



Town of Clayton
Regular Town Council Meeting Agenda
Monday, August 16, 2021 @ 6:00 PM
Council Chambers

THE PUBLIC MAY VIEW THE LIVE COUNCIL MEETING ON THE TOWN'S YOUTUBE CHANNEL:
https://www.youtube.com/channel/UCwz_EIU1ENyy7BkFsqmWYzQ

BELOW PLEASE FIND ADDITIONAL INFORMATION REGARDING PROCEDURES FOR IN-PERSON MEETINGS:

- ALL persons attending must wear a mask.
- We will be following proper social distancing at all times.
- All council/board members will be socially distanced in the council chambers and wearing face masks.*
- All staff and visitors will be socially distanced while within the council chambers. Face masks will be worn.*
- Hand sanitizer will be available, both in the lobby and council chambers.
- Podium/microphone will be sanitized after each speaker.

**Masks may be lowered when speaking.*

1. CALL TO ORDER

Pledge of Allegiance and Invocation

2. ADJUSTMENT OF THE AGENDA

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.)

- a. Certification of Sufficiency - 2021-72-ANX
 - Johnston Prep High School
[Certificate of Sufficiency](#)
- b. Final Acceptance
 - Highgate Subdivision - Phase 2
[Highgate Subdivision - Phase 2 - FINAL](#)
- c. Resolution to Set Public Hearing for September 7, 2021
 - 2021-72-ANX - Johnston Prep High School
[Resolution #2021-34](#)
- d. Budget Amendment - Joint Venture and Use Agreement w/ Johnston County Board of Education
[Ordinance #2021-08-01](#)
- e. DRAFT Minutes
 - August 2, 2021 - Regular Session
[August 2 2021 DRAFT Minutes](#)

POTENTIAL ACTION:

Adoption of Consent Agenda as Presented

4. ADMINISTRATIVE ITEMS

5. INTRODUCTIONS AND SPECIAL PRESENTATIONS

- a. Clayton Chamber of Commerce Annual Update
Presenter: Dana Wooten, Chamber President

6. PUBLIC HEARINGS

- a. 2021-54-RZ - Landmark Industrial Light Building
Presenter: Ben Paynter, Planner
[Cover](#)
[Application](#)
[Owner Consent Form](#)
[3 Neighborhood Meeting Materials](#)
[Site Layout](#)
[Adj Property Letter](#)
[Newspaper Ad](#)
[Staff Report](#)
[Staff Report Map](#)
[Planning Board Recommendation](#)
[Consistency Statement](#)
[Motion Form](#)
[Ordinance #2021-08-02](#)

POTENTIAL ACTION:

Adoption of Ordinance #2021-08-02

7. OLD BUSINESS

- a. Facility Condition Assessment
Presenter: Dolores Gill, Deputy Town Manager
[Cover](#)
- b. Resolution Awarding Design Build for Municipal Park
Presenter: Joshua Baird, Town Engineer
[Cover](#)
[RFQ Information](#)
[Balfour Beatty McAdams Ratio](#)
[Agreement DBIA530](#)
[Agreement DBIA535](#)
[Resolution #2021-35](#)
[Ordinance #2021-08-03](#)

POTENTIAL ACTION:

Adoption of Resolution #2021-35

POTENTIAL ACTION:

Adopt Ordinance #2021-08-03

- c. SRF Application/Re-Adoption of Capital Improvement Plan
Presenter: Rich Cappola, Interim Town Manager
[2021-2022 Water Sewer Fund CIP](#)
[Resolution #2021-36](#)

POTENTIAL ACTION:

Adoption of Resolution #2021-36

8. NEW BUSINESS

- a. Special Events Support Policy Update & Clayton Farmers Community Market and Horne Square Policy

Presenter: Amy Shearin, Emergency Services Coordinator

[Cover](#)

[DRAFT Special Event Support Policy](#)

[Special Events Support Policy](#)

[Resolution #2021-37](#)

[DRAFT Clayton Farmers Community Market Horne Square Policy](#)

[Clayton Farmers Community Market Horne Square Policy](#)

[Resolution #2021-38](#)

POTENTIAL ACTION:

Adoption of Resolution # 2021-37

POTENTIAL ACTION:

Adoption of Resolution #2021-38

- b. Archer Lodge Fire Department Service Agreement - 4th Amendment

Presenter: Matt Sutphin, Deputy Fire Chief

[Cover](#)

[Service Agreement](#)

[Exhibit A](#)

POTENTIAL ACTION:

Authorize Execution of Agreement

- c. Code of Ordinance Amendment - Chapter 91 - Animals

Presenter: Greg Tart, Police Chief

[REDLINE Version of Proposed Changes](#)

[CLEAN Version of Proposed Changes](#)

[Ordinance #2021-08-04](#)

POTENTIAL ACTION:

Adoption of Ordinance #2021-08-04

- d. Real Property Purchase

- 324 E. Horne Street

Presenter: Robert McKie, Finance Director

[Cover](#)

[Fully Executed Agreement 324 E. Horne](#)

[Ordinance #2021-08-05](#)

POTENTIAL ACTION:

Adoption of Ordinance #2021-08-05

9. STAFF REPORTS

- a. Town Manager
- b. Town Attorney
- c. Town Clerk
- d. Other Staff

10. OTHER BUSINESS

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

11. ADJOURNMENT

- a. Adjourn the Meeting

POTENTIAL ACTION:

Motion to Adjourn

Quasi-Judicial (evidentiary) – These hearings are different from other public hearings in that they resemble a court hearing where testimony is presented and the Town Council acts like a court of law. During evidentiary hearings, the Town Council receives only sworn testimony and other credible evidence. In addition, the Town Council must make findings of fact based upon the evidence presented. Citizens may give testimony in an evidentiary hearing after they have taken an oath.

ANNEXATION PETITION 2021-72-ANX
Johnston Prep High School
Parcels: 05105036
Owners: Tuttle Land Management, LLC
Non-Contiguous; 38.46 acres

CERTIFICATE OF SUFFICIENCY

To the Town Council of the Town of Clayton, North Carolina:

I, Kimberly A. Moffett, Town Clerk, do hereby certify that I have investigated the petition attached hereto and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160A-58.2.

In witness whereof, I have hereunto set my hand and affixed the seal of the Town of Clayton, this the 16th day of August, 2021 while in regular session.

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



TOWN OF CLAYTON
Engineering & Inspections
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

MEMORANDUM

To: Kimberly Moffett, Town Clerk

From: Chris Rowland, Construction Project Administrator

Copy: Jonathan Barnes, Dalton Engineering and Associates
Lori Bryant, Development Services Coordinator
Karen Durham, Engineering & Inspections Coordinator
Ryan Suman, Wakefield Development

Date: August 9, 2021

Subject: Highgate Subdivision – Phase 2

Please place a final acceptance request on the next available agenda for the subject public utilities to include water, sanitary sewer, and storm drainage. Also, please place all public street sections, rights of way, and all pertinent and related easements. A final inspection was done with all items being satisfactorily completed. Upon final acceptance, the Town will assume all operational and maintenance duties.

ANNEXATION PETITION 2021-72-ANX
Johnston Prep High School
Parcels: 05105036
Owners: Tuttle Land Management, LLC
Non-Contiguous; 38.46 acres

TOWN OF CLAYTON
RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION
OF ANNEXATION PURSUANT TO G. S.160A-58

WHEREAS, a petition requesting annexation of the contiguous area described herein has been received; and

WHEREAS, the Town Council has by resolution directed the Town Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the Town Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of the Town of Clayton, North Carolina that:

Section 1. A public hearing on the question of annexation of the contiguous area described herein will be held at Town Hall at 6:00 PM on Tuesday, September 7, 2021.

Section 2. Lying and being in Clayton Township, Johnston County, North Carolina and being more particularly described as follows:

BEGINNING AT AN IRON STAKE (CONCRETE MARKER) IN THE WESTERN EDGE OF US HIGHWAY NO. 70, N. J. MITCHINER'S SOUTHEAST PROPERTY CORNER, AND RUNS THENCE ALONG SAID MITCHINER PROPERTY LINE N. 82° 55' W. 2700 FEET TO AN IRON STAKE (CONCRETE. MARKER) IN COOPER BRANCH, N. J. MITCHINER'S SOUTHWEST PROPERTY COMER, THENCE ALONG THE RUN OF SAID BRANCH AS.IT MEANDERS IN A SOUTHERLY DIRECTION TO AN IRON STAKE (CONCRETE MARKER) JC BLINSON'S NORTHWEST PROPERTY LINE/COMER, THENCE ALONG SAID BLINSON'S PROPERTY LINE S 85°40' E. 1257.22 FEET TO AN IRON STAKE IN THE CENTER OF A DIRT ROAD LEADING FROM SAID BLINSON'S PROPERTY TO US HIGHWAY NO. 70, GRETCHEN P. MITCHINER'S NEW SOUTHWEST PROPERTY CORNER, THENCE ALONG THE SAID GRETCHEN P. MITCHINER'S PROPERTY LINE (ACROSS AN OPEN FIELD) N. 4° 20' E. 952.28 FEET TO AN IRON STAKE NEAR THE WOODED AREA, SAID MITCHINER'S NORTHWEST PROPERTY COMER, THENCE ALONG SAID MITCHINER'S PROPERTY LINE S. 85° 40' E. 132.65 FEET TO AN IRON STAKE NEAR THE WOODED AREA, THENCE S. 70° 18' E. 289 51 FEET TO AN IRON STAKE IN THE CENTER OF A DITCH, THENCE CONTINUING ALONG THE CENTER OF THE HIGHWAY EASEMENT DITCH S. 73° 10' E. 871.54 FEET TO THE CENTER OF SAID DITCH IN THE WESTERN EDGE OF US HIGHWAY NO. 70, GRETCHEN MITCHINER'S NORTHEAST PROPERTY CORNER, THENCE ALONG THE EDGE OF SAID HIGHWAY N. 5° 33' W. 266.12 FEET TO THE POINT OF BEING, CONTAINING 42 ACRES, MORE OR LESS, AND BEING THAT PORTION OF THE ALMA H.

PARRISH (DECEASED IN 1967) LANDS DEVISED IN HER LAST WILL AND TESTAMENT TO HELEN P. TUTTLE AS PROBATED AND RECORDED IN THE OFFICE OF THE CLERK OF SUPERIOR COURT OF JOHNSTON COUNTY, WHICH WAS SURVEYED AND PLATTED BY RAGSDALE ENGINEERS DATED DECEMBER 28, 1967, AND BEING A PART OF THE 67 ACRE TRACT OF LAND DEVISED TO ALMA CLEO HALL (PARRISH) BY HER FATHER, J. F. HALL.

Section 3. Notice of the public hearing shall be published once in The Johnstonian Newspaper, a newspaper having general circulation in the Town of Clayton, at least ten days prior to the date of the public hearing.

Duly adopted this the 16th day of September, 2021 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC
Town Clerk

Town of Clayton
Amendment to the FY 21-22 Budget

BE IT HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON that the following amendments shall be made to the FY 21-22 Budget:

Fund: General Fund

<u>Line Item</u>	<u>Previous Appropriation</u>	<u>Adjustment</u>	<u>Revised Appropriation</u>
Revenue			
100-40-00-48 99	Fund Balance Appropriated \$1,330,424	+500,000	\$1,830,424
Expenditures			
100-60-74-56 11	Contract Services \$289,210	+500,000	\$789,210

Explanation:

Amendment to appropriate fund balance to fulfill the Town's obligation related to the Joint Venture and Use Agreement with the Johnston County Board of Education to install an artificial turf athletic surface on the football stadium field and soccer field at Clayton High School. The Town has no ownership interest in the athletic fields. This amendment is required for compliance with G.S. 159-15.

Duly adopted this 16th day of August, 2021 while in regular session.

Jody L. McLeod
Mayor

Attest:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



**Town of Clayton
Regular Town Council Meeting Minutes
Monday, August 2, 2021 @ 6:00 PM
Council Chambers**

COUNCIL PRESENT:

Mayor McLeod
Mayor Pro Tem Thompson
Council Member Grannis
Council Member Holder
Council Member Bunn
Council Member Everett

STAFF PRESENT:

Rich Cappola, Interim Town Manager
Dolores Gill, Deputy Town Manager
Lee Barbee, Interim D/Town Manager
Jim Cauley, Town Attorney
Kimberly Moffett, Town Clerk
Robert McKie, Finance Director
Dick Hails, Interim Planning Director
Shaun Mizzell, Procurement & Contracts Manager
Joshua Baird, Town Engineer
Patrick Pierce, Economic Development Director
Justin Pulley, Grounds Maintenance Superintendent
Joy Garretson, Library Director
James Blalock, Utilities Maintenance Superintendent
Nathanael Shelton, Communications Director

COUNCIL ABSENT:

1 CALL TO ORDER

Pledge of Allegiance and Invocation

- a) Mayor McLeod called the meeting to order at 6:02 p.m. He led everyone in the Pledge of Allegiance as well as offering the Invocation.

2 ADJUSTMENT OF THE AGENDA

- a) Ms. Moffett requested a new item be added under New Business for discussion regarding Celebration of Kendra "Keni" Harrison, Olympics Silver Medal Winner.

Council Member Grannis requested that Item 3b be pulled from the Consent and placed under Old Business for brief discussion.

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.)

- a) Resolution Directing Clerk to Certify Sufficiency - 2021-72-ANX
b) ~~Right of Way Easement - Ranch Road Extension~~
c) DRAFT Minutes
 - July 14, 2021 - Special Session
 - July 19, 2021 - Regular Session
 - July 19, 2021 - Closed Session

ACTION: Adoption of Consent Agenda as Presented

Motion: Council Member Holder

Second: Council Member Bunn

Vote: Unanimous

4 ADMINISTRATIVE ITEMS

5 INTRODUCTIONS AND SPECIAL PRESENTATIONS

a) Employee Recognition

Presenter: James Blalock, Utilities Maintenance Supervisor

- Chris Snead - Instruction Control Tech
- Dylan Carroll - Utility Maintenance Mechanic 2

Mr. Blalock was present and shared information about recent accomplishments of two employees. Chris Snead has been with town for four years and recently received certification. He stated that Mr. Snead is an outstanding employee and is a big asset to the town. Mr. Blalock stated Dylan Carroll was the first employee to obtain the title of Utility Maintenance Mechanic 2 in the town. Mr. Carroll has been a member with the town for 6 years and is a huge asset to the town. Mr. Blalock offered his thanks to the council for their recent approval of several job classifications. Mayor McLeod offered his thanks on behalf of the council for the outstanding work done by these folks.

Mayor Pro Tem Thompson offered thanks to the town manager and department heads for advocating career ladders and providing opportunities for advancement within the town.

b) Library Tech Grant Update

Presenter: Joy Garretson, Library Director

Ms. Garretson was present and provided details regarding the new Tech Lending Program made possible by grant funds. This will help to increase access to chrome books and internet access. She stated policies for lending procedures would be completed shortly. She shared details about some of the programs and training that would be available.

Council Members Grannis and Thompson offered their thanks and appreciation for the amazing work done by Library Staff. Mayor McLeod offered his appreciation for this amazing resource opportunity.

6 PUBLIC HEARINGS

a) 2020-103-PDD - Lumen - Rezoning

Presenter: Planning Department

Mr. Hails requested that Items, 6a, 6b & 6c be continued to September 7, 2021.

ACTION: Continued to September 7, 2021

Motion: Council Member Grannis

Second: Council Member Bunn

Vote: Unanimous

- b) 2020-104-SD - Lumen (Quasi-Judicial)

Presenter: Planning Department

ACTION: Continued to September 7, 2021

Motion: Council Member Grannis

Second: Council Member Bunn

Vote: Unanimous

- c) Economic Development Incentive Agreement - Lumen

ACTION: Continued to September 7, 2021

Motion: Council Member Grannis

Second: Council Member Bunn

Vote: Unanimous

7 OLD BUSINESS

- a) Right of Way Easement - Ranch Road Extension

Presenter: Patrick Pierce, Economic Development Director

Council Member Grannis asked about timing of this item. Mr. Pierce advised that land acquisition was currently underway and he believed entire process would take approximately 12 months. Council Member Grannis asked if this were tied into NC 42 project and Mr. Pierce stated it was and shared additional details about the project.

ACTION: Authorize Execution of Easement

Motion: Council Member Grannis

Second: Council Member Everett

Vote: Unanimous

8 NEW BUSINESS

- a) Set Public Hearing - Code of Ordinance Amendment - Reduced Parking Requirements

Presenter: Dick Hails, Interim Planning Director

Mr. Hails was present and requested that Council set a Public Hearing to be held on Tuesday - September 7, 2021 with reference to Code of Ordinance amendment related to reduced parking requirements. He stated this was a follow up to the recently held special meeting regarding downtown parking.

Council Member Grannis questioned where we were in the process regarding the formation of a task force. Mayor McLeod stated membership was currently being worked on and it was hoped the first meeting of the task force would take place during the month of September.

ACTION: Set Public Hearing for September 7, 2021

Motion: Council Member Grannis

Second: Mayor Pro Tem Thompson

Vote: Unanimous

- b) CAMPO & Town of Clayton Financial Participation Agreement - BRT Extension Study

Presenter: Patrick Pierce, Economic Development Director

Mr. Pierce was present and provided brief background on this item; Bus Rapid Transit. He requested that council authorize the execution of the agreement. He stated the cost of a feasibility study would be \$400,000, with the town's portion being \$15000. He stated the preferred alternative would be announced in approximately June of 2022.

Council Member Bunn questioned if this were the same as the Light Rail Study. Mr. Pierce advised these were separate studies but they would work in concert with the other.

ACTION: Authorize Execution of Agreement

Motion: Council Member Grannis

Second: Council Member Bunn

Vote: Unanimous

c) **Prequalification Bid for Construction Project Policy**

Presenter: Shaun Mizzell, Procurement & Contract Manager

Mr. Mizzell presented this item. He shared details regarding the purpose for having this policy in place. He stated the policy would only pertain to certain construction projects. This policy will allow the town to prequalify bidders for important projects.

Council Member Grannis stated he was very happy to see this policy in place. He asked what typical timeline might be for prequalification. Mr. Mizzell stated it is approximately 7 days for the evaluation to be noticed and most likely another 2-3 days for finalization.

ACTION: Adoption of Resolution #2021-32

Motion: Mayor Pro Tem Thompson

Second: Council Member Everett

Vote: Unanimous

d) **Cemetery Policy Update - Flowers/Decorations**

Presenter: Dolores Gill, Deputy Town Manager

Ms. Gill was present and provided details about the proposed policy update. It was stated that everyone would receive a copy of the policy at the time they purchased a cemetery plot. She also stated that a signature line had been added to the policy. She also stated that proper signage would be placed notifying of our policy for maintaining our cemeteries.

ACTION: Adoption of Resolution # 2021-33

Motion: Council Member Bunn

Second: Council Member Everett

Vote: Unanimous

e) **Discussion Celebration for Kendra "Keni" Harrison**

Discussion was held regarding ideas and thoughts for a Celebration. Mayor McLeod stated this is a historic accomplishment that cannot go unrecognized. All council were in full support. Council Member Bunn offered the suggestion of doing something in

conjunction with the High School. Council Member Holder stated a Proclamation needs to be part of the celebration.

Mayor requested that a meeting be set up with the town's executive team and the high school principal to discuss celebration; possibly parade or perhaps a celebration contained to the field and track area at the high school. The Mayor further stated he understood this would not be able to take place within the next 30 days but it must be on the radar. Council Member Grannis stated it was probably best to get in contact with someone from her team as soon as possible and Mayor McLeod stated conversations had taken place with parents.

9 STAFF REPORTS

a) Town Manager

Mr. Cappola stated the new HR Director would begin her employment with the town on August 30, 2021. He also stated an assessment center for the planning director was being held this week. He was hopeful that we would have a new Planning Director in place by early September. He further stated that with the concern and rise in COVID numbers, we would be revising our current protocol and re-instating a mask mandate for all employees and visitors entering any town facility.

b) Town Attorney

c) Town Clerk

d) Other Staff

10 OTHER BUSINESS

a) Informal Discussion & Public Comment

Ms. Goss a resident was present. She stated she moved to Clayton one year ago. She stated she loved the town and the people are very friendly and she feels very safe. She is a resident of Ashcroft and that currently Providence Construction was building directly behind her home. She stated that she as well as 7 additional residents were not have a good experience with Providence. She stated there is an illegal sidewalk and mailbox on her property. She shared a photo of same. She stated no one is assisting with the problem. She further stated when she moved into her home, the land was level and now there is a severe embankment. She stated she feels it is "an illegal grab" on behalf of Providence. She stated she had spoken with three people who stated things would be taken care of but to date nothing has been done. She stated people can look directly into her home from the mailbox. She is asking for council to step in and assist. She stated this is her retirement home and will continue asking for assistance.

Mayor stated it was refreshing to hear this story the way it was presented. He stated her concerns would not go unnoticed and staff would look into this issue.

Council Member Bunn asked if Mr. Cappola had any insight. Mr. Cappola, asked that Ms. Goss provide her contact information to staff before she left. Mr. Cappola further stated we were aware of the situation and would definitely follow it and make sure she was assisted. Interim Deputy Town Manager/Fire Chief Barbee provided his card to Ms. Goss.

b) Council Comments

Council Member Grannis reminded of the ADA transition plan open house being held at Town Hall tomorrow evening from 6:00 - 7:30 p.m.

Mayor Pro Tem Thompson provided an update regarding chickens and community garden. He stated discussion has taken place and we are working to come to a solution. He further wanted to reassure all this item has not been forgotten.

11 ADJOURNMENT

- a) With there being nothing further, the meeting was adjourned at 6:54 p.m.

ACTION: Motion to Adjourn

Motion: Council Member Grannis

Second: Council Member Holder

Vote: Unanimous

Duly adopted this the 16th day of August, 2021 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

August 16, 2021

Agenda Location

Consent Agenda

Item Title

2021-54-RZ Landmark Light Industrial Rezoning

Presenter

Planning Department

Summary/Description

Decision to rezone a 24.81 acre tract from Planned Development-Commercial to Light Industrial

Requested Action

Approval/Denial

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Meeting Timeline

Click or tap here to enter text.



TOWN OF CLAYTON
Planning Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

REZONING APPLICATION COVER SHEET

Name of Project: Spec Industrial Building **Date:** _____
Applicant Name: Landmark Industrial, LLC

The following checklist to be completed by applicant:

- ☐ Pre-Application Meeting on: _____
- ☐ Review Fee
- ☐ Advertisement Fee
- ☐ Completed Application
- ☐ Owner's Consent Form
- ☐ Adjacent Property Owner's List
- ☐ Neighborhood Meeting Notice Letter (1 copy)
- ☐ 2 Sets of stamped, addressed, empty envelopes for adjacent property owner notification
- ☐ Signed & Sealed Boundary Survey
- ☐ Copy of signed & sealed boundary survey in PDF on USB

Reviewed by: _____



TOWN OF CLAYTON
Planning Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

REZONING APPLICATION

- ☐ Standard Rezoning Fee: \$500.00
☐ Planned Development Rezoning Fee: \$1,000 + \$5.00 per acre
☐ Advertisement Fee: \$200.00

SITE INFORMATION

Name of Project: Landmark Light Industrial Building
Acreage of Property: 24.81 Zoning District: _____
County Tag #: 05g02006g NC Pin #: 165910-46-2003
Address/Location: Shotwell Road
Existing Zoning District: PD-C Proposed Zoning District: I-1

APPLICANT INFORMATION

Applicant: Landmark Industrial, LLC
Mailing Address: 233 Horton Grove Road, Fort Mill, SC 29715
Phone Number: 7049659268 Fax: _____
Contact Person: Dave Williams
Email Address: dwilliams@landmark-ind.com

PROPERTY OWNER INFORMATION

Name: Elphick Properties, L.L.C
Mailing Address: 107 Seapath Estates, Wrightsville Beach, NC 28480
Phone Number: 919-880-6194 Fax: _____
Email Address: jelphick1955@gmail.com>

OFFICE USE ONLY

Date Received: _____ Amount Paid: _____ File Number: _____

EXPLANATION OF PROJECT

Please provide detailed information concerning all requests. Attach additional sheets if necessary.

The property is currently zoned PD-C and subject to a Declaration of Restrictive Covenants that allows for
for a light industrial use on the property. The applicant is seeking to rezone the property to I-1 and develop a speculative light industrial warehouse.

APPROVAL CRITERIA

All applications for a Rezoning must address the following findings:

1. Consistency with the adopted plans of the Town.

Rezoning the property to I-1 is consistent with the Town's future land use plan- mixed use employment center

2. Suitability of the subject property for uses permitted by the current vs. the proposed district.

The current uses permitted on the property includes office and retail and the proposed uses will include office
and warehousing and other uses allowed under I-1 zoning.

3. Whether the proposed change tends to improve the balance of uses, or meets specific demand in the Town.

The proposed change will provide employment opportunities with higher wages than typical retail establishments and
provide "for lease" warehouse space for new and growing businesses in the area. Presently there are not any options to lease Class A warehouse
space in Clayton or Johnston County and the vacancy rate for the overall market is less than 4%.

4. The capacity of adequate public facilities and services including schools, roads, recreation facilities, wastewater treatment, potable water supply and stormwater drainage facilities is available for the proposed use.

The proposed use will not have any direct impact on schools or recreation facilities. With an estimated peak wastewater discharge of 6,000 GPD
the project will have a minimal impact on the Town's remaining wastewater treatment capacity. It is unlikely that the development will generate the
the number of AM and PM peak trips to warrant any traffic improvements other than a turn lane into the development which is typically required by NCDOT for projects of this size.

5. It has been determined that the legal purposes for which zoning exists are not violated.

Yes, to the best of my knowledge.

6. It has been determined that there will be no adverse effect upon adjoining property owners unless such effect can be justified by the overwhelming public good or welfare.

Confirmed.

7. It has been determined that no one property owner or small group of property owners will benefit materially from the change to the detriment of the general public.

Confirmed.

APPLICANT AFFIDAVIT

I/We, the undersigned, do hereby make application and petition to the Town Council of the Town of Clayton to amend the Zoning Ordinance and change the Official Zoning Map of the Town of Clayton as requested.. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Clayton, North Carolina, and will not be returned.

David Williams

Print Name



Signature of Applicant

6/1/21

Date

NEIGHBORHOOD MEETING INFORMATION

Purpose:

The purpose of the Neighborhood Meeting is to inform the surrounding property owners of the nature of the proposed land use and/or development features, answer questions, respond to concerns, and solicit comments.

Meeting Date:

The neighborhood meeting must be held prior to the 1st scheduled public meeting date. It is recommended to hold the meeting at least 10 days prior to the 1st scheduled public meeting date, however, it is **not** a requirement.

Meeting Time & Location:

The meeting must be held no earlier than 6:00 pm Monday through Friday, and must be held in a location generally accessible to residents within close proximity of the request. The meeting space must be able to comfortably accommodate everyone that receives an invitation.

Meeting Notice Mailing requirements:

1. The applicant must contact all adjacent property owners via first class mailing (see sample letter).
2. The mailing must include all the persons, firms, or corporations owning property within 100 feet and immediately adjacent to the subject property. Where the subject property immediately adjoins a public or private right-of-way, landscape or riparian buffer, commonly-owned private area, public property, or homeowners' association property, then letters of notification shall be sent to adjoining property owners as if they directly abut the subject property.
3. The notice must be mailed at least ten (10) calendar days but not more than twenty-five (25) days prior to the date of the Neighborhood Meeting.

Information required to be provided at the Neighborhood Meeting:

At a minimum, the following materials must be present and discussed at a Neighborhood Meeting:

1. A copy of the project application.
2. A schedule of all upcoming public meetings for the application.
3. A map at a scale that is appropriate to the project and shows neighboring properties and roads.
4. A map, drawing, or other depiction of the proposed land use change or development proposal.

Information provided to Planning Department:

Alert the Planning Department once the date, location, and time of the Neighborhood Meeting are determined.

Deliver the following items to the Planning Department at least ten (10) calendar days prior to the 1st scheduled public meeting in electronic or hard copy format:

- ☐ Adjacent Property Owner's List (aka "mailing list") *Should be submitted with original application packet*
- ☐ Copy of the letter mailed *Should be submitted with original application packet*
- ☐ Attendance Roster (aka "sign-in sheet") *Submit no later than 10 days prior to 1st public meeting date*
- ☐ Neighborhood Meeting Summary Form with minutes (see below) *Submit no later than 10 days prior to the 1st public meeting date*

ADJACENT PROPERTY OWNERS LIST

Project Name: Landmark Light Industrial Building

The following are all the persons, firms, or corporations owning property within 100 feet and immediately adjacent to the property (including across street rights of way) subject to this request. Where the subject property immediately adjoins a public or private right-of-way, landscape or riparian buffer, commonly-owned private area, public property, or homeowners' association property, then letters of notification shall be sent to adjoining property owners as if they directly abut the subject property. Please use a separate sheet if necessary

It is the responsibility of the applicant to correctly identify the current owner, based upon records in the Johnston County GIS Office, for all property owners of land within the required public notice radius.

PARCEL NUMBER	NAME	ADDRESS
165910267476	Wakemed Property Services	3000 New Bern Ave. Raleigh, NC 27610-0000
165910269035	Omkrishna LLC	248 Madison Ave. Decatur, GA 30030-3542
165910351926	Glenda Perry	31 Hastings Circle Greensboro, NC 27406-9323
16591035771	Jason Brock	12180 US Hwy 70 Bus Clayton, NC 27520
165910453301	Stallings Mill Apartments	639 Executive Place STE 400 Fayetteville, NC 28305-5489
165910468843	Meridian Building Investments	2207 Oxford Rd Raleigh, NC 27608-1636
165911566583	Lee Brothers Rentals	400 W. Main St. Clayton, NC 27520-0000
165911552509	Tree House Properties, LLC	P.O. Box 4206 Greensboro, NC 27404-0000
165911577432	Douglas M. Hobbs LLC	343 E. Six Forks Road STE 300 Raleigh, NC 27609-7888
165911377624	SIF CDC LLC	725 Conshohocken State Rd Bala Cynwd, PA 19004-2122

SAMPLE NEIGHBORHOOD MEETING LETTER

(PLACE ON AGENT'S OR OWNER'S LETTERHEAD)

<Date>

Dear Clayton Area Property Owner:

The purpose of this letter is to notify you of an application filed with the Town of Clayton for a land use change or development proposal involving property adjacent to, or in close proximity to, property shown in your ownership by Johnston County tax records. Per Town of Clayton regulations, a Neighborhood Meeting will be held to provide information to area residents about the proposal. A representative of the applicant will be present to explain their application, answer questions, and solicit comments.

Meeting Date: _____ Meeting Time: _____

Meeting Location: _____

Type of Application: _____

Project/proposal property address: _____

Description of project/proposal: _____

Upcoming public meetings for this
application (Planning Board
and/or Town Council): _____

At a minimum, the following will be available for your inspection at the Neighborhood Meeting:

1. A copy of the project application.
2. A schedule of all upcoming public meetings for the application.
3. A map at a scale that is appropriate to the project and shows neighboring properties and roads.
4. A map, drawing, or other depiction of the proposed land use change or development proposal.

A map is enclosed with this letter showing the location of the property that is subject to this application for land use change and/or development proposal.

If you have any questions prior to or after this meeting, you may contact us at **<Insert phone number of applicant>**. You may also contact the Town of Clayton Planning Department at 919-553-5002.

Sincerely,

<Applicant>

Cc: Town of Clayton Planning Department

October 2019

Page 3 of 5

NEIGHBORHOOD MEETING ATTENDANCE ROSTER

Project: _____

Application: _____

Location/Date: _____

	NAME	ADDRESS
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NEIGHBORHOOD MEETING SUMMARY FORM

FILL OUT THE FOLLOWING:

Application:

Date of Mailing:

Date of Meeting: _____ Time of Meeting: _____

Location of Meeting:

I hereby attest that letters were mailed to the addresses listed on the Adjacent Property Owners List (attached) ten days prior to the Neighborhood Meeting, and that all required information was presented at the Meeting:

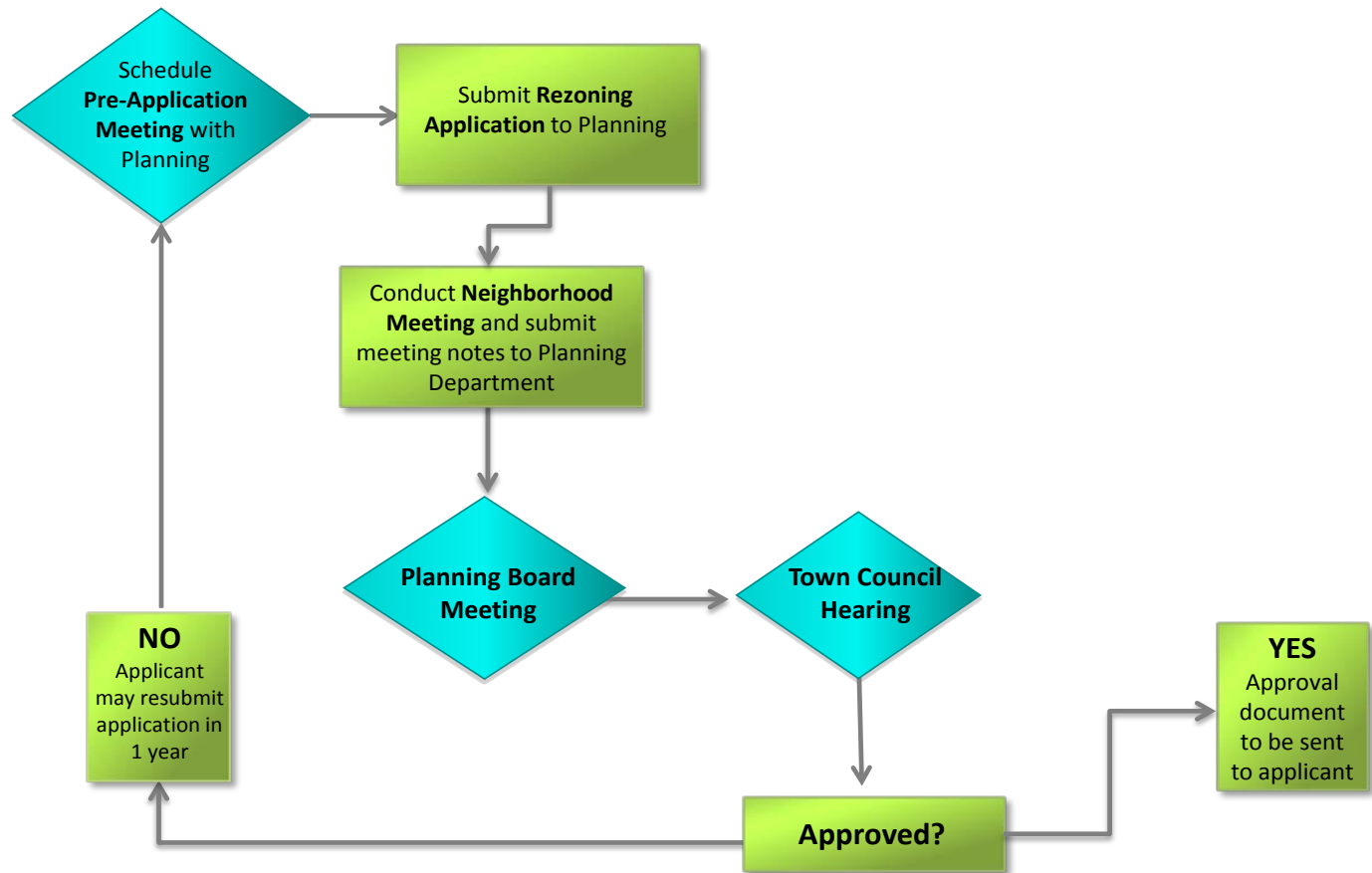
Printed Name: _____ Signature: _____

Meeting Summary/Minutes: *provide a summary of the discussion held at the meeting, including issues raised and any resolution discussed, and any changes made to the application as a result of the meeting.*

Please write clearly (or submit a typed summary). Use additional sheets if necessary.

Town of Clayton Rezoning Process Flow Chart

This is the same process for a Planned Development Rezoning





TOWN OF CLAYTON
Planning Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

OWNER'S CONSENT FORM

Consent is required from the property owner(s) if an agent will act on their behalf. A separate form is required from each owner. Consent is valid for one year from date of notary, unless otherwise specified. All fields must be completed.

Project Name: Landmark Light Industrial Building Address or PIN #: 165910-462003

AGENT/APPLICANT INFORMATION:

Dave Williams, Landmark Industrial, LLC
(Name - type, print clearly)

233 Horton Grove Road
(Address)
Fort Mill, SC 29715
(City, State, Zip)

I hereby give **CONSENT** to the above referenced agent/applicant to act on my behalf, to submit applications and all required materials and documents, and to attend and represent me at all meetings and public hearings pertaining to the following processes (*list applicable requests*):

Rezoning Application

Site Plan Application

Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify that I have authority to execute this consent form as/on behalf of the property owner. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I further agree to all terms and conditions which may be imposed as part of the approval of this application.

