested changes to the monitoring program and/or MOA modifications.
- The LNBA's website address.

Table 5
File Format for Coalition Data Reporting

[illegible]

**Memorandum of Agreement among The State of North Carolina's
Division of Water Resources, The Lower Neuse River Basin
Association Permittees, and The Lower Neuse River Basin
Association.**

WHEREAS, the Clayton Town Council seeks to memorialize the Town's continued support and membership of the Lower Neuse River Basin Association.

NOW THEREFORE BE IT ORDAINED by the Clayton Town Council approves and authorizes Town Manager to execute attached Memorandum of Agreement (MOA) and any subsequent related amendments associated with the MOA.

Duly adopted this the 15th day of July 2024 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Heidi L. Holland, CMC, NCCMC
Town Clerk



Regular Town Council Meeting Agenda Cover Sheet

Meeting Date

July 15, 2024

Agenda Location

CONSENT AGENDA

Item Title

Resolution To Accept Public Utilities into The Town of Clayton Public Utility System for Maintenance – Ashcroft Section 2 Ph. 1A and Section 1 Ph. 8

Suggested Action

Adoption of Resolution

Strategic Priorities Alignment



☐
Think Clayton
(Administrative)



☐
Think Arts &
Culture



☐
Think
Downtown



☐
Think
Economic
Development



☐
Think Land
Use &
Housing



☐
Think
Mobility



☐
Think Parks,
Recreation
& Natural
Resources



☐
Think Public
Services &
Infrastructure

Public Hearing: No

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

- | | |
|--|--|
| ☐ Public Hearing (Required by GS) | ☐ Public Hearing (Not Required by GS) |
| ☐ Newspaper Notice (Required by GS) | ☐ Newspaper Notice (Not Required by GS) |
| ☐ Public Forum/Input Session | ☐ Press Release |
| ☐ E-News Distribution | ☐ Website |
| ☐ Social Media | ☐ Survey |
| ☐ Special Mailing | ☐ None Required |

Summary

Public Utilities (water and sewer), their easements, and applicable apparatuses are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications, and Design. The subject public utilities have been verified through testing and inspections to be installed per the Town’s Manual of Standards, Specifications, and Design and have been certified and approved by the appropriate regulatory agencies. Engineering staff recommends acceptance of the subject public utility infrastructure and pump station and entering the one-year warranty period.

Funding Source

N/A

Corresponding Documentation

[Ashcroft Section 2 Ph. 1A and Section 1 Ph. 8 Utility Final Acceptance Resolution](#)

Submitted By: Kevin Watson, Engineering

Reviewed By:

Joshua Baird, Water Resources Director	Approved - Jul 10 2024
Sam Johnson-Phillips, Deputy Town Clerk	Approved - Jul 10 2024
Heidi Holland, Town Clerk	Approved - Jul 10 2024

**Resolution To Accept Public Utilities into The Town of Clayton Public Utility System for
Maintenance – Ashcroft Section 1 Ph. 8 Ashcroft Section 2 Ph. 1A**

WHEREAS, public utilities (water and sewer), their easements, and applicable apparatuses are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications and Design; and

WHEREAS, the public utility segments listed below have been certified and approved by the appropriate regulatory agencies; and

WHEREAS, the public utility segments listed below were monitored and inspected for any construction deficiencies, and

WHEREAS, Town of Clayton Engineering staff has inspected the public utility segments listed below on July 15, 2024 and recommends final acceptance by Town Council for operation and maintenance by the Town and;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Clayton, North Carolina accept this list of public utilities and their apparatuses into the Town of Clayton Public Utility System.

SUBDIVISION	LOCATION DESCRIPTION	UTILITY TYPE AND SIZE	LENGTH
Ashcroft Section 1 Ph. 8	Maidenhair Pl.	8 inch Sewer	479 ft.
Ashcroft Section 1 Ph. 8	Bluestar Ct.	8 inch Sewer	208 ft.
Ashcroft Section 1 Ph. 8	SS Easement	8 inch Sewer	536 ft.
Ashcroft Section 2 Ph. 1A	Greenview St.	8 inch Sewer	539 ft.
Ashcroft Section 2 Ph. 1A	Maidenhair Pl.	8 inch Sewer	528 ft.
Total:			2290 ft.

SUBDIVISION	LOCATION DESCRIPTION	UTILITY TYPE AND SIZE	LENGTH
Ashcroft Section 1 Ph. 8	Maidenhair Pl.	8 inch Water	531 ft.
Ashcroft Section 1 Ph. 8	Bluestar Ct.	8 inch Water	236 ft.
Ashcroft Section 1 Ph. 8	Water Easement	8 inch Water	266 ft.
Ashcroft Section 2 Ph. 1A	Greenview St.	8 inch Water	532 ft.
Ashcroft Section 2 Ph. 1A	Maidenhair Pl.	8 inch Water	666 ft.
Total:			2231 ft.

Duly adopted this the 15th day of July 2024.

Jody McLeod
Mayor

ATTEST:

Heidi L. Holland, NCCMC
Deputy Town Clerk



Regular Town Council Meeting Agenda Cover Sheet

Meeting Date

July 15, 2024

Agenda Location

CONSENT AGENDA

Item Title

Resolution To Accept Streets into The Town of Clayton Street System for Maintenance Walk at East Village Phase 2

Suggested Action

Place on Consent Agenda

Strategic Priorities Alignment



☐
Think Clayton
(Administrative)



☐
Think Arts &
Culture



☐
Think
Downtown



☐
Think
Economic
Development



☐
Think Land
Use &
Housing



☐
Think
Mobility



☐
Think Parks,
Recreation
& Natural
Resources



☐
Think Public
Services &
Infrastructure

Public Hearing: No

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

- | | |
|--|--|
| ☐ Public Hearing (Required by GS) | ☐ Public Hearing (Not Required by GS) |
| ☐ Newspaper Notice (Required by GS) | ☐ Newspaper Notice (Not Required by GS) |
| ☐ Public Forum/Input Session | ☐ Press Release |
| ☐ E-News Distribution | ☐ Website |
| ☐ Social Media | ☐ Survey |
| ☐ Special Mailing | ☐ None Required |

Summary

Streets and rights-of-way are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications, and Design. The subject streets have been verified through inspections to have been installed per the Town’s Manual of Standards, Specifications, and Design. A one-year warranty period for the subject streets has expired and a final inspection was performed by Engineering staff. Engineering staff recommends final acceptance of the subject streets. Upon final acceptance, the subject streets are eligible for funding through NCDOT’s Powell Bill Program.

Funding Source

N/A

Corresponding Documentation

[WAEV Phase 2 Street Final Acceptance Resolution - Already Under Warranty](#)

Submitted By: Michael Worner, Engineering

Reviewed By:

Joshua Baird, Water Resources Director	Approved - Jul 10 2024
Sam Johnson-Phillips, Deputy Town Clerk	Approved - Jul 10 2024
Heidi Holland, Town Clerk	Approved - Jul 10 2024

Resolution To Accept Streets into The Town of Clayton Street System for Maintenance
Walk at East Village Phase 2

WHEREAS, streets and right-of-way are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications and Design; and

WHEREAS, approval by the Town of Clayton Town Council is necessary for eligibility for receiving funding from the NCDOT's Powell Bill Program;

WHEREAS, the street segments listed below were placed under a warranty period for one-year to monitor for construction deficiencies, which expired on June 20, 2024; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Clayton, North Carolina accept this list of streets and right-of-way into the Town of Clayton Street System.

SUBDIVISION	STREET NAME	BEGINNING DESCRIPTION	END DESCRIPTION	LENGTH
Walk at East Village Phase 2	Village Walk Dr.	Cabarrus St.	Davidson St.	0.08
TOTAL				0.08mi

Duly adopted this on the 15th day of July 2024.

Jody McLeod
Mayor

ATTEST:

Heidi L. Holland, NCCMC
Deputy Town Clerk



Regular Town Council Meeting Agenda Cover Sheet

Meeting Date

July 15, 2024

Agenda Location

CONSENT AGENDA

Item Title

Municipal Records Retention and Disposition

Presenter(s)

Heidi Holland, Town Clerk

Suggested Action

Place on Consent Agenda

Strategic Priorities Alignment



☐
Think Clayton
(Administrative)



☐
Think Arts &
Culture



☐
Think
Downtown



☐
Think
Economic
Development



☐
Think Land
Use &
Housing



☐
Think
Mobility



☐
Think Parks,
Recreation
& Natural
Resources



☐
Think Public
Services &
Infrastructure

Public Hearing: No

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

- ☐ Public Hearing (Required by GS)
- ☐ Newspaper Notice (Required by GS)
- ☐ Public Forum/Input Session
- ☐ E-News Distribution
- ☐ Social Media
- ☐ Special Mailing

- ☐ Public Hearing (Not Required by GS)
- ☐ Newspaper Notice (Not Required by GS)
- ☐ Press Release
- ☐ Website
- ☐ Survey
- ☐ None Required

Summary

The Clerk's Office has evaluated all files to determine if they have met their retention requirements. The files listed in the resolution have met their retention period, and both the electronic and hard copies have been destroyed and/or deleted from SharePoint.

Funding Source

N/A

Corresponding Documentation

[Municipal Records Retention and Disposition](#)

Submitted By: Heidi Holland, Clerks

Reviewed By:

Heidi Holland, Town Clerk

Rich Cappola, Town Manager

Approved - Jun 28 2024

Approved - Jul 10 2024

**TOWN OF CLAYTON
MUNICIPAL RECORDS RETENTION & DISPOSITION
2024**

WHEREAS, on April 4, 2022, the Clayton Town Council duly adopted the Municipal Records Retention and Disposition Scheduled (dated 10/1/2021); and

WHEREAS, certain records no longer have further use or value for official business, research or reference purposes within the respective retention periods specified within the Municipal Records Retention and Disposition Schedule; and

WHEREAS, the Clerk is the custodian of the town records; and

WHEREAS, the Clerk verified the value of the records for official business, research, or referenced purposes within the respective retention periods specified within the Municipal Records Retention and Disposition Schedule.

NOW, THEREFORE, this document serves as record that the below records were disposed of in accordance with the Municipal Records Retention and Disposition Schedule between the months of March and July 2024.