OWNER AUTHORIZATION:

JOSEPH BURDICK
(Name - type, print clearly)

[Signature]
(Owner's Signature)

107 SEAPATH BISTARS DR.
(Address)

WRIGHTSVILLE BEACH, NC 28480
(City, State, Zip)

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

Sworn and subscribed before me A. GORDON MACKINNON, a Notary Public for the above State and County, this the 15 day of JUNE, 2021.

SEAL

A GORDON MACKINNON
NOTARY PUBLIC
New Hanover County
North Carolina
My Commission Expires 07/28/2024

[Signature]
Notary Public

My Commission
Expires:

7/28/2024

July 2018

NEIGHBORHOOD MEETING ATTENDANCE ROSTER

Project: Landmark Light Industrial Project

Application: 2021-54-RZ

Location/Date: Virtual Meeting-MS Teams, July 6th 6:00-8:00 PM

	NAME	ADDRESS
1	Dave Williams	233 Horton Grove Road, Fort Mill, SC
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NEIGHBORHOOD MEETING SUMMARY FORM

FILL OUT THE FOLLOWING:

Application: Landmark Light Industrial Building

Date of Mailing: June 17, 2021

Date of Meeting: July 6, 2021 Time of Meeting: 6:00 pm-8:00pm

Location of Meeting: Virtual Meeting-MS Teams and Conference ID

I hereby attest that letters were mailed to the addresses listed on the Adjacent Property Owners List (attached) ten days prior to the Neighborhood Meeting, and that all required information was presented at the Meeting:

Printed Name: Dave Williams Signature: _____

Meeting Summary/Minutes: *provide a summary of the discussion held at the meeting, including issues raised and any resolution discussed, and any changes made to the application as a result of the meeting.*

The meeting was held from 6:00 to 8:00 pm. No one connected via MS Teams or called into the conference ID that was provided.

Follow Up-D.Williams followed up directly with Stolz USA, Stephen Kurtz and Jeff Nugent , the owners of Carolina Distribution Facility and presented the plan on 7-12-21. They did not have any objections or comments and will coordinate with Landmark on reviewing and approving Landmark's plans as required by the Declaration.

D. Williams followed up with David Stallings of Meridian Investments on July 13, 2021 and discussed the proposed development. Mr. Stallings did not have any comments or objections to the proposed plan.

Please write clearly (or submit a typed summary). Use additional sheets if necessary.



June 24, 2021

Dear Clayton Area Property Owner:

The purpose of this letter is to notify you of an application filed with the Town of Clayton for a land use change or development proposal involving property adjacent to, or in close proximity to, property shown in your ownership by Johnston County tax records. Per Town of Clayton regulations, a Neighborhood Meeting will be held to provide information to area residents about the proposal. A representative of the applicant will be present to explain their application, answer questions, and solicit comments.

Meeting Date: July 6, 2021

Meeting Time: 6:00 pm

Meeting Location: MS Teams Video Meeting-Please email dwilliams@landmark-ind.com and a meeting invite will be sent to your attention with a link to the virtual meeting. Alternatively, the call-in number is [+1 872-242-8873](tel:+18722428873) and [pass code is 109013214#](#)

Type of Application: Rezoning PD-C to I-1

Project Proposal Address: 0 Shotwell Road

Description of project/proposal: Construct a +/- 150,000 square foot light industrial building and related parking .

Upcoming public meetings for this
application (Planning Board
and/or Town Council): July 19, 2021

At a minimum, the following will be available for your inspection at the Neighborhood Meeting:

1. A copy of the project application.
2. A schedule of all upcoming public meetings for the application.
3. A map at a scale that is appropriate to the project and shows neighboring properties and roads.
4. A map, drawing, or other depiction of the proposed land use change or development proposal.

A map is enclosed with this letter showing the location of the property that is subject to this application for land use change and/or development proposal.

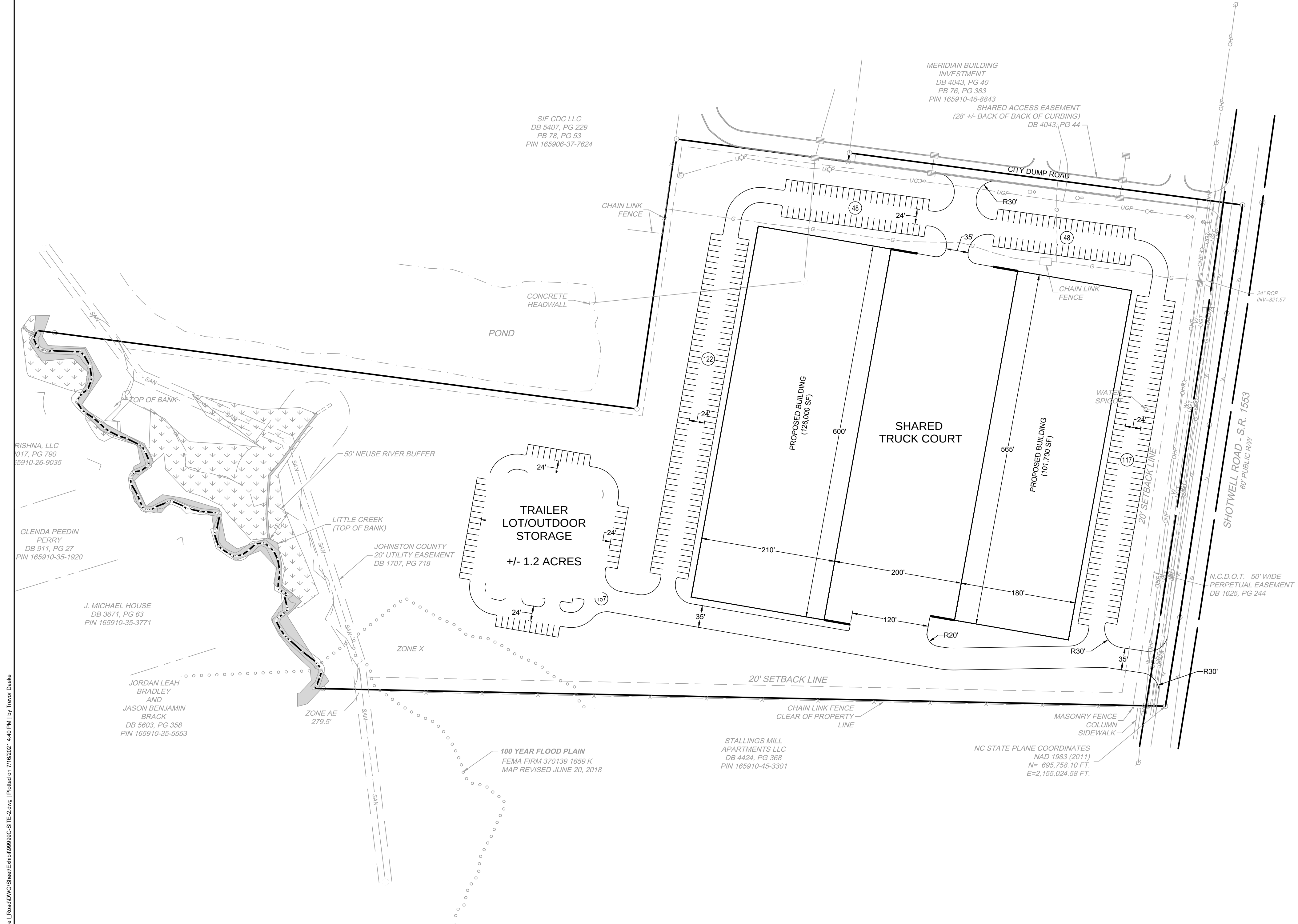
If you have any questions prior to or after this meeting, you may contact us 704.965.9268. You may also contact the Town of Clayton Planning Department at 919-553-5002.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dave Williams".

Dave Williams
Landmark Industrial,

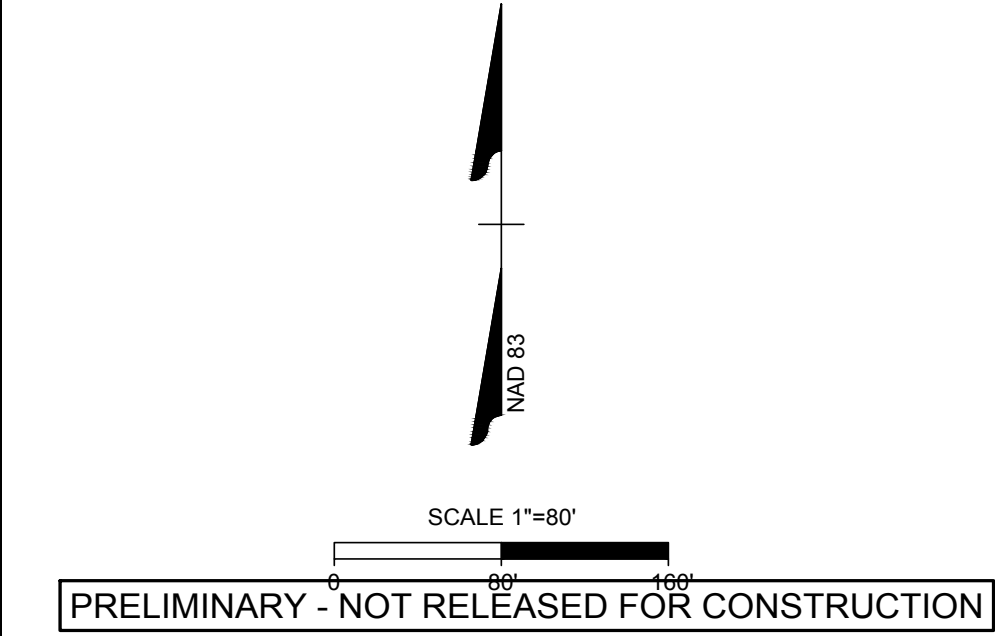
Cc: Town of Clayton Planning Department



SITE DATA TABLE	
PROJECT NAME:	0 SHOTWELL ROAD
PROPERTY OWNER:	ELPHICK PROPERTIES LLC 1000 CCC DRIVE CLAYTON, NC 27520
PIN(S):	1070
DEED REFERENCE:	DB. 76 PG. 384
PROPERTY ADDRESS:	0 SHOTWELL ROAD CLAYTON, NC 27520
JURISDICTION:	TOWN OF CLAYTON
EXISTING ZONING:	PD-C
PROPOSED ZONING:	TBD
EXISTING USE:	VACANT
PROPOSED USE:	INDUSTRIAL WAREHOUSE
EXISTING SITE AREA:	1,046,412 S.F. (24.02 AC.)
PARKING SUMMARY:	
MINIMUM REQUIRED PARKING SPACES:	1 SPACE FOR 1,000 SQFT + 1 SPACE PER 200 SQFT OF OFFICE SPACE ASSUMED 10% OFFICE SPACE AND 90% WAREHOUSE 10(126,000 + 101,700) / 200 = 114 SPACES 90(126,000 + 101,700) / 1000 = 205 SPACES TOTAL REQUIRED = 319 SPACES
TOTAL PROVIDED PARKING:	502 SPACES

PLAN REVIEW NOTES:
1. EXISTING CONDITIONS BASED ON FILES OBTAINED FROM JOHNSTON COUNTY GIS AND NC ONE MAP ON 03/01/2021 AND FILES OBTAINED FROM TIMMONS GROUP ON 07/06/2021.
2. THIS TEST FIT PLAN DOES NOT GUARANTEE THAT ALL REQUIREMENTS FROM ZONING ISSUES, NOR STORM DRAINAGE, GRADING, UTILITIES, EASEMENTS, AND THE LIKE ARE PROPERLY ADDRESSED AT THIS TIME. THE ABOVE REQUIREMENTS CAN AFFECT THE SITE LAYOUT.
3. ALL REQUIREMENTS ASSUMED WITH THIS LAYOUT ARE TENTATIVE AND SUBJECT TO CHANGE AS MAY BE DIRECTED BY THE CLIENT, ARCHITECT, JOINT DEVELOPER, OR ANY OF THE GOVERNMENTAL PERMITTING AGENCIES. TIMMONS GROUP HAS DONE THE BEST WE CAN GIVEN THE PRELIMINARY NATURE OF THIS WORK. ONLY AFTER A THOROUGH ALTA AND TOPOGRAPHIC SURVEY ARE PERFORMED, AND THE REQUIRED REVIEW PROCESSES ARE COMPLETE, CAN MORE ASSURANCE BE GIVE TO THIS PLAN AS IT RELATES TO MOVING FORWARD.

PRELIMINARY CONCEPT
PLAN. SUBJECT TO CHANGE



PRELIMINARY - NOT RELEASED FOR CONSTRUCTION

PRELIMINARY
NOT FOR
CONSTRUCTION

THIS DRAWING PREPARED AT THE RALEIGH OFFICE 5410 Trinity Road, Suite 102 Raleigh, NC 27607 TEL 919.866.4951 FAX 919.833.8124 www.timmons.com	REVISION DESCRIPTION	

YOUR VISION ACHIEVED THROUGH OURS.	DATE	
	DATE	07/16/2021
	DRAWN BY	T. DAEKE
	DESIGNED BY	R. BAKER
	CHECKED BY	R. BAKER
SCALE		AS SHOWN

TIMMONS GROUP

NORTH CAROLINA LICENSE NO. C-1652
0 SHOTWELL ROAD
CLAYTON - JOHNSTON COUNTY - NORTH CAROLINA
SITE LAYOUT EXHIBIT

JOB NO.
48435.001
SHEET NO.
EX1.0

These plans and associated documents are the exclusive property of TIMMONS GROUP and may not be reproduced in whole or in part and shall not be used for any purpose whatsoever, inclusive, but not limited to construction, bidding, and/or construction staking without the express written consent of TIMMONS GROUP.



Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

August 2, 2021

NOTICE

SUBJECT: **Project:** 2021-54-RZ Landmark Light Industrial Building Rezoning
 Address: Shotwell Road
 TAG #: 05G02006G
 Applicant: Landmark Industrial, LLC

Dear Clayton Area Property Owner:

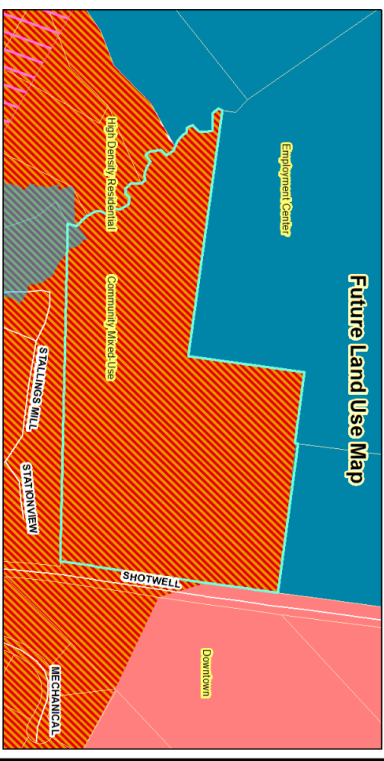
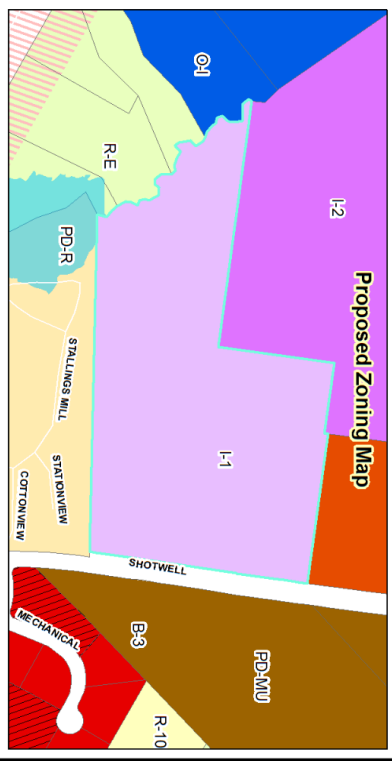
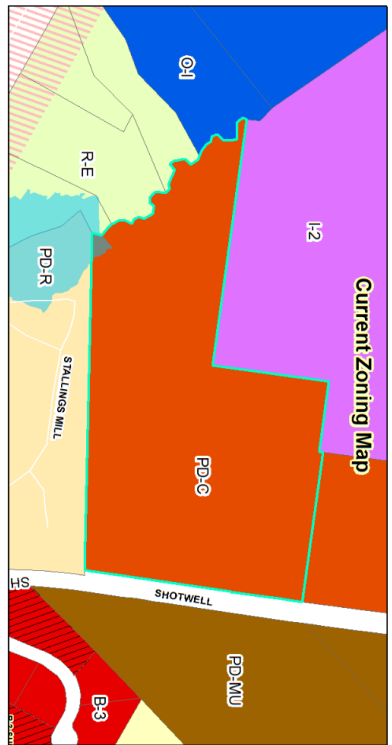
Notice is hereby given that the Clayton Town Council will hold a public meeting on **August 16, 2021 at 6:00 PM** at Town Hall, 111 E. Second Street, to make a decision on the above referenced Rezoning application. The applicant is requesting to rezone 24.81 acres from Planned Development - Commercial (PD-C) to Light Industrial (I-1). Please see the map on the back of this letter.

Based upon records in the Johnston County Tax Office, you are the owner of property that is within 100 feet of this proposed rezoning request. You are invited to attend this meeting and express your opinions on this request to the Town Council.

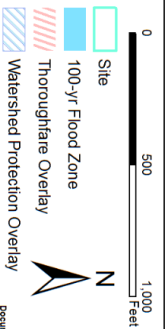
If you should need additional assistance or information, please contact the Planning Department at (919) 553-5002 or email at bpaynter@townofclaytonnc.org

Sincerely,

Ben Paynter, Planner



Request:
 2021-54-RZ, to Rezone a parcel from
 Planned Development - Commercial (PD-C)
 to Light Industrial (I-1).



Staff Report Map
 Prepared by: TOC Planning Department
 June 7, 2021

Disclaimer: Town of Clayton assumes no legal responsibility
 for the quality to the data represented here.

Document Path: C:\PLANNING\REZONING\rezoning\2021-54-RZ, Landmark Light Industrial Building Staff Report Map - 2021-54-RZ, Landmark Light Industrial Building.mxd

PUBLIC NOTICE

In accordance with NC GS 160A-384, the Clayton Town Council will hold a public hearing on Monday August 16, 2021 at 6 PM at Town Hall, 111 East Second Street, to consider rezoning request 2021-54-RZ for TAG number(s) 05G02006G. The requested change is from PD-C to I-1.

The Clayton Town Council reserves the right to approve the request as presented or any portion of the request without necessity of withdrawal or modification of the application or additional public hearing on the matter. Likewise, the Town Council may designate approval to the district requested or another district or districts without modification of the request or additional public hearing.

This is an open meeting and the public is invited to attend.

Ben Paynter, Planner
919-553-5002

Johnstonian Newspaper

Please advertise on the following dates:
Wednesday, August 4 2021
Wednesday, August 11 2021

Affidavit of publication required.



Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-1545

*Planning Board, June 28 2021
Town Council, July 19 2021*

STAFF REPORT

Application Number: 2021-54-RZ

Project Name: Landmark Light Industrial Building Rezoning

TAG #(s): 05G02006G

Town Limits/ETJ: In Town Limits

Applicant: Landmark Industrial, LLC.

Owner: Elphick Properties, LLC

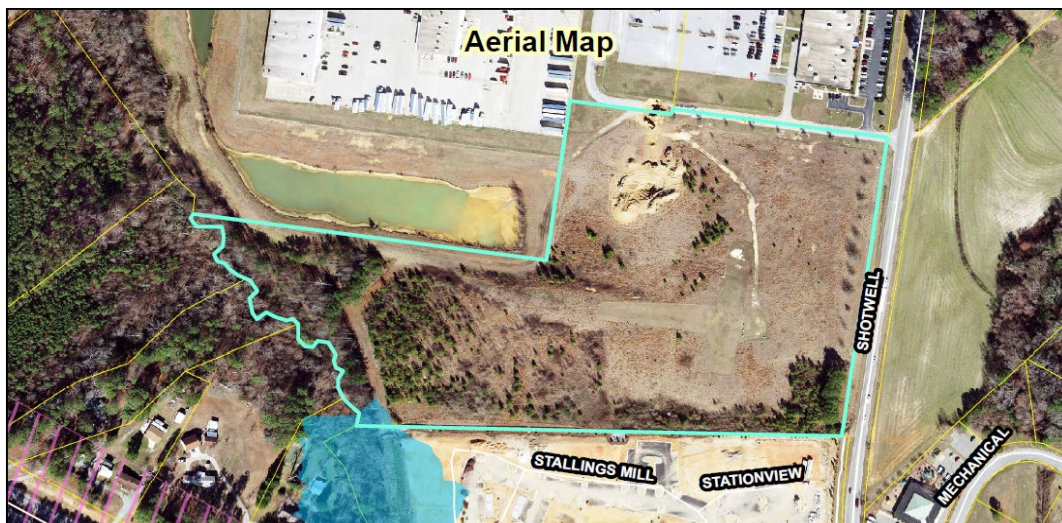
Location: Shotwell Road/City Dump Road

Project Planner: Ben Paynter

Public Noticing Dates:

- **Neighborhood Meeting:** July 6
- **Sign posted:** June 18
- **Adjacent Property Letters Mailed:** June 18

REQUEST: Rezoning 24.81 acre tract from Planned Development - Commercial (PD-C) to Light Industrial (I-1)



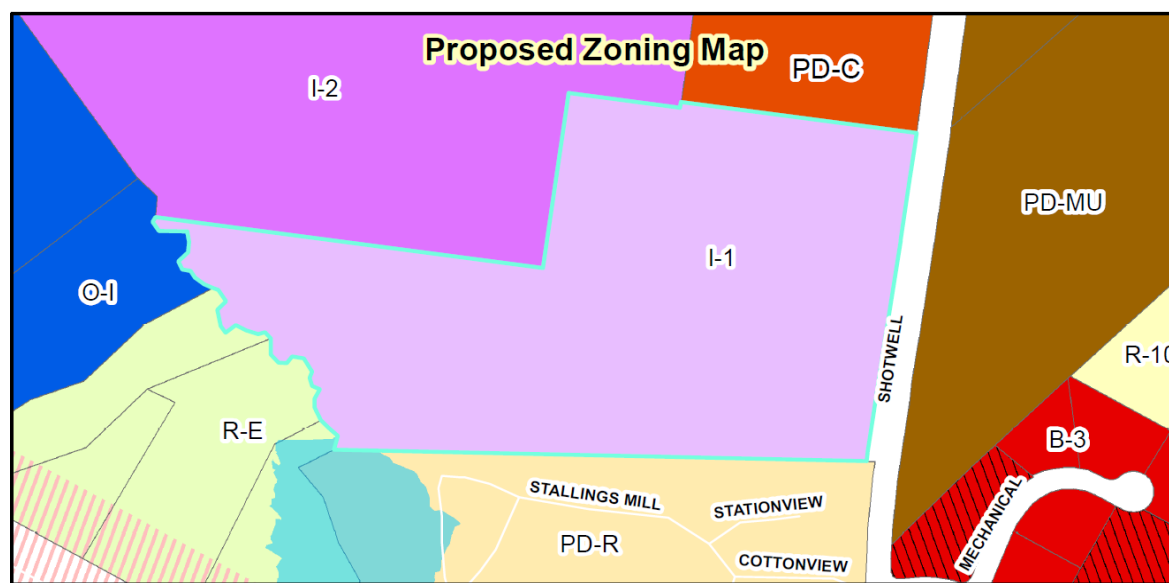
SITE DATA:

Acreage: 24.81

Existing Use: Vacant

ADJACENT ZONING AND LAND USES:

Direction	Zoning	Existing Use
North	Heavy Industrial (I-2)	Distribution/Manufacturing
South	Planned Development – Residential (PD-R)	Multifamily/Apartments
East	Planned Development – Mixed Use (PD-MU)	Vacant/Agriculture
West	Office Institutional (O-I), Residential Estate (R-E)	Vacant/Forest, Low density residential

**STAFF ANALYSIS AND COMMENTARY:****Overview**

This request is for a rezoning from Planned Development – Commercial (PD-C) to Light Industrial (I-1). This will establish standard zoning requirements and land use for this property that will allow for future development of various light industrial uses. PD-C is a mixed-use designation intended for flexible commercial uses that are also generally allowed in the Office Institutional (O-I), Central Business (B-1), Neighborhood Business (B-2), and Highway Business (B-3) districts. The applicant plans to establish a warehouse/distribution type building on the property consistent to what is already found along Shotwell Road.

Staff was not able to find reliable information on the Planned Development - Commercial (PD-C) zoning currently applied to this property. It appears that it would have been intended to support a flexible mixture of commercial and service oriented business uses. The Light Industrial (I-1) zoning may achieve a similar result with more standard land use regulations as it is intended to support uses that provide job

opportunities but are operated in a relatively clean and quite manner. The zoning district should not be obnoxious to nearby residential or business districts, warehousing and wholesaling activities and research facilities according to 155.200 (B)(2)(f) in the Unified Development Code.

The Light Industrial (I-1) zone will allow for light industrial uses that could also support jobs and commerce that is a function of the Employment Center and Community Mixed Use future land use designation found in this area.

Consistency with the Comprehensive Plan 2040

On the Future Land Use Map adopted in the current Comprehensive Plan, this property is designated as Community Mixed Use. Light Industrial (I-1) zoning may be inconsistent with the Community Mixed Use designation according to how it is defined in the Comprehensive Plan but is in keeping with the intent of the future land use as an area of mixed commerce and employment opportunities. The I-1 zone is consistent with Employment Center which also makes up a majority of this area along Shotwell Road. The rezoning of this parcel from Planned Development – Commercial (PD-C) to Light Industrial (I-1) would also result in a Future Land Use map amendment to update the designation from Community Mixed Use to Employment Center. Town Council has the ability to update the Future Land Use map with a rezoning approval.

Comprehensive Plan Goals supporting the rezoning request include:

Objective LU1.2 Encourage the redevelopment or adaptive reuse of under-utilized commercial development.

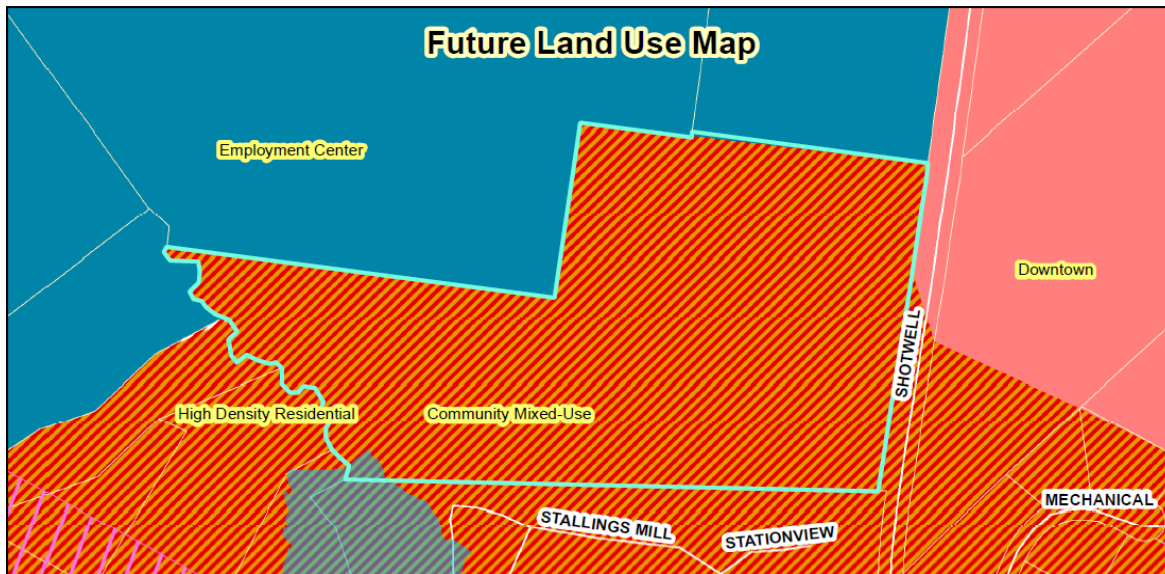
Strategy LU1.2.1 Consider increased densities and intensities to encourage existing under-utilized commercial properties to redevelop.

Objective LU1.3 Encourage a mix of residential and non-residential land uses within Neighborhood and Community centers identified on the Future Land Use Map.

Strategy LU1.3.1 Create and implement small area plans to attract infill development and redevelopment to areas identified as Neighborhood and Community centers on the Future Land Use Map

Comprehensive Plan Goals not supporting the rezoning request include:

None



CONSIDERATIONS:

- Rezonings are decided by the Town Council. The Planning Board shall make a recommendation to the Town Council.
- When adopting or rejecting the rezoning, the Town Council shall approve a statement describing whether its action is consistent with adopted plans and/or policies of the Town and explaining why the Council considers the action taken to be reasonable and in the public interest.

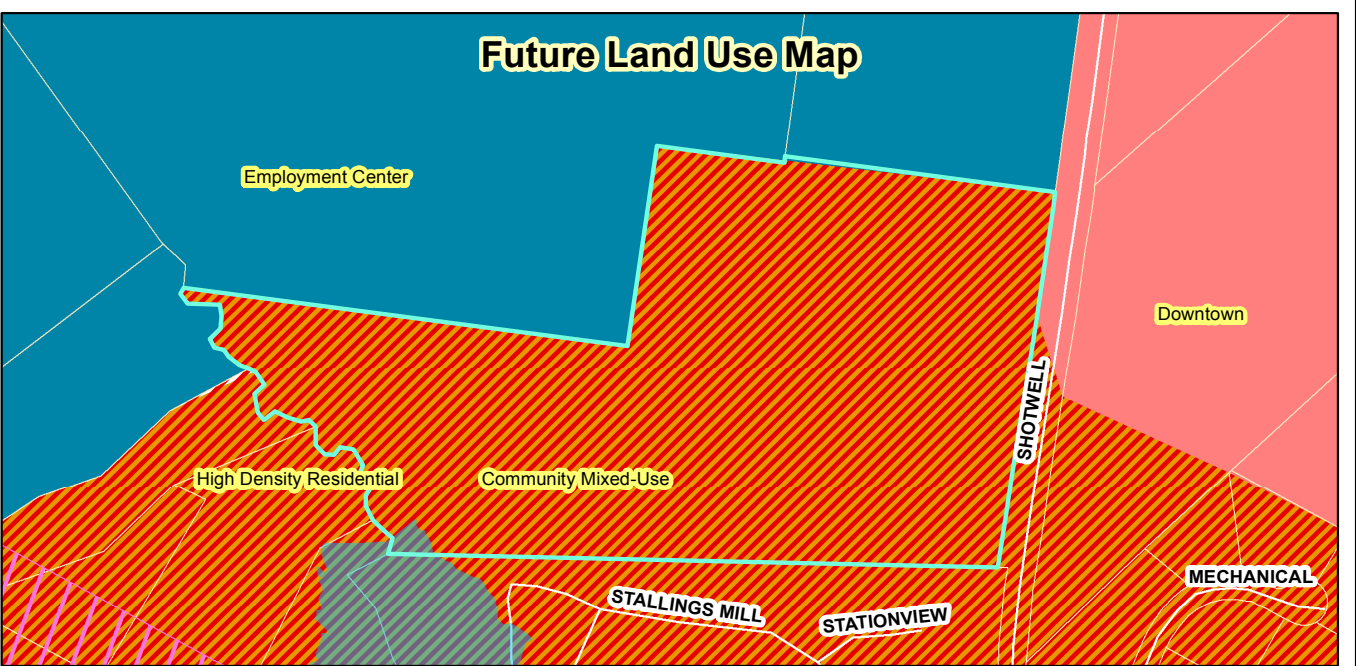
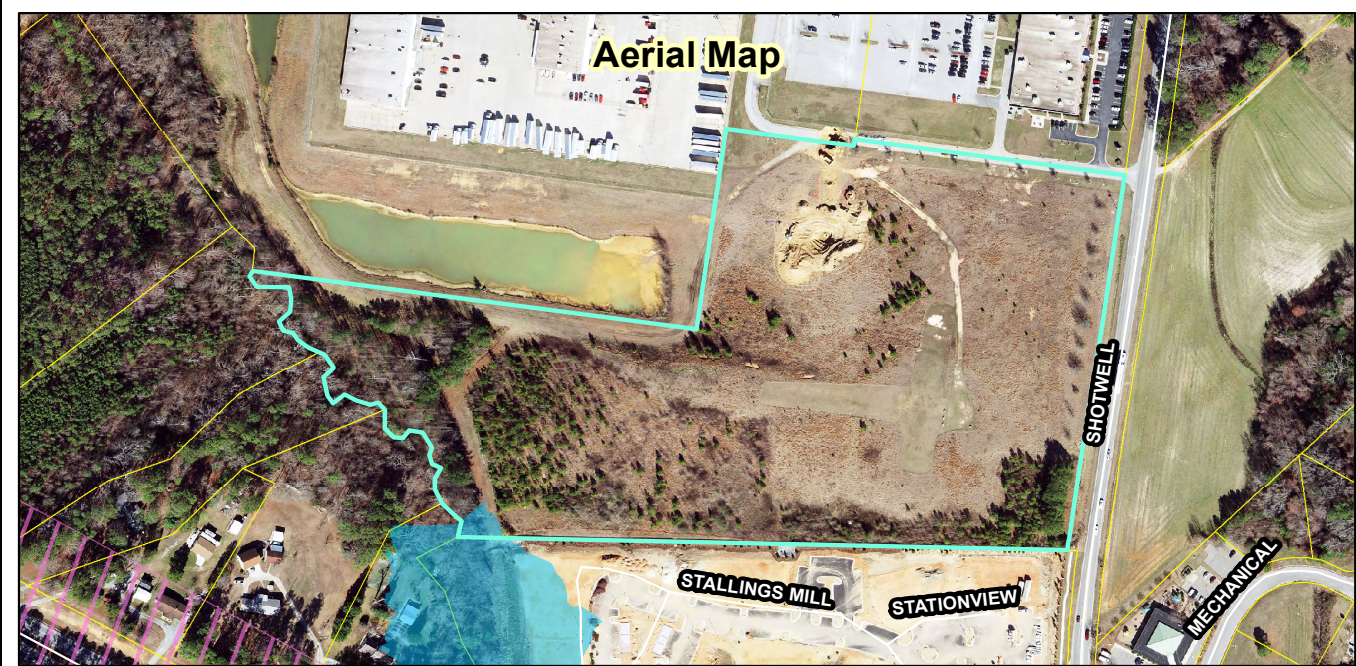
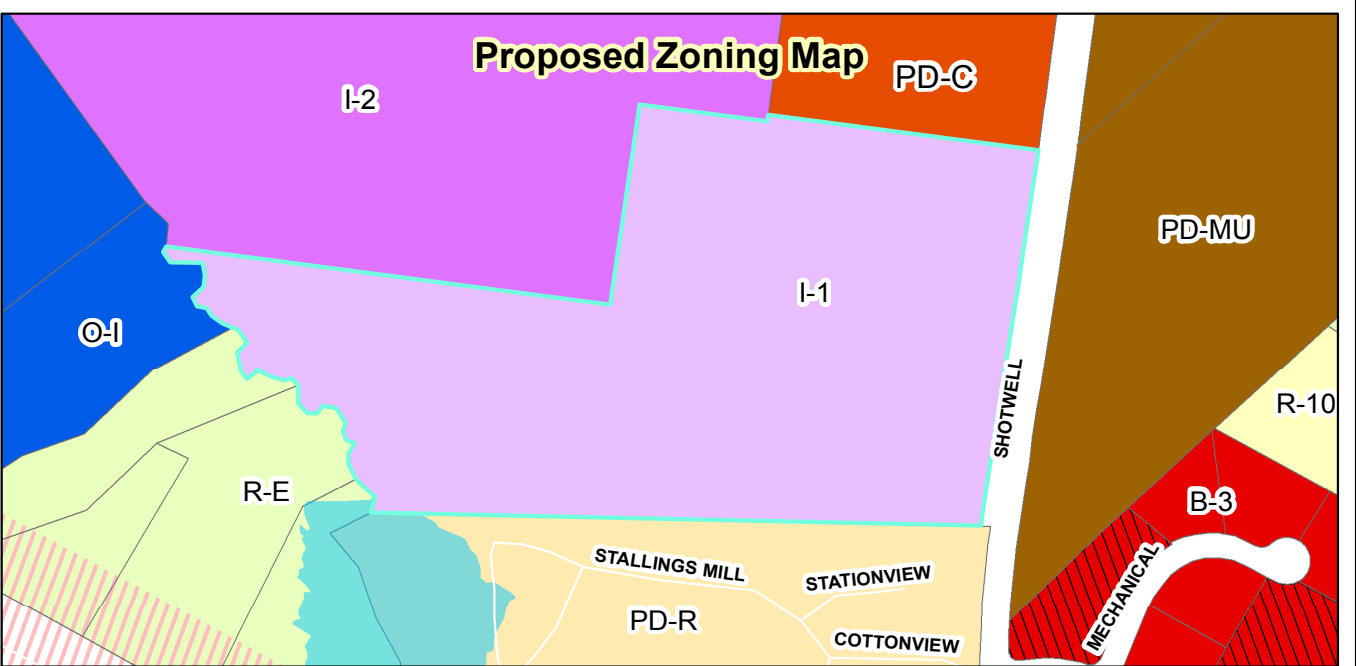
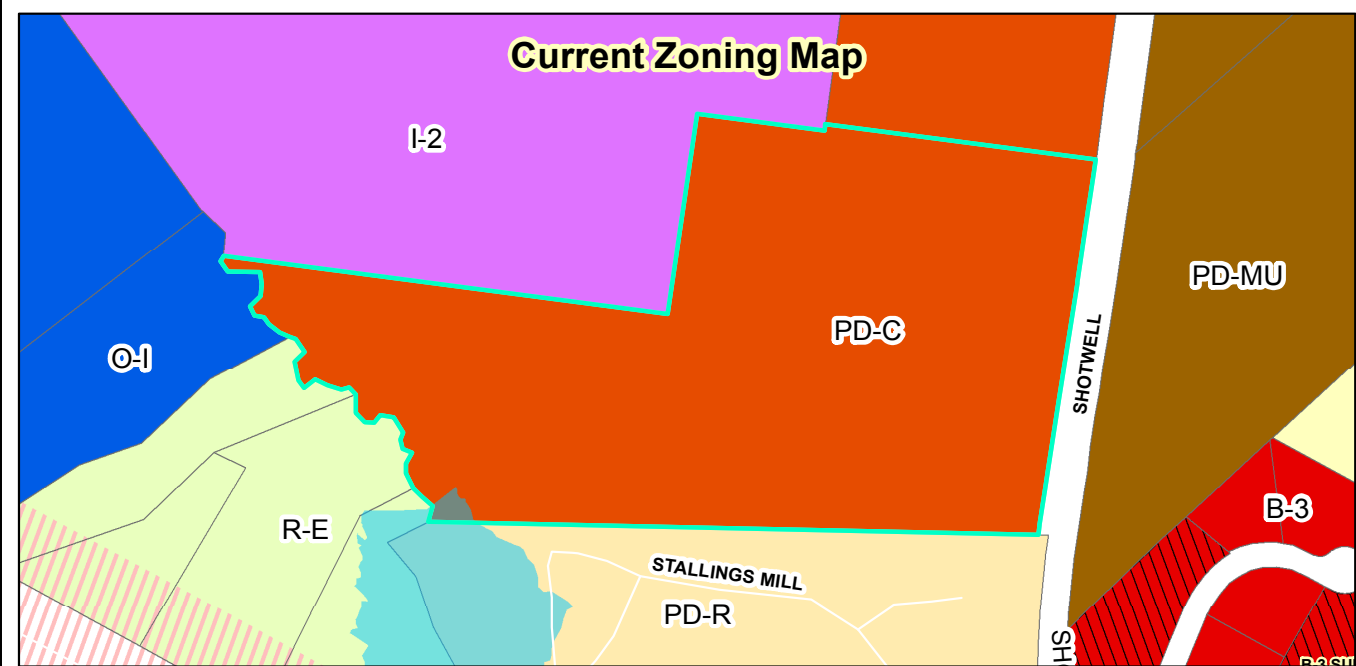
STAFF RECOMMENDATION:

Staff recommends **Approval** of the proposed rezoning request.