Bank Statements

(Retention Schedule, destroy in office after 3 years)

- Town Clerk's Bank PCard Bank Statements, Jan – March 2021

Hazard Mitigation Plan

(Retention Schedule, destroy in office after 3 years)

- Multi-jurisdictional Hazard Mitigation Plan, 2005

Powell Bill

(Retention Schedule, destroy in office after 3 years)

- Powell Bills, 1995, 1996, 2011, 2013, 2014

Agenda

(Retention Schedule, destroy in office after 4 years)

- Council Retreat Agenda, 2018

Advisory Board Resigned Member Applications

(Retention Schedule, destroy in office after 1 year)

- BOA, 2016, 2017, 2018, 2019, 2020
- DDA, 2017, 2018, 2019, 2020, 2021
- Fire Advisory Board, 2017, 2018, 2019
- Library Advisory Board, 2017, 2018, 2019

- Planning Board, 2016, 2017, 2018, 2019, 2020, 2021
- Public Art Advisory Board, 2017, 2018, 2019, 2020, 2021
- Recreation Advisory Board, 2016, 2017, 2018, 2019

Agreements/Contracts

(Retention Schedule, destroy in office after 10 years)

- ElectriCities Aerial Device Testing Agreement, 1999
- ElectriCities Aerial Device Testing Program Agreement, 1999
- ElectriCities Emergency Assistance Agreement, 2004
- ElectriCities Mutual Aid Agreement, 1989, 1999, 2000
- ElectriCities General Load Reduction Plan Agreement, 2006
- ElectriCities Initial Project Power Sales Agreement, 2007
- ElectriCities Renewable Energy Development & Services Agreement, 2009
- NC One Call Center Membership Agreement, 2008
- Carolina Telephone & Telegraph Co, Embarq, Service and Equip Agreement for Ethernet; 2009
- UniFirst Customer Service Agreement, 2012
- S&R Lawn Care and Landscaping Service Agreement, 2002
- Last Detail Landscaping and Supply Service Agreement, 2004
- Artistic Scapes, Inc. Service Agreement, 2006
- Coats Service Agreement, 2004
- NCEMPA Power Sales Agreement, 1981
- Piedmont Natural Gas Service Agreement, 2006
- Allen Kelly & Co., Inc., HVAC Service Contract, 2002
- BPG Construction, Inc. 2007
- Parker, Poe, Adams and Bernstein Legal Representation Agreement, 1999
- Sage Design, Scope of Services Contract, 2012
- Terminix, 2013
- Wood Termite (for Library), 1996
- Wood Termite (for Town Hall), 2001, 2003
- Neopost USA, Inc. Lease Agreement for Postage Machine, 2017
- Pitney Bowes, Lease Agreement for Postage Machine, 2014, 2015
- Triangle Confections Amendment to Agreements, 2013
- CFE, Inc. Wall Repair for The Clayton Center, 2009
- MACTEC Roofing Consulting Services for The Clayton Center, 2006
- Mix 101.5 Advertiser Agreement for The Clayton Center, 2012
- Big Bad Voodoo Daddy Contract, The Clayton Center, 2012
- BMI, The Clayton Center, 2012
- Colin Hay Contract, The Clayton Center, 2012
- Independent Weekly, The Clayton Center, 2012
- Jim Witter Contract, The Clayton Center, 2012
- Marty Stuart Contract, The Clayton Center, 2013
- Kris Allen Trio Contract, The Clayton Center, 2013
- ASCAP Agreement, The Clayton Center, 2009

- Cindy Williams Contract, The Clayton Center, 2012
- Singalong Sound of Music Contract, The Clayton Center, 2012
- Sports Radio Contract, The Clayton Center, 2012
- Technical Innovation Agreement, 2012
- Tommy Emmanuel Contract, The Clayton Center, 2012
- Wild Kingdom Contract, The Clayton Center, 2013
- Artistic Scapes, Inc. Service Agreement, 2006
- Pounds Landscaping Service Agreement, 2001
- S&R Lawn Care & Landscaping Service Agreement, 2002
- Alltel Water Tower Agreement (expired 2002), 1997
- McRae Office Solutions, Equipment Agreement, 2003
- Canon Lease Agreement, 2003
- Southern Piping Company Maintenance Agreement, 2007
- Sharp Masonry Agreement, 2002
- CC Mangum Company LLC Agreement, 2007
- New World Systems Agreement, 2008, 2010, 2011, 2012
- New World Systems License Agreement, 2012, 2013
- New World Systems Additional Services Agreement, 2007, 2013
- One Source Document Solutions Agreement, 2013
- Corbett Contracting Inc, Storm Drainage Agreement, 2008
- Waste Management Contract, 1993, 1995, 1996 1999, 2003, 2004, 2005, 2007, 2011
- Real Time Solutions Web Design Agreement, 2013

Census

(Retention Schedule, destroy in office when reference value ends)

- Census, 1980, 1984, 1982, 1987, 1988, 1995, 1996, 1998, 1999, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011

Proposals

(Retention Schedule, destroy in office after 10 years)

- MACTEC Engineering Proposal, 2004
- Artistic Scapes, Inc. Chemical Applications Proposal, 2018
- Bolton Landscapes Wynston Subdivision Berm and Plantings Proposal, 2013
- Artistic Scapes, Inc. Lawn Maintenance Proposal, 2007, 2008, 2009, 2010, 2011
- G2 Design, Proposal for Parking Project, 2013
- Sage Design, Proposal for TOC, 2012
- Triangle J Council Drug and Alcohol Testing Proposal, 1995
- Fire Alarm for the Clayton Center, 2005
- Artistic Scapes, Inc. 70 Highway DOT ROW Proposal, 2008
- Artistic Scapes, Inc. Mulch, 2001
- Artistic Scapes, Inc., Lawn Maintenance, 2009, 2010, 2011
- Earthworks, Inc. Proposal for Parks & Rec. Dept., 2002
- Tyndall Engineering Structural Engineering Proposal for ECCP, 2010
- SEL Co Construction Inc., 2011 Proposal, 2011

- Tamage Mark Hall Proposal, 2011
- Narron Contracting Inc., Proposal for Clayton East Area Neighborhood Sidewalks 2013
- Withers & Ravenel Johnston St Stormwater Infrastructure Improvements Proposal, 2007
- VC3 IT Support Proposal, 2006
- VC3 Managed Services Proposal, 2006, 2009

Quote/Estimates

(Retention Schedule, destroy in office after 3 years)

- Cisco Phone System Move, 2013
- Response to RFP for a VOIP System, 2021
- PBS&J Parking Needs Assessment, 2006
- Brennan's Fence Installations Estimate, 2015
- Precision Safe Sidewalks, 2011
- New World Systems Quote, 2013
- VC3 Quotes, 2013, 2019, 2020
- VC3 Disaster Recovery Quote, 2010
- VC3 Webfilter, 2013
- VC3 Systems Support Quote, 2004

Letter of Awarded Bids

(Retention Schedule, destroy in office after 1 year)

- Letter From Rural Center For Award Of \$130,000, 2012
- Letter From Rural Center For Award Of \$39,398, 2012
- US Department of Commerce, EDA Award, 2016
- American's Transportation Award Letter, 2009

Work Orders

(Retention Schedule, destroy in office after 1 year after work is complete)

- VC3 SAN Migration Work Order, 2010
- VC3 SAN Implementation Work Order, 2011
- VC3 Police Dept Move to Temporary Location, 2010
- VC3 NaaS Work Order, 2015, 2019
- VC3 Cisco UC Upgrade Work Order, 2013
- VC3 Wifi Bridge LEC-FS2 AAS Work Order, 2015
- VC3 Email Migration Work Order, 2016
- VC3 Endpoint Detection and Response Work Order, 2021
- VC3 Work Order 61775816, 2014
- VC3 Managed Security Work Order, 2020
- VC3 Managed Services Work Order, 2010
- VC3 Advantage Work Order, 2012, 2015, 2019
- VC3 Webfilter, 2013

Street Projects

(Retention Schedule, Destroy in office 5 years after superseded or obsolete)

- Clayton Street Improvements Project 2009, 2010, 2012

Invoices

(Retention Schedule, destroy in office after 3 years)

- Developmental Associates, LLC, 2016

Auction Services

(Retention Schedule, destroy in office after 3 years)

- GovDeals, 2005

Monthly Reports

(Retention Schedule, destroy in office after 6 years)

- From Inspections, 2017, 2018

Certificate of Liability

(Retention Schedule, destroy in office after 1 year)

- Certificate of Liability, 2020, 2021

Code of Ordinances

(Retention Schedule, destroy in office when ordinance is no longer in effect or superseded)

- Code of Ordinances, 1995, 1996
- Chapter 91, 1995 (this chapter was updated in 2022)
- Cable TV Ordinance, 1989
- Flood Damage Ordinance, 1987 (this chapter was updated in 2022)
- Garbage and Trash Collection, 1987 (this chapter was updated in 2014)
- Garbage Ordinance, 1994 (this chapter was updated in 2014)
- Junked Vehicles Ordinance, 1990 (this chapter was updated in 2001)
- Massage Parlor Ordinance, 1975 (this chapter was updated in 2016)
- Noise Ordinance, 1983 (this chapter was updated in 2017)
- Restricted Parking Ordinance, 1989 (this chapter was updated in 2021)
- Sewer Use, 1994 (this chapter was updated in 2018)
- Sign Ordinance, 1986 (this chapter was updated in 2023)
- Tire Disposal, 1990 (this chapter was updated in 2014)
- Code of Ordinance Supplement, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2011, 2012, 2013, 2014

Policies

(Retention Schedule, destroy in office when superseded or obsolete)

- Performance Appraisal System Manual, 1988
- Minority Participation Policy, 1992 (this policy was updated in 2021)
- Personnel Policy, 1993, 1997, 1999 (this policy was updated in 2024)
- Fire Department Restructuring Plan, 1999 (this policy was updated in 2018)

- Customer Service Policy, 1988 (this policy was updated in 2021)
- Street Light Installation, 1996 (this policy was updated in 2024)
- Conflict of Interest, 1983 (this policy was updated in 2024)
- Controlled Substance and Alcohol Policy, 1999 (this policy was updated in 2024)
- Safety Policy, 1991 (this policy was updated in 1996)

Events

(Retention Schedule, destroy in office when superseded or obsolete)

- Town Hall Day, 2015

Key System

(Retention Schedule, destroy in office when superseded or obsolete)

- Returned Keys 2019, 2020
- Key Request to Marshall's Locksmith, 2019, 2020, 2021
- Operations Key Spreadsheet, 2010

Planning Plat Map Signers

(Retention Schedule, destroy in office when superseded or obsolete)

- 2019, 2020

Organizational Meeting Information

(Retention Schedule, destroy in office when superseded or obsolete)

- Organizational Meetings, 2011, 2013, 2015, 2017

Schedules

(Retention Schedule, destroy in office when ordinance is no longer in effect)

- Area Lighting Schedule, 1989

Fees

(Retention Schedule, destroy in office when ordinance is no longer in effect)

- Building Permit Fees, 1989

NC General Statutes

(Retention Schedule, destroy in office when superseded or obsolete)

- The General Statutes of North Carolina inserts, 1994

Advisory Board Attendance

(Retention Schedule, destroy in office when superseded or obsolete)

- Fire Advisory Board, 2018, 2019
- Library Advisory Board, 2018, 2019
- Public Art Advisory Board, 2020, 2021

Correspondence

(Retention Schedule, keep with permanent value, otherwise destroy after 3 years)

- Arbor Day Letter, 2016

- Fair Credit Report Act, 2012
- Notice of No Further Action, East Coast Environmental, 2014
- Housing Finance Agency, 2016
- CCOC Donation, 2020
- Letter Regarding Walden Way, 2020
- Corps of Engineers Application, 2019
- USA Taekwondo 2018 North Carolina State Championship
- National Assoc. of University Women Clayton Branch, 2018
- Support for Archer Lodge Bicycle and Pedestrian Planning Grant Application, 2017
- Kudzu Concern, 2017
- First Street Tavern Letter, 2017
- Support of Walnut Hill Nature Preserve Recreational Trails Programs Grant Application, 2017
- Grifols, 2017
- Regulations Regarding Placement of Dumpsters and Pallet Storage/Removal, 2017
- Misc. Correspondence, 2015, 2016, 2017, 2018

Surplus

(Retention Schedule, destroy in office after 3 years)

- Fire Engine Surplus Town of Fairmont, 2017

Warranty Acceptances

(Retention Schedule, destroy in office after 3 years)

- Warranty Acceptances, 2014, 2015, 2016, 2017, 2018, 2019

Powell Bill

(Retention Schedule, destroy in office after 3 years)

- Powell Bills, 2015, 2016, 2017, 2018, 2019

Leases

(Retention Schedule, destroy in office after 10 years)

- Austin Acres, 2000-2001, 2001-2002, 2003-2004, 2004-2005, 2005-2006 (replaced with 2015-2016)
- Harley-Davidson Leasing Commercial Lease, 2003
- VC3 Lease Agreement, 2001 (Expired on July 31, 2006)
- ALTEC Capital Services, 2001 (Expired 2005)
- Pittman Parking Lease, 1983 (Expired 1984)
- 609 Washington Street (Royal Kids Christian Care), 2003 (Expired 2004)
- Johnston County Arts Council, 2005 (Expired 2006)
- NC Dept of Correction, 2008 (Expired 2009)
- NC Dept of Correction, 2009 (Expired 2012)
- VC3 Agreement, 2004 (Expired 2006)

Public Records Request

(Retention Schedule, destroy in office after 2 years)

- SPCA, 2012
- General Requests, 2019, 2020
- John Street Assessment, 2011, 2012

Traffic Calming Study

(Retention Schedule, destroy in office after 5 years)

- Front Street Ext, 2005
- Garrison Avenue, 2015, 2016
- Glen Laurel SD, Garrison SD and Champion Street, 2011
- Riverwood Athletic Club Clayton Transportation Services, 2014
- Glen Laurel SD, 2011
- RR Crossings, 2002

Loans

(Retention Schedule, destroy in office 5 years after satisfaction or cancellation of loan)

- US Department of Agriculture, 2016

Evaluations

(Retention Schedule, destroy in office after 3 years)

- Town Manager, 2019, 2020

Vehicle for Hire

(Retention Schedule, destroy in office after 3 years)

- 2003, 2004, 2006, 2007, 2008

Permits

(Retention Schedule, destroy in office 1 year after expiration of license/permit)

- NCDENR Permit No. WQCS00110, Expired Dec. 31, 2015
- NCDENR Permit No. WQ0022224, Expired May 31, 2020
- NCDENR Permit No. WQ0023178, Expired September 31, 2020

Grants

(Retention Schedule, destroy in office after 5 years)

- Rural Center Grants Transfer, 2013
- Economic Development Assistance Grant, 2016
- EIP Application, 2015-2016
- Grant Services, Hartigan, 2005
- NC General Assembly Water Sewer Study Grant \$50,000, 2017
- AIA Water & Wastewater Grant, 2017
- Regional Wastewater Project - Revision #1 Rural Economic Development Grant Agreement, 2017

Board of Elections

(Retention Schedule, destroy in office when reference value ends)

- Elections 2004, 2005, 2008, 2009, 2015, 2016, 2017

Ceremonial Letters

(Retention Schedule, destroy in office when superseded or obsolete)

- NAUW Letter, 2025, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2018, 2019, 2023
- Sam Robertson 94th Birthday, 2011
- Eagle Scout Letters, 2010, 2011, 2012, 2014
- Pearls of Interest Group, 2010
- Cooper High Reunion
- Sympathy Letter, 2013
- Senior Concerns, 2014
- Taekwondo Letter, 2015, 2016
- Brighter Hope Christian Fellowship Groundbreaking, 2014
- Community Shred Tips
- Congrats to Representatives, 2012, 2013
- Goodwill Concern Letter, 2010
- Student Loan Forgiveness Letter, 2007
- Mayor Recommendation Letter, 2012
- Parking Ticket Letter, 2005

Rules of Procedures

(Retention Schedule, destroy in office when superseded or obsolete)

- Rules of Procedures, 2004, 2006, 2007, 2012

Ethics Training

(Retention Schedule, destroy in office when superseded or obsolete)

- Butch Lawter, 2016
- Jason Thompson, 2016
- Avery Everett, 2020

Council Updates from Clerk's Office

(Retention Schedule, destroy in office when superseded or obsolete)

- Council Updates from Clerk's Office, 2022

Retention Schedule

(Retention Schedule, destroy in office when no longer in effect or superseded)

- Retention Schedules, 2009, 2013, 2014, 2015, 2016, 2017, 2018

Agendas

(Retention Schedule, destroy in office after 4 years)

- Clerk's Office Council Meeting Agendas 2018, 2019

MOU

(Retention Schedule, destroy in office after 10 years after expiration date)

- DuPont, Land adjacent to Neuser River Property, 2012 (expired December 31, 2012)

Duly adopted this the 15th of July, 2024 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Heidi L. Holland, CMC, NCCMC
Town Clerk

**TOWN OF CLAYTON
PROCLAMATION
NATIONAL INTERN DAY**

WHEREAS, the Town of Clayton recognizes the positive impact that experiential learning has on preparing students for success in life; and

WHEREAS, all students in North Carolina should have access to experiential learning opportunities; and

WHEREAS, experiential learning opportunities, such as work-based learning, are important to the economic vitality of its communities; and

WHEREAS, work-based learning serves to connect students' skills and competencies gained from education with those used in the workplace; and

WHEREAS, on the last Thursday in July, National Intern Day is celebrated across the country by millions of students, higher education institutions, employers and other organizations; and

WHEREAS, in recognition of National Intern Day, the Town of Clayton is committed to elevating awareness, advancing meaningful and diverse work-based learning opportunities, and acknowledging those involved in internships: students, education institutions and employers; and

NOW, THEREFORE, on behalf of the Clayton Town Council, we hereby proclaim July 25, 2024 as National Intern Day.

Proclaimed this the 15th day of July, 2024.

Jody L. McLeod
Mayor



Regular Town Council Meeting Agenda Cover Sheet

Meeting Date

July 15, 2024

Agenda Location

NEW BUSINESS

Item Title

Lumos Master Encroachment Agreement

Presenter(s)

Rich Cappola, Town Manager

Suggested Action

Approval of Agreement

Strategic Priorities Alignment



Think Clayton
(Administrative)



Think Arts &
Culture



Think
Downtown



Think
Economic
Development



Think Land
Use &
Housing



Think
Mobility



Think Parks,
Recreation
& Natural
Resources



Think Public
Services &
Infrastructure

Public Hearing: No

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

☐ Public Hearing (Required by GS)

☐ Newspaper Notice (Required by GS)

☐ Public Forum/Input Session

☐ E-News Distribution

☒ Social Media

☐ Special Mailing

☐ Public Hearing (Not Required by GS)

☐ Newspaper Notice (Not Required by GS)

☐ Press Release

☒ Website

☐ Survey

☐ None Required

Summary

Lumos plans to install a fiber-to-the-premise (FTTP) network in select parts of town to increase broadband connectivity options for town residents. The agreement sets the terms and conditions allowing Lumos to encroach upon the public rights of way of the public streets within the corporate limits of the Town for the installation, operation, and maintenance of its communications Facilities.

Background/History

In December 2023, Lumos announced a \$50 million expansion of their network into Johnston and Harnett counties. The FTTP network will provide speeds for customers up to 5 gigabit per second.