Planning Board recommended **Approval** of the rezoning request at the July 26 2021 meeting.

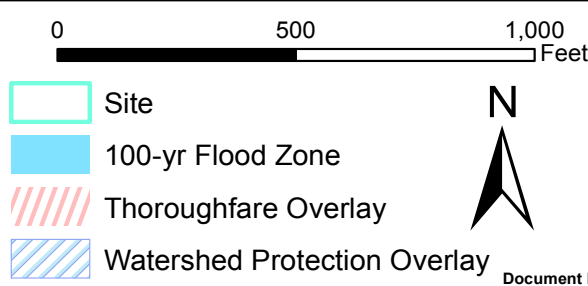
ATTACHMENTS:

- 1) Application
- 2) Staff Report Maps
- 3) Neighborhood Meeting Materials
- 4) Survey
- 5) PB Adjacent Property Letter
- 6) TC Adjacent Property Letter
- 7) Newspaper Ad



Request:
2021-54-RZ, to Rezone a parcel from
Planned Development - Commercial (PD-C)
to Light Industrial (I-1).

Applicant: Landmark Industrial, LLC
 Property Owners: Elphick Properties, LLC
 Tag #: 05G02006G



Staff Report Map
 Prepared by: TOC Planning Department
 June 7, 2021

Disclaimer: Town of Clayton assumes no legal responsibility
 for the quality of the data represented here.

Document Path: O:\PLANNING\REZONING\Rezoning\2021\2021-54-RZ Landmark Light Industrial Building\Maps\Staff Report Map - 2021-54-RZ Landmark Light Industrial Building.mxd

**TOWN OF CLAYTON
PLANNING BOARD WRITTEN RECOMMENDATION
REZONING**

2021-54-RZ – Landmark Light Industrial Building

On July 26, 2021 the Planning Board heard the above-referenced request and made the following vote:

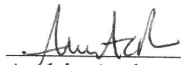
Recommendation to the Town Council to:

☒ approve the request.

☐ deny the request.

Recommendation(s) made this 26th day of July, 2021 while in regular session.

Signed:



Andria Archer, Planning Board Chair

TOWN OF CLAYTON
ZONING AMENDMENT
CONSISTENCY AND REASONABLENESS STATEMENT

2021-54-RZ Landmark Light Industrial Building Rezoning

The Town Council of the Town of Clayton hereby states:

Section 1: The above referenced zoning amendment IS APPROVED.

Section 2: The above referenced zoning amendment AMENDS THE FOLLOWING PLAN(S):

The Town of Clayton's Comprehensive Plan 2040, specifically:

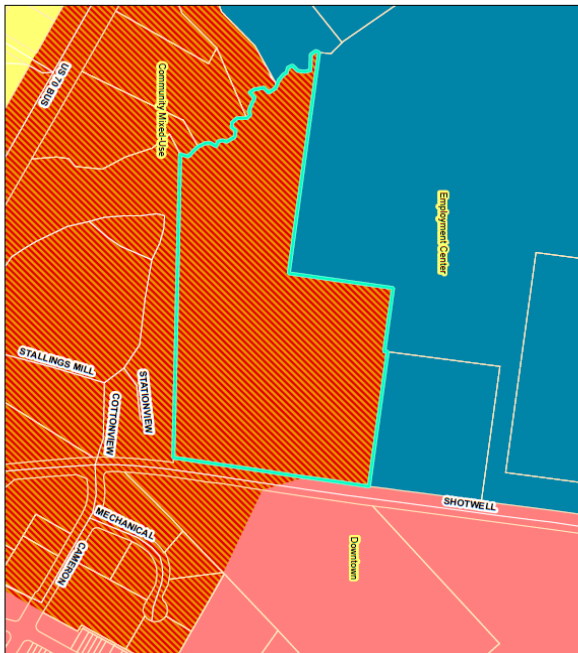
This approved rezoning amends the Future Land Use map in the Comprehensive Plan from Community Mixed Use to Employment Center. The update to the Future Land Use map will align with the following goals and objectives of the comprehensive plan:

Objective LU1.2 Encourage the redevelopment or adaptive reuse of under-utilized commercial development.

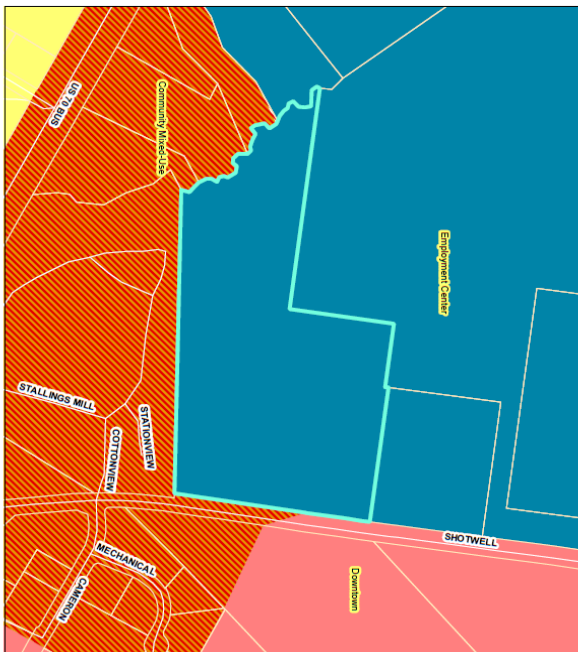
Strategy LU1.2.1 Consider increased densities and intensities to encourage existing under-utilized commercial properties to redevelop.

Section 3: Based upon information presented at the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and the Planning Board contained in the staff report, and considering the criteria applicable sections of the Unified Development Code of the Town of Clayton, the above referenced zoning amendment is reasonable and in the public interest.

Employment Center is a future land use designation that abuts this property being rezoned from Planned Development-Commercial to Light Industrial. The future land use designation and update to the Comprehensive Plan 2040 Future Land Use Map to Employment Center for this property will be consistent with current and future land uses in this area.



Current Future Land Use Map



Proposed Future Land Use Map

**Request to update Future Land Use map
to be consistent with rezoning of parcel to I-1.**

Applicant: Landmark Industrial, LLC
Property Owners: Epitaph Properties, LLC
Bag #: 050020065



Staff Report Map
Prepared by: TOC Planning Department
June 10, 2021

Disclaimer: Town of Clayton assumes no legal responsibility
for the quality to the data represented here.

Document Path: C:\97\LANMARK\INDUSTRIAL\050020065\2021-06-10-21-14-42 Landmark Light Industrial Building\Map\Staff Report Map TLU Update - 2021-06-10-21 Landmark Light Industrial Building.mxd

**Town of Clayton
Town Council
Zoning Ordinance Amendment Motion Sheet
Text Amendment**

After considering the recommendations of the Planning Board and Planning Director, I move to **[approve OR deny] Case 2021-54-RZ**

[IF APPROVING]

and to approve the Statement of Consistency and Reasonableness included in the Agenda packet [with the following modifications: STATE MODIFICATIONS, IF ANY].

**MOTION FORM
Item 6a
2021-54-RZ
Landmark Industrial Light Building**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE AND
ZONING MAP
OF THE TOWN OF CLAYTON, NORTH CAROLINA**

WHEREAS a petition has been filed with the Town Council of the Town of Clayton requesting an amendment to the Zoning Ordinance and Zoning Map of the Town of Clayton to include in the Light Industrial (I-1) zone the property described below, said property formerly being zoned Planned Development - Commercial (PD-C); and

WHEREAS said property is owned by Elphick Properties, LLC.; and

WHEREAS the Planning Board of the Town of Clayton has reviewed the proposed change(s) and made a recommendation thereupon; and

WHEREAS notice of a public hearing to consider the proposed change was published in accordance with law in the Johnstonian, a local newspaper, as required by Section 155.702(D) of the Clayton Unified Development Code and by Section 160A-364 of the North Carolina General Statutes; and

WHEREAS a notice of the proposed zoning classification action was mailed to the owner(s) of the parcel(s) of land involved, as shown on the County Tax Listings, and to the owners of all parcels of land abutting that (those) parcel(s) of land and within 100 feet of the subject parcel(s) of land, as shown on the County Tax Listings, by depositing a copy of the same in the United States Mail, first class postage paid, as required by Section 155.702(D) of the Zoning Ordinance of the Town of Clayton and by Section 160A-384 of the General Statutes; and

WHEREAS the said public hearing was actually conducted at 6:00 p.m. on August 16, 2021 wherein a reasonable opportunity was given to all those in attendance to speak either in favor or against the said change or to make relevant comments;

THEREFORE, after duly considering the matter, THE TOWN COUNCIL OF THE TOWN OF CLAYTON DOES HEREBY ORDAIN:

SECTION 1. That the Unified Development Code of the Town of Clayton is hereby amended to include in the Light Industrial (I-1) zone the following described property:

General Description:

Property is located on Shotwell Road/City Dump Road

Specific Description:

NC Parcel Identification Numbers: 165910-46-2003

SECTION 2. That the official Town of Clayton Zoning Map is hereby amended to include in the Light Industrial (I-1) zone the above-described property and will be so marked.

SECTION 3. That if any section, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. That this ordinance shall become effective immediately upon its adoption.

DULY ADOPTED by the Clayton Town Council this 16th day of August, 2021 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

August 16, 2021

Agenda Location

Old Business

Item Title: Summary Report-Facility Condition Assessment

Presenter: Dolores Gill-Deputy Town Manager

Summary/Description

The purpose of the item is to review a summary of the Facility Condition Assessment conducted by Jacobs Engineering. During the month of April, a team of consultants inspected each building and provided a detailed summary including the overall health of the building, prioritized deficiencies, and potential cost for ongoing maintenance and equipment replacement. This information will be used to provide guidance to the Town of Clayton as funds are appropriated for repairs and replacement in the Town properties.

Requested Action

Informational Only

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Presentation and link to full report.

Meeting Timeline

N/A



Town Council Agenda Cover Sheet

Meeting Date

August 16, 2021

Agenda Location

Old Business

Item Title

Award Design-Build Contract – Municipal Park Improvements
Budget Amendment Ordinance

Presenter

Joshua Baird – Engineering Director

Summary/Description

On May 17th, Town Council approved final scope for the 2019 Parks and Recreation Bond. Following the meeting, staff created a schedule for first bond sale to occur later 2021 going towards improvements at East Clayton Community Park (ECCP) and Municipal Park. Due to East Clayton Community Park design being further along than Municipal design, staff propose to deliver improvements at ECCP via a standard construction contract (design-bid-build) and to deliver improvements at Municipal via a Design-Build contract aligning the bid at ECCP and GMP at Municipal in late 2021.

Under NC General Statutes and Town Purchasing Policy, the design contract at ECCP does not require board approval and has been signed by Town Manager. The final design work has commenced and consultant is currently working toward a bid set of drawings.

Staff have issued a RFQ under NC General Statutes 143-128.1 (A) to solicit a design-build team to complete the improvements at Municipal. On July 2nd, 2021 Staff received a total of 8 statements of Qualifications. Staff shortlisted and interviewed a total of four teams. After evaluating each, the selection team (comprised of representatives from Engineering, Parks and Recreation, Finance, and Administration) selected a team comprised of Balfour Beatty, McAdams, and Ratio Architects as the top candidate. Staff have worked with the selected Design-Build team to negotiate a contract that is acceptable to both parties. Contract is based on standard DBIA contract. Upon completion of the initial design and permitting (Phase 1) by the team, a supplemental agreement with Guaranteed Maximum Price (GMP) will be generated. The proposed initial contract has been reviewed by Town staff including Procurement and Contracts Manager. The total phase 1 pre-construction services is \$385,434. Staff request Council's approval for the Town Manager or designee to execute the initial Design-Build Contract and any amendments up onto the GMP milestone.

Furthermore, a budget amendment is required to appropriate fund balance to temporarily fund pre-construction services related to the design-build contract for Municipal Park. These costs will be reimbursed with proceeds from the upcoming GO Bond sale. This amendment is required for compliance with G.S. 159-15.

Requested Action

Approval/Denial

Funding Source (If Applicable):

N/A

Cost: \$385,434 **Yes** ☒ **No** ☒

Additional Documents to be Included in Agenda Packet

Proposed Design-Build Contract

Request for Qualifications (including Establishment of Design-Build Criteria)

Balfour-Beatty Statement of Qualifications

Meeting Timeline

Click or tap here to enter text.

REQUEST FOR QUALIFICATIONS

DESIGN AND CONSTRUCTION SERVICES FOR MUNICIPAL PARK IMPROVEMENTS



Issued: June 23rd, 2021

Town of Clayton
Engineering Department
Clayton, North Carolina

PPAB 5134690v1

I. General

- A. Pursuant to N.C. Statute Sec. 143-128.1(A), the Town of Clayton (the “Town” or “Owner”) is soliciting proposals from qualified design-build teams interested in providing professional design and construction services for renovations of Municipal Park including picnic shelters, toilet facilities, performance stage/band shell, splash pad, playground, outdoor sports courts, walking trail, natural turf field and parking.
- B. The Town will follow a Qualifications Based Selection process as required by N.C. General Statutes and select the most-qualified team to negotiate a contract for services. This RFQ provides complete information on the services being sought, the submittal requirements, and timeline. Copies of the RFQ and any addenda may be downloaded directly from this site: <https://www.townofclaytonnc.org/Finance/bidding-opportunities.aspx>. Interested firms may submit a Statement of Qualifications, meeting the requirements defined in the RFQ to:

Joshua Baird, PE
Town Engineer
Town of Clayton
111 East Second St, Clayton, NC 27520*

PO Box 879 (Via US Mail)
Clayton, NC 27528

Email: prj-PRbond@TownofClaytonNC.org
*For hand delivery

- C. Statements of Qualifications must be received by 4:00 p.m. on 7/15/2021. To ensure receipt of any addenda to the RFQ, please contact the person listed above to register as an interested firm. The Town is not responsible for providing updated information/changes to firms not known by the Town as holding a copy of this RFQ.
- D. Any questions regarding this RFQ must be received in writing prior to 7/2/2021 by 4:00 p.m. Questions received after this date may not receive a response. Questions should be directed to the contact above. All written questions will be answered in an addendum posted on the Town’s website: <https://www.townofclaytonnc.org/Finance/bidding-opportunities.aspx>
- E. This RFQ does not obligate the Town to pay any costs incurred by respondents in the preparation and submission of a response. Furthermore, the RFQ does not obligate the Town to accept or contract for any expressed or implied services. The Town reserves the right to reject any and all submittals.

II. Background and Project Site

Municipal Park is located at 325 McCullers St, Clayton, NC 27520. It is one of the town's oldest parks, but with its central location it has been home to festivals and community wide events for many years. Today the park includes 1 basketball court, 1 tennis court, 1 playground, 1 restroom and 1 baseball field. The envisioned park includes picnic shelters, toilet facilities, performance stage/band shell, splash pad, playground, outdoor sports courts, walking trail, natural turf field and parking. The park will be a trailhead for the East Coast Greenway/Mountains to the Sea Trail as well as the greenway gateway to and from downtown Clayton. See Attachment A for additional information on the Project Site.

The Town anticipates utilizing pre-fabricated structures for the picnic shelters and band shell. The town also anticipates replicating a recently built restroom at East Clayton Community Park.

The Design-Builder will be expected to provide concurrent design and construction turnkey activities for this project resulting in a finished, fully usable facility that satisfies all project requirements and contract terms. The Design-Builder, as the sole responsible source for total project compliance and construction related performance (including architectural programming, design, and construction services) will hold all design professionals, testing services (with the exception of Special Inspections by Owner), trade contractors and trade supplier contracts.

Survey and preliminary site investigations have been completed.

III. Scope

A preliminary scope of work for the Design-Builder includes but is not limited to:

- A. Pre-Planning, schedule and budget review. Review of the prototype and site plan validation. Pre-construction project planning including preliminary cost estimate.
- B. Preparing site, architectural, structural, mechanical, plumbing and electrical design plans based on Owner's criteria and to include:
 - a. Site Design: clearing and grubbing, grading and drainage plans, sedimentation and erosion control plans, layout and staking plans, elevations and sections, construction details, lighting and signage, landscape and planting plans and details;
 - b. Building Design: building plan configuration and elevation elements including exterior building skin materials and colors, foundation, structural and roof systems, building fenestration and openings, overall dimensions, materials testing requirements, Mechanical/Electrical/Plumbing design including systems, equipment and calculations and submittals;
- C. Development and refinement of cost estimates and project schedules;
- D. Construction administration and observation including conferences, weekly site observations and regularly scheduled progress meetings with the Town;
- E. Construction
 - a. Site work to include but not be limited to:
 - i. Clearing and rough grading with excess dirt and material removed from the

- site. Tree protection and erosion control measures to be immediately put into place.
- ii. Site utilities including domestic water, sewer, natural gas and electrical service and site lighting.
- iii. Concrete paving, walkways, utilities, landscaping and storm water retention system.
- b. Building construction to include but not be limited to:
 - i. Concrete slab on grade foundations with continuous spread reinforced concrete footings and concrete floor slabs.
 - ii. Exterior bearing walls.
 - iii. Roof structure
 - iv. Interior finishes including walls, floor and ceiling finishes, interior doors, casework, painting, wall protection and window coverings.
 - v. Toilet and bath fixtures and accessories.
 - vi. Interior and exterior signage.
 - vii. Mechanical and electrical systems and controls.
- F. Project closeout, establishment of warranties, and guarantees. Final start-up and certification of mechanical, electrical and plumbing systems.
- G. Provide certified record drawings (site, stormwater and public utilities) as well as electronic copies in both PDF and an approved editable format (.dwg).

IV. PROJECT BUDGET

- a. In 2019, Town residents approved an \$18 Million in general obligation bonds to improve parks and rec facilities. The Town anticipates spending approximately \$4 Million on the municipal improvements.

V. Schedule

Note: All times are Eastern Standard Time

Sequence of Activity	Schedule
Issue RFQ	6/23/2021
Deadline for written questions and clarifications on RFQ (prj-PRbond@TownofClaytonNC.org)	7/2/2021 (4P)
Town of Clayton issues any addenda	7/7/2021
Deadline for submission of Statement of Qualifications (Locations above)	7/15/2021 (4P)
Notify Shortlisted Teams	7/19/2021
Interviews	7/23/2021
Notify selected Design-Build firm, begin contract negotiations	By 7/26/2021
Complete contract negotiations with selected team and award Contract	8/16/2021
GMP	November 2021
Project Completion	May 2022

VI. Submittal Response Requirements

Provide five (5) bound copies and one electronic copy in pdf format of your submittal. Submittals shall be a maximum of 20 pages (10 if double sided) and on 8.5" x 11" paper bound such that lay flat when opened. Font size shall be no less than 10 pt. Submittals must contain the following information:

Section 1- Letter of Interest: The Letter of Interest should include a synopsis of the firm, the team's qualifications, the project manager and primary contact, the project principal representing the contractual authority of the firm/team.

Section 2 – Project Organization: Provide a project organization chart identifying the team composition. Define key staff members who will be working on the project and explain their roles and their expected commitment to the project as a percentage of their time. Indicate any firm/company qualifying as a minority entity.

Section 3 - Profile(s) of Firm or Team: Provide information about each firm, licensed contractor and licensed subcontractor -in the project team. Identify capabilities and experiences, the number of employees and location and number of years in business under its current name. Identify the scope of services to be provided under this project.⁺ If contractors and/or subcontractors have not yet been selected, describe the selection strategy to be used and how it is compliant with Article 8, Chapter 143 of the North Carolina General Statutes.

Section 4 - Resumes: Provide resumes of the key staff, including the project manager and task leaders. Include resumes for staff identified as having a major role in the project.

Section 5 - Project Approach and Schedule: Provide a description of the proposed approach to the project. Include a response to the preliminary scope but do not simply restate the scope. Identify key risks/ challenges/ concerns you anticipate and any mitigation steps to achieve successful delivery. Describe the team's approach to design document quality assurance and quality control. Describe the firm and/or team's track record delivering projects with minimal change orders. Describe the team's level of experience with the major regulatory bodies likely to be project reviewers, whether local, state or federal. Describe the team's use of technology and how it will be used to engage with the owner in each project phase. Provide an outline project schedule, showing tasks, milestones and deliverables, including review meetings with the Town project team and community groups.

Section 6 - Reference Projects: Please identify recent, representative projects of a similar scope, complexity and size (NO MORE THAN FIVE), performed by the proposed team. At least three should be completed projects. For each project, provide project duration and completion year, references (name, email and phone number), and estimated and completed project cost. Identify which team members performed the work and the role each played in the reference project.

VII. Selection Criteria

A team of Town staff will review the proposals based on the criteria below and may make a recommendation to negotiate a tentative contract. This request for qualifications does not commit the Town to award a contract or enter into an agreement, to pay costs incurred in the preparation of a response to this invitation, or to procure or contract for any services or supplies. The Town reserves the right to reject any or all submittals received as a result of this RFQ. Each RFQ response submitted will be evaluated on their Statement of Qualifications score (100 points maximum) as determined through a qualification review process and the scoring criteria noted as follows:

1. Design-Build Team Experience and Qualifications - 30 Points
2. Design & Engineering Professionals' Experience and Qualifications - 30 Points
3. Project Understanding and Approach - 20 Points
4. Ability to meet Project Schedule - 10 Points
5. Reference Projects – 10 Points

VIII. Project Delivery and Objectives

At all times and project stages the Design-Builder shall act in the best interests of the Owner and use their best efforts to deliver the project in an expeditious and cost-effective manner consistent with the Owner's project requirements, time constraints and budget. The Design-Builder shall develop a contractually obligated overall project schedule and will be responsible for methods of construction, safety, scheduling and coordination of all construction work in addition to miscellaneous contracts

required for completion of the project within its predetermined budget limits and schedule.

The Owner expects all parties to this project to work closely together and deal appropriately with project conditions to finish the job successfully. A spirit of cooperation, collaboration and a commitment among professional design and construction services providers to work in the best interests of the project is of utmost importance.

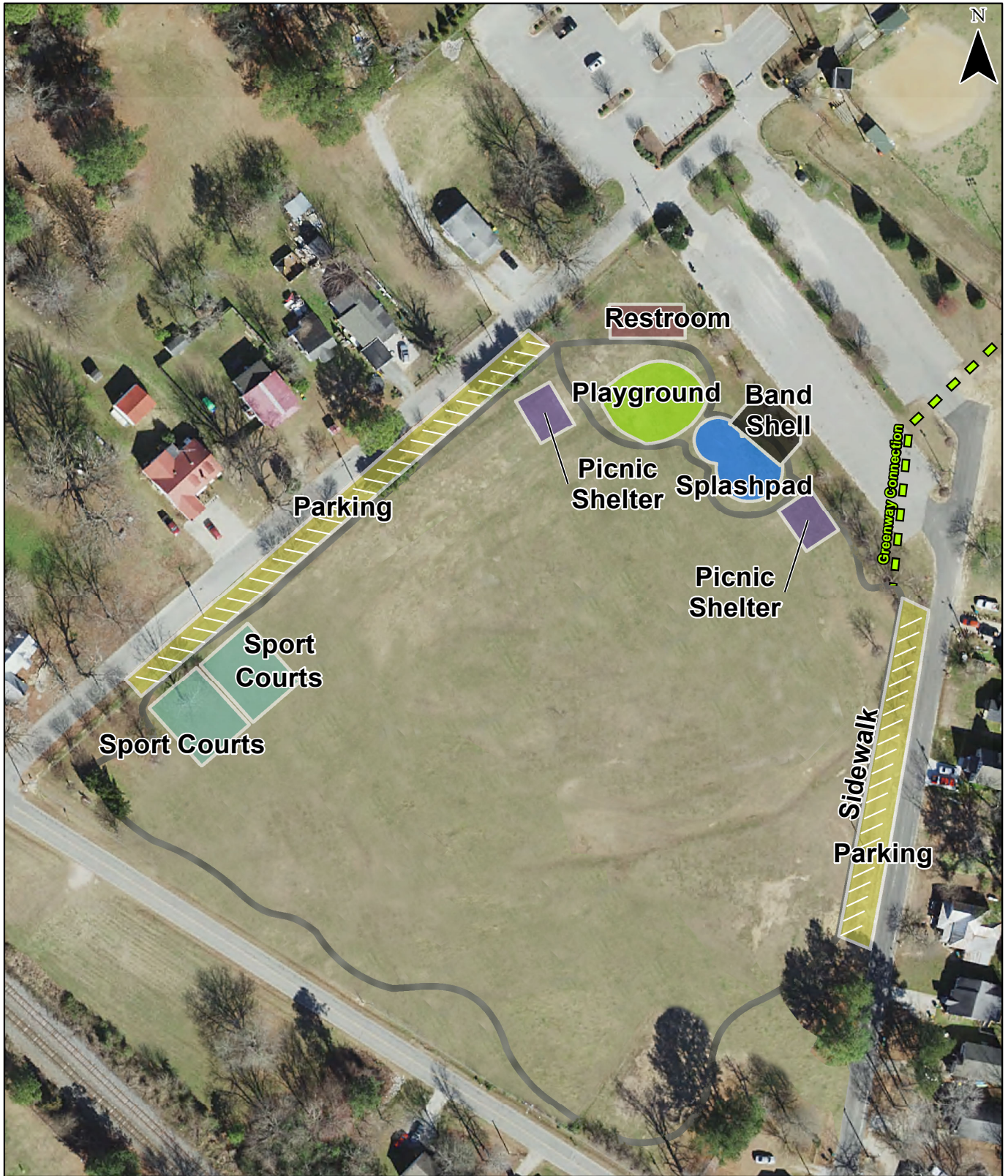
IX. Minority Business Policy.

In accordance with N.C.G.S. 143-128.2, Engineer shall adhere to Owner's Minority Business Policy for all building construction or repair projects in the amount of \$300,000 or more and on Owner building projects involving State funding where the total project cost \$100,000 or more.

X. Attachments

Attachment A – Site Location/Proposed Features
Attachment B – Establishment of Design Build Criteria
Attachment C – Minority Business Participation Policy
Attachment D – Insurance Requirements

Attachment A



Municipal Park Proposed Features

0 50 100 200 Feet

May. 12, 2021

Attachment B



TOWN OF CLAYTON
Engineering Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

To: File

From: Joshua Baird, PE - Town Engineer

Date: June 23, 2021

Subject: Establishment of Criteria for a Design-Build Delivery Method for Construction Contracts and Approval of Using the Design-Build Delivery Method for the Municipal Park Improvemtns

Background: In 2019, voters approved an \$18 Million Parks and Recreation bond. The \$18 Million is to be distributed around three parks (East Clayton Community Park, Community Park and Municipal Park) and the financial model includes two bond sales. Preliminary work has begun at East Clayton and Community Park. In order to meet timeline of bond sales, Parks and recreation programming and to “catch-up” to the work on the East Clayton and Community Park projects, staff propose utilizing the design-build delivery method. The Design-Build delivery method will provide the needed flexibility to complete the Project on time and within budget.

North Carolina General Statute §143-128.1A authorizes governmental entities to award construction contracts pursuant to the design-build delivery method after having established written criteria to determine the circumstances under which such delivery method is appropriate for a project.

Below are the required written criteria for the Municipal Park Improvement Project.

Criteria 1 – The extent to which the Town can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications (RFQ) for a design-builder. Through the Engineering Department and Department of Parks and Recreation, the Town has professional personnel with the qualifications and experience needed to thoroughly define the project requirements prior to issuance of a RFQ for design-builders. Additionally, professional personnel are available in the areas of purchasing, finance and legal to assist as needed in the development of an RFQ

Criteria 2 – The time constraints for the delivery of the project. The Town Council has indicated that East Clayton Community Park and Municipal park are to be priorities. There is a need to expedite the design and construction timeline of the Municipal Park Improvement Project to align with the bond sale timeline and to meet Parks and Recreation programming needs. The Municipal Park Improvements Project GMP must align with the hard bid at East Clayton Community Park for the first bond sale. Typical procedure would be to procure a design consultant, complete the design and then undertake construction. This process would take significant time and would result in Municipal GMP not aligning with East Clayton hard bids. The design-build process provides the best option for the Town to timely complete the Project.

Criteria 3 – *The ability to ensure that a quality project can be delivered.* Within the Engineering Department and Department of Parks and Recreation the Town has adequate professional and experienced personnel to ensure that the design-build firm will provide a quality project within the budget constraints established by the Town Council.

Criteria 4 – *The capability of the Town to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.* Within the Engineering Department and Department of Parks and Recreation, the Town has professional and experienced personnel that are knowledgeable of design-build projects. Should it become necessary to contract out the construction management of the design-build contract, there are experienced consultants that are available.

Criteria 5 – *A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.* The Town complies with G.S. § 143-128.2 and G.S. § 142-128.4. The Town has an established M/WBE program which requires contractors to comply with all M/WBE goals set by Town Council.

Criteria 6 – *The criteria utilized by the Town, including a comparison of the costs and benefits of using the design-build delivery method for a given project in lieu of the other delivery methods identified.* The project timeline is constrained, and thus the design-build delivery method enables the Town to meet its desired timing. The potentially significant reduction in the overall project duration has a direct benefit on the project budget. By reducing the duration of the project, the Town is eliminating any price escalation which could occur in a lengthened project timeline. Additionally, the scope of the design effort is expected to be reduced, which enables more of the approved budget to go directly towards the physical construction of the Municipal Improvements over what a more conventional delivery process would allow.

Attachment C

	TOWN OF CLAYTON POLICY	
	Department: Finance	Effective: January 19, 2021
Policy Title: OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN TOWN OF CLAYTON BUILDING CONSTRUCTION OR REPAIR CONTRACTS Version #01	Supersedes: V.# 1992 Resolution	
	Prepared By: J. Brian Pridgen (Cauley Pridgen P.A.) Town Attorney	
	Approved By: Town Council Resolution: 2021-04 Date: JAN. 19, 2021	

In accordance with G.S. 143-128.2, these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on **Town of Clayton** building construction or repair projects in the amount of \$300,000 or more and on Town building projects involving State funding where the total project cost \$100,000 or more. The outreach plan shall also be applicable to the selection process of architectural, engineering, and Construction Manager-at-Risk services.

The Town of Clayton has a current verifiable goal of **ten** percent for minority participation for building construction or repair projects. The goal will be reviewed **every five years**.

SECTION A: INTENT

It is the intent of these guidelines that the Town of Clayton, as awarding authority for building construction or repair projects, and the contractors and subcontractors performing the construction contracts awarded shall cooperate and in good faith do all things legal, proper, and reasonable to achieve the goal of ten percent for participation by minority businesses in each building construction or repair project as required by GS 143-128.2. Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

A copy of these Guidelines will be issued with each bid package for applicable Town of Clayton building projects. These Guidelines shall apply to all contractors on such projects, regardless of ownership.

SECTION B: DEFINITIONS

1. Minority - a person who is a citizen or lawful permanent resident of the United States and who is:
 - a. Black, that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
 - d. American Indian, that is, a person having origins in any of the original peoples of North America; or
 - e. Female
2. Minority Business (MBE) - means a business:
 - a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
 - c. The business is certified as a Historically Underutilized Business by the North Carolina Department of Administration Office for Historically Underutilized Business.
3. Socially and economically disadvantaged individual - means the same as defined in 15 U.S.C. 637: Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.
4. Public Entity - means the State and all public subdivisions and local governmental units.
5. Owner – Town of Clayton.
6. Designer – Any person, firm, partnership, or corporation which has contracted with the Town of Clayton to perform architectural or engineering work.
7. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
8. Contract - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials, or services, including construction, and obligating the buyer to pay for them.
9. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the Town of Clayton to perform building construction or repair work.
10. Subcontractor - A firm under contract with the prime contractor or construction manager at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.
11. HUB Office – N.C. Department of Administration's Office for Historically Underutilized Businesses.

SECTION C: MINORITY OUTREACH PLAN AND GUIDELINES

Owner:

The Owner shall do the following:

1. Implement the attached “Town of Clayton’s Minority and Small Business Participation Outreach Plan” to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and nonminority businesses.
2. Attend the scheduled prebid conference and explain the minority goals and objectives.
3. At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the Owner for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
 - (1) A description of the work for which the bid is being solicited.
 - (2) The date, time, and location where bids are to be submitted.
 - (3) The name of the individual within the public entity who will be available to answer questions about the project.
 - (4) Where bid documents may be reviewed.
 - (5) Any special requirements that may exist.
4. Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.
5. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
6. Review, jointly with the designer, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) prior to recommendation of award.
7. Evaluate documentation to determine that a good faith effort has been achieved for minority business utilization prior to recommendation of award.
8. Forward documentation showing evidence of implementation of Owner’s requirements to the State Construction Office and the HUB Office upon request.

In addition, after a contract has been awarded the Owner shall:

- a. Review prime contractors’ pay applications for compliance with minority business utilization commitments prior to payment.
- b. Submit the report to the HUB Office as required by G.S. 143-128.3(a).

Designer:

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer will:

1. Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.
2. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
3. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
4. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) – (i.e. bidders’ proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing good faith efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award.

5. During construction phase of the project, review documentation for contract payment to MBEs (e.g. state form “Appendix E: MBE Documentation for Contract Payment” <http://interscope2.doa.state.nc.us/Guidelines/MBE/MBGuidelines2002R.pdf>) for compliance with minority business utilization commitments. Submit this form with monthly pay applications to the Owner.
6. Make documentation showing evidence of implementation of Designer’s responsibilities available for review by the Owner and State officials upon request.

Prime Contractor(s), CM at Risk, and Its First-Tier Subcontractors:

The following requirements apply to all contractors utilizing single-prime bidding, separate-prime bidding, construction manager at risk and alternative contracting methods, as well as to all contractors performing as contractors and first-tier subcontractors under construction manager at risk. For purposes of this subsection, the term “contractor(s)” shall also include first-tier subcontractors under a construction manager at risk. The contractors shall:

1. Attend the scheduled prebid conference and any prebid meetings scheduled by the Owner.
2. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
3. At least ten (10) days prior to the scheduled day of bid opening or due date for proposals, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification must include all of the following:
 - (a) A description of the work for which the subbid is being solicited.
 - (b) The date, time and location where subbids are to be submitted.
 - (c) The name of the individual within the company who will be available to answer questions about the project.
 - (d) Where bid documents may be reviewed.
 - (e) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

If there are more than three (3) minority businesses within a 75 mile radius of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify three (3), but may contact more, if the contractor(s) so desires.

4. During the bidding process, comply with the contractor(s) requirements listed in these Guidelines and any contractor requirements listed in the Town of Clayton’s Minority and Small Business Participation Outreach Plan.
5. Identify on the bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and submit affidavit listing Good Faith Efforts (Affidavit A) as required by G.S. §143-128.2(c) and G.S. §143-128.2(f). If the contractor will be performing all of the work with its own workforce, the contractor may submit Affidavit B, Intent to Perform Contract with Own Workforce,” in lieu of Affidavit A. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
6. Make documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First-Tier Subcontractor responsibilities available for review by the Owner and State officials upon request.
7. Provide one of the following to Owner upon being named the apparent low bidder:
 - (1) an affidavit (Affidavit C) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal; or
 - (2) if the percentage is not equal to the applicable goal, then an affidavit (Affidavit D) and documentation of all Good Faith Efforts taken to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitation, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.

8. Within thirty (30) days after award of the contract, the apparent lowest responsible, responsive bidder shall file with Owner a list of all identified subcontractors that the contractor will use on the project.
9. Identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values. The schedule of values shall be provided as required in the General Conditions of the Contract to facilitate payments to the subcontractors.
10. Submit with each monthly pay request and final payment request the "MBE Documentation for Contract Payment" - (Appendix E), for Designer's review.
11. If at any time during the construction of a project, if it becomes necessary to replace a minority business subcontractor, immediately advise the Owner in writing of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor,
12. Make a good faith effort to solicit subbids from minority businesses during the construction of a project if additional subcontracting opportunities become available.

In addition, a construction manager at risk shall submit its plan for compliance with N.C. Gen. Stat. § 143-128.2 for approval by the Town prior to soliciting bids for the project's first-tier subcontractors.

Minority Business Responsibilities:

Certification

The Town of Clayton does not certify minority businesses. Any business which desires to participate as a minority business under these Guidelines will be required to register and become certified as a historically underutilized business ("HUB") by the North Carolina Department of Administration Office for Historically Underutilized Businesses ("HUB Office").

Businesses seeking HUB certification are directed to: <http://www.doa.state.nc.us/hub/prog-certification.htm>.

Minority HUB contractors shall make a good faith effort to participate in construction projects as demonstrated by:

1. Attending the scheduled prebid conference.
2. Responding promptly whether or not they wish to submit a bid when contacted by the Owner or bidders.
3. Attending training and contractor outreach sessions given by the Owner, contractors and state agencies, when feasible.
4. Participating in Mentor/Protégé programs, training, or other business development programs offered by the Owner, contractors or state agencies.
5. Negotiating in good faith with the Owner or contractors.

Other Responsibilities

Minority businesses that are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

MINORITY BUSINESS CONSTRUCTION CONTRACT PROVISIONS

(To be included in solicitations and contract documents)

APPLICATION:

The Guidelines for Recruitment and Selection of Minority Businesses for Participation in Town of Clayton Construction Contracts are hereby made a part of these contract documents.

MINORITY BUSINESS SUBCONTRACT GOALS:

The goal for participation by minority firms as subcontractors on this project has been set at 10%.

The bidder must identify on its bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit (Affidavit A) listing good faith efforts or affidavit (Affidavit B) of self-performance of work, if the bidder will perform work under contract by its own workforce, as required by G.S. §143-128.2(c) and G.S. 143-128.2(f).

In addition, the lowest responsible, responsive bidder must do one of the following:

(1) Provide Affidavit C that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal.

OR

(2) If the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, is less than the applicable goal, provide Affidavit D as well as documentation of Good Faith Efforts.

OR

(3) Provide Affidavit B, which includes sufficient information for the Owner to determine that the bidder does not customarily subcontract work on this type project.

The above information must be provided as required. Failure to submit these documents is grounds for rejection of the bid.

SECTION D: MINIMUM COMPLIANCE REQUIREMENTS

All written statements or affidavits made by the bidder shall become a part of the agreement between the Contractor and the Town of Clayton for performance of the contract. Failure to comply with any of these statements, affidavits, or with the minority business guidelines shall constitute a breach of the contract. A finding by the Town of Clayton that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false, or incomplete shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the Town of Clayton whether to terminate the contract for breach.

In determining whether a contractor has made good faith efforts, the Town of Clayton will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, diligence, and results of these efforts. Contractors are required to earn at least 50 points for good faith efforts. Failure to file a required affidavit or documentation demonstrating that the contractor made the required good faith effort, is grounds for rejection of the bid. Good faith efforts include:

1. Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. (10 points)
2. Making the construction plans, specifications, and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. (10 points)
3. Breaking down or combining elements of work into economically feasible units to facilitate minority participation. (15 points)
4. Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. (10 points)
5. Attending any pre-bid meetings scheduled by the public owner. (10 points)
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. (20 points)
7. Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Reasons for rejection of a minority business based on lack of qualification should be documented in writing. (15 points)
8. Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. (25 points)
9. Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. (20 points)
10. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands. (20 points)

SECTION E: DISPUTE RESOLUTION PROCEDURES

Pursuant to G.S. 143-128 (f1), all disputes involving contractors on a building construction or repair project with the Town of Clayton shall be resolved as governed under the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11).

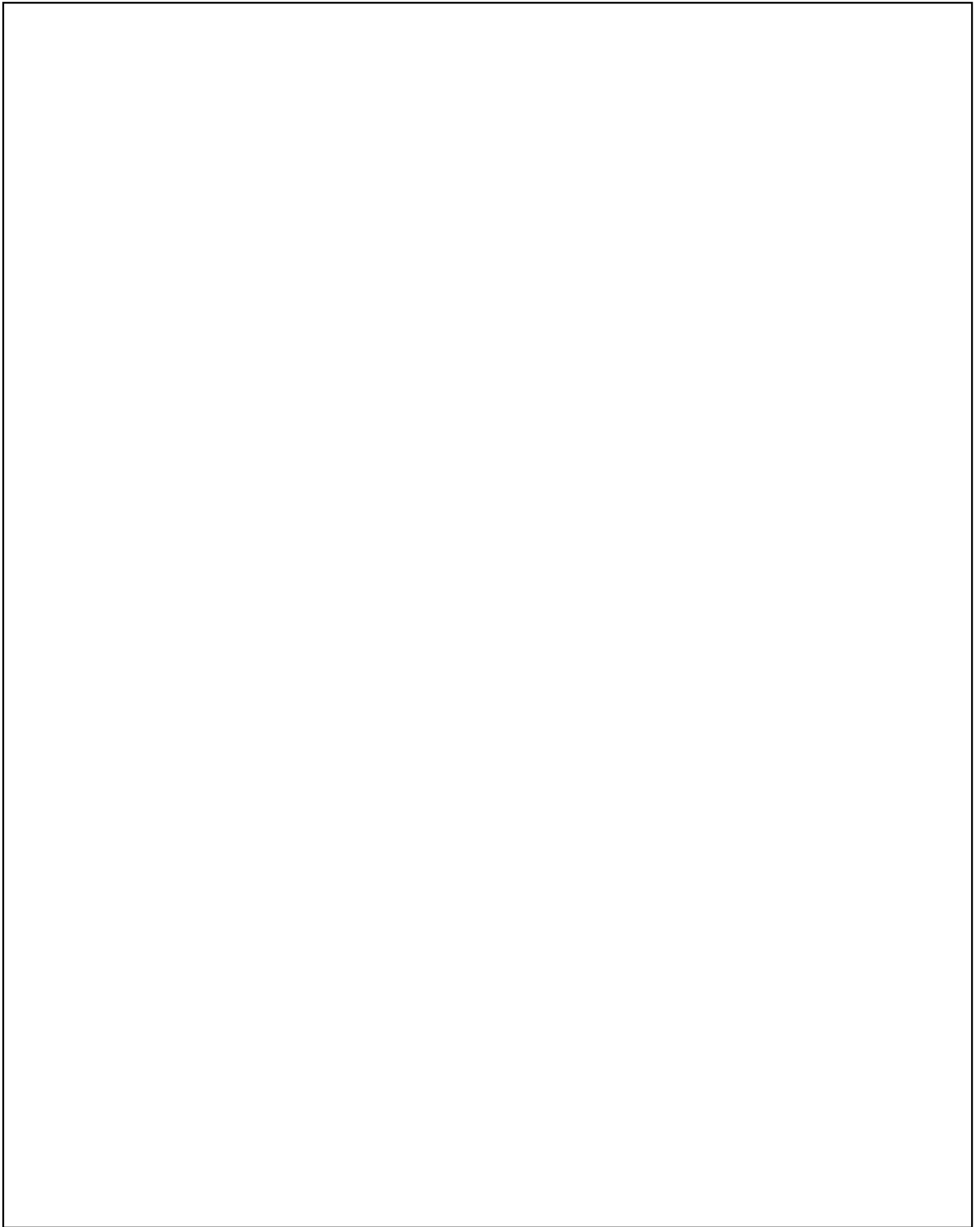
SECTION F: In addition to these guidelines, there will be issued with each construction bid package provisions for providing minority business participation in Town of Clayton projects.

SECTION G: The Town Board of Commissioners empowers the Town Manager to enforce and/or amend this policy as may be required by changes in State law or Federal regulation.

TOWN OF CLAYTON'S MINORITY AND SMALL BUSINESS PARTICIPATION OUTREACH PLAN

In addition to the good faith efforts set forth in the Guidelines for Recruitment and Selection of Minority Businesses for Participation in Town of Clayton Construction Contracts, the Town of Clayton will also make the following good faith efforts in order to make it feasible for minority businesses to submit successful bids or proposals for contracts for building projects. The Town of Clayton shall also make the following good faith efforts in the selection process for architectural, engineering, and construction manager at risk services.

1. Work with minority-focused and small business groups that support minority business and small business inclusion in the solicitation of bids.
2. Place more emphasis on the importance of soliciting certified minority businesses and small businesses for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from minority businesses.
3. Provide detailed information to majority contractors concerning the Guidelines for Recruitment and Selection of Minority Business for Participation in Town of Clayton Construction Projects and this Outreach Plan (hereinafter referred to collectively as the "MBE Program") and provide information on G.S. 143-129 by holding meetings with the contractors.
4. Assess the effectiveness of the MBE Program, and identify opportunities to enhance it, by evaluating minority business participation and compliance and reviewing the "good faith efforts" provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified minority businesses and small businesses that have expressed an interest in Town of Clayton projects. Identify these opportunities and contact interested businesses no later than 10 days prior to the bid opening and provide a list of prime contractors plan to participate in the project.
6. Build new business relationships through networking and continue networking with other North Carolina cities and counties to find out how this MBE Program is working and sharing "best practices" and ideas to improve the program.
7. Participate in education opportunities throughout the community as they become available and offer training sessions to share the Town's Outreach Plan with interested businesses and organizations.
8. Be visible through participation in trade shows and business organizations of interest to minority businesses, majority contractors and small businesses, and provide information to the general public about the MBE Program, and continue outreach efforts to the business community.
9. Enhance the Town's web page by including the MBE Program, listing good faith efforts, and creating links to minority business resources, and creating awareness of specific subcontracting opportunities.
10. Make available to minority-focused agencies, a list of subcontracting opportunities when they are identified, no later than 10 days prior to the bid opening, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
11. Direct minority businesses to the Statewide historically underutilized business certification program in order to ensure those firms wishing to do business with the Town of Clayton or any other public entity have access to up to date information.
12. Advertise upcoming bid opportunities in minority-focused media and on the Town website.
13. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.
14. Document telephone calls, emails and correspondence with or on behalf of minority businesses and encourage interested eligible firms to become certified.



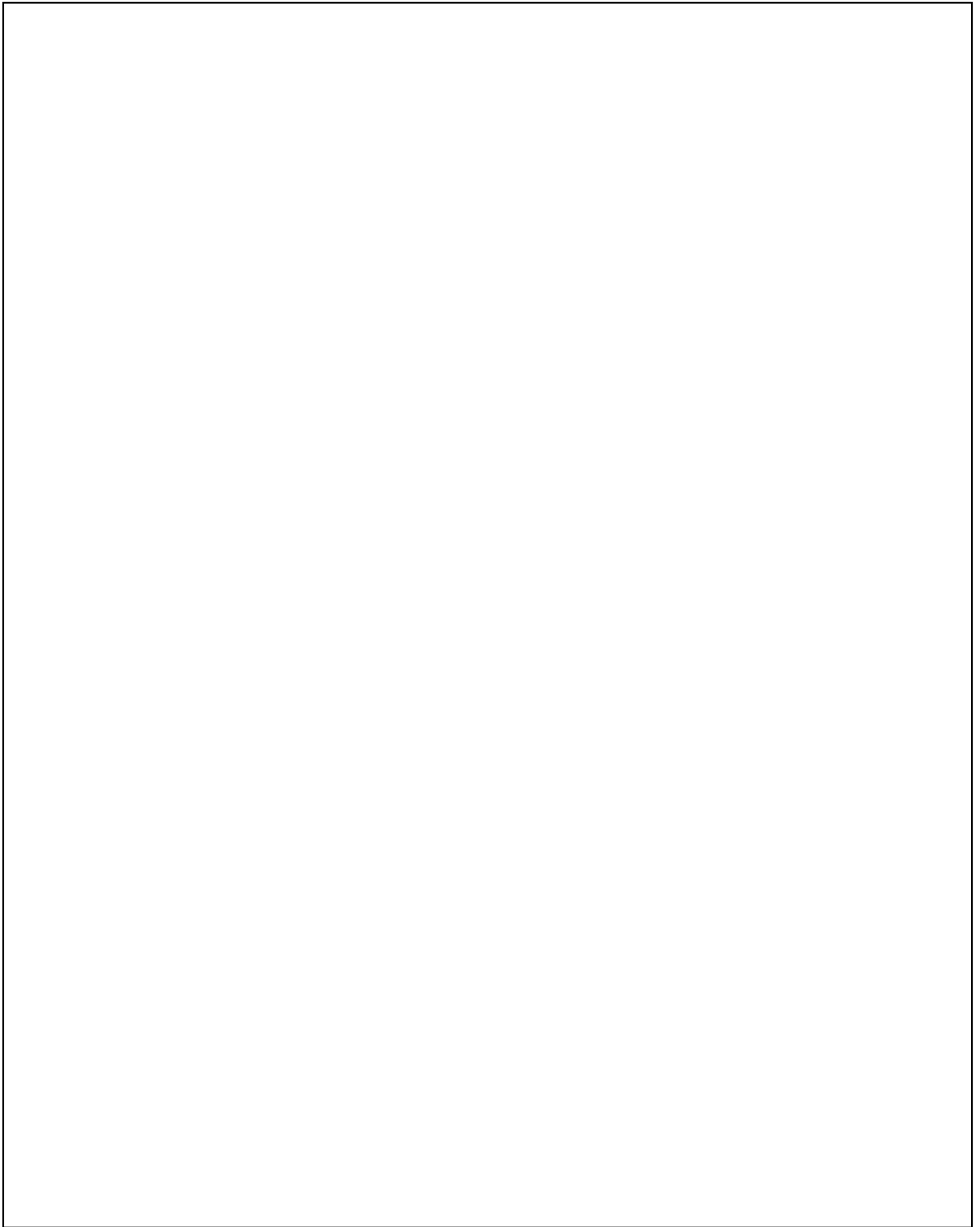
do hereby certify that on this project, we will use the following HUB Certified/ minority business as construction subcontractors, vendors, suppliers or providers of professional services.

**HUB
Certified
(Y/N)

[illegible]

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

The total value of minority business contracting will be (\$)_____.



State of North Carolina – AFFIDAVIT A – Listing of Good Faith Efforts

County of _____

(Name of Bidder)

Affidavit of _____

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

- ☐ **1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- ☐ **2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- ☐ **3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- ☐ **4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- ☐ **5 – (10 pts)** Attended prebid meetings scheduled by the public owner.
- ☐ **6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☐ **7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- ☐ **8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- ☐ **9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- ☐ **10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

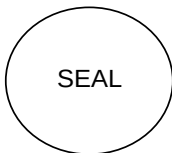
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

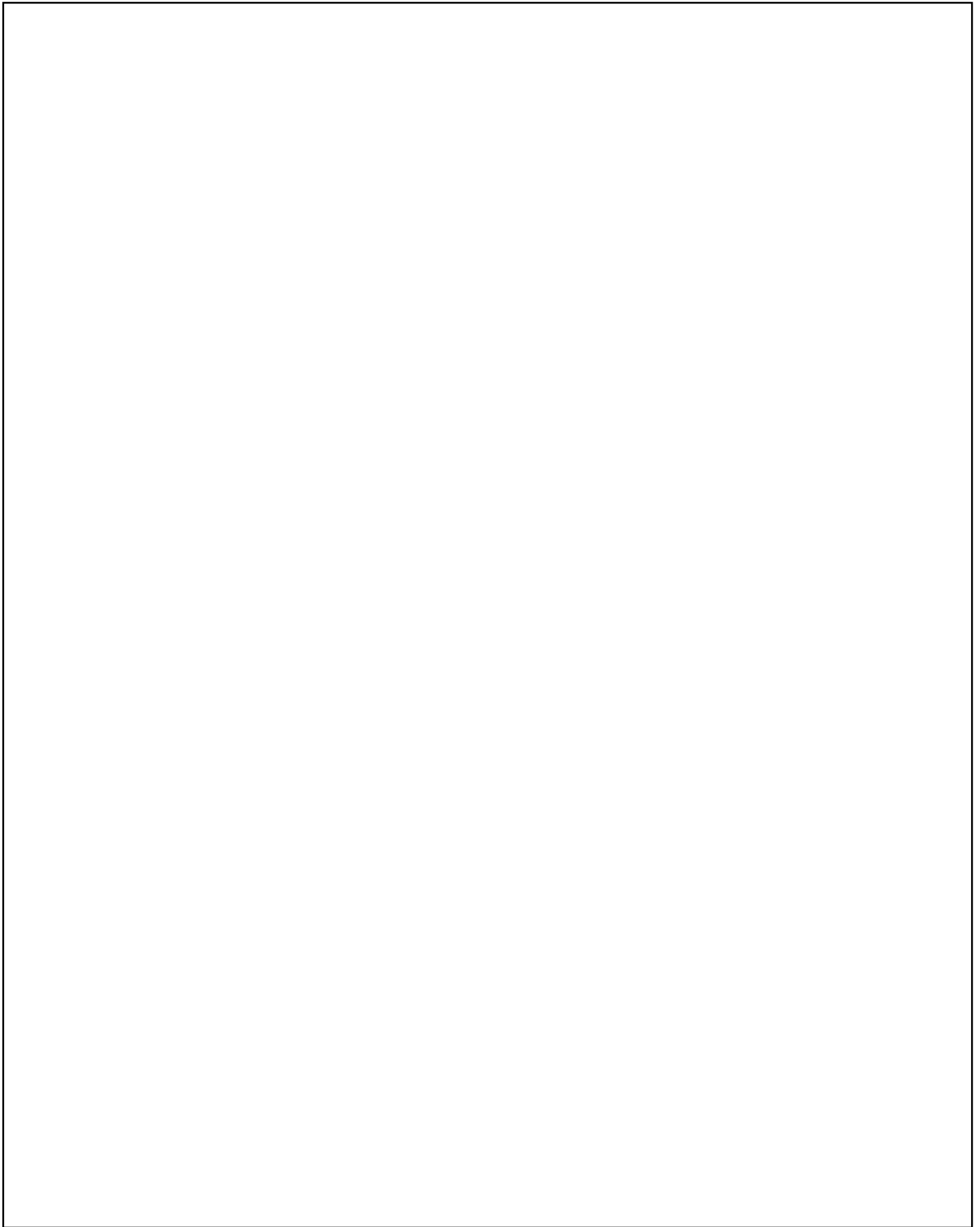
Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____
Subscribed and sworn to before me this _____ day of _____ 20____
Notary Public _____
My commission expires _____



State of North Carolina – AFFIDAVIT B – Intent to Perform Contract with Own Workforce

County of _____

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____
_____ contract.
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

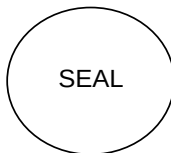
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____

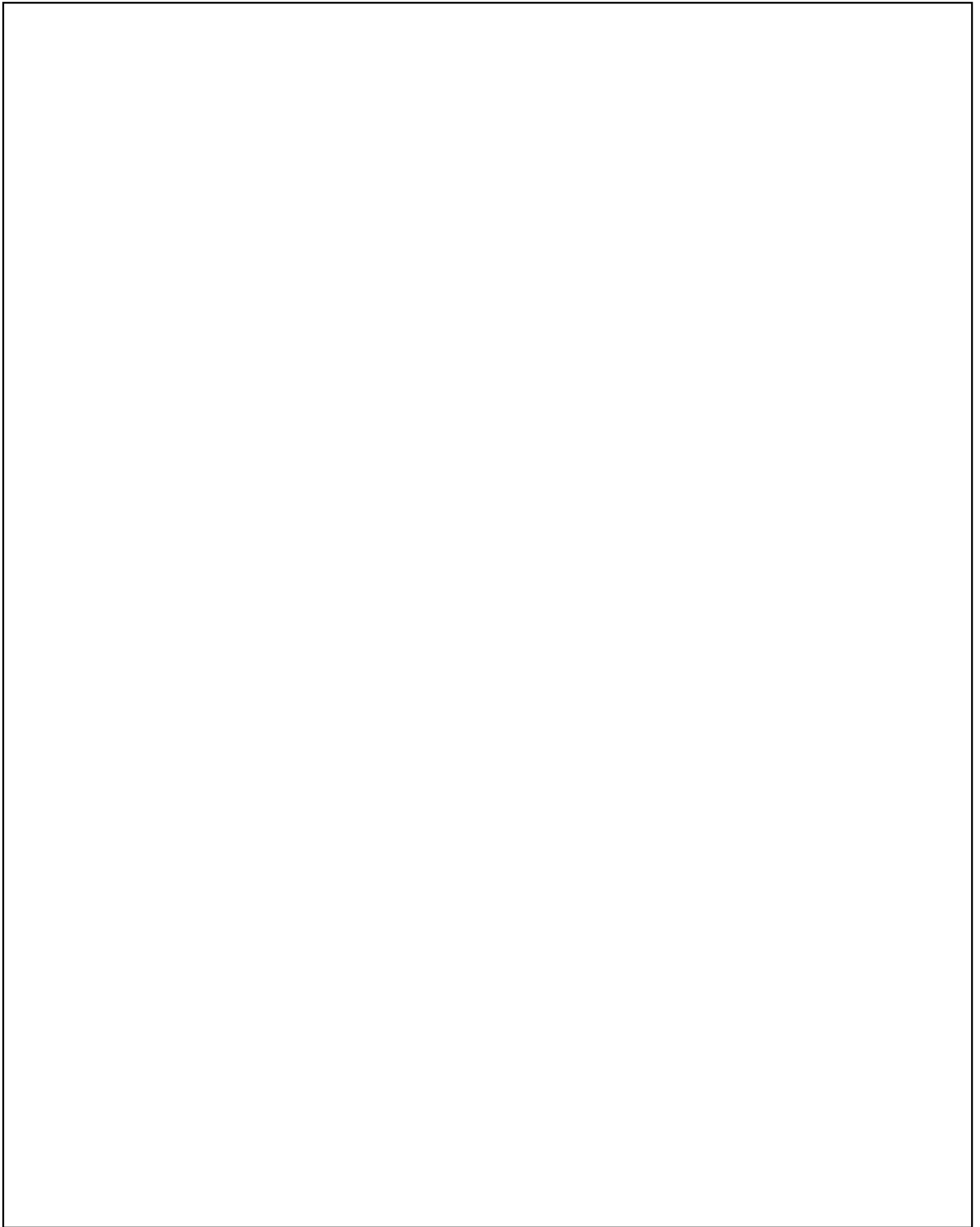


State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____



Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid

State of North Carolina – AFFIDAVIT C – Portion of the Work to be Performed by HUB Certified/Minority Businesses

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the portion of the work to be executed by HUB certified/minority businesses as defined in GS143-128.2(g) and 128.4(a),(b),(e) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit.

This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

Affidavit of _____ I do hereby certify that on the _____
(Name of Bidder)

Project ID# _____ (Project Name) Amount of Bid \$ _____

I will expend a minimum of _____% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

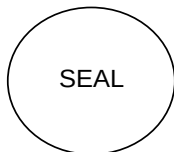
*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____



Signature: _____

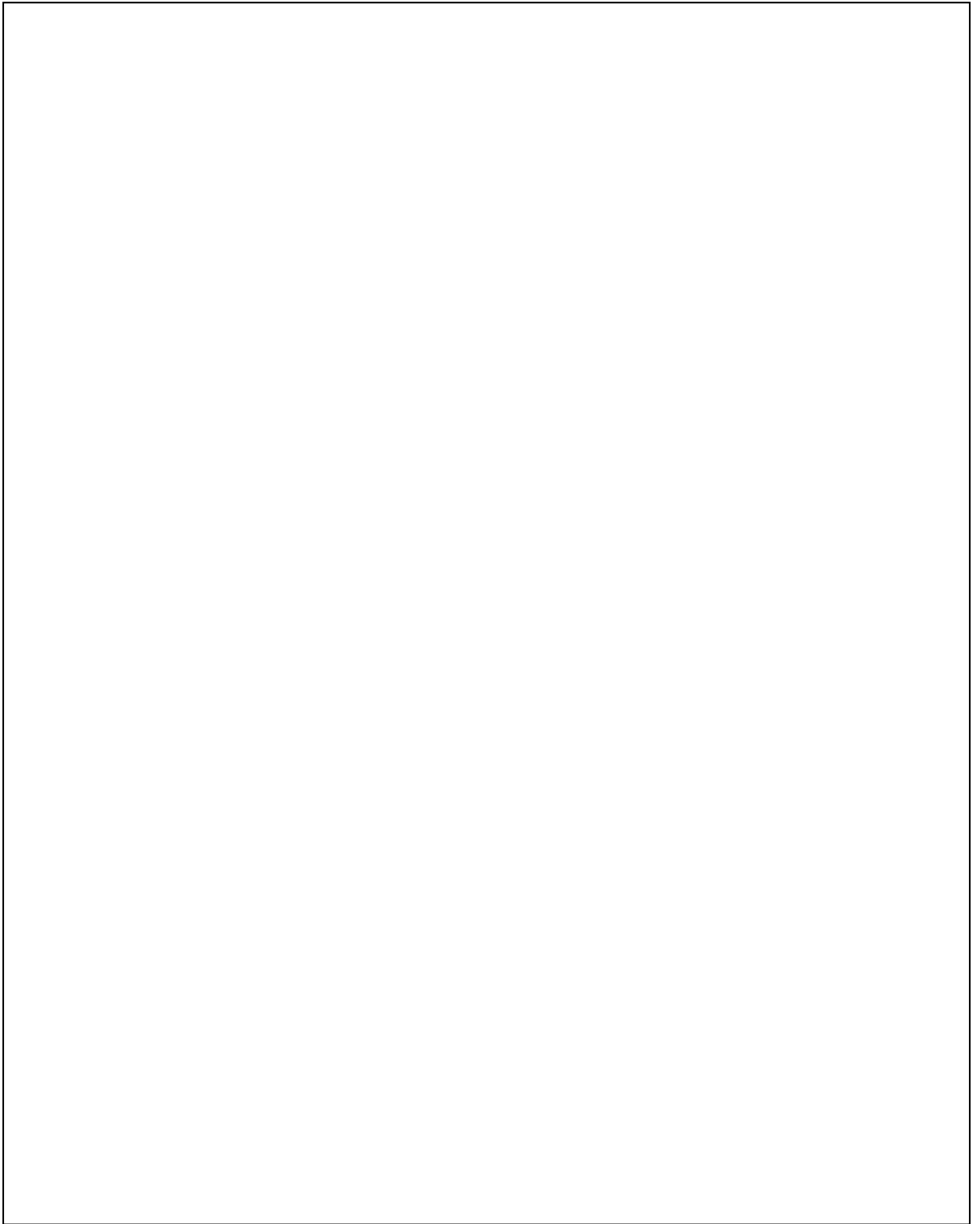
Title: _____

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____



State of North Carolina – AFFIDAVIT D – Good Faith Efforts

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 10% participation by HUB Certified/ minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of _____ I do hereby certify that on the
(Name of Bidder)

Project ID# _____ (Project Name) Amount of Bid \$ _____

I will expend a minimum of _____ % of the total dollar amount of the contract with HUB certified/ minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. (Attach additional sheets if required)

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

Examples of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

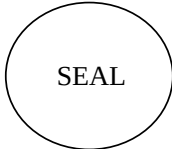
Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

Attachment D

MINIMUM INSURANCE REQUIREMENTS

Design-Builder, from the time of commencement of Services until one year after completion of Services, shall provide and maintain in force with responsible companies with a Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger and licensed by the North Carolina Insurance Commissioner to transact the business of insurance in the State of North Carolina for the applicable line of insurance, the following minimum insurance coverage:

1.0 Professional Liability Insurance

Errors and Omissions Professional Liability Insurance having minimum limits of \$5,000,000 per claim and \$10,000,000 in the aggregate. Owner shall be named as an intended third-party beneficiary to Design-Builder's Contract with any Architect, Engineer or other design professional.

2.0 Commercial General Liability Insurance

Occurrence form including premises and operations coverage, products and completed operations coverage, coverage for independent contractors, personal injury coverage and blanket contractual liability.

Limits of Liability

Bodily Injury/Property Damage Liability	\$1,000,000
Personal Injury Liability	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000

Coverage must include:

- 2.1 Policy to be endorsed to provide policy limits "per project".
- 2.2 Policy must name Owner as an additional insured.
- 2.3 Policy must be endorsed to provide a 30-day notice of cancellation.
- 2.4 There shall be no endorsement or modification of coverage for liability due to "explosion", "collapse" or "underground property damage".

3.0 Worker's Compensation

Limits of Liability

Worker's Compensation	statutory
Employer's Liability	
Each accident	\$1,000,000
Policy Limit – Disease	\$1,000,000
Each Employee – Disease	\$1,000,000

Coverage Must Include

- 3.1 Coverage for all states in which operations are conducted.
- 3.2 Policy must be endorsed to provide a 30-day notice of cancellation.

4.0 Business Automobile Liability

(Owned, non-owned, and hired vehicles on an occurrence basis)

Limits of Liability

Combined Single Limit (BI & PD)	\$1,000,000 per accident
---------------------------------	--------------------------

Coverage must include:

- 4.1 Policy must be endorsed to provide a 30-day notice of cancellation or substantial change to Owner.
- 4.2 Policy must name Owner as an additional insured.

5.0 Umbrella Insurance

Limits of Liability

Annual aggregate	\$10,000,000
Per Occurrence Limit	\$10,000,000

Coverage must include:

- 5.1 Coverage must be "following form" coverage for all underlying coverages set forth above.
- 5.2 Policy must be endorsed to provide a 30-day notice of cancellation or substantial change to Owner.
- 5.2 Policy must name Owner as an additional insured.

6.0 Waiver of Subrogation:

Design-Builder waives all right of recovery of damage against Owner, its agents and employees to the extent covered by insurance, and Design-Builder shall obtain from its insurers a waiver of subrogation against Owner and its agents and employees for all insurance coverage except Worker's Compensation and Professional Liability.

7.0 Consultants and Subcontractors

Unless otherwise approved by Owner, Design-Builder shall require all of its design consultants and/or subcontractors to provide insurance adequate to cover the typical risks for such consultant or subcontractor. Any deficiency in the coverage or policy limits of the consultants and/or Subcontractor will be the sole responsibility of Design-Builder.

8.0 The insurance provisions set out above in no way affect, reduce or limit the liability of Design-Builder as stated elsewhere in this Agreement.

9.0 Miscellaneous

9.1 The Commercial General Liability and Umbrella Excess Liability policies shall cover the contractual liability assumed by Design-Builder under the Design-Build Documents. The Commercial General and Umbrella Excess Liability policies shall include endorsements naming the Owner and their officers, members, agents and employees, as additional insureds. The policies of the Design-Builder shall be primary and non-contributing with any insurance carried by Owner.

9.2 The Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Commercial Umbrella Excess Liability Insurance shall provide coverage for the Design-Builder and its representatives who may be engaged in performing any of the work, services or activities in connection with the Project.

10.0 Certificates of Insurance:

Before commencing performance of the Services, Design-Builder and its consultants and/or subcontractors must furnish certificate(s) of insurance evidencing:

- 10.1 Insurance coverage acceptable to Owner.
- 10.2 Effective expiration dates of policies.
- 10.3 Owner must be given thirty (30) days written notice of all cancellation, non-renewable, or material changes in policy.
- 10.4 A waiver of subrogation endorsement has been attached to all policies.
- 10.5 Any deductible and/or self-insured retention.
- 10.6 Any exclusions to the policy which are not part of the standard form.
- 10.7 Certificate of Insurance title block format is as follows:



Town of Clayton

Proposal for Municipal Park Improvements

 July 15, 2021

SECTION 1: LETTER OF INTEREST

Joshua Baird, PE, Town Engineer
Town of Clayton
111 East Second Street
Clayton, NC 27520

Dear Joshua,

Balfour Beatty together with our design partners of Ratio and McAdams are pleased to submit this design build qualification and proposal for the Municipal Park Improvements Project. Your choice in a design-built partner is an important one. We feel our team is uniquely qualified for this project. We offer the following advantages to the Town of Clayton:

Proven Team for Clayton

We offer the same team who recently completed the Town of Clayton's Harmony Park. This team also has experience working on parks with the City of Raleigh, the Town of Cary, Wake County, and Davie County, to name a few.

Design-Build Experience

Our team has provided leadership on multiple design-build projects in North Carolina totaling more than \$300 million dollars in revenue. We recently completed the UNCW Parking Deck II and UNCW Student Village projects in Wilmington, NC. Our team understands the benefits of this contract method including how it can be used to create efficiency and reduce cost for our owners. Our approach to design-build is transparent and collaborative.

Team Chemistry

Balfour Beatty and our design partners have substantial experience collaborating on some of areas most notable projects. In addition to a successful Harmony Park, this team has a long history of successful projects together including SE Raleigh YMCA, multiple schools for WCPSS, and the soon to begin the Dorothea Dix Gateway Plaza and Play.

Market Reputation

Our companies have worked in the Raleigh market since 1985 and our existing relationships with subcontractors and design partners in this market are second to none. We will utilize this long standing history of relationships to provide the best cost, quality, and schedule for the Municipal Park Project. The Town of Clayton is important to this team. As many of our employees call Clayton and Johnston County home, this project is important to our local area.

Sincerely,

Chad Humphrey
Triangle Market Lead

Balfour Beatty

Project Manager and Primary Contact:

Scott Garner, Project Manager / Single Point of Contact
Balfour Beatty

Project Principal representing the contractual authority:

Tony Stoneking, Officer of the Company
Balfour Beatty

Balfour Beatty



 **RATIO**

 **lynchmykins**



THE WOOTEN COMPANY

SECTION 2: PROJECT ORGANIZATION

Provide a project organization chart identifying the team composition. Define key staff members who will be working on the project and explain their roles and their expected commitment to the project as a percentage of their time. Indicate any firm/company qualifying as a minority entity.