Recommendation

Approve the agreement

Funding Source

N/A

Corresponding Documentation

[Clayton-Lumos MEA \(7-10-2024\) CLEAN \(GD rev. 7.10.24\) CLEAN](#)

Submitted By: Patrick Pierce, Administration

Reviewed By:

Heidi Holland, Town Clerk

Approved - Jul 10 2024

Sam Johnson-Phillips, Deputy Town Clerk

Approved - Jul 10 2024

Master Right Of Way Encroachment and Network Development Agreement

THIS AGREEMENT made and entered into this the ____ of _____, ____ (the “Effective Date”) by and between the **Town of Clayton**, a municipal corporation created under the laws of the State of North Carolina, whose address is _____, party of the first part and hereinafter referred to as the “**Town**”, and **North State Communications Advanced Services, LLC d/b/a Lumos**, a North Carolina limited liability company, party of the second part, and hereinafter referred to as “**Provider.**”

W I T N E S S E T H

WHEREAS, to foster innovation and stimulate economic growth, the Town desires to expand the availability of state-of-the-art communications services for Town residents and businesses by way of private investment in the “next generation” fiber-to-the-premises networks (“FTTP Network”), capable of delivering services with service capability speeds up to 5 Gigabit per second in its jurisdiction and surrounding areas; and

WHEREAS, Provider desires to deploy and operate a FTTP Network in the Town’s jurisdiction to meet the standards of such an ultra-high-speed network, and to thereby make a long-term commitment in the local market and use that network to provide industry-leading broadband Internet access, video programming, voice and other communications services to residential, business, and governmental customers; and

WHEREAS, Provider believes it is well-positioned to deploy such a fiber-based network to provide services to the citizens of the Town; and

WHEREAS, this Agreement is accordingly intended to establish the framework under which Provider will construct and deploy its FTTP Network in the Town and access the Town’s right of ways, pursuant to all applicable local and other legal requirements (“the Project”); and

WHEREAS, Provider is willing to invest its capital to complete the Project subject to receiving certain assurances from the Town regarding the procedures that will govern the Project; and

WHEREAS, the Town is willing to provide Provider with such assurances as more particularly set forth in this Agreement;

WHEREAS, in order to carry out the Project, Provider desires to encroach upon the public rights of way of the public streets within the corporate limits of the Town for the installation, operation, and maintenance of its communications Facilities; and

WHEREAS, it is to the material advantage of Provider and the Town to effect this encroachment, and the Town, in the exercise of authority conferred upon it by North Carolina General Statute § 160A-296, is willing to permit the encroachment within specific locations within the Town public rights of way of the public streets within the corporate limits of Town, subject to the terms and conditions of this Agreement and the provisions of the Town’s Code of Ordinances provided, however, that Provider performs and abides by the covenants and agreements herein contained; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be bound, hereby enter this Agreement as set forth below:

Definitions

For the purposes of this Agreement the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Communications Services means any retail communications service offered and provided by Provider through its Facilities, including but not limited to broadband Internet access service, voice service, and video service.

Facilities includes, without limitation, fiber optic cables, conduits, converters, splice boxes, cabinets, handholds, manholes, vaults, equipment, surface location markers, appurtenances, and related facilities to be located by Provider in the Public Rights of Way of the Town and used or useful for the provision of communications services it is authorized by law to provide via the FTTP Network.

FTTP Network (or Network) means a Fiber to the Premises Network utilizing XGS-PON technology providing voice and broadband Internet access services with service capability speeds up to 5 Gigabit per second to residents and businesses within the Market Area.

NCDOT means North Carolina Department of Transportation.

Law means any local, state or federal legislative, judicial or administrative order, certificate, decision statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirement, as amended, now in effect or subsequently enacted or issued during the term of this Agreement, including, but not limited to, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 70, codified at 47 U.S.C., and all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the North Carolina Utilities Commission pursuant thereto.

Market Area means residents and business locations within the corporate limits of the Town of Clayton, which shall include any additional areas annexed by the Town after the Effective Date. Nothing contained herein shall be construed as to require Provider to provide Services to all residents and business locations within the Market Area.

Premises means a residence, commercial building, multi-dwelling unit (MDU), or buildable lot that can be feasibly and reasonably served by the Network.

Public Rights Of Way or Public Way means the surface, the airspace above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway or utility easement hereafter held by the Town or other public rights of way which shall entitle the Town and Provider to the use thereof for the purpose of installing and maintaining Facilities owned by Provider. No reference herein to the "public way" shall be deemed to be a representation or guarantee by the Town that its title to any property is sufficient to permit its use for such purpose, and Provider shall, by its use of such terms, be deemed to gain only such rights to use property in the Town as the Town may have the undisputed right and power to give or as granted by Federal or State law.

State means the State of North Carolina.

1. Provider Commitments

1.1. Design and Construction of the Network.

1.1.1 Network Description. Provider shall complete all necessary design work and deploy and operate a FTTP Network that provides Communications Services to residents and businesses within the Market Area.

1.2 Financing. Provider will bear all costs for deployment of the FTTP Network, including design, engineering, construction, equipment, and insurance. Provider will also bear all costs associated with the maintenance of the FTTP Network.

1.3 Network Construction. Provider will deploy and construct the Network in the Market Area in compliance with all applicable local and other regulatory and permitting requirements and processes, and any other Applicable Standards. Applicable Standards means and includes all applicable rules and regulations and engineering and safety standards governing the installation, maintenance, and operation of Network facilities and the performance of all work in public and private rights of way, and includes the most current versions of National Electric Safety Code (“NESC”); the National Electrical Code (“NEC”); the regulations of the Federal Communications Commission (“FCC”); the Occupational Safety and Health Administration (“OSHA”); provisions of the Town’s, county’s, or State of North Carolina’s building, construction, zoning, and safety codes; and agreements, rules and regulations relating to permits for occupation of public rights of way; each of which is incorporated by reference in to this Agreement, and/or other reasonable safety, engineering, architectural or aesthetic requirements of the Town, state or federal authority having jurisdiction over such facilities.

1.4 Construction Methods. Traditional infrastructure used for wireless and wireline network deployment shall be used, including, but not limited to, conduit, fiber, poles, rack space, nodes, buildings, facilities, central office locations and available land.

1.5 Network Deployment.

1.5.1 Schedule. The Network will be deployed, and Communications Services made available by Provider in the Market Area. Provider will keep the Town and the public apprised throughout the construction of the FTTP Network and identify the specific neighborhoods or geographic areas where Provider plans to initiate construction at least 30 days before commencing construction. Subject to the reasonable request of the Town, Provider will target certain neighborhoods or geographic areas for deployment or temporarily avoid construction in certain geographic areas to prevent disruptions during special events (e.g., to ensure certain streets are unimpeded for planned festivals or parades, etc.) or due to other special circumstances. Provider will provide Communications Services in areas where construction has been completed via the FTTP Network on an ongoing as-requested basis, for customers who are satisfied with and agree to customer terms and conditions for the Communications Services. Provider will also provide ad hoc updates from time to time upon the reasonable request of the Town concerning, among other matters, demand thresholds required for residential neighborhoods, efforts to assess and increase demand, and deployment status.

1.5.2 Use of Subcontractors. Construction and other work related to the FTTP Network may be completed by independent contractors and representatives engaged by Provider. If so, Provider shall be

responsible for all negligent acts or omissions of its independent contractors that occur in the Town's rights-of-way or on other Town property or infrastructure when performing work on behalf of Provider, or to the extent stricter standards exist within any applicable ordinance, in compliance with the Town's ordinances, policies and procedures. Notwithstanding the use of any subcontractor(s), Provider shall remain entirely responsible for the performance of its obligations under this Agreement, and Provider shall be responsible for actions of its subcontractors in connection with this Agreement. Provider shall ensure that any subcontractor is properly insured, licensed, and otherwise compliant with all Applicable Standards and applicable law.

1.5.3 E-Verify. Provider, and all subcontractors, will comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, "Verification of Work Authorization," and will provide documentation or sign affidavits or any other documents requested by the Town demonstrating such compliance.

1.5.4 Pole Attachments. Most utility poles located in the Market Area are owned by the Town, and Provider shall be obligated to enter into a pole attachment agreement with the Town before making any attachments thereto. Similarly, Provider shall be obligated to enter into a pole attachment agreement with any other third-party owner of poles to which it desires to attach in the Market Area. Additionally, Provider acknowledges that it will have to obtain separate permits for any country or state-controlled right-of-way. If requested, the Town agrees to cooperate with Provider's efforts to gain access to rights of way owned and controlled by the N.C. Department of Transportation or other third parties. Any unauthorized Facilities or FTTP Network components will be promptly removed by Provider at its sole expense.

1.5.5. Utility Poles. Provider is prohibited from installing any new utility poles within the Town's Public Rights of Way while carrying out this Agreement, except as allowed in Part 3E, Art. 19 of Chapter 160A of the North Carolina General Statutes, as amended or recodified.

1.5.6. Borings. Provider will use commercially reasonable efforts to restore property within three (3) business days of the boring, subject to factors beyond Provider's reasonable control. Consideration will be given to the amount of restoration needed with each boring and Provider will make commercially reasonable efforts to conduct borings in a manner which requires the least amount of restoration (e.g., when appropriate using streets and sidewalks for equipment rather than lawns, etc.). After boring under the street / curb and sidewalks, Provider will inspect for any heaving that may have occurred from the boring process and repair the same. In addition, all activities in the right of way of the Town shall comply with the provisions of this Agreement, right of way permits, and the ordinances of the Town, and in the event of any conflict between the provisions thereof and this Agreement, the provisions of this Agreement shall prevail.

1.5.7 Franchise. Intentionally Omitted.

1.5.8. Operations. Provider will provide personnel in the Town to perform installation, repair and maintenance services for all fiber services, and shall have a customer service branch with 24/7 availability to its customers in the Town.

1.5.9 Network Management. Provider agrees that it will undertake commercially reasonable efforts to manage and maintain its FTTP Network in the Town, including monitoring and maintaining the FTTP Network according to generally accepted engineering standards in the communications industry, implementing system improvements meeting or exceeding industry standards, ensuring that the FTTP Network remains an up-to-date communications facility, and taking commercially reasonable steps to ensure optimum FTTP Network reliability.

1.5.10. Town Service. Upon request by the Town pursuant to this Section 1.5.10, the Provider shall furnish the Town with a 1-gigabyte internet service, inclusive of any requisite Provider equipment necessary for the integration with the Town's existing network infrastructure situated within any Town-owned building regularly utilized by Town employees. There shall be no fee levied for the provision of the 1-gigabyte internet service. Insofar as the installation or maintenance does not necessitate additional construction, the Town shall not incur any charges for installation or maintenance fees. This complementary service shall be requested and documented via an amendment to this Agreement which shall include documentation of the consideration for entering into such amendment.