- Scott Garner, Project Manager **100%**
- John Katskowsky, Preconstruction **100%**
- Billy Clark, General Superintendent **25%**
- Roy Lyon, Superintendent **100%**
- Brent Covington, Architect **100%**
- Rachel Cotter, Landscape Architect **100%**
- Eric Domonell, Civil / LA Lead **25%**
- Daniel Wiebke, Wastewater Engineer **25%**
- Collette Ramirez, Structural Engineer **20%**
*Lynch Mykins is a Women-Owned Business
- Bob Egan, MEP Engineer **20%**

OUR DESIGN-TEAM PROVIDES THE TOWN OF CLAYTON WITH THE FOLLOWING:

- Design-Build Expertise
- Experience with the Town of Clayton
- National and Local Park Expertise
- Same Architecture/Construction Management team from Town of Clayton's Harmony Park



Balfour Beatty

Scott Garner
Project Manager



Balfour Beatty

Tony Stoneking
VP of Operations



PRECONSTRUCTION

Balfour Beatty

John Katskowsky
Preconstruction Lead



CONSTRUCTION

Balfour Beatty

Billy Clark
General Superintendent



Balfour Beatty

Roy Lyon
Superintendent



DESIGN



MCADAMS
Rachel Cotter, RLA
Lead Landscape Architect



MCADAMS
Eric Domonell, PE,
Landscape Architect



MCADAMS
Daniel Wiebke, PE, CFM
Stormwater Engineer



RATIO

Brent Covington AIA
Designer-of-Record



lynchmykins

Collette Rameriez, PE
Lead Structural Engineer



THE WOOTEN COMPANY
Bob Egan, PE
Lead MEP Engineer



INDIVIDUAL TEAM EXPERIENCE



SECTION 3: PROFILE OF FIRM OR TEAM

A. Provide information about each firm in the project team.

FIRM	CAPABILITIES + EXPERIENCE	# OF EMPLOYEES	LOCATION	# YEARS UNDER CURRENT NAME	SERVICES TO BE PROVIDED
Balfour Beatty	Balfour Beatty provides first-class facilities for the arts community, public transportation, education, parks and recreation, public safety and for city administration. In addition, we have successfully completed 14 natural turf athletic fields, 7 playgrounds and miles of paved walkways with Wake County Schools.	75	Raleigh, NC	87	General Contractor
 McADAMS	McAdams is a full-service civil engineering, land planning, landscape architecture and geomatics firm headquartered in Durham, North Carolina with offices in Raleigh and Charlotte, North Carolina and Dallas-Fort Worth, Texas. McAdams has built its reputation throughout the industry over 42 years by delivering unmatched expertise and unwavering commitment to clients in a variety of markets including municipal, education, healthcare and energy, as well as commercial and residential development.	325	Raleigh, NC	42	Civil Engineering / Landscape Architecture / Stormwater
 RATIO	Built elements contribute significantly to the identity of the community and the character of the park. RATIO pays special attention to these small structures; we strive to make them contextual, functional, durable and iconic. Our portfolio contains 730 community projects valued over \$2.1 billion in construction. These projects include parks and playgrounds, YMCAs, community centers, aquatic centers, senior centers and athletic fields across the nation.	23	Raleigh, NC	3	Architecture
 lynchmykins	Lynch Mykins has worked on nearly every conceivable building type including higher education, federal/state/local, entertainment and arts, healthcare, hospitality, k-12, historic restoration and commercial. Dedicated to creative approaches, collaborative processes and integrated design, Lynch Mykins is headquartered in Raleigh, NC and has been responsible for the design of buildings and other structures at a rate of over \$1 billion in construction value per year.	40	Raleigh, NC	3 years as Lynch Mykins, 43 years as Stroud Pence	Structural Engineering
 THE WOOTEN COMPANY	The Wooten Company's Building Systems Group is a branch of the multidisciplinary engineering firm that provides Mechanical, Electrical and Plumbing and Fire Protection Engineering services. Founded in 1936 the company is now in its 83 rd year of continuous operation and employs a 90 person staff, 56 in our Raleigh office. The firm is licensed by the State of North Carolina to practice engineering and surveying (NC Certificate of Registration F-0115).	56	Raleigh, NC	84	Mechanical / Electrical / Plumbing Engineering

If contractors and/or subcontractors have not yet been selected, describe the selection strategy to be used and how it is compliant with Article 8, Chapter 143 of the North Carolina General Statutes.

Utilizing over 15 years of experience in the local market performing work for public entities, Balfour Beatty will structure the bidding and outreach of this project to meet and the goals set forth in G.S. 143.

For each scope of work, we will utilize our vast database of M/WBE subcontractors to provide opportunities to submit bids. Scopes of work will be written in such a manner to reduce bid barriers to those subcontractors that may not have the bonding capacity for larger work. This approach is taken with all public work in compliance with the statutes.

Multiple bids will be received for each bid package scope that is issued and evaluated for the best qualified bid.

All subcontractors will be required to fulfill the good faith efforts as outlined in the Town of Clayton M/WBE policies as well as the state guidelines.

"We have appreciated the spirit of collaboration and problem-solving as we have worked through pricing models and impacts on design intent. We have always felt your team has been a partner, not adversary, and this has made our meetings productive and dynamic."

- Cody Klein, ASLA
Partner, OJB

Designer of Record, Cary Downtown Park

Project Spotlight: Apex High School

This new 315,752 sf, four-story high school consisted of new 111 classroom/educational spaces, administrative spaces, cafeteria, state-of-the-art media center, 8,000 sf, 850-seat auditorium, two centralized gymnasiums, great **outdoor athletic facility** including a **football stadium, tennis courts, basketball courts, softball and baseball fields**. The facility is located on a **108-acre** site in Apex.



SECTION 4: RESUMES



Tony Stoneking LEED AP BD+C

VP of Operations | Balfour Beatty

Why is Tony the Right Fit? Tony has led all of our recent design-build projects within North Carolina. He was performed constructability for Clayton's recently completed Harmony Park. Tony will provide the necessary leadership from early design through warranty and beyond. His oversight will ensure the project is on budget, on schedule, and meets all project goals.



Clayton
Resident



Town of Clayton, NC
Harmony Park
Local Park, Same Team, Multiple Stakeholders
City of Raleigh, NC
Dorothea Dix Park
Local Park, Same Team, Multiple Stakeholders

Town of Cary
Downtown Park
Local Park, Same Team, Multiple Stakeholders
Wake County Public Schools
Apex High School
Gymnasium, Multipurpose Fields

Background

33 Total Yrs of Exp **25** at Current Firm

Tony will provide overall leadership for the project.

Credentials

NC GC License #48828

First Aid / CPR / AED | OSHA 30 |
LEED AP BD+C

Education

Purdue University
Bachelor of Science, Building
Construction



Scott Garner

Project Manager | Balfour Beatty

Why is Scott the Right Fit? Scott has served as Project Manager for the Clayton's recently completed Harmony Park. He understands the design-build delivery method and will help guide the Town of Clayton through the process.



Town of Clayton, NC
Harmony Park
Local Park, Same Team, Multiple Stakeholders

Blue Cross Blue Shield
EPIC
Walking Trails, Exterior Gardens

Wilson YMCA
New Wilson YMCA and Parking Deck
Same Team, Multiple Stakeholders

Edgecombe County Schools
KIPP Pride High School
Gymnasium, Multipurpose Fields

Background

24 Total Yrs of Exp **5** at Current Firm

Scott will oversee all project management functions from preconstruction through closeout

Credentials

First Aid / CPR / AED | OSHA 30

Education

UNC-Chapel Hill
MBA

East Carolina University
Bachelor of Science, Construction
Management



John Katschkowsky LEED AP BD+C

Preconstruction Lead | Balfour Beatty

Why is John the Right Fit? John has worked with various municipalities throughout North Carolina, and has provided preconstruction on all of Balfour Beatty's design-build projects within NC. His impressive background and expertise in preconstruction and MEP coordination from very logistically complex projects will create a level of understanding that ensures all trade packages have ZERO scope gaps.



Town of Clayton, NC
Harmony Park
Local Park, Same Team, Multiple Stakeholders
City of Raleigh, NC
Dorothea Dix Park
Local Park, Same Team, Multiple Stakeholders

Town of Cary
Downtown Park
Local Park, Same Team, Multiple Stakeholders
Wake County Public Schools
Apex High School
Gymnasium, Multipurpose Fields

Background

34 Total Yrs of Exp **17** at Current Firm

John will be responsible for analyzing, budgeting and coordinating the mechanical, plumbing, electrical and commissioning aspects of this project.

Credentials

CPR / First Aid / AED
LEED AP BD+C

Education

Iowa State University
Bachelor of Science, Building
Construction

Balfour Beatty



RATIO



THE WOOTEN COMPANY



Brent Covington AIA

Project Architect | RATIO

Why is Brent the Right Fit? Brent has worked as a designer for nearly a decade before joining RATIO, bringing with him experience in the Recreation, K-12, Hospitality, and Residential markets. An Architect, Brent's responsibilities include project design and management, consultant coordination, construction document development and construction administration.



Town of Clayton
Harmony Park
Clayton, DB, Same Team, Multiple Stakeholders

Town of Morrisville
Aquatics & Fitness Center Renovation
Multiple Stakeholders

City of Durham
Aquatic Facilities Master Plan
Local Parks, Multiple Stakeholders

YMCA of the Triangle / WCPSS
Southeast Raleigh YMCA/Elementary School
Multiple Stakeholders, Balfour Beatty+Ratio

Background

13 Total Yrs of Exp **7** at Current Firm

Brent will provide overall design leadership for the project.

Credentials

NC Registered Architect #13114

Education

North Carolina State University
Master of Architecture

North Carolina State University
Bachelor of Graphic Design



Billy Clark LEED AP BD+C

General Superintendent | Balfour Beatty

Why is Billy the Right Fit? Billy has served as superintendent for the Clayton's recently completed Harmony Park. He understands the design-build delivery method and will help guide the Town of Clayton through the process.



Town of Clayton, NC
Harmony Park
Local Park, Same Team, Multiple Stakeholders

Blue Cross Blue Shield
EPIC
Walking Trails, Exterior Gardens

Duke Health
Mary Duke Trent Semans Center for Health
Walking Trails, Exterior Gardens

WCPSS
Willow Spring High School
Multipurpose Fields, Balfour Beatty+Ratio

Background

33 Total Yrs of Exp **17** at Current Firm

Billy will be responsible for all field operations.

Credentials

First Aid / CPR / AED | OSHA 30 |
LEED AP BD+C



Roy Lyon LEED AP BD+C

Preconstruction Lead | Balfour Beatty

Why is Roy the Right Fit? Roy is a 20+ year resident of Clayton. He was an active member of the Civitan for more than 13 years, during which time he served as head coach, board member, vice president, president, head of buildings and grounds, and assistant director. This personal experience will provide valuable insight to the design build process for this local project.



Town of Clayton, NC
Harmony Park
Local Park, Same Team, Multiple Stakeholders

The Beach Company
The Jasper
Heavy Site/Civil Emphasis, Multiple Stakeholders

City of Durham, NC
Public Works Shelter
Municipality, Multiple Stakeholders

Duke Health
North Pavilion
Multiple Stakeholders, High Profile Project

Background

3 Total Yrs of Exp **3** at Current Firm

Roy will provide day-to-day, hands-on field operations oversight.

Credentials

CPR / First Aid / AED

Education

Wake Tech Community College
Associate, Automotive Systems
Technology



Rachel Cotter RLA

Lead Landscape Architect | McAdams

Why is Rachel the Right Fit? Rachel has dedicated her career to the planning, designing, constructing and promoting public parks and civic spaces for the enjoyment of all people. The most rewarding aspect of her tenure has been the positive impact she has on bringing safe, accessible, equitable and energetic spaces to our local communities.



Town of Clayton, NC
Municipal Park
Clayton, DB, Multiple Stakeholders

Town of Clayton, NC
East Clayton Community Park
Clayton, Local Park, Same Team

Town of Clayton, NC
Community Park
Clayton, DB, Same Team, Multiple Stakeholders

Town of Clayton, NC
Town Square
Clayton, DB, Same Team, Multiple Stakeholders

Background

17 Total Yrs of Exp 7 at Current Firm

Rachel will oversee the landscape architecture for the project.

Credentials

RLA: NC #1690

Education

James Madison University
Bachelor of Science in Biology

NC State University
Masters of Landscape Architecture



Eric Domonell PE

Lead Civil | McAdams

Why is Eric the Right Fit? Eric is a professional engineer with a broad range of experience across various disciplines of civil engineering including the design and analysis of commercial and residential structures; buried stormwater structures; pedestrian bridges and boardwalks; greenways; on-road bicycle / pedestrian infrastructure; and site grading.



Town of Clayton, NC
East Clayton Community Park
Clayton, Local Park, Same Team

City of High Point, NC
City Lake Park
Multiple Stakeholders

City of Burlington, NC
Burlington City Park
Multiple Stakeholders

Town of Rolesville, NC
Frazier Farm Park
Multiple Stakeholders

Background

8 Total Yrs of Exp 1 at Current Firm

Eric will provide civil engineering for this project.

Credentials

PE: NC #047504

Education

Rensselaer Polytechnic Institute
Bachelor of Science, Civil Engineering

Rensselaer Polytechnic Institute
Master of Civil Engineering



Daniel Wiebke PE CFM

Lead Stormwater | McAdams

Why is Daniel the Right Fit? Daniel has worked on many aspects of the stormwater industry, including drainage system design and analysis; green stormwater infrastructure; dam management and rehabilitation; permitting tool development; and very deep roots in stormwater control measure design and floodplain management.



Town of Clayton, NC
Municipal Park
Clayton, DB, Same Team, Multiple Stakeholders

Town of Clayton, NC
East Clayton Community Park
Clayton, Local Park, Same Team

Town of Clayton, NC
Community Park
Clayton, DB, Same Team, Multiple Stakeholders

Town of Clayton, NC
Town Square
Clayton, DB, Same Team, Multiple Stakeholders

Background

8 Total Yrs of Exp 3 at Current Firm

Daniel will be responsible for analyzing and coordinating the stormwater aspects of this project.

Credentials

PE: NC #043300

CFM: #14-0542

Education

NC State University
Bachelor of Science in Civil Engineering

Master of Biological + Agricultural Engineering

Balfour Beatty



RATIO

lynchmykins



THE WOOTEN COMPANY

SECTION 5: PROJECT APPROACH AND SCHEDULE

A. Provide a description of the proposed approach to the project. Include a response to the preliminary scope but do not simply restate the scope.

A design build project provides the owner and project team with much needed flexibility in delivery, especially under time-sensitive circumstances. Knowing this project requires an aggressive schedule to support the sale of the 2019 park bonds, the Municipal park project will require a design-build team that brings the Town experience, knowledge and a collaborative approach from early in the process. This approach will bring cost and schedule certainty to the Town of Clayton that is needed to sell bonds at the appropriate time. The following key aspects of our approach will ensure a permissible, constructable project within the Town's established budget and schedule: early goal alignment; related project and teaming experience; collaboration and constructability reviews; and cost control through budget management.

Early Goal Alignment *Early goal alignment will be the key to meeting the Town's aggressive project schedule.*

We will work with the Town to establish the non-negotiables, or project elements that must be included to achieve the Town's recreation, operation and maintenance goals. The design and construction costs will be developed around those "non-negotiables" to ensure the baseline intent of the project is met.

Related Project + Team Experience *The Balfour Beatty / McAdams / Ratio Architecture Team brings both related project and teaming experience.*

Each firm has experience collaborating on several recreation and construction projects across the state, including East Clayton Community Park's Harmony Playground, multiple K-12 schools recreation spaces and Dorothea Dix Park. These established partnerships allow our team a foundation for a collaborative design and construction process that will result in higher quality design, more cost-effective construction and a more rapid schedule.

Similarly, our team has successfully implemented each of the proposed project elements on several projects across the state. This related project experience provides the team a launching point to accelerate the project schedule and anticipate and overcome challenges before they become obstacles. For example, as stated in the RFQ, the intent is to mimic a restroom shelter like the new facility at Clayton's Harmony Park. Based on this intent, we are prepared to quickly refine the design if needed, permit and construct this restroom at Municipal park. Using our lessons learned and feedback from the Town based on the first installation will allow for a more streamlined design. One key adjustment would be to evaluate the potential of utilizing a load bearing masonry structure to support the wooden truss members. This approach allows for removal of the steel columns that not

only take up space but cause an additional maintenance item for cleaning around.

The project team also has deep experience designing and constructing the proposed park amenities including splash pads, band shelters, restrooms and shelters, multiuse athletic fields, event spaces and sports courts. Most recently, McAdams has designed such features for community parks in High Point, Davie County, Hope Mills, and Garner to name a few.



McAdams completed the design of a splash pad at New Center in Clover, SC.



McAdams completed the design of multiuse fields at the nCino Sports Park in Wilmington, NC



Ratio Architecture, Balfour Beatty, Lynch Mykins, and Wooten completed the design and construction of the restroom building at Clayton's Harmony Playground.

EXPERIENCE WITH MUNICIPAL PARK

The project team is also uniquely familiar with the Municipal Park. McAdams has completed site analysis, due diligence and code review and completed preliminary concept designs for Municipal Park through the Town of Clayton Parks Bond Project. Through their experience they have developed an intimate knowledge of the existing site, project stakeholders, the surrounding community and Town's vision for the park. The team's distinct experience will allow for quicker design and plan development, and permit approvals. As active members of the Clayton Civitan for many years, the Balfour Beatty team has participated in many construction projects in this area. Our unique knowledge of the site will give our team a streamlined approach to logistics and coordination with the neighborhood.

Constructability Analysis *Throughout the course of the design, the Balfour Beatty team will perform constructability analysis of the design to help produce a more cost effective and biddable set of drawings.*

These analyses will focus on improving items such as construction efficiencies, elevation discrepancies, utility conflicts, and future access needs. As a design-build teammate, this real-time feedback allows the design team to continue drawing to completion while improving design throughout the process. By performing these reviews our scopes of work will provide more clear direction to the bidders which translates into more accurate / precise bids and more developed cost certainty.

Cost Control Through Budget Management *Balfour Beatty, as the contractor leading the designer, is responsible for controlling the cost and plan changes effecting budget.*

Changes outside of the unforeseen condition or owner driven directive would be the responsibility of this team to manage within the parameters of the contract. This results in few change orders during construction.

Similarly, given Balfour Beatty's recent and varied construction experience, we have a deep understanding of current market volatility and material price fluctuations. Our in-house cost estimator can advise the design team in real-time if material revisions will help mitigate market volatility for various materials.

Our team will bring recent cost data from the Harmony Playground project to provide early cost certainty as design is developed. Once the scope for the restroom facility and picnic shelters is defined, we can use the 2020 cost with adjusted scope and escalation to lock in that portion of the budget. This allows the design team to continue site development and scope inclusion with more certainty.

We will continue this approach throughout the design development. If funding is available, we will look to release scope early to also drive the cost certainty of the job. An early release of long lead items such as the wood timber or significant scope (grading/erosion control) gives our team the ability to price the work and lock in cost. As market conditions continue to remain volatile, taking opportunities to lock in cost is paramount to the success of the project.

Please see page 11 to learn more about how we track project material costs.



Balfour Beatty

McAdams

RATIO

lynchmykins

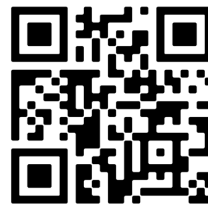
THE WOOTEN COMPANY

B. Identify key risks/ challenges/concerns you anticipate and any mitigation steps to achieve successful delivery.

DESIGN CONSIDERATIONS	
Consideration	Approach
Playground	Consider all-inclusive play equipment to serve all ability levels. Costs may be minimized by a direct purchase approach through a coop or other existing purchasing contract
Rock + Unsuitable Soil	Review existing geotechnical reports or complete them for the areas to receive improvements early in the process. Refine plans to locate features where depth of rock is greatest and soil is most conducive to proposed use.
Stormwater Control Measures (SCMs)	Evaluate existing vs. proposed impervious surfaces to identify any required stormwater management facilities. The proposed improvements may increase the area of impervious surfaces and trigger additional stormwater control measures
Splash Pad	Review regulatory requirements early in the process to avoid unanticipated upgrades. The local health department may require support amenities such as restrooms and / or showers.
Trail Connections + Surfacing	Consider usership, surface run-off, erosion, and maintenance implications when determining trail surfacing.
Multipurpose Fields	Evaluate field programming and design to maximize playability and user experience while maintaining construction costs that conform to the established budgets.
Grading, Erosion, + Drainage	Evaluate existing drainage patterns early in the process to identify improvements to site grading and drainage patterns resulting in minimized erosion, standing water, and sedimentation or wash-outs. Evaluate cut and fill quantities for proposed elements such as athletic fields to minimize costly off-site imported fill material.
Maintenance + Operations	Consider maintenance implications and cost of service to ensure required maintenance does not exceed the Department's capacity. Consider the cost of field irrigation and provide alternatives to municipal water sources to minimize annual irrigation costs.
Utilities	Evaluate existing utility capacity compared with proposed park amenities and confirm adequacy.

Potential Challenge *A key challenge to the successful delivery of this project will be managing the schedule.* Balfour Beatty has never missed a completion date under Tony Stoneking's leadership over the past 30 years. The schedule will be defined in the beginning and executed to completion. This will require quick and nimble decisions from the Town during the design phase and construction should field changes arise. Our team will work with the Town to identify early opportunities to release long lead items as funding allows. Based on current market conditions, we propose an early release of the prefabricated wooden structures. This would be necessary for the restroom facility so that shop drawings can be produced and loading given to the design team. Albeit a small portion, we would also suggest releasing mechanical and electrical components to give ample delivery time based on fluctuating markets.

During the planning and construction of the project, our team will engage the neighborhood with notices of any key construction activities that may impact the surrounding houses. *Logistics will be clearly communicated for haul routes and other residential traffic impacts to Kilgo and McCullers Street. Should a need arise for closing of the throughfare of W. Stallings Street, those will be coordinated through the town for the optimum window that supports the project schedule. Coordination will also take place with the Civitan club to recognize any major sporting event weekends.*



**SCAN THIS QR CODE TO
VIEW THE TENTATIVE
LOGISTICS PLAN OUR TEAM
HAS CREATED FOR THE
MUNICIPAL PARK PROJECT**

TAKING A CLOSER LOOK MATERIALS COST ANALYSIS



Managing the supply chain is a large part of the preconstruction process. Our team will evaluate the drawings to identify any critical items that could impact costs or schedule. And our national team will send procurement updates to help us manage critical material costs and lead times. Locally, we are plugged in with our subcontractor and vendor partners to keep a pulse on any volatility or opportunities within the local market.

For a park project, the national team will monitor packages that are showing signs of schedule or cost volatility. We will be watching for dips in the market where we could pre-purchase materials and take advantage of a shift in cost or schedule, if funding is allowed.

Below is an example of an airtable we use to track commodities.

TRACKING COMMODITIES IN REAL TIME HELPS KEEP YOUR PROJECT ON TIME AND BUDGET

With a projected start in the fall/winter of 2021 the team will implement erosion control measures to mitigate wet seasonal conditions. These measures will include truck wash stations and street sweepers to ensure the neighborhood roads are well maintained. Pending any early fund availability, the team suggests beginning general site work and underground utilities prior to the winter months to limit exposure to unsuitable soils caused by wet conditions.

During construction, the project superintendent will facilitate weekly meetings to keep the project team informed about job progress. We will utilize our in-house scheduler Randy Hart to maintain the overall project schedule, delivering updates on a bi-weekly basis.

Although the schedule is updated "in-house", the reporting is controlled much like a third party independent service to ensure review and approval of progress and schedule impacts. While the project superintendent is responsible for updating the job schedule, progress reporting is completed by the Vice President, Tony Stoneking. This ensures a control mechanism to prevent schedule delays without reasonable justification and identify field challenges requiring resolution in a timely manner.



Airtable

Grid view

	Commodity Group	CSI Division	Current Month Pri...	52 Week Average PPL...	Historical Graph (fr...	Lead-time	Pricing (fro...	Notes (from Material Summary)	BLS Link (from Expande...
1	Concrete - Hydraulic	Div 3 Concrete, Div 4 Masonry, ...	\$261.7	\$258.9		Steady	Increasing	No disruption, local operational performance may vary	https://beta.bls.gov/data/view/view/timeseries/WPU1...
2	Concrete - Premix	Div 3 Concrete, Div 4 Masonry, ...	\$147.0	\$143.2		Steady	Increasing	No disruption, local operational performance may vary	https://beta.bls.gov/data/view/view/timeseries/WPU1...
3	Asphalt, Tar Paving Mixtures	Div 3 Concrete, Div 4 Masonry, ...	\$185.4	\$190.6		Steady	Steady	Lessening demand, increased capacity	https://beta.bls.gov/data/view/view/timeseries/WPU1...
4	Sand, Gravel, Stone	Div 3 Concrete, Div 4 Masonry, ...	\$147.0	\$143.2					https://beta.bls.gov/data/view/view/timeseries/WPU1...
5	Sand & Gravel, Premix	Div 3 Concrete, Div 4 Masonry, ...	\$125.9	\$124.8					https://beta.bls.gov/data/view/view/timeseries/WPU1...
6	Waste	Div 1 General Conditions	\$134.7	\$134.0					https://beta.bls.gov/data/view/view/timeseries/WPU50

C. Describe the team's approach to design document quality assurance and quality control.

An added benefit of the design build delivery is the collaborative effort between the contractor and design team for the purpose of maintaining a strong and concise set of documents. Our team will utilize the constructability reviews to document the formal changes to the drawings. Throughout the design process however, the team will take a proactive approach to constantly improving the design.

Our team has built a strong reputation for excellence in design, engineering and entitlements. Such excellence stems from a well-defined and robust Quality Assurance (preventing errors) and Quality Control (Checking for Errors) process (QA/QC). Our process combines the most current best practices and industry standards with internal standards and regulatory requirements to minimize project errors, reduce liability, achieve approvals with few revisions and ensure safety and well-being of the public. Our QA/QC process is implemented through all phases of the design process, from the initial kick-off meeting through project close-out and audit. At each project milestone, deliverables are reviewed by a technical manager from each professional discipline, a cost estimator and construction administrator. This process results in achieving owner goals, technical accuracy, maintenance of established project budgets and project constructability. Each review process electronically documents internal and external comments, ensuring each are addressed prior to initiating the next phase of the project.

There will be multiple formal pricing exercises that take place at SD/DD/CD level design. Our team will also reach out to our subcontractor community to price check our full estimate. These price checks allow our team to review project constructability with the subcontractors ahead of bidding to ensure what is on paper is the most efficient method of building the project.

These drawings will drive the QA/QC methodology used throughout construction as well. A detailed QA/QC plan will be developed and reviewed with the design team to ensure that all expectations are clear from the beginning of the project.

Southeast Raleigh YMCA Elementary School for which \$670,000 in unused contingency was returned to the YMCA at the end of the project!

Balfour Beatty
400 S McDowell Street, Suite 200
Durham, NC 27601

DATE: December 2019

PAY TO THE ORDER OF: **YMCA OF THE TRIANGLE**

\$670,000.00

Six hundred, seventy thousand dollars & ⁰⁰/₁₀₀

FOR: **100% OF THE UNUSED CONTINGENCY FROM THE SE RALEIGH YMCA ELEMETARY**

D. Describe the firm and/or team's track record delivering projects with minimal change orders.

Successfully executing a project with minimum change orders starts in the project planning. As a design build project, Balfour Beatty will hold the designers responsible to maintain the established budgets for the project. Our recent success of drawing management and minimal change orders could be seen with the outcome of the Harmony Playground.

Through successful scoping and buyout, projects savings were used to help fund the third picnic shelter. All other project change orders were requests made by the owner. Through constructability and design review, our team will strive to issue a complete, thorough, and easily biddable set of project documents. Our team takes ownership from day one.

PROJECT	GMP	FINAL COST	# OF CHANGE ORDERS
Wake County Green Elementary Addition/ Renovations	\$19,129,833	\$18,689,833	0
Wake County Lacy Elementary School	\$19,533,714	\$18,698,374	0
NCSU Wolf Ridge Apartments at Centennial	\$111,659,650	\$109,955,662	0
Wake County Oakview Elementary School	\$20,443,109	\$20,323,089	1

" We appreciate how this team always presented a cooperative spirit with the school representatives and the YMCA project managers and stakeholders. They collectively succeeded in solving problems and reaching solutions to produce a quality end-product. These devoted professionals maintained uncompromising standards for quality, safety, and excellence on this challenging project."

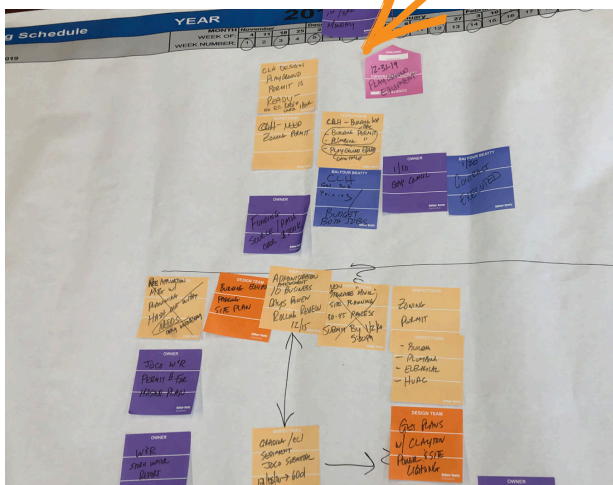
*- Tim Carr, Senior Vice President
YMCA of the Triangle*

PULL PLANNING AT HARMONY PARK

The design-build team utilized pull planning to maintain schedule and keep all project team members proactively communicating. Pull Planning is not just a useful planning tool; it gets people to come together and discuss every aspect of work. Most importantly, it creates an atmosphere of communication that gets all parties to work with each other. That is crucial to have a successful job.

- Creates a more predictable workflow through collaboration and public commitments
- Provides clear picture of the flow of work, hand-offs, constraints, etc.
- Ensures trade expertise is leveraged
- Enables collective understanding
- Drives quality and safety through increased accountability and awareness
- Brings consistency to our planning process
- Helps to eliminate rework and reduces the need for contingency

Below is a portion of the pull planning board from Harmony Park's Project team.



E. Describe the team's level of experience with the major regulatory bodies likely to be project reviewers, whether local, state or federal.

Given the project team's familiarity with the site after completing preliminary concepts, site survey and due diligence, we are positioned to expedite construction drawings to secure required permits more quickly.

Furthermore, the project team boasts a state-wide reputation for securing required permits within aggressive schedules. With a forty-year heritage in land development, permissible projects are the foundation of our team's success. Over the years we have built relationships with agency reviewers that will help expedite the permitting process whether local, state or federal. Our experience navigating approvals through agencies including NCDOT, NCDEQ, DEMLR, Army Corps of Engineers, and local planning and utility agencies will prove valuable given the aggressive schedule. For this project, we anticipate the following permits will be required:

- Site Plan / Utilities - Town of Clayton
- Stormwater - DEMLR
- Erosion Control - NCDEQ

During McAdams' preliminary work on the park bond projects, the team met with TRC reviewers and is familiar with site plan requirements.

Finally, our team has completed over \$1 billion in local high-profile public projects such as the Downtown Cary Library and Parking Deck (Town of Cary/Wake County ownership), the City of Raleigh 911/Central Communications Center, the Wake County Justice Center, 14 Wake County Public School projects including the YMCA Elementary School, multiple large renovation projects at RDU Airport and many more.

Every single person on our proposed team successfully operates their professional lives in direct collaboration with government regulatory bodies. In fact, 90% of our work is with a public client.

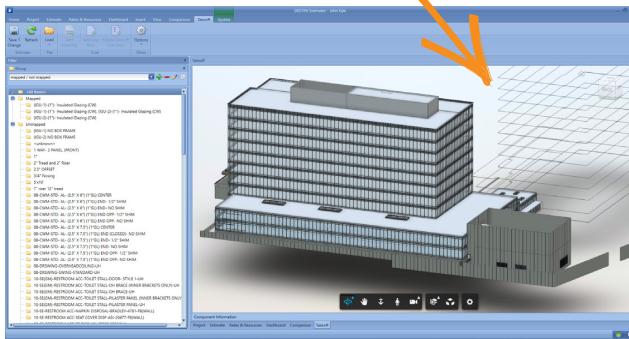
"If I've said it once, I've said it a hundred times, that Balfour Beatty is the best contractor I've ever worked with! And just so you know, I've been involved with every building project we've done since 1997."

*- Paula Stewart, Former County Manager
Harnett County, NC*

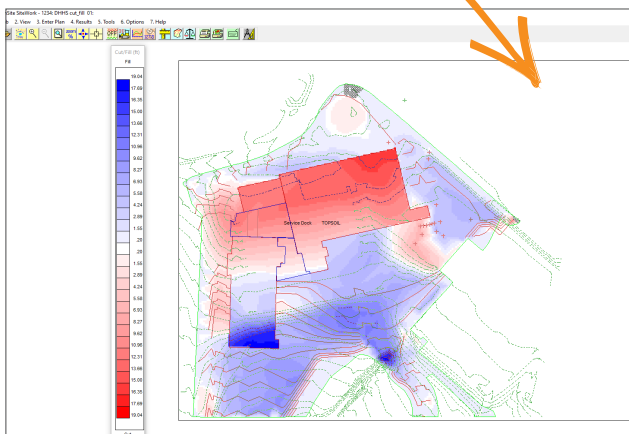
F. Describe the team's use of technology and how it will be used to engage with the owner in each project phase.

Our team will approach this project to utilize technology that best benefits the execution. Beginning in preconstruction, we will utilize our estimating toolkit that includes Destini and InSite SiteWorks.

Destini is our takeoff mechanism to provide our detailed estimates in a timely manner. It utilizes a historical database to provide baseline costs as budgets are established. These costs are updated throughout to provide accurate costing for evaluation by the project team. This estimating tool also allows our team to set up multiple pricing options/alternates from day one that can be evaluated throughout the design.



InSite SiteWorks provides our project team the ability to perform cut/fill analysis using the grading plans as design is developed. Although this site is relatively flat, optimizing and limiting import/export will be important to help control budget. The nature of this project does not lend itself to the use of BIM (Building Information Modeling), which is a standard piece of our technology package. We will however utilize a 3D camera to document job progress throughout the project. Existing site conditions will be documented to protect both the contractor and the owner for concerns from the surrounding neighborhoods. We will also use drone technology to provide aerial project updates that the Town can utilize to generate interest in the upcoming improvements to the recreational offerings.



G. Provide an outline project schedule, showing tasks, milestones and deliverables, including review meetings with the Town project team and community groups.

Our team has developed a preliminary schedule for the project based on our knowledge of previous construction activities at Harmony Park as well other similar installations. This schedule will be utilized to establish a project flow once the program elements have been well defined.

This schedule is targeting submission of a GMP to the Town in support of the November 15th Council meeting. This GMP will be based on DD drawings to support the sale of bonds. Strategic allowances will be carried to balance any scope adjustments from DD to CD deliverable. As programming is developed, we will strive to improve upon these dates as much as possible. we can achieve with the most suitable staff.



Scan this QR code to download a comprehensive schedule.



Anticipated Project Milestones

Contract Award 8/16/2021

SD Drawings Complete 9/7/2021

DD Drawings Complete 10/21/2021

GMP presented to Town 11/8/2021

Town Council Meeting 11/15/2021

CD Drawings Complete 11/16/2021

Construction NTP 12/6/2021

Construction Completion 5/31/2022



Park

Design-Build

Town of Clayton

Team Member Project

Shelters / Restrooms



Town of Clayton Harmony Park

OWNER REFERENCE

Town of Clayton
Josh Baird, PE, Town Engineer
111 East Second Street
Clayton, NC 27520
o. 919.359.9379
jbaird@townofclaytonnc.org

PROJECT DURATION

8 months

YEAR COMPLETED

2020

ESTIMATED / COMPLETED COST

\$1,456,669 / \$1,508,276

PROJECT TEAM

Scott Garner - Project Manager
Tony Stoneking - Constructability
John Katschkowsky - Preconstruction
Bill Clark - General Superintendent
Roy Lyon - Superintendent
Brent Covington - Architect
Bob Egan - MEP Engineer
Collette Ramirez - Structural Engineer



The **design build** park project is located in **East Clayton**. Project included a new **multi-themed playground, two picnic shelters, and a bathroom facility**. Also included were **new parking lots to serve the park**. Not only was this project a design-build delivery, but also a coordination of multiple stakeholders and outside participants ranging from donors such as Caterpillar to the Clayton Community Foundation and the Town representatives.