2. Town Support and Commitments.

2.1 Project Liaison and Contacts. The Town shall designate staff that will facilitate communications between Provider and Town staff and officials and will coordinate between municipal departments regarding the Project.

2.2 Town Business. The Town will provide Provider with an opportunity to obtain any of the Town's phone, video, Internet and other fiber services currently being provided by third parties upon terms reasonably acceptable to both Parties and in accordance with all applicable laws and ordinances including, but not limited to, any RFP and bidding requirements.

2.3 Permit Processing and Inspections.

2.3.1 Permit Processing. Parties will use their best efforts to conduct, within 30 days after this Agreement is signed and prior to construction of the FTTP Network, a pre-construction conference to review and to plan for the construction to be undertaken by Provider. Permit processing and workflow will follow the flowchart listed on Exhibit A hereto. The Town agrees to provide diligent and expeditious review and determinations of all applications for permits submitted by Provider and will attempt, based on the nature and size of the work being permitted and any applicable legal requirements (including need for governing board approval), to approve or respond within thirty (30) business days from the date of the submission of the request, in connection with constructing and deploying the FTTP Network, including requests for any approvals necessary for construction, maintenance or other work within Town's right of ways and easements or related to access to Town's assets or infrastructure, all in accordance with all applicable regulations and ordinances and the Town's standard processes and practices generally made available to all third parties.

2.3.2 Inspections. In order to facilitate and ensure continuity and efficiency of inspections, the Town will designate inspectors and supervisors with the collective authority to inspect all construction for the FTTP Network, maintenance and related work in connection with each applicable permit to be issued by the Town to Provider. The Town will ensure that all such inspections are completed without undue delay in accordance with applicable ordinances and the Town's processes and practices made available to all third parties.

2.4. Solicitation. The Town agrees to permit Provider to conduct door-to-door consultative sales in accordance with applicable laws, including the Town of Clayton, NC Ordinances "Chapter 115: Peddlers, Transient Vendors, and Solicitors." Prior to performing any door-to-door consultative sales, Provider will obtain a solicitation permit from the Town of Clayton Police Department.

2.5 Non-Discriminatory Practices. As to its non-discriminatory practices concerning the FTTP

Network during the Term of the Agreement and as permitted under applicable law, it is the Town's policy to treat broadband Internet service providers in the Market Area, including Provider, in a competitively neutral and non-discriminatory way as to benefits, concessions, accommodations, and other rights that the Town extends to providers of comparable broadband Internet services, depending on their availability and the similarity of services involved.

2.6 Project Announcement. The parties will cooperate on one or more joint publicity and public relations initiatives related to the announcement of construction of the FTTP Network (the "Public Announcement").

3. Right Of Way Access

3.1 Use of Public Rights of Way. For the purpose of installation, operation and maintenance of its FTTP Network, Provider may erect, install, construct, repair, replace, reconstruct and retain in, under, upon, across and along the public streets and ways within the corporate limits of the Town such Facilities as are necessary to the operation of the FTTP Network, provided, however, that, subject to applicable Law, Provider shall comply with all design, permitting, construction, safety, and performance provisions contained in this Agreement and other applicable local codes and ordinances. Any major changes or future modifications to the permitted design shall be required to follow applicable permitting processes in place at that time. Provider accepts the Town right-of-way "as is" and "where is" and assumes all risks related to the use.

3.2 Location of Public Rights of Way and Existing Utilities. It is the responsibility of Provider to determine the location of the public rights of way and utilities located therein. For the avoidance of doubt and due to the expedited network deployment contemplated herein, with advance notice and approval of the estimated costs thereof, Provider agrees, the provisions of G.S. 87-119 notwithstanding, to reimburse the Town for any cost incurred by the Town due to outsourcing utility locating services if such utility locating needs caused by the Project and the expedited network deployment exceed Town staff capabilities. In the event Provider does not agree to incur the costs associated with outsourced utility locating services, the Town shall continue to utilize Town staff for utility locates on a schedule acceptable to Town. The cost to repair, restore, or relocate existing facilities due to this encroachment shall be the responsibility of Provider. To the extent applicable, Provider agrees to fully comply with Underground Utility Safety and Damage Prevention Act, Article 8A of Chapter 87 of the NCGS.

3.3 Use of Areas Outside the Public Rights of Way. Section 3 and Section 4 hereof only cover the encroachment over and upon the public rights of way owned by the Town within the corporate limits of the Town. Provider shall secure all necessary easements, permits, permission, or approval for encroachment or other use of property outside the Town owned right of ways. The foregoing notwithstanding, the Town neither promises nor contracts to obtain or acquire easements or rights of way for the construction, installation, maintenance, or operation of Provider's Facilities. In the event Provider seeks to install facilities in such areas to be future public rights of way owned by the Town, the installation shall conform to all Town standards, and Provider agrees that the Town shall not be liable for relocation costs if a conflict arises with future Town facilities or infrastructure.

3.4 Police Powers. Provider's rights are subject to the police powers of the Town to adopt and enforce ordinances for the health, safety, and welfare of the public to the extent allowed by law. Provider shall comply with all applicable general laws and ordinances enacted by the Town pursuant to that power (for instance, the Town's noise ordinance).

3.5 Provider's Encroachment into Public Rights Of Way: Except as may be explicitly provided herein, this Agreement does not: i) convey any right, title or interest in the Public Rights Of Way; ii) divest the Town of any interest in the Public Rights of Way; or iii) constitute any warranty of the Town's title or legal interest in the Public Rights of Way.

4. Construction and Technical Standards

4.1 Compliance with Construction and Technical Standards. Provider shall construct, install and maintain its Facilities in an orderly and skillful manner and in a manner consistent with all laws, Town ordinances, construction standards, current and future technological standards and governmental requirements, which standards are incorporated by reference herein.

4.2 Tree Trimming Plan for Overhead Lines. After any required approval by the Town of the Facilities, Provider shall submit to the Town a tree trimming plan if required by the Director of Engineering for review and approval.

4.3 Approval of Construction Plans. Prior to the construction of any portion of the FTTP Network in Town-owned public rights of way or placement or installation of any part of Provider's Facilities within Town owned public rights of way, Provider shall first submit to the Director of Engineering or designee, a Construction Plan prepared and sealed by a North Carolina licensed Professional Engineer. The plan shall include a concise description of the Facilities proposed to be erected or installed in any Town owned public rights of way and their specifications, engineering drawings, and detailed plans indicating the proposed location of all such Facilities. Provider shall include the approximate location of existing Town utilities derived from GIS files obtained from Town within 6 months of submission of each permit set. After Provider receives KMZ Maps of Town's existing utilities and to the extent practicable, the plan shall also show the location of Provider Facilities referenced from public rights of way, street section, all existing above and below ground structures, and existing utilities. Provider's Construction Plans shall only include those utilities depicted on Town's KMZ maps. Upon approval of the plans, the Town will issue a permit which shall become part of this Agreement.

4.4 Pole Attachment. Intentionally Omitted.

4.5 Identification of Facilities. All above ground structures shall be marked to identify the owner of the structure and emergency contact for the same.

4.6 Approval from NCDOT, Railroad, and Piedmont Natural Gas. Provider shall provide to the Town as part of the construction plan submittal copies of approved encroachment agreements from the NCDOT where NCDOT rights of way are involved, from the appropriate Railroad Company where the railroad right of way crossings are involved, and from Piedmont Natural Gas when crossing the high-pressure cross-county gas supply main and any other major utility or transportation entity.

4.7 ADA Compliance. Provider shall comply with the ADA Standards for Accessible Design.

4.8 Approvals Required. No placement or installation of any part of Provider's Facilities in Town-owned rights of way or Town owned streets shall be commenced by any person until construction permits and written approval has been issued by the Director of Engineering; provided further, that such permits and approval shall not be unreasonably withheld, and action thereon shall be taken within a reasonable period of time as allowed by law.

4.9 Record Drawings. Within sixty (60) days after the completion of any construction activities of the Facilities within the encroachment areas, Provider shall provide to the Director of Engineering a digital copy of the record drawings compatible with ESRI GIS software.

4.10 Pre-Construction Requirements. A pre-construction meeting will be required prior to performing any work. The Provider, contractor(s), stakeholders, etc. shall attend. At this time or upon request, Provider shall present necessary construction plans and schedule; including staging, street/lane/sidewalk obstructions, project duration, work hours, paving restoration, construction inspection, public notification, etc. Provider shall take a sufficient number of preconstruction photos and videos to document pre-existing condition of all areas where work is to be performed to the Town's satisfaction. All damaged items along property frontages (asphalt, curb, and sidewalk) shall be replaced, and in commercially reasonable condition prior to closeout of all applicable permits.

4.12 Requirement for Underground Installations. All installations shall be underground in those areas of the Town where all utilities serving the area are underground at the time of installation. In areas where other utility facilities are above ground at the time of installation, Provider may install its service above ground on such facilities with prior Town approval, which shall not be unreasonably withheld or delayed. At such time as all utilities and cable serving the area are reasonably required to be placed underground by the Town or are placed underground, Provider shall likewise place its services underground without cost to the Town, except and unless the Town has agreed to pay to relocate the facilities of another service provider in the same geographic area (e.g., pursuant to a relocate project for which the Town has received grant funds).

4.13 Applicable Standards. Provider shall always comply with the (1) applicable Federal, State and local regulations and (2) the standards set forth in this Agreement.

4.14 Interference with Persons, Improvements, Public and Private Property and Utilities. Provider's Facilities shall be located, erected, and maintained so that such system shall:

4.14.1 Not endanger or interfere with the health and safety of persons;

4.14.2 Not interfere with the utilization of the right of way by the Town or the Town's facilities;

4.14.3 Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places, or property, except to the minimum extent possible during actual construction, repair, or removal;

4.14.4 Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction, repair or removal; and

4.14.5 Not obstruct, hinder, or interfere with any gas, electric, water or other utilities, cable, telecommunication, or telephone facilities located within the Town.