Southeast Raleigh YMCA Elementary

OWNER REFERENCE

YMCA of the Triangle
Tim Carr, Senior Vice President
Properties, Facilities, and Risk
Management
801 Corporate Center Drive
Raleigh, NC 27606
o. 919.719.9622
tim.carr@ymcatriangle.org

PROJECT DURATION

16 months

YEAR COMPLETED

2019

ESTIMATED / COMPLETED COST

\$28,000,000 / \$27,733,811*

*owner-requested scope changes

PROJECT TEAM

Tony Stoneking - Constructability
John Katschkowsky - Preconstruction
Brent Covington - Architect



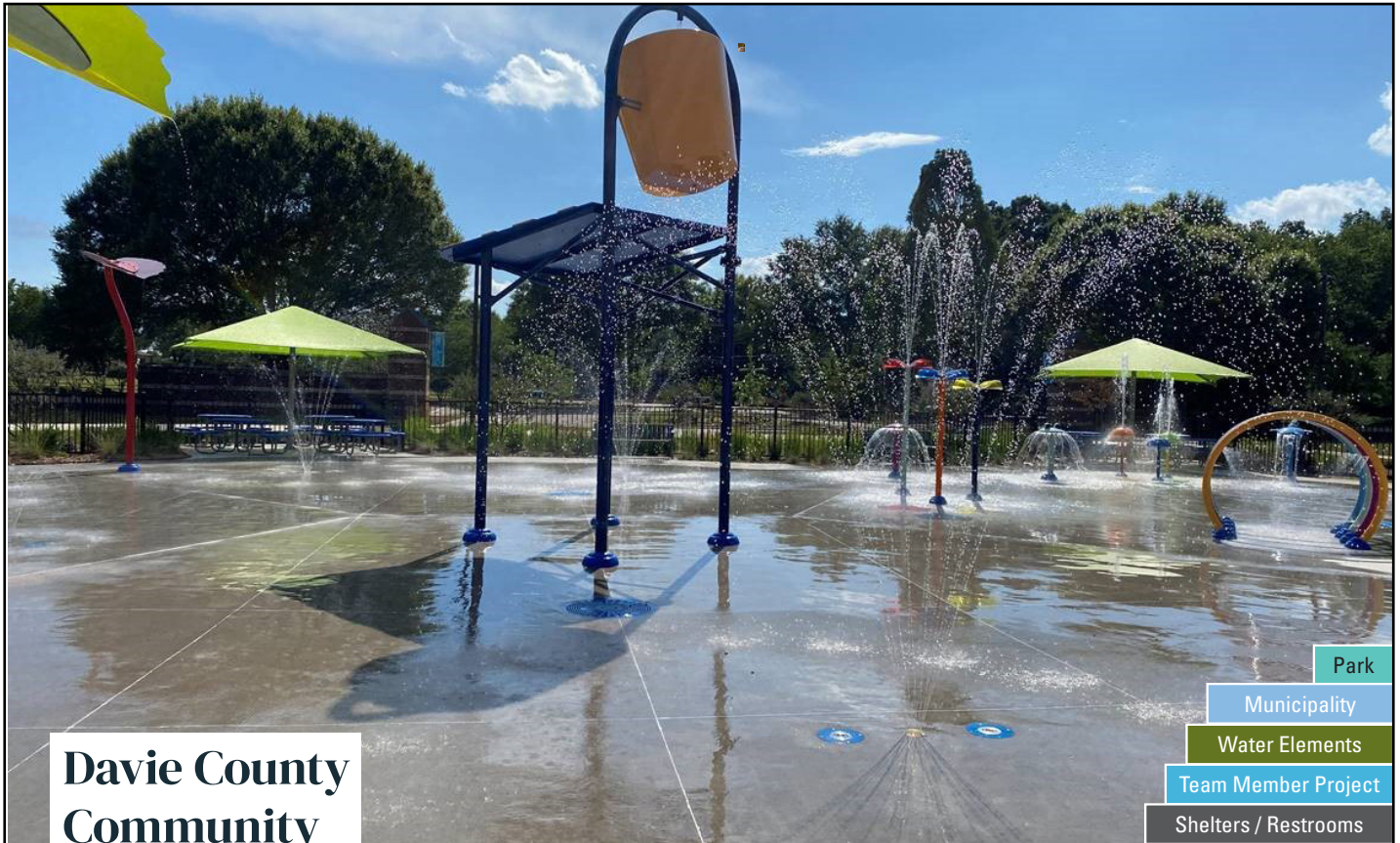
Park

Water Elements

Multipurpose Fields

Team Member Project

This project was the first phase part of the Southeast Raleigh Promise to develop a 114,934 sf facility that joined a YMCA and a Wake County Elementary School. Included in the project were **perimeter roads, landscaping, playing fields, playgrounds, an aquatics center, community gardens, sidewalks** and other YMCA facilities. Approximately 35,000 sf of the building is used primarily by YMCA and approximately 75,000 sf is used as an elementary school.



Park

Municipality

Water Elements

Team Member Project

Shelters / Restrooms

Davie County Community Center

OWNER REFERENCE

Davie County
Paul Moore, Parks and Recreation Director
644 North Main Street
Mocksville, NC 27028
o. 336.753.8326
pmoore@daviecountync.gov

PROJECT DURATION

30 months

YEAR COMPLETED

2020

ESTIMATED / COMPLETED COST

\$5,042,616 / \$5,693,620

*owner-requested scope changes

PROJECT TEAM

Rachel Cotter - Site/Civil/Landscape Lead



The McAdams team was retained to ***evaluate the existing conditions of the site and buildings, engage the community to solicit input regarding the desired program elements, evaluate the local / regional market for recreation opportunities, create a master plan for improvements and recommendations for programming and develop a cost analysis and operations proforma for the proposed improvements.*** Informed by an extensive community outreach process facilitated by McAdams, the team was able to reach consensus regarding the vision for the park. Adopted in 2017, the master plan served as the foundation for the McAdams team to prepare construction documents for the project opportunities for the community.



City of Raleigh Dorothea Dix Park Phase 1

OWNER REFERENCE

City of Raleigh
Priscilla Williams, Construction Project
Administrator
One Exchange Plaza, Suite 801
Raleigh, NC 27601
o. 919.966.5575
priscilla.williams@raleighnc.gov

PROJECT DURATION

24 months

YEAR COMPLETED

Estimated 2024

ESTIMATED / COMPLETED COST

Estimated \$35,000,000

PROJECT TEAM

Tony Stoneking - Constructability
John Katschkowsky - Preconstruction
Rachel Cotter - Site/Civil/Landscape Lead



Included in the proposed Gateway project area is a **new entrance to the park**, extension of Grissom and/or Daladams Streets, **a portion of multi-use greenway within the park boundary**, temporary parking area, and transit stops, **new public gathering spaces, including civic plaza(s), cookout zones and play area(s), a water feature/fountain, pedestrian paths, planted areas including lawns, gardens and plant beds, hardscape elements, site furnishings, public art element(s), new architectural pavilion structure(s) with bathrooms** to support park programming and renovations to one of two historic houses located within the project area.



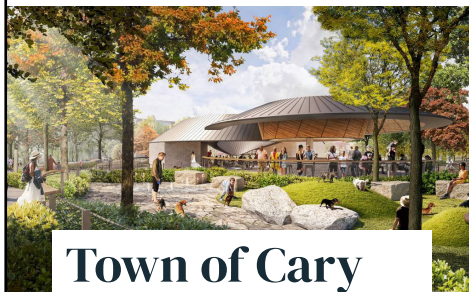
Park

Municipality

Water Elements

Team Member Project

Shelters / Restrooms



Town of Cary Downtown Park

OWNER REFERENCE

Town of Cary
Paul Kuhn, Facilities and Design
Construction Manager
o. 919.469.4360
paul.kuhn@townofcary.org

PROJECT DURATION

27 months

YEAR COMPLETED

Estimated 2023

ESTIMATED / COMPLETED COST

Estimated \$51,381,000

PROJECT TEAM

Tony Stoneking - Constructability
John Katschkowsky - Preconstruction



Downtown Park will total **seven acres** in size and will be centrally located in Downtown Cary surrounded by Walker, Academy, Park, and Walnut Streets. The park will feature **a "great lawn" and unique, tiered water feature**. The lawn will be fronted by a **pavilion** and interspersed around the lawn will be a series of unique spaces, or "rooms," linked by **paved walking trails**. Additional features include performance places, market spaces, public art incorporated into the landscape, food and beverage facilities, a **children's play area, interactive water features, a dog play area, and walkways for strolling and relaxing**.

THANK YOU

FOR REVIEWING
OUR SUBMITTAL

Chad Humphrey | Market Leader
chumphrey@balfourbeattyus.com
919.795.6618

Balfour Beatty





STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - COST PLUS FEE WITH AN OPTION FOR A GUARANTEED MAXIMUM PRICE

Document No. 530

Second Edition 2010

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Washington, DC

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Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price

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

This **AGREEMENT** is made as of the 16th day of August in the year of 2021, by and between the following parties, for services in connection with the Project identified below:

OWNER:

Town of Clayton ("Owner")
111 E. Second Street
Clayton, NC 27520
Or
PO Box 879 (mail)
Clayton, NC 27528
Attn. Joshua Baird, PE

DESIGN-BUILDER:

Balfour Beatty Construction, LLC
406 South McDowell Street; Suite 200
Raleigh, North Carolina 27601
Attn. Tony Stoneking

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

Clayton Municipal Park Improvements
325 McCullers Street
Clayton, NC 27520

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents. The Design-Builder is responsible to the Owner for the design and construction of the Project in accordance with the terms of this Agreement. Therefore, errors, omissions or inconsistencies in the design documents, including Construction Documents, provided by Design-Builder, or anyone working under Design-Builder, which are below the applicable standard of care, shall not serve as a basis for Change Orders or any adjustment to the Contract Price or Contract Time. In addition, to the extent that there are any deficiencies in design or construction which are below the applicable standard of care, these shall be the responsibility of Design-Builder as to the Owner.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition), as modified, ("General Conditions of Contract");

2.1.2 The GMP Exhibit referenced in Section 6.6.1.1 herein (and, if applicable, at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.6.2 hereof)

2.1.3 This Agreement, including all exhibits set forth below;

Exhibit A - Project RFQ dated June 23, 2021
Exhibit B - Design Builder's RFQ Response dated July 15, 2021;
Exhibit C - Design-Builder's Precon Proposal dated August 11, 2021;
Exhibit D - Project Preliminary Draft Design and Timeline Schedule dated August 11, 2021;
Exhibit E - Minimum Insurance per RFQ Requirements.
Exhibit F - Payment and Performance Bond Forms;
Exhibit G - Contractor and Subcontractor Release and Lien Waiver Forms

2.1.4 The General Conditions of Contract DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition), as modified, ("General Conditions of Contract");

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement (and again, if applicable, at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.6.2 hereof), shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any

identified conflicts or ambiguities prior to execution of the Agreement or, if applicable, prior to Owner's acceptance of the GMP Proposal.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or if applicable, after Owner's acceptance of the GMP Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s), as provided by the Contract Documents, to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification (and have caused critical path delay in the case of the Contract Time).

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder (and supersede all prior negotiations, representation and agreements, either written or oral with respect to the subject matter hereof) and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents. This Agreement may be amended or modified only in writing signed by both the Owner and the Design-Builder and any amendments or modifications which would result in an increase to the Guaranteed Maximum Price or the completion dates shall be by Change Order as provided herein.

Article 4

Ownership of Work Product

4.1 Work Product. Design-Builder acknowledges and agrees that all right, title, and interest under federal and state copyright and intellectual property laws in any design documents, reports, data, or design concepts, CADD materials, models and information produced by Design-Builder or anyone working under Design-Builder in connection with this Agreement, including but not limited to, any Architectural Works of the Project as defined by the federal Architectural Works Copyright Act (including those furnished in electronic form) shall be conveyed, assigned and transferred by the Design-Builder to the Owner upon submittal of such documents to the Owner and payment by the Owner for the Services required to produce those documents. Design-Builder and its consultants shall not place a copyright notation on such documents. The rights vested in Owner pursuant to this Article shall not be construed so as to preclude Design-Builder from utilizing standard report language or individual standard features on other projects for other clients. Otherwise, the Design-Builder may not use the design documents on other projects. Owner may furnish documents, reports or other data produced by Design-Builder to third parties in connection with completing the projects contemplated by Owner, and such third parties may rely on such documents, reports and data. Reuse or modification of the aforementioned documents by the Owner without the Design-Builder's written permission shall be at the Owner's risk, and the Design-Builder shall have no liability with respect to such reuse or modification.

4.2 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the reuse or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from

and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the reuse or alteration of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The design Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed with design Work ("Date of Commencement") unless the parties mutually agree otherwise in writing. With respect to the construction Work, unless the parties mutually agree otherwise in writing, the construction Work shall commence within five (5) days of the date established in the Owner's Notice to Proceed which shall not be issued until the building permit for the Work has been issued.

5.2 Substantial Completion and Final Completion of the Work and Design Schedule.

5.2.1 Substantial Completion of the entire construction Work shall be achieved no later than the date established in the GMP Amendment to this Agreement ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work, if any, ("Scheduled Interim Milestone Dates") shall be identified in the GMP Amendment to the Agreement.

5.2.3 Attached as **Exhibit D** is a schedule for the performance of the design services that are included as part of the Work under this Agreement ("Project Design and Timeline Schedule"). The Project Design and Timeline Schedule shall be coordinated with the Project Schedule.

See Exhibit D Project Design and Timeline Schedule.

5.2.4 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable and no later than 30 calendar days after the Scheduled Substantial Completion Date. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

5.2.5 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by Thirty (30) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner **Five Hundred Dollars (\$500.00)** as liquidated damages for each day that Substantial Completion extends beyond the LD Date, and such liquidated damages shall be Owner's sole remedy for damages resulting from the delayed completion of the Work.

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement for failure to achieve the Contract Time(s) shall be the amount equal to Design-Builder's fee for the Project.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to Design-Builder's Fee (as defined in Section 6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.6 hereof and any adjustments made in accordance with the General Conditions of Contract.

6.2 Design-Builder's Fee.

6.2.1 Design-Builder's Fee shall be:

Project Design, Design Management and the project Preconstruction scope will be paid at a lump sum value of \$385,434.00. The following definitions apply for purposes of this Section 6.2.1: "Project Design" means the design services that are included as part of the Work under this Agreement; "Design Management" means the services required to complete and to manage the "Project Design", including all Design-Builder subconsultants and subconsultant of the Owner; "Preconstruction scope" means the additional services by the Design-Builder required to prepare for a prompt start to Construction at the completion of Project Design and permitting.

Five percent (5.0%) of the Cost of the Work (excluding the lump sum scope above), as adjusted in accordance with Section 6.2.2 below.

6.2.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:

6.2.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of Five percent (5.0%) of the additional Costs of the Work incurred for that Change Order, plus any other markups provided by the Contract Documents. There shall be no automatic markup for general conditions costs in any Change Order, as general conditions costs are part of the Cost of the Work, and shall be itemized as part of any proposed change order, if required by the Change in the Work.

6.2.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include no additional reduction to account for Design-Builder's Fee or any other markup.

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

6.3.1 Wages or salaries, vehicle costs or mileage, phone, etc. per Design-Builder company policy for direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site.

6.3.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.3.3 Wages or salaries, vehicle costs or mileage, phone, etc. per Design-Builder company policy for direct employees of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified and performing a function directly attributable to the project.

6.3.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof which shall be charged using a multiplier of 61.15% to the wages and salaries of the employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

6.3.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work (if required by Owner, but none anticipated).

6.3.6 Payments made by Design-Builder to Subcontractors for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

6.3.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

6.3.8 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

6.3.9 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

6.3.10 Costs of removal of debris and waste from the Site.

6.3.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, internet service, computing equipment, printing equipment, office supplies, telephone service, photocopying and reasonable petty cash expenses.

6.3.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

6.3.13 Premiums for all insurance and bonds for Design-Builder and all eligible subcontractors and design consultants, of any tier, required by this Agreement or the performance of the Work which shall be included as Cost of the Work at the following fixed rates: (a) workers compensation insurance, general liability insurance and excess liability insurance at the fixed rate of 1.10% to final contract value; (b) professional liability insurance for Design-Builder at the fixed rate of (Included in (a) above); (c) General Contractor Payment and Performance Bonds, if applicable, at the fixed rate of 0.84% of final contract value; (d) builders risk insurance at the fixed rate of .25% of final contract value; and, (e) subcontractor default insurance, if applicable, for all first tier

subcontractors and suppliers to the Design-Builder at the fixed rate of 1.50% of final subcontracted value or final value of purchased order value for materials.

6.3.14 Any and all water, sewer, electric power, and site parking lot lighting Utility costs incurred in the performance of the Work is by Owner.

6.3.15 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

6.3.16 Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

6.3.17 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.3.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

6.3.19 Deposits which are lost, except to the extent caused by Design-Builder's negligence, together with deductibles for insurance paid by the Design-Builder.

6.3.20 Loss prevention safety costs and management for time spent onsite and related to project. In addition, costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.3.21 Project related IT equipment, program licenses and fees, maintenance, accounting and data processing costs related to the Work, including the cost of information technologies support services required in the performance of the Work at a fixed rate equate to 0.37% of the Cost of the Work.

6.3.22 Project GMP Allowances per 6.4, and Design-Building Contingency per 6.6.1.2 in amounts to be determined at time of GMP Exhibit

6.3.23 Other costs, including General Conditions costs identified in the GMP Proposal and not otherwise identified in this Article, which are reasonably and properly incurred in the performance of the Work to the extent approved in advance and in writing by Owner.

6.4 Allowance Items and Allowance Values.

6.4.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Exhibit and are included within the GMP.

6.4.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.4.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project Schedule, due to no fault of Design-Builder or its Subcontractors or Design Consultants, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.4.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

6.4.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.5 Non-Reimbursable Costs.

6.5.1 The following shall not be deemed as costs of the Work:

6.5.1.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.

6.5.1.2 Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

6.5.1.3 The cost of Design-Builder's capital used in the performance of the Work.

6.5.1.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 The Guaranteed Maximum Price ("GMP").

6.6.1 GMP Established Upon Execution of this Agreement. Final GMP will be established per 6.6.2. However, and preliminary GMP budget of \$4,000,000 per RFQ for sitework, structures (restroom, picnic shelters, and band stand), storm water management, and site amenities (splash pad, playground, and sports courts).

6.6.1.1 Subject to changes in accordance with the Contract Documents, Design-Builder guarantees that it shall not exceed the GMP as established by the GMP Proposal. Documents used as a basis for the GMP shall be identified in an exhibit to this Agreement ("GMP Exhibit"). Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.

6.6.1.2 The GMP includes a Contingency in the amount indicated in the GMP Amendment which is available for Design-Builder's exclusive use for Cost of the Work it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; (f) insurance deductibles, or (g) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency. Design-Builder agrees that with respect to any expenditure

from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.6.2 GMP Established after Execution of this Agreement.

6.6.2.1 GMP Proposal. If requested by Owner, Design-Builder shall submit a GMP Proposal to Owner which shall include the following, unless the parties mutually agree otherwise:

6.6.2.1.1 A proposed GMP, which shall be the sum of:

- i. Design-Builder's Fee as defined in Section 6.2.1 hereof;
- ii. The estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.1.2 hereof and General Conditions; and
- iii. If applicable, any prices established under Section 6.1.2 hereof.

6.6.2.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the GMP Proposal;

6.6.2.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

6.6.2.1.4 The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;

6.6.2.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

6.6.2.1.6 If applicable, a schedule of alternate prices;

6.6.2.1.7 If applicable, a schedule of unit prices;

6.6.2.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if performed, shall be the basis for an increase in the GMP and/or Contract Time(s); and

6.6.2.1.9 The time limit for acceptance of the GMP Proposal.

6.6.2.2 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

6.6.2.3 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

6.6.2.4 Failure to Accept the GMP Proposal. Subject to the provisions of Section 6.6.2.5, if Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

6.6.2.4.1 Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.2.3 above;

6.6.2.4.2 Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

6.6.2.4.3 Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item 6.6.2.4.2 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

6.6.3 Savings.

6.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows: Twenty Five percent (25%) to Design-Builder and Seventy Five percent (75%) to Owner.

6.6.3.2 Savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the Fifth_(5th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment, for

work performed in the previous month, in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within twenty (20) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3 If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.2 Retainage on Progress Payments.

7.2.1 Owner will retain Five percent (5%) of the cost of Work or less if mandated by applicable state law or agreed to in writing, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.2.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of One percent (1 %) per month until paid.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work performed through the date of termination;

8.1.2 The actual costs and expenses reasonably incurred in demobilization and shutting down operations at the Site and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 the pro-rata portion of Design-Builders Fee earned on account of the Work performed.

The Owner shall have no further liability to the Design-Builder, including consequential damages, lost profits or other damages arising out of termination.

8.2 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Design-builder's work product shall be as set forth in Article 4 hereof.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

**Joshua Baird, PE – Town Engineer
Town of Clayton
111 E. Second Street
Clayton, NC 27520
(919) 359-9379**

9.1.2 Owner designates the individuals listed below as its Owner's Representatives, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

**Joshua Baird, PE – Town Engineer
Town of Clayton
111 E. Second Street
Clayton, NC 27520
(919) 359-9379**

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Balfour Beatty Construction, LLC
1930 Camden Road, Suite 280
Charlotte, North Carolina 28203
Attn: Scott Skidelsky
President
(407) 284-0844

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Balfour Beatty Construction, LLC
406 South McDowell Street; Suite 200
Raleigh, NC 27601
Attn: Tony Stoneking
Sr. Vice President
(919) 795-4954

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit E attached hereto, and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

[Check one box only. If no box is checked, then no bond is required.]

☒ Required ☐ Not Required

Payment Bond.

[Check one box only. If no box is checked, then no bond is required.]

☒ Required ☐ Not Required

Other Performance Security.

☐ Required ☒ Not Required

Subcontractor Default Insurance in accordance with Exhibit C and 6.3.13 of this contract.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)* – N/A

This Agreement may be executed in multiple counterparts and delivered by facsimile or electronic communication, each of which will for all purposes be deemed an original and all of which when taken together will constitute one and the same instrument.

In executing this Agreement, Owner and Design-BUILDER each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

Town Of Clayton
(Name of Owner)

(Signature)

(Printed Name)

(Title)

Date: _____

DESIGN-BUILDER:

Balfour Beatty Construction, LLC
(Name of Design-BUILDER)

(Signature)

Scott Skidelsky
(Printed Name)

President
(Title)

Date: _____



STANDARD FORM OF GENERAL CONDITIONS OF CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Document No. 535

Second Edition, 2010

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Washington, DC

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Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition).

1.2.2 *Basis of Design Documents* are as follows: For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents."

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.6 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.7 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.8 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

1.2.10 *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

1.2.11 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*.

1.2.12 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.13 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.14 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.15 *Site* is the land or premises on which the Project is located.

1.2.16 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.17 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.18 *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes including the receipt of all approvals for such use by governmental entities having jurisdiction over the Project, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official.

1.2.19 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to Project Schedule, (ii) whether

discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Attached to the Agreement as an exhibit is a projected Construction Schedule. Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a detailed critical path schedule for the execution of the Work for Owner's review and approval, which shall be coordinated with the Project Design and Timeline Schedule ("Project Schedule"). The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Design-Builder shall coordinate the activities of Owner's separate contractors, consultants, architects and engineers to the extent coordination of such parties is required to complete Design-Builder's Work within the Contract Time. Owner's review of, and response to, the Project Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work. Notwithstanding anything to the contrary in the Contract Documents, the Project Design and Timeline Schedule, Projected Construction Schedule, and the Project Schedule and any revisions thereto are not Contract Documents; and any interim approvals thereof shall not serve to modify any completion dates required by the Contract Documents, which may only be modified by a written Change Order signed by both parties.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant. Owner shall be a third party beneficiary of the any agreements entered into between the Design-Builder and Design Consultants. However, this Agreement is not intended to create any contractual rights of the Design Consultants as to the Owner.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the

Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule, as approved by Owner.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above or as otherwise agreed by the Parties. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with Owner's Project Criteria and other requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner or relieve Design Builder of any responsibility for the quality and completeness of the Construction Documents.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements and with approval of Owner, which shall not be unreasonably withheld, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors and Design Consultants. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident

arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, and that all construction Work shall be of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. All construction Work not conforming to these standards will be considered defective and shall be remedied by the Design-builder, at its sole expense. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion. Design-Builder is also responsible to the Owner for the accuracy and quality of any design documents, including Construction Documents in accordance with the standard of care consistent with standards for design professionals in the State of North Carolina..

2.10 Correction of Defective Work.

2.10.1 Without limiting the warranties in Section 2.9.1, Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, including any design deficiencies, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents. If the Design-Builder fails to correct such Work, the Owner, after providing written notice and a reasonable opportunity for Design-Builder to cure, may correct the Work, and the Design-Builder shall be responsible for any costs incurred by the Owner.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.3 The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule, as approved by Owner.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents, but failure to give such notice shall not prejudice any rights Owner may have under this Agreement or applicable law.

3.2 Furnishing of Services and Information.

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

3.2.1.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.2.1.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.2.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

3.2.1.4 A legal description of the Site;

3.2.1.5 To the extent available, record drawings of any existing structures at the Site; and

3.2.1.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or

other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on, or for, the Project or at the Site, by separate contractors, consultants, architects or engineers under Owner's control, subject to Design-Builder's obligation to coordinate any design documents provided by Owner consultants with those of the Design-Builder for accuracy, completeness and integration. Owner shall contractually require its separate contractors, consultants, architects and engineers to cooperate with, and coordinate their activities with Design-Builder and, as necessary, Design-Builder's design consultants, so as not to interfere with Design-Builder and to enable Design-Builder to timely and safely complete the Work consistent with the Contract Documents. Should Design-Builder be adversely impacted or delayed by Owner's separate contractors, consultants, architects and engineers, or any of them, it shall notify Owner in writing of such event with a copy to the offending party, and the Design-Builder may make a claim as provided by the Agreement.

3.6.2 Design-Builder's safety rules and requirements for the Project shall apply to Owner and its separate contractors, consultants, architects and engineers.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent

experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance (critical path activities of the Work) are adversely impacted by the Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and

with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Owner's Property Insurance.

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

5.3.2 Unless the Contract Documents provide otherwise, Design-Builder shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

5.3.3 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.4 Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result

of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security.

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof, which shall include as a condition precedent to payment (i) interim lien waivers for interim payments and final lien waivers for final payment, in the forms attached as **Exhibit I**, from the Design Builder and each Subcontractor and Sub-Subcontractor (who is providing labor or materials in excess of \$25,000.00 in the aggregate) and (ii) the Design-Builder's affidavit attached as **Exhibit J**.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and

materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will endeavor to notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement, subject to its right to withhold pursuant to Section 6.3.3.

6.3.3 The Owner may refuse to make any payment to the Design-Builder to the extent that the Owner deems it necessary or desirable to protect itself against loss or damage due to: (i) defective work not remedied; (ii) third-party claims, notices of intent to lien, liens, notice of lien on funds, stop notices or similar claims, or reasonable evidence indicating probable filing of such claims or liens; (iii) failure of the Design-Builder to make payments properly to Subcontractors or for labor, material or equipment; (iv) reasonable evidence that the Work cannot be completed without exceeding the GMP; (v) reasonable evidence that the Work will not be completed by the required completion dates specified herein; (vi) persistent failure to prosecute or carry out the Work, or unsatisfactory supervision of the Work by the Design-Builder; (vii) damage to the Owner or another contractor; (viii) or accrued liquidated damages (if applicable under this Agreement).

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release and waiver in the form attached as **Exhibit I** executed by Design-Builder and each Subcontractor and Sub-Subcontractor (who has provided labor or materials in excess of \$25,000.00 in the aggregate) waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.7.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects

Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

7.2 Tax Claim Indemnification.

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the portion of the Work causing the damage) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order to account for delays in the critical path activities of the Work. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the time period and could not have been reasonably anticipated and that weather conditions had an adverse effect on the critical path activities of the Work.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price in the event that such critical path delay is caused by the Owner, or the employees or agents of either, and such adjustment shall be only for those direct costs incurred by virtue of the delay including, without limitation, additional field overhead costs actually incurred as a result of delay to the critical path activities of the Work, but Design-Builder shall not be entitled to indirect costs (e.g., home office overhead costs), incidental, or consequential damages; provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for actual costs reasonably incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs, fees and any other markups set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If Design-Builder believes that it is entitled make a claim for increases in the Contract Sum or Contract Time or other for any event arising out of or related to the Work or Project, Design-Builder shall provide written notice to Owner of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and, unless otherwise provided in these General Conditions, within ten (10) days after the occurrence giving rise to the claim for relief or after the Design-Builder reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the Owner of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties may submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation and in no event shall any such mediation be a condition precedent to further dispute resolution proceedings. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

10.3 Not Used

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY

OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect, and expressly excludes: (i) the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential; and (ii) damages recovered through insurance.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted (critical path activities of the Work as regards time) by any suspension of stoppage of the Work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with

the repurchase and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within fifteen (15) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such fifteen (15) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted (critical path activities of the Work, in the cast of the Contract Time) by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

11.5.1.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment.

13.2.1 The Design-Builder shall not assign or sublet this Contract, or any portion thereof or the proceeds therefrom, without the Owner's prior written consent. The Owner may assign this Contract to its lender, an affiliated entity, or a purchaser of the Project without the Design-Builder's consent.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are

binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

13.9 Amendments.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

RESOLUTION OF AWARD

WHEREAS, the Town of Clayton, North Carolina issued a RFQ under NCGS 143-218.1(A) to solicit a Design-Build team to complete the improvements at Clayton Municipal Park; and

WHEREAS, on July 2 2021 staff received a total of 8 statements of qualifications and shortlisted and interviewed a total of four teams; and

WHEREAS, after evaluating each, the selection committee selected a team comprised of Balfour, Beatty, McAdams & Ratio Architects (Design-Build) as the top candidate; and

WHEREAS, staff has worked with the selected Design-Build team to negotiate a contract based on DBIA standard that is acceptable to both parties; and

WHEREAS, it is recommended Design-Build Contract be granted to Balfour, Beatty, McAdams & Ratio Architects; and

WHEREAS, upon completion of initial design and permitting (Phase 1), a supplemental agreement with Guaranteed Maximum Price (GMP) will be brought before Council; and

WHEREAS, it is further recommended that town manager or designee be authorized to execute the initial Design-Build Contract and any amendments up to the GMP milestone; and

NOW, THEREFORE, BE IT RESOLVED that award is made to Balfour, Beatty, McAdams & Ratio Architects (Design-Build Contract) for the improvements at Clayton Municipal Park. Balfour, Beatty, McAdams & Ratio Architects is authorized to proceed with Phase 1 design and permitting services under the design-build agreement with the Town for a total cost of \$385,434.

Duly adopted this the 16th day of August, 2021 while in regular session upon motion of Council Member _____, seconded by Council Member _____.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Town of Clayton
Amendment to the FY 21-22 Budget

BE IT HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON that the following amendments shall be made to the FY 21-22 Budget:

Fund: General Fund

<u>Line Item</u>	<u>Previous Appropriation</u>	<u>Adjustment</u>	<u>Revised Appropriation</u>
Revenue			
100-40-00-48 99	Fund Balance Appropriated \$1,830,424	+400,000	\$2,230,424
Expenditures			
100-60-95-58 00	Capital Projects \$117,730	+400,000	\$517,730

Explanation:

Amendment to appropriate fund balance to temporarily fund pre-construction services related to the design-build contract for Municipal Park. These costs will be reimbursed with proceeds from the upcoming GO Bond sale. This amendment is required for compliance with G.S. 159-15.

Duly adopted this 16th day of August, 2021 while in regular session.

Jody L. McLeod
Mayor

Attest:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

**TOWN OF CLAYTON
CAPITAL IMPROVEMENT PLAN
WATER & SEWER FUND**

Dept.	Project No.	Project Name	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 27-31	Total
W&S	WS-18-01	AMR/AMI Meter System - Fully Funded	\$ 1,562,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,562,500
W&S	WS-18-03	W&S Project (South O'Neil - Blanche to Horne)	-	700,000	-	-	-	-	-	\$ 700,000
W&S	WS-18-04	W&S Project (Blanche-Fayetteville to Ellington)	-	546,875	-	-	-	-	-	\$ 546,875
W&S	WS-19-02	Water Project (70 Bus W - Olde Town to Rose)	-	-	-	37,500	281,250	-	-	\$ 318,750
W&S	WS-19-04	Water System Capacity Purchases	1,500,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	10,000,000	\$ 21,500,000
W&S	WS-VRP	W&S Vehicle Replacement Plan	62,000	123,000	-	119,000	57,000	-	300,000	\$ 661,000
W&S	WS-19-07	New Street Improvements Projects	-	500,000	500,000	500,000	500,000	500,000	2,500,000	\$ 5,000,000
W&S	WS-19-11	Regency Drive W&S Rehab	-	-	187,500	625,000	-	-	-	\$ 812,500
W&S	WS-19-13	Neuse River Water Reclamation Facility	16,000,000	40,000,000	35,000,000	25,000,000	-	-	-	\$ 116,000,000
W&S	WS-19-15	Little Creek Outfall Line NC 42 Highway-Fully Funded	1,928,750	-	-	-	-	-	-	\$ 1,928,750
W&S	WS-19-16	Manhole Rehab Project	83,250	112,500	112,500	112,500	112,500	112,500	562,500	\$ 1,208,250
W&S	WS-19-19	Sewer System Capacity Purchases	169,500	169,500	169,500	169,500	169,500	169,500	169,500	\$ 1,186,500
W&S	WS-19-21	Operations Facility & Needs Study - 30%	4,155	18,750	1,687,500	4,500,000	4,500,000	-	-	\$ 10,710,405
W&S	WS-20-02	Water & Sewer Master Plan	-	100,000	-	-	-	-	150,000	\$ 250,000
W&S	WS-20-03	Water System Model	25,000	62,500	62,500	62,500	62,500	62,500	-	\$ 337,500
W&S	WS-20-05	First St Parking	-	62,500	-	-	-	-	-	\$ 62,500
W&S	WS-20-09	Hamby Line Replacement (825 Linear Feet)	-	-	-	-	-	-	437,500	\$ 437,500
W&S	WS-20-10	Water Sewer Future Line Replacements	-	400,000	250,000	250,000	250,000	250,000	1,250,000	\$ 2,650,000
W&S	WS-20-12	Lombard: Second St to Little Creek Outfall	-	-	-	262,500	206,250	-	-	\$ 468,750
W&S	WS-20-13	Peele Subdivision Main Replacement	-	-	906,250	-	-	-	-	\$ 906,250
W&S	WS-20-14	Walnut Creek Gravity Sewer Lift Station Abandonment	-	-	5,688,875	-	-	-	-	\$ 5,688,875
W&S	WS-20-15	Inflow and Infiltration Analysis	-	-	187,500	-	-	-	-	\$ 187,500
W&S	WS-20-17	Rollingwood Sewer Service Rehab	-	-	25,000	250,000	-	-	-	\$ 275,000
W&S	WS-20-18	Future Lift Station Rehab/Upgrade	200,000	-	343,750	-	-	-	1,170,625	\$ 1,714,375
W&S	WS-20-20	Additional Portable CD103 Godwin Pump and Hose	87,500	-	-	-	-	-	-	\$ 87,500
W&S	WS-20-21	W. Main and Liberty W&S Improvements	75,000	-	1,325,000	-	-	-	-	\$ 1,400,000
W&S	WS-20-26	Interconnect Water Meter Relocation	-	-	62,500	-	-	-	-	\$ 62,500
W&S	WS-20-27	Bulk Water Filling Station	12,500	125,000	-	-	-	-	-	\$ 137,500
W&S	WS-20-30	Truck #84-2007 International Dump Truck Replacement	154,000	-	-	-	-	-	-	\$ 154,000
W&S	WS-20-31	FS #2 Elevated Tank Riser Floor	-	-	-	-	-	-	500,000	\$ 500,000
W&S	WS-20-32	Elevated Storage Improvements Project	-	3,281,250	-	-	-	-	-	\$ 3,281,250
W&S	WS-20-34	Starmount PS Abandonemnt & Sewer Line Rehab	-	-	150,000	500,000	-	-	-	\$ 650,000
W&S	WS-20-35	Water Sewer Project (Clayton Estates)	-	-	-	-	-	-	2,125,000	\$ 2,125,000
W&S	WS-20-36	5MGD Surface Water Treatment Plant	-	-	-	-	-	-	68,750,000	\$ 68,750,000
W&S	WS-20-37	Arbors Lift Station Abandonment	-	-	-	375,000	-	-	-	\$ 375,000
W&S	WS-20-39	Walmart Lift Station Abandonment	-	-	250,000	1,750,000	-	-	-	\$ 2,000,000
W&S	WS-21-01	Vehicle #86 - 2015 Freightliner Vactor Renew Repurchase Agree	432,691	-	-	-	-	-	445,000	\$ 877,691
W&S	WS-21-02	Vehicle #74 - 2007 Sterling Sewer Vac Truck Replacement - Re	432,691	-	-	-	-	-	445,000	\$ 877,691
W&S	WS-21-04	Main St Repair and Redirection Phase 1	20,000	-	250,000	2,500,000	-	-	-	\$ 2,770,000
W&S	WS-21-05	Main St Repair and Redirection Phase 2	-	-	187,500	2,562,500	-	-	-	\$ 2,750,000
W&S	WS-21-06	Main St Repair and Redirection Phase 3	-	-	-	187,500	2,562,500	-	-	\$ 2,750,000
W&S	WS-21-07	Main St Repair and Redirection Phase 4	-	-	-	-	187,500	1,937,500	-	\$ 2,125,000
W&S	WS-21-08	City Rd PS Abandonment & Waterline	70,000	-	1,125,000	-	-	-	-	\$ 1,195,000
W&S	WS-22-01	NC42/Ranch Rd Waterline Extension	-	-	500,000	-	-	-	-	\$ 500,000
W&S	WS-22-02	CAT Tank Conversion	-	562,500	-	-	-	-	-	\$ 562,500
W&S	WS-22-03	Forest Hills Pump Station	-	-	3,375,000	-	-	-	-	\$ 3,375,000
W&S	WS-22-05	CAT 289D w/MP Bucket & Brush cutter	-	110,000	-	-	-	-	-	\$ 110,000
W&S	WS-22-06	CAT 304E2 Excavator w/hydraulic coupler & thumb	-	90,000	-	-	-	-	-	\$ 90,000
W&S	WS-22-07	Lumen Infrastructure Contribution (Storage Tank)	-	150,000	2,812,500	-	-	-	-	\$ 2,962,500
W&S	WS-22-08	NC-42W Wastewater Transmission	-	150,000	2,812,500	-	-	-	-	\$ 2,962,500
Total Cost			\$ 22,819,537	\$ 49,264,375	\$ 59,970,875	\$ 41,763,500	\$ 10,889,000	\$ 5,032,000	\$ 88,805,125	\$ 278,544,412
Funding Projection										
Grants			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pay Go			4,391,655	9,264,375	17,594,500	12,263,500	6,389,000	5,032,000	17,040,125	\$ 71,975,155
Financing - Bonds/Installment Debt			18,427,882	40,000,000	42,376,375	29,500,000	4,500,000	-	71,765,000	\$ 206,569,257
Total			\$ 22,819,537	\$ 49,264,375	\$ 59,970,875	\$ 41,763,500	\$ 10,889,000	\$ 5,032,000	\$ 88,805,125	\$ 278,544,412

RESOLUTION BY GOVERNING BODY OF APPLICANT

WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina the Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of (state whether a wastewater treatment works, wastewater collection system, stream restoration, stormwater treatment, drinking water treatment works, and/or drinking water distribution system or other “green” project), and

WHEREAS, The Town of Clayton has need for and intends to construct a wastewater treatment project described as the Water Reclamation Facility Expansion Project, and

WHEREAS, The Town of Clayton intends to request state loan assistance for the project,

NOW THEREFORE BE IT RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF CLAYTON;

- That the Town of Clayton, the **Applicant**, will arrange financing for all remaining costs of the project, if approved for a State loan award.
- That the **Applicant** will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.
- That the governing body of the **Applicant** agrees to include in the loan agreement a provision authorizing the State Treasurer, upon failure of the Town of Clayton to make scheduled repayment of the loan, to withhold from the Town of Clayton any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.
- That the **Applicant** will provide for efficient operation and maintenance of the project on completion of construction thereof.
- That Mayor, Jody McLeod, and Interim Town Manager, Rich Cappola, the **Authorized Officials**, and successors so titled, are hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a loan to aid in the construction of the project described above.
- That the **Authorized Officials**, and successors so titled, are hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.
- That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.
- That this resolution further serves as adoption of the **Applicant's** 10-year Capital Improvement Plan that includes the project seeking State or Federal funding.

Duly adopted this the 16th day of August, 2021 while in regular session.

Rich Cappola, Interim Town Manager

Jody McLeod, Mayor

CERTIFICATION BY RECORDING OFFICER

The undersigned duly qualified and acting Town Clerk of the Town of Clayton does hereby certify: That the above/attached resolution is a true and correct copy of the resolution authorizing the filing of an application with the State of North Carolina, as regularly adopted at a legally convened meeting of the Town Council duly held on the 16th day of August 2021 and, further, that such resolution has been fully recorded in the journal of proceedings and records in my office. IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of August 2021.

Kimberly A. Moffett, CMC, NCCMC

Town Clerk
Town of Clayton



Town Council Agenda Cover Sheet

Meeting Date

August 16, 2021

Agenda Location

New Business

Item Title

Special Event Policy Update

Presenter

Amy Shearin

Summary/Description

Requesting approval of updates to the Special Event policy, including clean up language to reflect new procedures, simplified event categories, application submittal deadlines and yearly limits on events.

Requested Action

Approval/Denial

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Special Event Policy

Meeting Timeline

Click or tap here to enter text.



Town of Clayton
111 E. Second St, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-1520
Fax: 919-553-1720

FINAL DRAFT

Use & Policy Agreement for Use of Horne Square

The Town of Clayton (hereby referred to as the Town) enters into this agreement with Clayton Farm & Community Market (hereby referred to as CFCM), PO Box 1452, Clayton, NC 27527.

CFCM is licensed to use the space outlined below for the contract period of June 1, 2021, through June 30, 2023 for use as the Clayton Farmers Market, Holiday Markets, Night Market & Winter Markets (hereby referred to as the Farmers Market) for the retail sales of farm and handmade goods to the public. Goods shall be locally grown and produced as defined in CFCM Operating Guidelines- found at <http://cfcmnc.org/forms>

The CFCM agrees to pay the Town of Clayton the sum of \$1.00 per year. If both parties agree, this agreement may be extended for an additional term of two years.

CFCM will operate the Farmers Market in Horne Square, located at the corner of Main Street and Lombard Street on Saturdays from 9 a.m. – 1 p.m. April through October, and 10 a.m. – 1 p.m. November through March. This agreement also allows the use of Horne Square for a night market during the Downtown shops “Last Friday” promotion. CFCM agrees to vacate Horne Square 1 hour after the scheduled closing of the Farmers Market.

The Farmers Market is able to request the use of other Town facilities, including but not limited to Town Square, town parks, etc., to set up the regularly scheduled Saturday morning market or any specialty markets. These alternate locations will fall under this Use & Policy Agreement and the Farmers Market is responsible for compliance with any and all rules and regulations pertaining to the specific locations, including the Town’s special events policies, as applicable.

CFCM is aware that scheduling conflicts may occur during the rental period. If the Town of Clayton, schedules an event that is in direct time and use conflict with the Farmers Market, the Town-scheduled event will have priority use of Town Property.

CFCM will be notified by the Town at least two weeks in advance, if practical, should a scheduling conflict arise, and when feasible, be permitted to use a location on Main Street that is complementary with the event. When a conflicting event requires closure of Main Street, the Town will make best efforts to relocate the Farmers Market to a location near Town Square to facilitate easier access for the Farmers Market vendors, per CFCM’s request.

All scheduling conflicts will be resolved by the Emergency Management Coordinator whose decision will be final.

The COVID-19 pandemic and possibility for future pandemics add additional uncertainty to the scheduling and use of public facilities and public gatherings. The Town of Clayton will make best efforts to communicate with CFCM regarding potential required closures or other disruptions as a result of changing local, state and federal laws and regulations.

As required terms of this agreement, CFCM will make best efforts to ensure staff, volunteers, vendors and patrons of the market follow local, state and federal laws and regulations, including but not limited to social distancing and wearing of face masks, while using this public facility. A failure to do so may result in an immediate termination of this agreement.

The following provisions also apply to this agreement:

1. CFCM representative will prepare market area and setup all items associated with the operation of the Farmers Market, including but not limited to signs, tables, tents, trash and recycling cans.
2. CFCM representatives will keep an accounting of all vendors' operations in the Farmers Market and the space assigned to each.
3. CFCM representatives will monitor the unloading of vendor products and will monitor the site throughout the day.
4. CFCM is solely responsible for the setup, breakdown, and cleanup of Horne Square (or other location of operations if relocated) each Saturday, to include but not limited to removal of all signage, tables, tents, trash and recycling.
5. CFCM has access to electrical outlet and water for market-related vendor use only. The use of electrical outlets is at your own risk.
6. CFCM may not assign, sublet, transfer or otherwise offer use of Horne Square or any temporary location of operations to a third party. Third party users must contact the Emergency Management Coordinator to obtain approval.
7. CFCM agrees to verify and/or obtain, at its sole cost or at the cost of associated vendors, all permits, licenses and authorizations necessary for the purpose of engaging in sales of any and all vendor products and merchandise.
8. No ground stakes may be used by the user or any agent of the user for any purpose, including but not limited to, securing tents, signage or staging.
9. No vehicles are allowed on Horne Square pavers.
10. Fireworks & open fires are not allowed due to fire and safety regulations.
11. CFCM will make best efforts to ensure staff, volunteers, vendors and patrons of the market follow local, state and federal laws and regulations, including but not limited to social distancing and wearing of face masks, while using this public facility.

Penalty & Termination Policy

Cancellation & Schedule Changes. CFCM agrees to provide at least two weeks' notice, with the exception of weather-related events, to the Emergency Management Coordinator should the Farmers Market be cancelled at any time during the period of this agreement. Failure to adequately notify Town of Clayton of cancellations or changes to schedule or to comply with any other terms of this agreement may result in termination hereof without notice.

Cleanup & Damage. A \$250 cleanup fee will be charged in the event Horne Square or any temporary operating location, is not adequately cleared of trash, recycling and event-related debris immediately following the conclusion of the Farmers Market. Failure to adequately clean following an event will result in a verbal warning after one incident, a warning of termination by letter after a second incident, and termination after a third incident. Farmers Market is responsible for repairing any damage caused by their activities and reporting any damage found upon their arrival.

Termination of Agreement. Grounds for termination of this agreement include, but are not limited to, violation of any terms of this agreement or the convenience of the Town.

Indemnification

CFCM agrees to protect and indemnify the Town from and against any claims, actions, damages and liabilities including but limited to any and all legal and other professional fees arising from or related to the event or activities associated with the operation of the Markets.

CFCM shall carry \$1,000,000 per occurrence limit for commercial general liability, \$1,000,000 for commercial auto, a \$2,000,000 umbrella liability coverage and include the Town, its officers, employees and agents as an additional insured under the policy. A certificate shall be provided to the Town of Clayton upon execution of this agreement, and subsequently, upon the annual renewal of the policy. CFCM is further obligated to notify the Town within three (3) business days of cancellation or change of any insurance coverages.

The undersigned represents that he/she is authorized to sign this agreement on behalf of the CFCM and that he/she has read, understands and will adhere to the above policies for operation of the Farmers Market at Horne Square and within the Town of Clayton.

Clayton Farm & Community Market

Signature _____ Print Name & Title _____

Date _____

Town of Clayton

Signature _____ Print Name & Title _____

Date _____

Town of Clayton Policy & Procedure Statement



Policy Number	ADM-2021-02
Department	Administration
Subject	Special Events Support Policy
Approved By	Town Council – Resolution #2021-37
Effective Date	August 16, 2021
Revision Date(s)	

A. Purpose

Special events provide opportunities to improve quality of life, build a sense of community, showcase local and regional talent, enrich cultural opportunities, draw first-time visitors to the Town of Clayton and contribute to the local economy.

This policy outlines the process for facilitation of special events proposed within the Town of Clayton. It further aids in identification of resources required and a cost allocation for the provision of those resources.

It is the policy of the Town of Clayton that special events should not result in the expenditure of excessive public resources. This policy is intended to work in concert with all other applicable rules, regulations, laws, and ordinances of the Town of Clayton and the State of North Carolina.

This policy does not apply to rental or use of The Clayton Center. This policy does not generally apply to the rental or use of Town parks operated by the Parks and Recreation Department. The Parks and Recreation Department may require applicants to submit to the special event process if the proposed event is deemed to have significant impact on Town resources.

B. Definitions

Event Organizer: Any individual, firm, or organization proposing a special event on public property or property controlled by the Town of Clayton.

Public Property: Refers to all Town and State-owned property, squares, streets, sidewalks, rights-of-way and greenways.

Special Event: An event, public or private, occurring on public property as defined above. This includes, but is not limited to, road races, public gatherings, demonstrations, competitions, concerts, festivals, neighborhood events, fundraisers, and entertainment/amusement events. If the special event is located on private property, the Town reserves the right to require event organizers to submit a special event permit application pursuant to this policy if the nature and scope of the event encumbers public property or requires Town services and/or resources.

Private Event: Activities where the general public is not invited, events such as weddings or family reunions that occur on Town Square, Horne Square, Town parks or greenways or similar spaces. Private events may be required to submit either a special event permit application or temporary use permit application as determined by the Planning Department.

Road Race: Organized activity involving running, biking, walking or other means of transportation, with three or more participants that involves the use or obstruction of Town street rights-of-way, Town sidewalks, Town parks or greenways.

Protest/Demonstration: An organized activity involving movement of or gathering of a group, with three or more participants which seeks to bring awareness to or change a worldview, policy, current event, or anything similar, and utilizing Town street rights-of-way, Town sidewalks, parks, greenways or squares. Protests and demonstrations require a permit to be issued by the Clayton Police Department.

Special Event Permit Application: An application required by the Town of Clayton prior to the utilization of public property and/or public resources for a special event. Special event applications require approval and must meet all conditions imposed on the event.

Support Services: Services provided by the Town of Clayton to ensure that special events are conducted in a safe and healthy manner, protect people and property. This includes manpower, equipment, supplies, and consumables required to service the special event.

Town-Sponsored / Partnered (Legacy) Special Event: An event that either originates from within a Town of Clayton department such as Downtown Development, Parks & Recreation, and Library, or any affiliated individual, group or organization which, by action of Town Council, is partnering with the Town of Clayton to offer a special event. Town of Clayton Sponsored/Partnered Special Events may require a separate agreement which specifies the responsibilities of each party.

Yearly Event Limits: The maximum number of events permitted in a calendar year.

C. Categories of Special Events

Class A: Class A events are events that meet one or more of the following criteria

- A road closure larger than 2 city blocks is being requested
- Significant impact to traffic flow or emergency services.

Class B: Class B events are any event that meets one or more of the following criteria:

- Alcohol will be present on Town Property
- A road closure smaller than 2 city blocks is being requested
- Parking lot closure is being requested
- Limited to no impact to traffic or emergency services

Class C: Class C events are any event that meets the following criteria

- Use of Town Property
- No impact to traffic flow or emergency services

D. Special Events Permit Process

1. **Pre-Application Meeting:** Prior to the submittal of a special event application, the Event Organizer must schedule and hold a pre-application meeting with the Emergency Management Coordinator. If the event is a protest/demonstration, as previously defined, the pre-application meeting must include the Event Organizer, the Emergency Management Coordinator, and an approved law enforcement official.
2. **Submittal Deadline:**
 - Applications for Class A events must be submitted a minimum of 90 days prior to the special event.
 - Applications for Class B events must be submitted a minimum of 60 days prior to the special event.
 - Applications for Class C events must be submitted a minimum of 30 days prior to the special event.
3. **Application:** Special Event organizers must submit a complete special event application and application fee prior to review. Incomplete applications will either be returned to the organizer or delayed until all required items have been submitted. Special event application forms are available on the Town of Clayton website (www.townofclaytonnc.org) or by contacting the Emergency Management Coordinator.
4. **Reservation of Dates:** Dates for events will be reserved on a first-come, first-serve basis. The following restrictions shall apply:
 - Recurring events will be given first priority.
 - Conflicts will be resolved by the Emergency Management Coordinator.
 - Emergency Management Coordinator can suggest alternative dates based on the scheduling of other events and the amount of support services required.
5. **Application Review:** The Emergency Management Coordinator may make specific recommendations concerning the proposed location, scope, date and time for the special event. They will also evaluate the type and amount of anticipated Town resources needed for the special event. Costs will be calculated based on the current Town of Clayton Fee Schedule (Appendix A).
6. **Yearly Event Limits:** In order to limit the impact on Town Resources, surrounding businesses and residents and allow public spaces to remain open to other users, a Yearly Limit is applied to each category of special events.
 - There shall be no more than 10 Class A events per year

- There shall be no more than 15 Class B events per year
- There shall be no more than 25 Class C events per year

The criteria for evaluating special event permit applications are as follows:

- Completeness of application and event layout
- Impact and cost of the event on public health, safety, and welfare
- Impact and cost of the event on Town support services
- Impact of the event on the environment and public property
- Frequency of the same or similar event(s) as well as potential conflicts with previously approved events
- Impact on the surrounding businesses or residences
- Ability for the public place to remain open to other users
- Perceived benefit of event for Town of Clayton residents and businesses
- Likelihood of participation by Town of Clayton residents and businesses
- Previous history of event organizer in facilitating successful special events
- Ability of event organizer to achieve goals set forth for special events

6. Street / Public Property Closure:

Following the review of a special event application, approval/denial of requested closures shall be handled as follows:

- The Police Chief, or his/her designee is responsible for authorizing the closure of public streets, including notification to, or authorization from NCDOT for the closure of state owned and maintained streets.
- The Police Chief, or his/her designee may at his/her discretion, request Town Council review and approval for new events or other authorizations necessary to support the special event.
- The Emergency Management Coordinator, or his/her designee is responsible for authorizing the closure of public squares, parks and parking lots in support of a special event.

- 7. Post Event Review:** Following a special event, the Emergency Management Coordinator may review a special event where concerns regarding consistency with town goals, public safety, and review criteria listed above were identified during the special event. Based on post event review, the Special Events Committee reserves the right to reject future special event applications for any event failing to meet Town goals or standards.

8. Notice

Requirements: In an effort to improve communications and keep impacted citizens, businesses and other establishments fully informed of all special event notices are required to include the information listed below. Postcards, door hangers and flyers should be black ink on brightly colored yellow paper. The Planning Department will provide a list of the addresses that lie within the appropriate notice zone. Event organizers are reminded it is a Federal offense to place materials in or on mailboxes.

- a) Name of event

- b) Name of sponsoring organization
- c) Date and timeframe of event
- d) Description of associated road closures and the timeframe of road closures
- e) Description of event and information about the noise impacts of event, such as music or fireworks, and their timeframe
- f) Name and contact information of event organizer (including a phone number and email address)
- g) Website address associated with event, if applicable
- h) Statement that this notice is placed in accordance with requirements of the Town of Clayton, with Town of Clayton contact information.

For events that are deemed to have a significant impact on residents and/or businesses, including road races/walks notice must be initially provided in writing to all affected 30 days prior to the event. A reminder must be provided 2-3 weeks prior to the event and again 1 week prior to the event date.

Generally, other special events will not be required to notify adjacent property owners. At the discretion of the Emergency Management Coordinator, a special event may be deemed subject to the notification requirements.

9. Evaluation of Notice. Failure to comply with these requirements may affect an event organizer's ability to host events in the future.

10. Denial & Appeal: A special event permit application may be denied by the Emergency Management Coordinator if it is found that it's granting would not be in the public interest. Any applicant denied a Special Event Permit shall receive a written notice for the denial. The applicant may appeal the decision to the Town Council within fifteen working days (15) of the notice. The findings and the determination of the Town Council shall be final.

11. Payment of Fees: Special Event Fees are listed in the Comprehensive List of Fees and Charges ("List") and in Appendix A. The List is updated by the Town Council from time to time and can be found on the Town's website (www.townofclaytonnc.org).

- The application review fee is due at time of submittal.
- Special event fees and deposits must be paid no later than thirty (30) days prior to the event.
- Event organizers are responsible for all costs associated with compliance with the notice requirements.
- Special event permits will not be issued until all fees and deposits are paid.

12. Issuance of Event Permit: No special event shall take place without a Town issued special event permit. The permit must be available for inspection on site at the event at all times.

13. Permit Revocation: The Town may revoke a special event permit issued pursuant to this section if the applicant or operator of the special event has:

- Misrepresented or provided false information in the application;

- Violated any provision of the Town of Clayton Unified Development Code or Johnston County Health Department regulations;
- Violated any local, State or Federal law;
- Operated the special event in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety or welfare, specifically including failure to keep the Town of Clayton owned property clean and free of refuse; or
- Failed to pay all special event fees.

14. Day of Event Requirements: The event organizer or his/her designee must be on site at all times and reachable. The special event permit must be available for inspection on site at all times.

15. Event Rejection/Cancellation/Refund of Fees:

If the special event is rejected

or cancelled after the payment of fees because of conditions beyond the control of the event organizer, the Town may consider a partial refund of fees paid, however application fees are not refundable. Any cost already incurred by the Town will be deducted from the refund.

16. Rules and Prohibitions:

- **Adherence to Town Ordinances and Rules:** All applicants must adhere to all Town Ordinances and Rules of Use for Town Square and Horne Square, as applicable.
- **Alcohol:** Event organizers must acquire all required permits from the North Carolina Alcohol Beverage Commission. Alcohol sales, consumption and possession are prohibited on Town property, unless the following criteria is met:
 - A copy of the approved NCABC permit is submitted to the Emergency Management Coordinator.
 - Applicable Town departments have signed off on the NCABC permit; and
 - Off-duty Town of Clayton police officers will provide security whenever a special event involves the sale, delivery, possession, and/or consumption of alcohol. The number of officers required is determined by the Chief of Police or his/her designee in accordance with departmental policy.
 - Event organizer is responsible for all cost associated with the ABC permit and compliance of NC ABC guidelines.
- **Alterations to Public Property:** Alterations to public property including the attachment or installation of decorations or displays are strictly prohibited unless advance permission is granted by the Town. Alteration or tampering with infrastructure (electric panels, irrigation, meters, etc.) is strictly prohibited, will result in the revocation of the permit, and will affect the event organizer's ability to host events in the future.
- **Repairs.** Repairs necessary due to damage to any structure, irrigation system, landscaping, or infrastructure will be billed to the event organizers at replacement cost plus a fifteen percent premium on labor. The Town reserves the right to regulate placement and method of placement of items or structures on any public property. Please reference the rules and procedures regarding damage Rules of Use Policy for Town Square and Horne Square.

- **Signage:** Signage promoting the event is allowed in a limited number of areas within Town limits, subject to review and approval by the Planning Department.
- **Event Equipment and Layout:** A layout of the event area, including locations of all tables, chairs, tents, stages, vendor set-up, portable restrooms, road closures, parking plans, and other equipment must be submitted with the application and may be modified by the Special Event Committee. No event equipment will be provided by the Town of Clayton. Organizers are not permitted to drive stakes into the ground on any Town of Clayton property.
- **Town of Clayton Promotion of an Event:** If deemed appropriate by the Town, a special event may be promoted via the Town of Clayton's various communication tools. The event organizer must submit, in writing, a brief description of the event to the Emergency Management Coordinator no less than one week prior to the event. The description should include sufficient detail about the event to answer all expected reasonable questions by staff and the public. Commercial events/activities are generally not promoted on the Town of Clayton website unless the event is in partnership with the Town. Event promotion will be performed on a time available basis and will be secondary to other Public Information Office functions.
- **Food Sales:** Any intention to sell food must comply with all State and County Sanitation laws. Copies of any required permits, including a Temporary Food Establishment Permit must be supplied to the Emergency Management Coordinator prior to the event. Fire Code requires a fire extinguisher at each cooking location.
- **Safety, Security, Medical:** As public safety is of paramount concern for the TOC, an event organizer may be required to hire off-duty Town of Clayton or Johnston County public safety personnel to provide security, medical, and/or fire services before, during, and after the event.
- **Parking:** Participants must adhere to all parking regulations established by the Town of Clayton. Event organizers are prohibited from charging patrons for parking in public spaces without the express written consent of the Town of Clayton. Event organizers must secure adequate on-or off-site parking for large events. When off-site parking is utilized, use of shuttles for transport must be stated in the Special Event Application and approved. Likewise, a pedestrian circulation plan may be required.
- **Resource Estimates:** The Emergency Management Coordinator reserves the right to be the final authority in estimates of attendance, need for additional staff hours, and/or assignment of manpower and equipment for a special event.
- **Restroom Facilities:** For all events which are 4- hours duration or longer, portable toilets may be required. The Emergency Management Coordinator will assist the event organizer in determining the number and placement of toilets. In compliance with the Americans with Disabilities Act, the event organizer must provide a sufficient number of handicap accessible portable toilets. In the event of a dispute between the Event Organizer and the Emergency Management Coordinator as to the number and placement of toilets, the Emergency Management Coordinator's decision will be final.

It is the event organizer's responsibility to make all arrangements (contacting, reserving, coordinating drop-off, pumping during the event, and pick-up) including the payment of all associated fees.

- **Sanitation:** If deemed necessary by the Emergency Management Coordinator, garbage and recycling carts, must be rented from the Town of Clayton. Fees will be charged to the event organizer in accordance with the Comprehensive List of Fees. The Emergency Management Coordinator will assist the event organizer to determine the number and placement of garbage and recycling carts required for the event. In the event of a dispute between the Event Organizer and the Emergency Management Coordinator as to the number and placement of garbage and recycling carts, the Emergency Management Coordinator's decision will be final. It is the event organizer's responsibility to collect any garbage and recycling and ensure the carts are returned to their original drop-off location on site following the event in order to ensure return of the deposit. At the conclusion of the event, all trash/recycling must fit inside of a receptacle or be hauled off by the event organizer.
- **Clean-up & Damage:** It is the event organizer's responsibility to ensure the event location is returned to its original condition following an event. The event site will be inspected after an event and any work needed to clean-up or repair will be charged to the event organizer and may result in forfeiture of deposit and revocation of future event privileges.
- **Noise:** All events must be in compliance with the [Town of Clayton Noise Ordinance, located in Section 98.01 of the Town's Code of Ordinances](#). Sound system equipment is not provided by the Town of Clayton. The event organizer must indicate on the Special Event Permit Application of any intended use of a sound system or any amplified sound during the event.
- **Utilities:** Specific requirements for the use of electricity and water must be submitted with the application. Electricity and water are not available without permission from the Town. A flat utility fee will be charged for events less than one day. Events exceeding one day will be required to establish a utility account and pay for consumed utilities.

17. Insurance

For events on Town of Clayton property, applicants must provide proof of \$1,000,000 General Liability insurance coverage, if alcohol is served: \$2,000,000 General Liability insurance coverage is required. The Town of Clayton must be named as an "additional insured" and a certificate showing such must be provided prior to the issuance of the Special Event Permit.

18. Release and Indemnity

Each event organizer must execute a release and indemnity agreement as included in the Special Event Permit Application. Event organizers must demonstrate that they are either personally or organizationally responsible for liability, will guarantee orderly behavior, and will underwrite any damage of the premises. Liability is assumed by the applicant in regard to any personal or property damage rising out of activities related to

the event. It is the responsibility of the event organizer to read the application form completely and understand fully his/her responsibilities.

19. **Assignment** The event organizer shall be prohibited from assigning any rights granted through the Special Use Permit Process and may not convey the use of the premises to any other party.

20. **Discrimination**

The applying organization, association, or entity shall not discriminate or advocate discrimination on account of race, color, religion, creed, national origin, age, gender, sexual orientation or disability.

TOWN OF CLAYTON
AMENDING SPECIAL EVENTS SUPPORT POLICY

BE IT RESOLVED by the Clayton Town Council that the Special Events Policy be amended to read as follows:

A. Purpose

Special events provide opportunities to improve quality of life, build a sense of community, showcase local and regional talent, enrich cultural opportunities, draw first-time visitors to the Town of Clayton and contribute to the local economy.

This policy outlines the process for facilitation of special events proposed within the Town of Clayton. It further aids in identification of resources required and a cost allocation for the provision of those resources.

It is the policy of the Town of Clayton that special events should not result in the expenditure of excessive public resources. This policy is intended to work in concert with all other applicable rules, regulations, laws, and ordinances of the Town of Clayton and the State of North Carolina.

This policy does not apply to rental or use of The Clayton Center. This policy does not generally apply to the rental or use of Town parks operated by the Parks and Recreation Department. The Parks and Recreation Department may require applicants to submit to the special event process if the proposed event is deemed to have significant impact on Town resources.

B. Definitions

Event Organizer: Any individual, firm, or organization proposing a special event on public property or property controlled by the Town of Clayton.

Public Property: Refers to all Town and State-owned property, squares, streets, sidewalks, rights-of-way and greenways.

Special Event: An event, public or private, occurring on public property as defined above. This includes, but is not limited to, road races, public gatherings, demonstrations, competitions, concerts, festivals, neighborhood events, fundraisers, and entertainment/amusement events. If the special event is located on private property, the Town reserves the right to require event organizers to submit a special event permit application pursuant to this policy if the nature and scope of the event encumbers public property or requires Town services and/or resources.

Private Event: Activities where the general public is not invited, events such as weddings or family reunions that occur on Town Square, Horne Square, Town parks or greenways or similar spaces. Private events may be required to submit either a special event permit application or temporary use permit application as determined by the Planning Department.

Road Race: Organized activity involving running, biking, walking or other means of transportation, with three or more participants that involves the use or obstruction of Town street rights-of-way, Town sidewalks, Town parks or greenways.

Protest/Demonstration: An organized activity involving movement of or gathering of a group, with three or more participants which seeks to bring awareness to or change a worldview, policy, current event, or anything similar, and utilizing Town street rights-of-way, Town sidewalks, parks, greenways or squares. Protests and demonstrations require a permit to be issued by the Clayton Police Department.

Special Event Permit Application: An application required by the Town of Clayton prior to the utilization of public property and/or public resources for a special event. Special event applications require approval and must meet all conditions imposed on the event.

Support Services: Services provided by the Town of Clayton to ensure that special events are conducted in a safe and healthy manner, protect people and property. This includes manpower, equipment, supplies, and consumables required to service the special event.

Town-Sponsored / Partnered (Legacy) Special Event: An event that either originates from within a Town of Clayton department such as Downtown Development, Parks & Recreation, and Library, or any affiliated individual, group or organization which, by action of Town Council, is partnering with the Town of Clayton to offer a special event. Town of Clayton Sponsored/Partnered Special Events may require a separate agreement which specifies the responsibilities of each party.

Yearly Event Limits: The maximum number of events permitted in a calendar year.

C. Categories of Special Events

Class A: Class A events are events that meet one or more of the following criteria

- A road closure larger than 2 city blocks is being requested
- Significant impact to traffic flow or emergency services.

Class B: Class B events are any event that meets one or more of the following criteria:

- Alcohol will be present on Town Property
- A road closure smaller than 2 city blocks is being requested
- Parking lot closure is being requested
- Limited to no impact to traffic or emergency services

Class C: Class C events are any event that meets the following criteria

- Use of Town Property
- No impact to traffic flow or emergency services

D. Special Events Permit Process

1. Pre-Application Meeting: Prior to the submittal of a special event application, the Event Organizer must schedule and hold a pre-application meeting with the Emergency Management Coordinator. If the event is a protest/demonstration, as previously defined, the

pre-application meeting must include the Event Organizer, the Emergency Management Coordinator, and an approved law enforcement official.

2. Submittal Deadline:

- Applications for Class A events must be submitted a minimum of 90 days prior to the special event.
- Applications for Class B events must be submitted a minimum of 60 days prior to the special event.
- Applications for Class C events must be submitted a minimum of 30 days prior to the special event.

3. Application: Special Event organizers must submit a complete special event application and application fee prior to review. Incomplete applications will either be returned to the organizer or delayed until all required items have been submitted. Special event application forms are available on the Town of Clayton website (www.townofclaytonnc.org) or by contacting the Emergency Management Coordinator.

4. Reservation of Dates: Dates for events will be reserved on a first-come, first-serve basis. The following restrictions shall apply:

- Recurring events will be given first priority.
- Conflicts will be resolved by the Emergency Management Coordinator.
- Emergency Management Coordinator can suggest alternative dates based on the scheduling of other events and the amount of support services required.

5. Application Review: The Emergency Management Coordinator may make specific recommendations concerning the proposed location, scope, date and time for the special event. They will also evaluate the type and amount of anticipated Town resources needed for the special event. Costs will be calculated based on the current Town of Clayton Fee Schedule (Appendix A).

6. Yearly Event Limits: In order to limit the impact on Town Resources, surrounding businesses and residents and allow public spaces to remain open to other users, a Yearly Limit is applied to each category of special events.

- There shall be no more than 10 Class A events per year
- There shall be no more than 15 Class B events per year
- There shall be no more than 25 Class C events per year

The criteria for evaluating special event permit applications are as follows:

- Completeness of application and event layout
- Impact and cost of the event on public health, safety, and welfare
- Impact and cost of the event on Town support services
- Impact of the event on the environment and public property
- Frequency of the same or similar event(s) as well as potential conflicts with previously approved events
- Impact on the surrounding businesses or residences
- Ability for the public place to remain open to other users
- Perceived benefit of event for Town of Clayton residents and businesses
- Likelihood of participation by Town of Clayton residents and businesses

- Previous history of event organizer in facilitating successful special events
- Ability of event organizer to achieve goals set forth for special events

6. **Street / Public Property Closure:**

Following the review of a special event application, approval/denial of requested closures shall be handled as follows:

- The Police Chief, or his/her designee is responsible for authorizing the closure of public streets, including notification to, or authorization from NCDOT for the closure of state owned and maintained streets.
- The Police Chief, or his/her designee may at his/her discretion, request Town Council review and approval for new events or other authorizations necessary to support the special event.
- The Emergency Management Coordinator, or his/her designee is responsible for authorizing the closure of public squares, parks and parking lots in support of a special event.

7. **Post Event Review:** Following a special event, the Emergency Management Coordinator may review a special event where concerns regarding consistency with town goals, public safety, and review criteria listed above were identified during the special event. Based on post event review, the Special Events Committee reserves the right to reject future special event applications for any event failing to meet Town goals or standards.

8. **Notice**

Requirements: In an effort to improve communications and keep impacted citizens, businesses and other establishments fully informed of all special event notices are required to include the information listed below. Postcards, door hangers and flyers should be black ink on brightly colored yellow paper. The Planning Department will provide a list of the addresses that lie within the appropriate notice zone. Event organizers are reminded it is a Federal offense to place materials in or on mailboxes.

- a) Name of event
- b) Name of sponsoring organization
- c) Date and timeframe of event
- d) Description of associated road closures and the timeframe of road closures
- e) Description of event and information about the noise impacts of event, such as music or fireworks, and their timeframe
- f) Name and contact information of event organizer (including a phone number and email address)
- g) Website address associated with event, if applicable
- h) Statement that this notice is placed in accordance with requirements of the Town of Clayton, with Town of Clayton contact information.

For events that are deemed to have a significant impact on residents and/or businesses, including road races/walks notice must be initially provided in writing to all affected 30 days prior to the event. A reminder must be provided 2-3 weeks prior to the event and again 1 week prior to the event date.

Generally, other special events will not be required to notify adjacent property owners. At the discretion of the Emergency Management Coordinator, a special event may be deemed subject to the notification requirements.

9. **Evaluation of Notice.** Failure to comply with these requirements may affect an event organizer's ability to host events in the future.
- 10. Denial & Appeal:** A special event permit application may be denied by the Emergency Management Coordinator if it is found that it's granting would not be in the public interest. Any applicant denied a Special Event Permit shall receive a written notice for the denial. The applicant may appeal the decision to the Town Council within fifteen working days (15) of the notice. The findings and the determination of the Town Council shall be final.
- 11. Payment of Fees:** Special Event Fees are listed in the Comprehensive List of Fees and Charges ("List") and in Appendix A. The List is updated by the Town Council from time to time and can be found on the Town's website (www.townofclaytonnc.org).
- The application review fee is due at time of submittal.
 - Special event fees and deposits must be paid no later than thirty (30) days prior to the event.
 - Event organizers are responsible for all costs associated with compliance with the notice requirements.
 - Special event permits will not be issued until all fees and deposits are paid.
- 12. Issuance of Event Permit:** No special event shall take place without a Town issued special event permit. The permit must be available for inspection on site at the event at all times.
- 13. Permit Revocation:** The Town may revoke a special event permit issued pursuant to this section if the applicant or operator of the special event has:
- Misrepresented or provided false information in the application;
 - Violated any provision of the Town of Clayton Unified Development Code or Johnston County Health Department regulations;
 - Violated any local, State or Federal law;
 - Operated the special event in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety or welfare, specifically including failure to keep the Town of Clayton owned property clean and free of refuse; or
 - Failed to pay all special event fees.
- 14. Day of Event Requirements:** The event organizer or his/her designee must be on site at all times and reachable. The special event permit must be available for inspection on site at all times.
- 15. Event Rejection/Cancellation/Refund of Fees:**
If the special event is rejected or cancelled after the payment of fees because of conditions beyond the control of the event organizer, the Town may consider a partial refund of fees paid, however application fees are not refundable. Any cost already incurred by the Town will be deducted from the refund.
- 16. Rules and Prohibitions:**
- **Adherence to Town Ordinances and Rules:** All applicants must adhere to all Town Ordinances and Rules of Use for Town Square and Horne Square, as applicable.
 - **Alcohol:** Event organizers must acquire all required permits from the North Carolina Alcohol Beverage Commission. Alcohol sales, consumption and possession are prohibited on Town property, unless the following criteria is met:

- A copy of the approved NCABC permit is submitted to the Emergency Management Coordinator.
- Applicable Town departments have signed off on the NCABC permit; and
- Off-duty Town of Clayton police officers will provide security whenever a special event involves the sale, delivery, possession, and/or consumption of alcohol. The number of officers required is determined by the Chief of Police or his/her designee in accordance with departmental policy.
- Event organizer is responsible for all cost associated with the ABC permit and compliance of NC ABC guidelines.
- **Alterations to Public Property:** Alterations to public property including the attachment or installation of decorations or displays are strictly prohibited unless advance permission is granted by the Town. Alteration or tampering with infrastructure (electric panels, irrigation, meters, etc.) is strictly prohibited, will result in the revocation of the permit, and will affect the event organizer's ability to host events in the future.
- **Repairs.** Repairs necessary due to damage to any structure, irrigation system, landscaping, or infrastructure will be billed to the event organizers at replacement cost plus a fifteen percent premium on labor. The Town reserves the right to regulate placement and method of placement of items or structures on any public property. Please reference the rules and procedures regarding damage Rules of Use Policy for Town Square and Horne Square.
- **Signage:** Signage promoting the event is allowed in a limited number of areas within Town limits, subject to review and approval by the Planning Department.
- **Event Equipment and Layout:** A layout of the event area, including locations of all tables, chairs, tents, stages, vendor set-up, portable restrooms, road closures, parking plans, and other equipment must be submitted with the application and may be modified by the Special Event Committee. No event equipment will be provided by the Town of Clayton. Organizers are not permitted to drive stakes into the ground on any Town of Clayton property.
- **Town of Clayton Promotion of an Event:** If deemed appropriate by the Town, a special event may be promoted via the Town of Clayton's various communication tools. The event organizer must submit, in writing, a brief description of the event to the Emergency Management Coordinator no less than one week prior to the event. The description should include sufficient detail about the event to answer all expected reasonable questions by staff and the public. Commercial events/activities are generally not promoted on the Town of Clayton website unless the event is in partnership with the Town. Event promotion will be performed on a time available basis and will be secondary to other Public Information Office functions.
- **Food Sales:** Any intention to sell food must comply with all State and County Sanitation laws. Copies of any required permits, including a Temporary Food Establishment Permit must be supplied to the Emergency Management Coordinator prior to the event. Fire Code requires a fire extinguisher at each cooking location.
- **Safety, Security, Medical:** As public safety is of paramount concern for the TOC, an event organizer may be required to hire off-duty Town of Clayton or Johnston County public safety personnel to provide security, medical, and/or fire services before, during, and after the event.