4.15 Excavation and Work in Public Streets and Right of Ways; Application; Restoration; Damage.

4.15.1 With respect to underground installations, Provider shall install the conduit for the cable by boring if possible, or by trenching, or plowing if boring is not feasible. Provider may excavate or disturb pavement, curb, gutters, sidewalks, driveways, or other surfacing in or on any street, right-of-way, or

public place as necessary for directional boring. Open cutting of the paved street section is not permitted. Utility holes and handholes shall not be visible in residential areas unless approved by the Director of Engineering who may require a route change. If authorized in writing by the Director of Engineering, sidewalks may be excavated for the placement of manholes and handholes.

- 4.15.2 Excavations or bores made by the Provider under the public streets, rights-of-way, or public places of the Town, pursuant to this Agreement, shall be made in compliance with the ordinances and regulations of the Town in effect at the time of such excavation.
- 4.15.3 Prior to any excavation in or boring under the public streets or rights-of-way of the Town, Provider shall notify all utilities that may be affected by such excavation in or boring under the street, rights-of-way, or property upon which the work is to be done, and the nature of the work to be performed. Additionally, the services of North Carolina One-Call may be used to notify its member utilities.
- 4.15.4 In situations deemed by Provider to constitute an emergency involving a danger to the public health, safety and welfare, Provider shall notify the Director of Engineering of the nature and the location of the potential hazard.
- 4.15.5 During the installation, repair or removal of Provider's Facilities in or on any street, right of way or public place, Provider agrees to provide at all times proper signs, signal lights, flagmen, barricades, and other warning devices for the protection of pedestrian and vehicular traffic.
- 4.15.6 Provider shall exercise due care in the operation, installation, alteration, repair or removal of its Facilities. If any utility or property of the Town, real or personal, is damaged, impaired or destroyed as a result of either the negligent or intentional acts of Provider or its employees, or the negligent acts of its agents or persons operating under its direction, supervision or control, Provider shall be liable to the Town for such damages, including but not limited to the cost to repair or replace the utility or property.
- 4.15.7 Any damage caused by Provider to Town infrastructure or facilities shall be repaired to Town standards and said repairs can be performed by the Town with the costs thereof to be reimbursed by Provider, or by a third-party contractor at Provider's expense, and subject to Town's inspection and acceptance. Provider shall reimburse the Town the cost of repairs within thirty (30) days after receipt of an itemized list of such costs or the Town may recover such costs through the performance bond provided by Provider.
- 4.15.8 Restoration
 - 4.15.8.1 Immediately after the Provider installs or repairs its Facilities within an existing street or vehicular access, the Provider shall backfill and complete pavement restoration in accordance with the Town's requirements. Permanent patches shall be made within 72 hours of the initial utility cut. Unless permanent resurfacing is to be placed immediately, temporary bituminous resurfacing, a minimum of two inches thick or as otherwise specified, shall be

placed and properly maintained by Provider. Alternatively, Provider may temporarily backfill and plate the trench. The plates, if located in the street, shall be installed flush with the surrounding pavement and secured by applying either hot or cold mix asphalt around the perimeter of the plate. At no time shall the plates be placed in such a manner that causes a traffic hazard to vehicles, pedestrians, cyclists, and other non-vehicular traffic.

4.15.8.2. The Provider shall restore and replace landscaping including landscaping behind the back of curb or in non-traffic areas that have been destroyed, disturbed, or damaged by such work in accordance with the Town's specifications within 10 days. All landscaping restorations shall be done with like materials (i.e., Bermuda grass shall be repaired or replaced with Bermuda sod; zoysia grass shall be repaired/replaced with zoysia sod, etc.).

4.15.8.3. To ensure compliance with Section 4.15.8, the Director of Engineering or any other designee of the Town Manager may conduct an on-site or remote inspection.

4.15.9 If the installation, alteration, repair or removal of the Facilities in or on any street, right of way or public place requires the temporary removal of bricks, grates, trees or other property or materials belonging to the Town, Provider shall, until such materials are reinstalled, and in the exercise of due care, store said property or materials in a safe place satisfactory to the Town to minimize the risk of damage or theft.

4.15.10 Provider shall preserve and protect all trees and shrubbery located within the streets, rights of way, and public places of the Town from damage by Provider. Provider shall comply with the regulations of the Town concerning the preservation and protection of trees and shrubs. Provider shall pay to the Town the cost of treating, removing, and replacing any tree or shrub on the streets, rights-of-way and public places of the Town which has been damaged or destroyed as a result of the work of Provider.

4.15.11 Whenever the Town, or NCDOT, or their successors or assigns, within the exercise of reasonable police power, for the benefit of the public safety, plan to widen, modify, close, relocate, grade or regrade any public street, sidewalk, or other public way, in, along, under or across, which Provider shall have installed any of its Facilities, it shall be the duty of Provider, upon reasonable notice by the proper authority, and at no cost to the Town or NCDOT to remove or relocate as necessary its Facilities; provided, however, that in the event the Town elects to compensate a third party service provider for removing or relocating facilities in the same geographic area, then Provider shall be entitled to compensation on the same terms.

4.15.12 Provider shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise, or lower its lines to permit the moving of buildings. The expense of such temporary removal, raising or lowering of lines shall be paid by the person requesting the same, and Provider shall have the authority to require such payment in advance. Provider shall be given not less than fifteen (15) working days' advance notice to arrange for such temporary line changes.

4.15.13 Any damage to Provider's encroaching structure caused by the Town's use of its rights of way for construction or maintenance work in the ordinary course of its business, shall be borne by Provider except to the extent where such damage is caused by the negligence or willful misconduct of the Town.

4.15.14 Sediment and Erosion Control and Illicit Discharge: All sediment and drill slurry must be contained and removed from all work areas. All work must be in accordance with Town Code of Ordinance Chapters 157 and 158.

4.15.15 Removal and Abandonment.

4.15.15.1 If this Agreement is terminated and if Provider has no other legal right to keep its Facilities in place, Provider agrees to vacate and remove its below-ground Facilities at its own expense within a commercially reasonable timeframe after termination of this Agreement, provided that the Director of the Department of Public Works may, at that time, agree in writing, upon the written request of Provider to allow abandonment of some or all of its below-ground Facilities in place.

4.15.15.2 Restoration of Property. Provider shall, in a timely fashion and to the Town's reasonable satisfaction, refill, at its own expense, any excavation and boring that shall be made by it and shall leave all public ways and places in as good a condition or better as that prevailing prior to Provider's removal of its Facilities without affecting the electrical, television, telephone or other telecommunication cable, wires or attachments or the utilities. Town shall inspect and approve the condition of the public ways and public places and cables, wires, attachments, and poles after removal. The liability, indemnity, insurance, and performance bond as provided herein shall continue in full force and effect during the period of removal until full compliance by Provider with the terms and conditions of this paragraph and this Agreement.

4.15.15.3 Repair and/or Restoration by Town; Reimbursement of Costs. In the event of a failure by Provider to complete any work required by this Section 4 in a timely fashion, or any other work required by Town ordinance within the time as may be established and to the reasonable satisfaction of the Town, the Town may cause such work to be done and Provider shall reimburse the Town the cost thereof within thirty (30) days after receipt of an itemized list of such costs or the Town may recover such costs through the performance bond provided by Provider. The Town shall be permitted to seek legal and equitable relief to enforce this section's provisions.

4.15.15.4 Should any removal or abandonment of Facilities in place be approved by the Director of Engineering, Provider shall thereafter apply for and obtain any necessary permits.

5. Emergency Contacts

5.1. Coordination of Emergency Events: In case of an emergency, Town will act to protect the public health and safety of its citizens and to protect public and private property, notwithstanding any

provision in this Agreement. In the event addressing the emergency impacts of Provider's Facility Equipment, the Town will make every reasonable effort to coordinate its emergency response with Provider.

5.2. Notice of Changes: Provider will keep emergency contact information current and provide the Director of Public Works with information as to changes within a reasonable time.

5.3 Response to Network Emergency: In case of a network emergency, Provider may access its Facilities without first obtaining a permit to disturb the Town right-of-way provided Provider has conducted network trouble-shooting and diagnostic tests and has reasonably identified the point or points of network failure or malfunction. While acting under this provision to address a network emergency, Provider shall conduct its activities within the Town right-of-way in such a commercially reasonable manner as to protect public and private property. Provider will make every commercially reasonable effort to coordinate its emergency response with the Town. To that end, prior to entering the Town right-of-way, Provider will contact the Director of Engineering and give notice to Town of the network emergency and an estimated time period to address the situation.

6. Assignment and Transfer Of Ownership Or Control

6.1 Assignment. No assignment of the rights and obligations granted hereunder, or transfer of ownership or control of the Facilities shall occur unless approved by the Town, which such approval may not be unreasonably withheld or delayed. A transfer of ownership or control of the Facilities shall comply with all applicable Federal, State and Local Laws. Provider shall promptly notify the Town of its intent to assign this Agreement or transfer ownership or control of the Facilities and shall provide the Town with a true copy of all the documents relating to such assignment or ownership transfer. The transferee is required to accept this Agreement and all of its terms, provisions, and any amendments at the time of transfer. Performance bond , insurance are required from the transferee before the transfer is complete. Notification to the Town shall be as outlined herein. Notwithstanding anything herein to the contrary, Provider shall be permitted to assign this Agreement and transfer ownership and control of its Facilities to any other entity with which it is affiliated through ownership (for example, a corporate parent, a subsidiary, or a subsidiary of a corporate parent) providing that such other entity undertakes all the obligations of Provider under this Agreement.

6.2 Grant of Third-Party Rights. Notwithstanding any provision in this Agreement to the contrary, the Town agrees and acknowledges that Provider shall have the right to grant to third parties indefeasible rights of use and/or a right to use its Facilities, which are subject to the rights that have been granted to Provider under this Agreement and that such actions by Provider shall not constitute a transfer of ownership or control of the Facilities or require the prior approval by the Town.

7. Performance Bond, Insurance, and Indemnification.

7.1 Performance Bond.

7.1.1 Within ten days following approval of this Agreement by the Council, Provider shall deliver to the Town:

- a) Performance bond issued by a surety licensed in North Carolina in the amount of two hundred fifty thousand dollars (\$250,000).

The form and content of the bond shall be approved by the Town. The bond shall be a security fund. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation of this Agreement.

7.1.2 The security fund shall serve as security for:

- a) The faithful performance by Provider of all the terms and conditions of the Agreement;
- b) Any expenditure, damage or loss incurred by the Town occasioned by Provider's unexcused or uncured failure to comply with all lawful rules, regulations, orders, permits and other directives of the Town issued pursuant to this Agreement; and
- c) The payment by Provider of all liens and taxes, and all damages, claims, costs or expenses which the Town has been compelled to pay or incur by reason of any act or default of Provider, and all other payments due the Town from Provider pursuant to this Agreement.
- d) The costs and expenses incurred by the Town as a result of Provider's abandonment of the Facility at any time during the term of the Agreement or any extension thereto; or Town's performance of work that Provider should have performed, or
- e) The repair and/or restoration of any property, facilities, utilities, or rights of way required to be repaired and/or restored by Provider pursuant to the terms of this Agreement.

7.1.3 If Provider fails to repay to the Town any damages, costs or expenses which the Town shall be compelled to pay by reason of any act or default of Provider in connection with this Agreement, the Town may then demand payment from the security fund.

7.1.4 The Town shall be the beneficiary under the performance bond. Provider shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any other purpose. During the term of the Agreement, the performance bond shall be maintained in the amount of two hundred fifty thousand dollars (\$250,000).

7.1.5 The Town, with the approval of Council, may, in its discretion, decrease the amount of or eliminate the security fund in consideration of the financial stability of Provider.

7.1.6 If Provider fails to pay the Town any fees, penalties, claims, liens or liquidated damages owed to the Town after 30 days' written notice to pay to the Town, specifying the amount owed and the nature of amount owed, the Town may remedy such failure by Provider by demand on the security fund (bond).

7.1.7 In the event that amounts are withdrawn by the Town pursuant to this Section, Provider shall restore the security fund to the amount it was prior to the Town's claim within 10 business days of notification by the Town of its withdrawal against the security fund.

7.1.8 In the event, Provider proposes construction activities which represent a level of construction activity or restoration for which the Town, in its sole reasonable and good faith discretion deems Provider's existing security fund to be inadequate security, the Town may direct Provider to post such additional security as the Town deems appropriate. Such additional security shall be maintained until Town notifies Provider that it is no longer necessary.

7.1.9 The rights reserved to the Town with respect to the security agreement fund are in addition to all other rights of the Town, whether reserved by this Agreement, or authorized by law, and no action, proceeding or exercise of a right with respect to such a bond shall affect any other right the Town may have except to the extent payment satisfies a Town claim.

7.1.10 The security fund shall contain the following endorsement: *“It is hereby understood and agreed that this instrument shall not be cancelled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the Town, by registered mail, from a surety of written notice of such an intention to cancel or not to renew.”*

7.1.11 Provider shall maintain the security fund in force and effect at all times that Provider has an active permit under the terms of this Agreement, plus an additional twelve (12) month period of time following completion of any work (including restoration) thereunder. In order to maintain coverage, Provider shall renew the security fund as necessary not less than 30 days prior to its expiration and provide a copy of the renewal to the Town.

7.2 Insurance.

7.2.1 All Certificates of Insurance must be furnished before work begins. A Certificate of Insurance (COI) must be issued by an authorized representative of the insurance carrier(s). Certificates of Insurance must have the Insurance Company name and NAIC number clearly identified.

7.2.2 Provider shall promptly advise the Town of any litigation arising out of this Agreement that may develop that would affect this insurance.

7.2.3 Neither the provisions of this section nor any damages recovered by the Town hereunder, shall be construed to limit the liability of Provider under the Agreement or for damages.

7.2.4 Provider shall provide at least 30 days prior written notice to Town of cancellation or non-renewal of any required coverage that is not replaced.

7.2.5 All insurance policies provided under the provisions of this Agreement shall be written by companies authorized to do business in the State of North Carolina and approved by the State Commissioner of Insurance.

7.2.6 Provider shall include the Town as an Additional Insured to the General Liability, Automobile Liability, and Umbrella Liability policies including those of its subcontractors while working hereunder.

7.2.7 Provider shall at all times during the Term of this Agreement maintain the following policies of insurance:

7.2.7.1 Commercial General Liability:

Limits:

Each Occurrence:	\$1,000,000
General Aggregate Limit	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000

The form of coverage must be the ISO CG 00 01 policy or equivalent as approved by the State of North Carolina Department of Insurance. Certificates evidencing ongoing completed operations coverage shall be provided for at least two years following the termination or expiration of this Agreement.

7.2.7.2 Commercial Automobile Liability:

Limits: \$1,000,000 combined single limit.

The Town must be added as an Additional Insured on the Commercial Auto Liability policy.

7.2.7.3 Workers' Compensation Insurance:

Limits:

Workers Compensation: Statutory for the State of North Carolina

Employers Liability: Bodily Injury by Accident \$1,000,000 each accident

Bodily Injury by Disease \$1,000,000 policy limit

Bodily Injury by Disease \$1,000,000 each employee.

Workers' Compensation must include all employees.

7.2.7.4 Umbrella Liability

An Umbrella or excess Liability policy covering General Liability, Automobile Liability and Employers Liability with a minimum limit of \$4,000,000 is required. Provider may use any combination of primary and excess to meet required total limits.

7.2.8 Notwithstanding the forgoing, Provider may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event Provider elects to self-insure its obligation under this Agreement to include Town as an additional insured, the following conditions apply: (i) Town shall promptly and no later than thirty (30) days after notice thereof provide Provider with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Provider with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Town shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Provider; and (iii) Town shall fully cooperate with Provider in the defense of the claim, demand, lawsuit, or the like.

7.3 Indemnification

7.3.1 To the maximum extent allowed by law, Provider shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a direct result of acts or omissions of Provider or subcontractors or anyone employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (1) Provider shall at its sole expense defend

Indemnitees with legal counsel reasonably acceptable to the Town.

- 7.3.2 To the maximum extent allowed by law, the Town shall defend, indemnify, and save harmless Provider, its parents, subsidiaries, and affiliates, and its and their respective directors, officers, partners, employees, agents, successors, and assigns ("Provider Indemnitees") from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a direct result of acts or omissions of the Town, including anyone employed by them or anyone for whose acts they may be liable for.
- 7.3.3 Exclusions. Subsections 7.3.1 and 7.3.2 will not apply to the extent the Charges arise from or are related to the gross negligence or willful misconduct of an Indemnified Party or is made by Indemnified Party's employees and covered under applicable workers' compensation laws.
- 7.3.4 Definitions. As used in subsections 7.3.1 and 7.3.2 above, "Charges" means any third-party claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement). "Indemnitees" means the Town, its officers, officials, independent contractors, agents, and employees, excluding Provider. Indemnitees and Provider Indemnitees collectively shall be referred to as an "Indemnified Party".
- 7.3.5 Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.
- 7.3.6 Survival. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of Provider under this Agreement.

8. Confidentiality.

8.1.1 Confidential Documents. "Confidential Documents" as used in this Agreement shall mean any and all records or other documents, whether stored or exchanged by the parties in hard copy or electronically, that contain information that are designated by either party as Confidential Documents, or that a party should reasonably know would be confidential or proprietary based off the circumstances of the disclosure and nature of the information disclosed, and qualify as "trade secrets" as defined in G.S. 66-152(3). Such documents may include, but are not limited to, business plans, business forecasts, research, financial information, customer lists, sales and merchandising efforts, marketing plans, design or engineering details and specifications. Documents shall in no event qualify as Confidential Documents if: (i) their relevant contents are publicly available prior to this Agreement or becomes publicly available without a breach by the receiving party; (ii) they are subject to inspection under the public records laws of the State of North Carolina and not within an exception to disclosure, (iii) rightfully received by the receiving party from third parties without accompanying confidentiality obligations; (iv) already in the receiving party's possession and was lawfully received from sources other than the disclosing party; (iv) independently

developed by the receiving party; or (vi) approved by the disclosing party for release.

8.1.2 Duties Regarding Confidential Documents. Through the term of this Agreement, and in order to achieve the objectives of this Agreement, one party may have to provide the other with access to documents it considers to be Confidential Documents. In such case, the parties shall use commercially reasonable efforts to label Confidential Documents as confidential or communicate in writing to the other party that it considers the information to be Confidential before, or at the time of the disclosure. The party which receives any Confidential Documents from the other party agrees to treat the same as confidential and shall not divulge, directly or indirectly, to any other person, firm, corporation, association or entity, for any purpose whatsoever, such documents, without the prior written consent of the disclosing party, except as required by law and except as provided in the paragraph below. The receiving party may, however, disclose Confidential Documents to its employees, agents and contractors on a need-to-know basis. The receiving party agrees to notify the disclosing party of any data breach affecting the Confidential Documents of the disclosing party, or any loss of such Confidential Documents from any other cause, within seventy-two (72) hours of the discovery of such breach or loss. The confidentiality and use restrictions contained in this Section 8 shall be enforced throughout the term of this Agreement and for an additional three (3) years thereafter.

8.1.3 Records Requests. If the Town receives a public records request to produce documents which Provider has labeled “confidential,” “trade secret” or another equivalent designation, or that Town could reasonably consider to be confidential or proprietary based on the circumstances of its disclosure and the nature of the information, the Town shall make an initial determination as to whether the Confidential Documents, in whole or in part, are subject to public inspection and promptly notify Provider of such initial determination. Within ten (10) calendar days of the receipt of such notice, Provider must notify the Town whether it agrees with the Town’s initial determination and, if not, notify the Town in writing which Confidential Documents, or parts thereof, are not subject to public inspection. The Town will then make a final determination as to whether the Confidential Documents, or parts thereof, are subject to public inspection under applicable laws and will promptly notify Provider of its final determination. The Town will allow Provider, if it disagrees with the final determination, three (3) calendar days after notice to obtain injunctive relief to prevent disclosure of the subject information before the Town releases the information. If such justification is not provided with the notice to withhold materials, Provider acknowledges that the notice shall be void and deemed of no effect and that the Town may release the information without any resulting liability to Provider. Further, if Provider does not seek appropriate injunctive or other judicial action or relief to prevent the disclosure of the materials within these three (3) calendars day period, the Town may release the information pursuant to the public records request without any resulting liability to Provider. Nothing in this Agreement shall prevent a party from disclosing Confidential Documents received from the other party if such disclosure is required by a court of competent jurisdiction or otherwise required by law.

8.1.4 Within 30 days of termination of this Agreement for any reason, each party agrees, to the extent permitted by law, to deliver to the other party all Confidential Documents of the other party then in such party’s possession.

9. Representations and Warranties; Limitation of Liability.

9.1 Representations. Each party represents that (i) it has the requisite right and authority to enter into this Agreement; (ii) this Agreement has been duly authorized, executed, and delivered and constitutes a valid and binding obligation enforceable in accordance with its terms, except as the same may be limited by

bankruptcy, insolvency, moratorium, and other laws of general application affecting the enforcement of creditors' rights; (iii) that entering into or performing its obligations under this Agreement shall not breach or contravene any obligation to any third party; and (iv) there are no actions, suits, proceedings or investigations pending, or to the knowledge of the Party, threatened against or affecting the Party of any of its properties, assets or businesses in any court or before or by any governmental authority that could, if adversely determined, reasonably be expected to have a material adverse effect on the Party's ability to perform its obligations under this Agreement. The parties each agree to comply with all applicable laws and regulations and Town policies as they may be amended from time-to-time. For purposes hereof, the term "applicable laws and regulations" means any applicable constitution, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by the appropriate government authorities and all amendments thereto from time to time.

9.2 Limitation of Liabilities. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY UNDER THE TERMS OF THIS AGREEMENT, OR ANY AGREEMENT ENTERED PURSUANT TO THIS MASTER AGREEMENT, FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES, PARENT COMPANIES AND AFFILIATES, AND THEIR RESPECTIVE TRUSTEES, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM.

10. Term and Default.

10.1 Term. The Term of this Agreement shall commence on the Effective Date and continue for a period of ten (10) years, and shall thereafter automatically renew for additional one (1) year Terms unless either party delivers written notice to the other party at least ninety (90) days before the expiration of the then-applicable Term stating their intent not to renew. This Agreement can also be terminated due to Default as set forth below.

10.2 Default. Either party may terminate this Agreement due to a Default (as defined below) by the other party by providing written notice to the defaulting party, provide that (i) such Default is incapable of remedy; or (ii) such Default is capable of remedy and the defaulting party fails to remedy such Default within thirty (30) days of receipt of notice from the other party. A party will be in Default under this Agreement if (i) such party materially breaches a term or provision of this Agreement; (ii) such party becomes insolvent or ceases to operate as a going concern; (iii) a petition under any of the bankruptcy laws is filed by or against such party and, if involuntary, is not dismissed within sixty (60) days after it is filed; (iv) such party makes a general assignment for the benefit of creditors; (v) a receiver, whether temporary or permanent, is appointed for the property of such party or any part thereof; or (vi) Provider fails to provide any Network services to Town residential end-users within two years of the Agreement's Effective Date. Said two-year failure to provide service to residential end-users shall not apply in any instance where the failure is related to the Town withholding Provider's needed consents or approvals under this Agreement to complete such installations.

11. Remedies. If Provider shall default in the performance of any of the covenants or conditions of this Agreement, or if the Facilities of Provider shall, by reason of improper maintenance or other cause, interfere with or become a source of danger, or be likely to interfere with or become a source of danger, to the street, utility system, or facilities of the Town, or other party utilizing the Town's right of way, and

Provider fails to remedy such default, interference, or dangers or improper condition within thirty (30) days after written notice from the Town to do so, this Agreement shall automatically terminate at the expiration of such thirty (30) day period and Provider, upon written notice by the Town, shall forthwith remove such Facilities from the Town's right of way(s) and restore said right of way(s) to the condition existing prior to the construction of any of Provider's Facilities thereon. In default thereof, the Town may at its election either take such action as is necessary to require removal of any Facilities by Provider or remove the same and restore the condition of said right of way(s) at the expense of Provider. Provided, however, in an emergency necessitating in the judgment of the Town immediate repair, maintenance or removal of the Facilities, Provider, upon request of the Town, shall do such requisite work or shall remove the Facilities, and if Provider fails to do so immediately after such request, the Town may do such requisite work or effect such removal at the expense of Provider.

12. Notices.

Except as otherwise provided herein, all notices from Provider to the Town pursuant to this Agreement shall be to the Town Manager or his/her designee as follows:

Town of Clayton

Attention: Town Manager

And to Provider

Lumos
4100 Mendenhall Oaks Parkway
Suite 300
High Point, NC 27265
Attention: Josh Many
Phone Number: 501-804-7894
Courtesy Copies to: Josh Many at josh.many@lumosfiber.com and Alison Brown at AJ.Brown@lumosfiber.com

Provider shall maintain with the Town a telephone number and an address for service of notices by mail. Provider shall be required to advise the Town of such addresses and telephone numbers and any changes thereof.

13. Failure To Enforce This Agreement, No Waiver Of The Terms Thereof. Neither the Town nor Provider shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

14. Severability

14.1 Invalidity. If any term, condition or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, provisions and conditions hereof shall, in all other

respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Provider and the Town.

14.2 Court Action. Notwithstanding anything to the contrary, in the event that any court, agency, commission, legislative body or other authority of competent jurisdiction (i) declares any section, deemed by the Town to be material, invalid, in whole or in part, or (ii) requires Provider either to (a) perform any act which is inconsistent with any section deemed by the Town to be material; or (b) cease performing any act deemed by the Town to be material, the Town shall so notify Provider and the Town and Provider shall, in good faith, renegotiate that term or those terms of this Agreement.

15. Survival. The provisions in Section 7.3, Section 8 and Section 9 of this Agreement shall survive and remain in effect after this Agreement is terminated. Also, any encroachment, license, attachment or other agreements that the parties enter into pursuant to this Agreement will remain in effect and shall expire by their own terms.

16. Independent Contractors. The parties are independent contractors. Nothing in this Agreement creates or implies, or shall be construed to create or imply, any agency, association, partnership, or joint venture between the parties and neither Party will be liable for the payment or performance of any debt, obligations, or liabilities of the other Party, unless expressly assumed in writing.

17. Reservation of Police Powers. This Agreement does not alter the terms or conditions of any approval, permit or decision granted or made by the Town, nor does it affect the general police powers of the Town and does not relieve Provider of any obligations under the Town laws, policies, or regulations and does not constitute an approval, permit or decision by the Town. Nothing in this Agreement shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Town in a manner not permitted by law.

18. No Exclusivity. Except as expressly stated otherwise in this Agreement, nothing in the Agreement shall be construed as precluding the Town from entering into similar agreements with any other Services provider or precluding any such party from providing Communications Services in the Market Area.

19. No Third-Party Beneficiaries. No rights or privileges of either Party hereto shall inure to the benefit of any other person or entity, and no such other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

20. Further Agreements. The Parties may negotiate and enter into additional agreements to effectuate the purpose of this Agreement.

21. Joint Drafting. The Parties acknowledge that this Agreement has been drafted jointly by the parties and agree that this Agreement will not be construed against either party as a result of any role such party may have had in the drafting process.

22. Governing Law and Jurisdiction. This Agreement and any action related to this Agreement will be governed by the laws of the State of North Carolina, excluding that body of law controlling conflict of laws and any application of the United Nations Convention on the International Sale of Goods. Any action, hearing, suit or proceeding arising out of or relating to this Agreement must be brought in the courts

of the State of North Carolina, or if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of North Carolina. Venue for Sate court actions shall be Johnston County. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding and waives any objection it may now have or hereafter have to venue or to convenience of forum. The parties agree that it is their mutual intent that this Agreement conforms to applicable local, state, and federal law regulating the covenants and obligations contained in this Agreement.

23. Dispute Resolution. Except as otherwise specifically provided in this Agreement, all disputes, disagreement, or controversies arising in connection with this Agreement will first be resolved through good faith negotiations in order to reach mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then either party may seek resolution by exercising any rights or remedies available to either party at law or equity.

24. Rights Cumulative, Specific Performance. All rights and remedies given to the Town and Provider by this Agreement shall be in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the Town and Provider, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Agreement or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the Town and Provider and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. The Parties shall be entitled to specific performance of the terms hereof in addition to any other remedy at law or in equity, including monetary damages, that may be available to each.

25. Entire Agreement; Amendment; Signatures. The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof. This Agreement supersedes any prior agreements or understandings between the parties. This Agreement constitutes the entire Agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by authorized representatives of both parties. This Agreement is for the exclusive benefit of their parties, their successors and permitted assigns. There are no third-party beneficiaries to this Agreement. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate originals as of the day and year first above written.

TOWN OF CLAYTON

By: _____
_____, Mayor

ATTEST

_____, Town Clerk

PROVIDER

By: _____
Name and title

PRE-AUDIT CERTIFICATION:

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

Finance Director

Account Number _____

Project Code (if applicable) _____

RECOMMENDED:

_____, Director of Engineering

State of North Carolina
County of Johnston

I, _____, a Notary Public of said County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that she is the Town Clerk of the Town of Clayton, a municipal corporation, and that by authority duly given and as the act of the Town of Clayton through and by the Town Council, its governing body, the foregoing instrument was signed in its name by the Mayor, _____, sealed with its corporate seal, and attested by herself as its Town Clerk.

WITNESS my hand and Notarial Seal, this the ____ day of _____, 20__.

_____, Notary Public

(Print or Type Name of Notary Here)

My Commission Expires: _____

State of _____

County of _____

I, _____ a notary public in and for the aforesaid county and state, certify that _____, personally (1) appeared before me this day, (2) stated that he or she is a [title of signer] of **Provider**, a _____ Corporation organized and existing under the laws of the State of North Carolina, (3) acknowledged that the foregoing Agreement with the Town of Clayton carries on in the usual way the Corporation's business, and (4) acknowledged the due execution of the contract on behalf of the Corporation.

WITNESS my hand and Notarial Seal, this the ____ day of _____, 20__.

_____, Notary Public

(Print or Type Name of Notary Here)

My Commission Expires: _____