- **Parking:** Participants must adhere to all parking regulations established by the Town of Clayton. Event organizers are prohibited from charging patrons for parking in public spaces without the express written consent of the Town of Clayton. Event organizers must secure adequate on-or off-site parking for large events. When off-site parking is utilized, use of shuttles for transport must be stated in the Special Event Application and approved. Likewise, a pedestrian circulation plan may be required.
- **Resource Estimates:** The Emergency Management Coordinator reserves the right to be the final authority in estimates of attendance, need for additional staff hours, and/or assignment of manpower and equipment for a special event.
- **Restroom Facilities:** For all events which are 4-hours duration or longer, portable toilets may be required. The Emergency Management Coordinator will assist the event organizer in determining the number and placement of toilets. In compliance with the Americans with Disabilities Act, the event organizer must provide a sufficient number of handicap accessible portable toilets.

In the event of a dispute between the Event Organizer and the Emergency Management Coordinator as to the number and placement of toilets, the Emergency Management Coordinator's decision will be final.

It is the event organizer's responsibility to make all arrangements (contacting, reserving, coordinating drop-off, pumping during the event, and pick-up) including the payment of all associated fees.

- **Sanitation:** If deemed necessary by the Emergency Management Coordinator, garbage and recycling carts, must be rented from the Town of Clayton. Fees will be charged to the event organizer in accordance with the Comprehensive List of Fees. The Emergency Management Coordinator will assist the event organizer to determine the number and placement of garbage and recycling carts required for the event. In the event of a dispute between the Event Organizer and the Emergency Management Coordinator as to the number and placement of garbage and recycling carts, the Emergency Management Coordinator's decision will be final. It is the event organizer's responsibility to collect any garbage and recycling and ensure the carts are returned to their original drop-off location on site following the event in order to ensure return of the deposit. At the conclusion of the event, all trash/recycling must fit inside of a receptacle or be hauled off by the event organizer.
- **Clean-up & Damage:** It is the event organizer's responsibility to ensure the event location is returned to its original condition following an event. The event site will be inspected after an event and any work needed to clean-up or repair will be charged to the event organizer and may result in forfeiture of deposit and revocation of future event privileges.
- **Noise:** All events must be in compliance with the [Town of Clayton Noise Ordinance, located in Section 98.01](#) of the Town's Code of Ordinances. Sound system equipment is not provided by the Town of Clayton. The event organizer must indicate on the Special Event Permit Application of any intended use of a sound system or any amplified sound during the event.
- **Utilities:** Specific requirements for the use of electricity and water must be submitted with the application. Electricity and water are not available

without permission from the Town. A flat utility fee will be charged for events less than one day. Events exceeding one day will be required to establish a utility account and pay for consumed utilities.

17. Insurance

For events on Town of Clayton property, applicants must provide proof of \$1,000,000 General Liability insurance coverage, if alcohol is served: \$2,000,000 General Liability insurance coverage is required. The Town of Clayton must be named as an “additional insured” and a certificate showing such must be provided prior to the issuance of the Special Event Permit.

18. Release and Indemnity

Each event organizer must execute a release and indemnity agreement as included in the Special Event Permit

Application. Event organizers must demonstrate that they are either personally or organizationally responsible for liability, will guarantee orderly behavior, and will underwrite any damage of the premises. Liability is assumed by the applicant in regard to any personal or property damage rising out of activities related to the event. It is the responsibility of the event organizer to read the application form completely and understand fully his/her responsibilities.

19. **Assignment** The event organizer shall be prohibited from assigning any rights granted through the Special Use Permit Process and may not convey the use of the premises to any other party.

20. Discrimination

The applying organization, association, or entity shall not discriminate or advocate discrimination on account of race, color, religion, creed, national origin, age, gender, sexual orientation or disability.

Duly adopted this the 16th day of August, 2021 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town of Clayton
111 E. Second St, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-1520
Fax: 919-553-1720

FINAL DRAFT

Use & Policy Agreement for Use of Horne Square

The Town of Clayton (hereby referred to as the Town) enters into this agreement with Clayton Farm & Community Market (hereby referred to as CFCM), PO Box 1452, Clayton, NC 27527.

CFCM is licensed to use the space outlined below for the contract period of June 1, 2021, through June 30, 2023 for use as the Clayton Farmers Market, Holiday Markets, Night Market & Winter Markets (hereby referred to as the Farmers Market) for the retail sales of farm and handmade goods to the public. Goods shall be locally grown and produced as defined in CFCM Operating Guidelines- found at <http://cfcmnc.org/forms>

The CFCM agrees to pay the Town of Clayton the sum of \$1.00 per year. If both parties agree, this agreement may be extended for an additional term of two years.

CFCM will operate the Farmers Market in Horne Square, located at the corner of Main Street and Lombard Street on Saturdays from 9 a.m. – 1 p.m. April through October, and 10 a.m. – 1 p.m. November through March. This agreement also allows the use of Horne Square for a night market during the Downtown shops “Last Friday” promotion. CFCM agrees to vacate Horne Square 1 hour after the scheduled closing of the Farmers Market.

The Farmers Market is able to request the use of other Town facilities, including but not limited to Town Square, town parks, etc., to set up the regularly scheduled Saturday morning market or any specialty markets. These alternate locations will fall under this Use & Policy Agreement and the Farmers Market is responsible for compliance with any and all rules and regulations pertaining to the specific locations, including the Town’s special events policies, as applicable.

CFCM is aware that scheduling conflicts may occur during the rental period. If the Town of Clayton, schedules an event that is in direct time and use conflict with the Farmers Market, the Town-scheduled event will have priority use of Town Property.

CFCM will be notified by the Town at least two weeks in advance, if practical, should a scheduling conflict arise, and when feasible, be permitted to use a location on Main Street that is complementary with the event. When a conflicting event requires closure of Main Street, the Town will make best efforts to relocate the Farmers Market to a location near Town Square to facilitate easier access for the Farmers Market vendors, per CFCM’s request.

All scheduling conflicts will be resolved by the Emergency Management Coordinator whose decision will be final.

The COVID-19 pandemic and possibility for future pandemics add additional uncertainty to the scheduling and use of public facilities and public gatherings. The Town of Clayton will make best efforts to communicate with CFCM regarding potential required closures or other disruptions as a result of changing local, state and federal laws and regulations.

As required terms of this agreement, CFCM will make best efforts to ensure staff, volunteers, vendors and patrons of the market follow local, state and federal laws and regulations, including but not limited to social distancing and wearing of face masks, while using this public facility. A failure to do so may result in an immediate termination of this agreement.

The following provisions also apply to this agreement:

1. CFCM representative will prepare market area and setup all items associated with the operation of the Farmers Market, including but not limited to signs, tables, tents, trash and recycling cans.
2. CFCM representatives will keep an accounting of all vendors' operations in the Farmers Market and the space assigned to each.
3. CFCM representatives will monitor the unloading of vendor products and will monitor the site throughout the day.
4. CFCM is solely responsible for the setup, breakdown, and cleanup of Horne Square (or other location of operations if relocated) each Saturday, to include but not limited to removal of all signage, tables, tents, trash and recycling.
5. CFCM has access to electrical outlet and water for market-related vendor use only. The use of electrical outlets is at your own risk.
6. CFCM may not assign, sublet, transfer or otherwise offer use of Horne Square or any temporary location of operations to a third party. Third party users must contact the Emergency Management Coordinator to obtain approval.
7. CFCM agrees to verify and/or obtain, at its sole cost or at the cost of associated vendors, all permits, licenses and authorizations necessary for the purpose of engaging in sales of any and all vendor products and merchandise.
8. No ground stakes may be used by the user or any agent of the user for any purpose, including but not limited to, securing tents, signage or staging.
9. No vehicles are allowed on Horne Square pavers.
10. Fireworks & open fires are not allowed due to fire and safety regulations.
11. CFCM will make best efforts to ensure staff, volunteers, vendors and patrons of the market follow local, state and federal laws and regulations, including but not limited to social distancing and wearing of face masks, while using this public facility.

Penalty & Termination Policy

Cancellation & Schedule Changes. CFCM agrees to provide at least two weeks' notice, with the exception of weather-related events, to the Emergency Management Coordinator should the Farmers Market be cancelled at any time during the period of this agreement. Failure to adequately notify Town of Clayton of cancellations or changes to schedule or to comply with any other terms of this agreement may result in termination hereof without notice.

Cleanup & Damage. A \$250 cleanup fee will be charged in the event Horne Square or any temporary operating location, is not adequately cleared of trash, recycling and event-related debris immediately following the conclusion of the Farmers Market. Failure to adequately clean following an event will result in a verbal warning after one incident, a warning of termination by letter after a second incident, and termination after a third incident. Farmers Market is responsible for repairing any damage caused by their activities and reporting any damage found upon their arrival.

Termination of Agreement. Grounds for termination of this agreement include, but are not limited to, violation of any terms of this agreement or the convenience of the Town.

Indemnification

CFCM agrees to protect and indemnify the Town from and against any claims, actions, damages and liabilities including but limited to any and all legal and other professional fees arising from or related to the event or activities associated with the operation of the Markets.

CFCM shall carry \$1,000,000 per occurrence limit for commercial general liability, \$1,000,000 for commercial auto, a \$2,000,000 umbrella liability coverage and include the Town, its officers, employees and agents as an additional insured under the policy. A certificate shall be provided to the Town of Clayton upon execution of this agreement, and subsequently, upon the annual renewal of the policy. CFCM is further obligated to notify the Town within three (3) business days of cancellation or change of any insurance coverages.

The undersigned represents that he/she is authorized to sign this agreement on behalf of the CFCM and that he/she has read, understands and will adhere to the above policies for operation of the Farmers Market at Horne Square and within the Town of Clayton.

Clayton Farm & Community Market

Signature _____ Print Name & Title _____

Date _____

Town of Clayton

Signature _____ Print Name & Title _____

Date _____

Town of Clayton Policy & Procedure Statement



Policy Number	ADM-2021-03
Department	Administration
Subject	Clayton Community Farmers Market & Horne Square Use Policy
Approved By	Town Council – Resolution #2021-38
Effective Date	August 16, 2021
Revision Date(s)	

he Town of Clayton (hereby referred to as the Town) enters into this agreement with Clayton Farm & Community Market (hereby referred to as CFCM), PO Box 1452, Clayton, NC 27527.

CFCM is licensed to use the space outlined below for the contract period of June 1, 2021, through June 30, 2023 for use as the Clayton Farmers Market, Holiday Markets, Night Market & Winter Markets (hereby referred to as the Farmers Market) for the retail sales of farm and handmade goods to the public. Goods shall be locally grown and produced as defined in CFCM Operating Guidelines- found at <http://cfcmmc.org/forms>

The CFCM agrees to pay the Town of Clayton the sum of \$1.00 per year. If both parties agree, this agreement may be extended for an additional term of two years.

CFCM will operate the Farmers Market in Horne Square, located at the corner of Main Street and Lombard Street on Saturdays from 9 a.m. – 1 p.m. April through October, and 10 a.m. – 1 p.m. November through March. This agreement also allows the use of Horne Square for a night market during the Downtown shops “Last Friday” promotion. CFCM agrees to vacate Horne Square 1 hour after the scheduled closing of the Farmers Market.

The Farmers Market is able to request the use of other Town facilities, including but not limited to Town Square, town parks, etc., to set up the regularly scheduled Saturday morning market or any specialty markets. These alternate locations will fall under this Use & Policy Agreement and the Farmers Market is responsible for compliance with any and all rules and regulations pertaining to the specific locations, including the Town’s special events policies, as applicable.

CFCM is aware that scheduling conflicts may occur during the rental period. If the Town of Clayton, schedules an event that is in direct time and use conflict with the Farmers Market, the Town-scheduled event will have priority use of Town Property.

CFCM will be notified by the Town at least two weeks in advance, if practical, should a scheduling conflict arise, and when feasible, be permitted to use a location on Main Street that is complementary with the event. When a conflicting event requires closure of Main Street, the Town will make best efforts to relocate the Farmers Market to a location near Town Square to facilitate easier access for the Farmers Market vendors, per CFCM’s request.

All scheduling conflicts will be resolved by the Emergency Management Coordinator whose decision will be final.

The COVID-19 pandemic and possibility for future pandemics add additional uncertainty to the scheduling and use of public facilities and public gatherings. The Town of Clayton will make best efforts to communicate with CFCM regarding potential required closures or other disruptions as a result of changing local, state and federal laws and regulations.

As required terms of this agreement, CFCM will make best efforts to ensure staff, volunteers, vendors and patrons of the market follow local, state and federal laws and regulations, including but not limited to social distancing and wearing of face masks, while using this public facility. A failure to do so may result in an immediate termination of this agreement.

The following provisions also apply to this agreement:

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notify Town of Clayton of cancellations or changes to schedule or to comply with any other terms of this agreement may result in termination hereof without notice.

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Indemnification

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CFCM shall carry \$1,000,000 per occurrence limit for commercial general liability, \$1,000,000 for commercial auto, a \$2,000,000 umbrella liability coverage and include the Town, its officers, employees and agents as an additional insured under the policy. A certificate shall be provided to the Town of Clayton upon execution of this agreement, and subsequently, upon the annual renewal of the policy. CFCM is further obligated to notify the Town within three (3) business days of cancellation or change of any insurance coverages.

Clayton Farm & Community Market

Signature _____ Print Name & Title _____

Date _____

Town of Clayton

Signature _____ Print Name & Title _____

Date _____

TOWN OF CLAYTON

CLAYTON FARMERS MARKET AND USE OF HORNE SQUARE POLICY

BE IT RESOLVED by the Clayton Town Council that the Special Events Policy be amended to read as follows:

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The Farmers Market is able to request the use of other Town facilities, including but not limited to Town Square, town parks, etc., to set up the regularly scheduled Saturday morning market or any specialty markets. These alternate locations will fall under this Use & Policy Agreement and the Farmers Market is responsible for compliance with any and all rules and regulations pertaining to the specific locations, including the Town’s special events policies, as applicable.

CFCM is aware that scheduling conflicts may occur during the rental period. If the Town of Clayton, schedules an event that is in direct time and use conflict with the Farmers Market, the Town-scheduled event will have priority use of Town Property.

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4. CFCM is solely responsible for the setup, breakdown, and cleanup of Horne Square (or other location of operations if relocated) each Saturday, to include but not limited to removal of all signage, tables, tents, trash and recycling.
5. CFCM has access to electrical outlet and water for market-related vendor use only. The use of electrical outlets is at your own risk.
6. CFCM may not assign, sublet, transfer or otherwise offer use of Horne Square or any temporary location of operations to a third party. Third party users must contact the Emergency Management Coordinator to obtain approval.
7. CFCM agrees to verify and/or obtain, at its sole cost or at the cost of associated vendors, all permits, licenses and authorizations necessary for the purpose of engaging in sales of any and all vendor products and merchandise.
8. No ground stakes may be used by the user or any agent of the user for any purpose, including but not limited to, securing tents, signage or staging.
9. No vehicles are allowed on Horne Square pavers.
10. Fireworks & open fires are not allowed due to fire and safety regulations.
11. CFCM will make best efforts to ensure staff, volunteers, vendors and patrons of the market follow local, state and federal laws and regulations, including but not limited to social distancing and wearing of face masks, while using this public facility.

Penalty & Termination Policy

Cancellation & Schedule Changes. CFCM agrees to provide at least two weeks' notice, with the exception of weather-related events, to the Emergency Management Coordinator should the Farmers Market be cancelled at any time during the period of this agreement. Failure to adequately notify Town of Clayton of cancellations or changes to schedule or to comply with any other terms of this agreement may result in termination hereof without notice.

Cleanup & Damage. A \$250 cleanup fee will be charged in the event Horne Square or any temporary operating location, is not adequately cleared of trash, recycling and event-related debris immediately following the conclusion of the Farmers Market. Failure to adequately clean following an event will result in a verbal warning after one incident, a warning of termination by letter after a second incident, and termination after a third incident. Farmers Market is responsible for repairing any damage caused by their activities and reporting any damage found upon their arrival.

Termination of Agreement. Grounds for termination of this agreement include, but are not limited to, violation of any terms of this agreement or the convenience of the Town.

Indemnification

CFCM agrees to protect and indemnify the Town from and against any claims, actions, damages and liabilities including but limited to any and all legal and other professional fees arising from or related to the event or activities associated with the operation of the Markets.

CFCM shall carry \$1,000,000 per occurrence limit for commercial general liability, \$1,000,000 for commercial auto, a \$2,000,000 umbrella liability coverage and include the Town, its officers, employees and agents as an additional insured under the policy. A certificate shall be provided to the Town of Clayton upon execution of this agreement, and subsequently, upon the annual renewal of the policy. CFCM is further obligated to notify the Town within three (3) business days of cancellation or change of any insurance coverages.

Duly adopted this the 16th day of August, 2021 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

August 16, 2021

Agenda Location

New Business

Item Title

Riverwood Athletic Club (RWAC) Service Agreement with Archer Lodge Fire Department

Presenter

Matthew Sutphin – Deputy Fire Chief

Summary/Description

Review and obtain approval for updated RWAC Service Agreement

Requested Action

Approval

Funding Source (If Applicable):

Included and approved in FY 2021-2022 budget

Cost: N/A Yes ☒ No ☒

Additional Documents to be Included in Agenda Packet

Service Agreement

RWAC Exhibit A (map of service area)

Meeting Timeline

Click or tap here to enter text.

STATE OF NORTH CAROLINA

COUNTY OF JOHNSTON

FOURTH AMENDMENT AND SUPPLEMENT TO SERVICE AGREEMENT

This FOURTH AMENDMENT AND SUPPLEMENT TO SERVICE AGREEMENT (this "Amendment") is entered into this ____ day of ____, 2021 by and between the TOWN OF CLAYTON NORTH CAROLINA, a municipal corporation organized and existing under the laws of the State of North Carolina (the "Town"), and the ARCHER LODGE VOLUNTEER FIRE DEPARTMENT, a corporation organized and existing under the laws of the state of North Carolina (the "ALVFD") (collectively, the "Parties").

WITNESSETH:

WHEREAS, the ALVFD provides fire protection services, fire suppression services, first responder services, and related emergency response services (the "Services") within a certain geographic area in Johnston County, North Carolina (the "Area");

WHEREAS, the Parties entered into a Service Agreement (the "Original Agreement") on May 8, 2000 under which the ALVFD agreed to perform the Services for the Riverwood Athletic Club for a term of 10 years;

WHEREAS; the Parties further agreed to three extensions of the Original Agreement by Amendment; and

WHEREAS, the Original Agreement and the subsequent Amendments have served the Town, the ALVFD, and the citizens well and acceptably; and

WHEREAS, Riverwood Athletic Club has been developed with new road connectivity to Covered Bridge Road; and

WHEREAS, due to this enhanced connectivity certain areas of Riverwood Athletic Club are within the five-mile response area of the Town of Clayton Fire Department as seen on Exhibit A in orange; and

WHEREAS, the recent construction of an exit from Payton Drive to Covered Bridge provides additional enhanced connectivity for certain areas of Riverwood Athletic Club as also shown on Exhibit A; and

WHEREAS, both Parties wish to extend the term of the Original Agreement, as amended, for the benefit of both Parties, the residents, businesses, and property owners in the Riverwood Athletic Club and other Annexed Properties;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and stipulations contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Term.** The term of the Agreement shall be extended for three years beginning January 1, 2022 unless sooner terminated pursuant to Paragraph 7 of this Amendment; provided however, the Parties may renew the Agreement for successive one (1) year terms by executing a written agreement prior to expiration of the then-current term or renewal term.
2. **Service.** The ALVFD shall provide the Services to the Properties shown in gray on Exhibit A on call, on demand and as otherwise needed, with service as equivalent as possible to the service enjoyed by the majority of residents and properties within the ALVFD service area, and in compliance with all applicable laws and regulations through December 31, 2024. In addition, as to any newly annexed areas ("Annexed Properties") with the ALVFD service area which are not reflected in the Town's five-mile response area by January 1, 2022 ALVFD agrees to continue to serve these areas under the terms of the existing agreement until such time as these areas come into the five-mile response area or the expiration of this agreement, whichever comes first.
3. **Annexed Properties.** "Annexed Properties" will only include properties annexed by the Town following the submittal of an annexation petition and the Town's subsequent enactment of an annexation ordinance, as provided in Sections 160A-31 and 160A-58.1 of the North Carolina General Statutes. The Town shall provide to ALVFD the location and, if available, the expected nature of development of any property to be included among the Annexed Properties at least six (6) months prior to the Town's adoption of an ordinance formally annexing the property.
4. **Compensation.** The Town shall pay the ALVFD on a semi-annual (December 31, June 30) basis fifty percent {50%} of the estimated annual Archer Lodge Fire District property tax revenue that would have been derived from the taxable real property located within the service area if those Properties had remained in the Archer Lodge Fire District and not been annexed by the Town. The Town shall calculate each semi-annual payment based on the then-prevailing tax rate in the Archer Lodge Fire District.
5. **Call Pay.** Paragraph 4 of the Original Agreement is deleted in its entirety, and the Town shall not be responsible for paying "call pay" to the ALVFD for Services performed after the date of this Amendment.
6. **Termination.** Paragraph 9 of the Original Agreement is amended to provide that either party may terminate the Agreement at any time by giving one (1) year's prior written notice to the other party.
7. **Notice.** The notice addresses in Paragraph 16 of the Original Agreement are amended as follows:

if to the Town: Mr. Rich Cappola
Interim Town Manager
111 E. Second Street
Post Office Box 879
Clayton, North Carolina 27520

with a copy to: Jim Cauley
Cauley Pridgen, PA
2500 Nash Street N, Ste C
Wilson, NC 27896-1394

if to the ALVFD: Mr. Philip Driver, Chief
Archer Lodge Volunteer Fire Department
6483 Covered Bridge Road
Clayton, North Carolina 27520

8. **Full Force and Effect.** The provisions of the Original Agreement shall remain in full force and effect unless amended by this Amendment. To the extent the Original Agreement conflicts with this Amendment, this Amendment will control.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

TOWN OF CLAYTON, NORTH CAROLNA

By: _____
Jody L. McLeod, Mayor

ATTEST:

Kimberly Moffet, Town Clerk

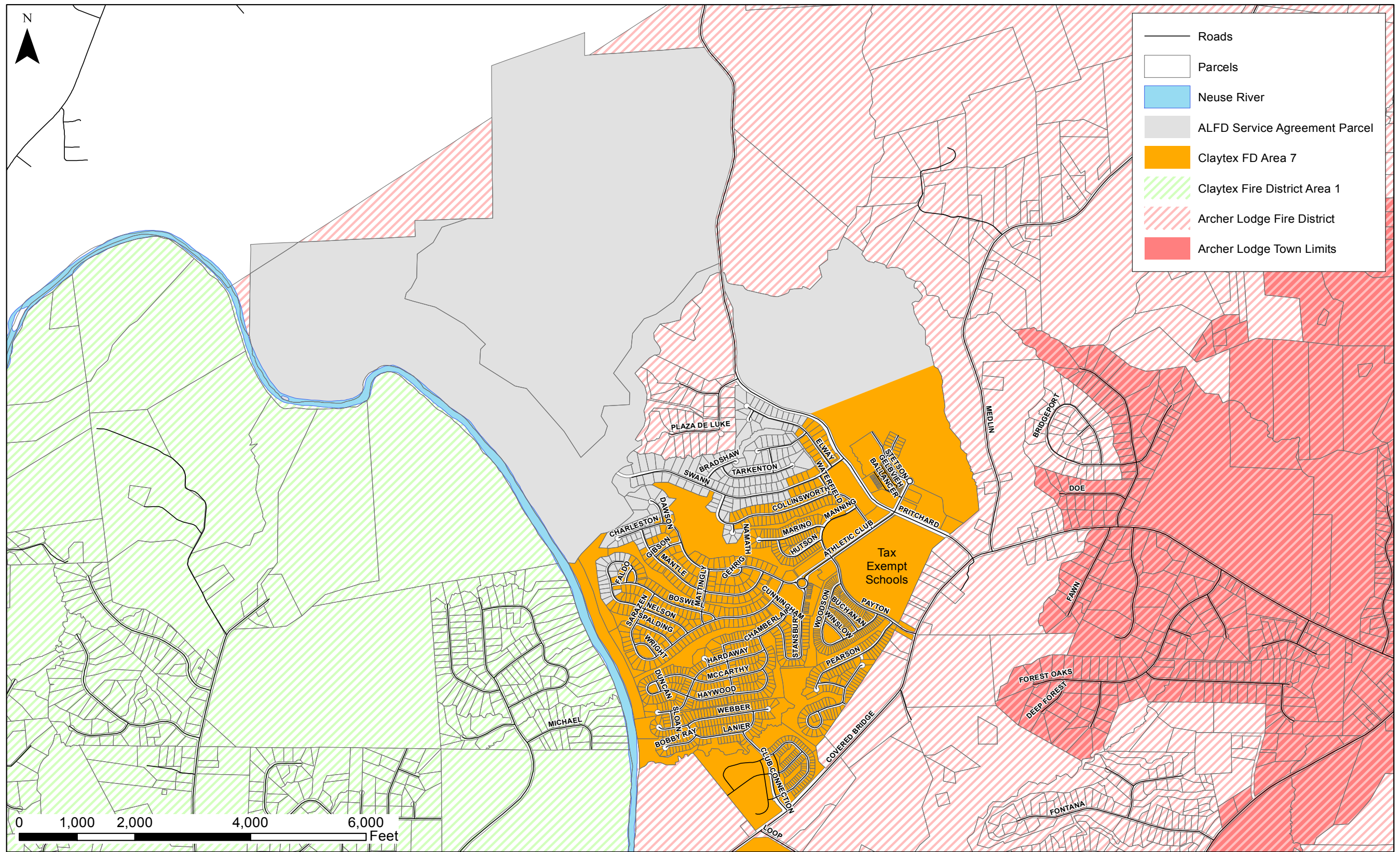
[AFFIX CORPORATE SEAL]

ARCHER LODGE VOLUNTEER FIRE DEPARTMENT

BY: _____
_____, President

ATTEST:

[SEAL]



*** Change in Town Ordinance 91.01 definitions section. Request the removal of "VICIOUS ANIMALS" and replace it with a definition of "DANGEROUS DOG"**

§ 91.01 DEFINITIONS.

~~VICIOUS ANIMAL.~~ Any animal which constitutes a physical threat to human beings or other animals by virtue of the severity of an unprovoked attack or attacks of such number and severity as to cause property damage or physical injury. These animals are prohibited within the town limits.

DANGEROUS DOG. A dog that been deemed dangerous or potentially dangerous by the Animal Control officer as defined in N.C.G.S. § 67.4.1.

Commented [JC1]: I recommend leaving this section.

***Change in Town Ordinance 91.03. Removal of all sections that indicate or use the word or definition of "vicious" animals.**

§ 91.03 ANIMALS CAUSING PUBLIC NUISANCE;~~VICIOUS ANIMALS.~~

(A) It shall be unlawful to own, keep, or harbor a public nuisance animal within the town. However, it shall not be unlawful to own or keep a dog of vicious tendencies for the protection of persons or property if the dog is securely confined in a manner not to expose it to the general public. This exception for dogs of vicious tendencies does not extend to dogs which excessively make disturbing noises.

(B) *Complaint and notice.* Upon receipt of a written detailed and signed complaint being made to the Animal Control Officer or Police Officer by any resident that any person is maintaining a public nuisance animal ~~or vicious animal~~ as defined in this chapter, the Animal Control Officer shall cause the owner of the animal in question to be notified that a complaint has been received and shall cause the situation complained of to be investigated and make a written report of his findings.

(C) *Abatement.* If the written findings of the Animal Control Officer indicate that the complaint is justified and can be abated, then the Animal Control Officer shall cause the owner or keeper of the animal in question to be so notified in writing by certified mail, return receipt requested, ordered to abate such nuisance within seven days after notification. Upon failure to abate the nuisance, the Animal Control Officer or Police Officer shall cause a citation or summons to be issued against the owner.

(D) *Impoundment upon failure to abate.* If any person receiving notice in the manner described above fails or refuses to abate the nuisance upon order of the Animal Control Officer within the specified time, the animal shall be apprehended and impounded in accordance with the provisions contained in this chapter. If extenuating circumstances exist, the owner may consult with the Animal Control Officer and Chief of Police and request an extension of time in order to remove the nuisance or correct the facilities for maintaining the animal in accordance with this chapter.

(E) *Right of appeal.* Within the seven day period mentioned in division (C) above, the owner of the nuisance animal may appeal the findings of the Animal Control Officer to the Chief of Police.

(F) *Redemption; destruction.* If the owner shall so request, the animal may be redeemed pursuant to the provisions hereinafter set forth, and upon further condition that the owner execute a written agreement to comply with the abatement order. If no redemption and execution is made by the owner within the time specified, then the animal shall be disposed of in accordance with the provisions of this chapter.

~~(G) *Impoundment based upon finding of vicious animal other than dangerous dogs.* If the written findings of the Animal Control Officer indicate that the animal in question is a vicious animal as defined in § 91.01, then the Animal Control Officer may immediately apprehend and impound the animal in accordance with the provisions contained in this chapter, provided that the Animal Control Officer provides the owner with written notice of the impoundment. Within seven days of receiving such notice, the owner of the animal may appeal the findings and actions of the Animal Control Officer to the Chief of Police. However, the animal shall remain impounded during the pendency of the appeal. If no appeal is made by the owner within the time specified or if the Chief of Police determines on appeal that the animal is a vicious animal as defined in § 91.01, then the animal shall be disposed of in accordance with the provisions of this chapter.~~

('71 Code, § 3-14) (Ord. passed 9-23-75; Am. Ord. passed 9-18-95; Am. Ord. passed 3-18-02) Penalty, see § 91.99

Commented [JC2]: I recommend leaving this section in and making the revision as shown to address vicious animals other than dangerous dogs.

***Request Proposed NEW ORDINANCE
And create a new Town Ordinance number 91.30**

PROPOSED NEW ORDINANCE: § 91.30 – DANGEROUS DOGS.

The Animal Control Officer is designated as the person to be responsible for determining that a dog is a "dangerous dog" or a "potentially dangerous dog" as defined in N.C.G.S. 67-4.1. ~~Any appeal of that determination may be taken first to the Chief of Police and then to an appellate board is designated as the person to which appeals may be taken pursuant to G.S. 67-4.1(c), consisting of the town manager, a deputy town manager and a citizen of the Town who shall be designated by the Mayor.~~ When a dog is declared to be potentially dangerous or dangerous, in addition to any requirements of state law, the Owner must adhere to the following:

~~A. Any dog that has been declared to be potentially dangerous under G.S. 67-4.1(a)(2) or dangerous under G.S. 67-4.1(a)(1)a.2 or b shall be required to comply with all of the following:~~

~~(1) Permanent identification mark required. Any dog declared dangerous or potentially dangerous will be permanently identified by means of a~~

tattoo located on the inside thigh or by electronic implant. The cost of said tattoo/implant will be paid for by the Owner. The Animal Control Officer will maintain a physical description and photograph of the dog. The Owner must allow and assist the Animal Control Officer in viewing the tattoo or reading the electronic implant at such times as deemed reasonable or at such time as the identification of the dog is in question.

(2) *Signage.* ~~An owner of a dog that has been deemed potentially dangerous or dangerous will place a~~ "Beware of Dog" sign ~~shall be placed at the residence of the dog~~ in plain view of the public. Said signs will be placed in such a manner and of such size and clarity as to be visible from the common entrance(s) to the property, specifically but not limited to the driveway. The Owner must also place a "Beware of Dog" sign on the dog's pen. The owner has 20 days from the declaration of the dog as a potentially dangerous or dangerous dog to comply.

(3) *Sterilization.* ~~An owner of a dog that has been declared potentially dangerous or dangerous will have their~~ The Owner shall have the dog spayed or neutered by a veterinarian licensed to practice in the state within 20 days of the declaration. All fees and costs are the responsibility of the Owner and must be paid in full to the satisfaction of the veterinarian prior to release.

(4) *A secure pen.* The ~~owner of a potentially dangerous or dangerous dog will keep the dog~~ will be kept in a secure enclosure that is constructed of materials strong enough to contain the dog. The owner must comply within 20 days and must construct any outdoor enclosure consistently with the following:

a) The enclosure shall be large enough for the dog (depending on the size of the dog) to move around freely. It shall provide the dog with adequate shelter and adequate shade.

b) The enclosure must have a floor, sides and a top from which the dog cannot escape.

c) The enclosure shall be constructed of a six-foot-high fence at least nine-gauge chain link. The enclosure will also have a fence or solid top constructed of the same material.

d) The structure must be constructed so that the dog may not dig under the sides. If the floor is constructed of dirt, the enclosure must include an eight-foot fence with two feet buried in the ground or sunken into a concrete pad which is 24 inches wide along the inside perimeter of the fence and four inches thick.

(5) *Inspection.* The Animal Control Officer may cause such inspections as deemed appropriate to be made of the premises of an owner of a ~~dog subject to potentially dangerous or dangerous dog to determine compliance with~~ the provisions of this section.

(6) *Off Owner's premises.* Anytime the animal is off the owner's premises, the dog will be on a secure collar and leash not to exceed six feet, wearing a muzzle and restrained by a competent person.

(7) *Relocation.* An Owner of a ~~potentially dangerous or dangerous~~ dog ~~subject to this section~~ must notify the Animal Control Officer at least three (3) working days prior to

moving the dog to a new address and give the Animal Control Officer the new address or location of the dog.

(8) *Notification of death.* The owner of a dog subject to this section must notify the Animal Control Officer within ten days after the dog dies.

(9) *Payment of annual ~~dangerous-dog~~ registration fee.* The Owner shall pay annually a registration fee for each dog subject to this section ~~dangerous or potentially dangerous dog~~ in an amount \$100.00.

(10) *Possession.* No ~~potentially dangerous or dangerous~~ dog subject to this section may be given away, sold, traded, placed for adoption, or otherwise transferred. The owner must retain ownership, possession, and responsibility for the dog until the dog dies or is surrendered to the Animal Control Officer for euthanasia.

(11) *Bites or attacks.* If a dog that is subject to this section ~~has been determined potentially dangerous or dangerous~~ subsequently bites or attacks a person, the dog will be surrendered or seized for euthanasia and the owner will be cited for the violation.

B. Any dog that has been declared to be dangerous under G.S. 67-4.1(a)(1)a.1 shall be required to be surrendered or seized for euthanasia and the owner will be cited for the violation.

~~C.-(12)~~ *Violation.* Any violation of the terms of ownership of a "dangerous" or "potentially dangerous" dog will result in a citation and civil penalty of \$500.00 per offense. The dog will be impounded and held until the violation is remedied, except as provided in subsection A.(11) and B. above, and all fees, fines and penalties are paid in full. If the owner is found in violation of this section more than once, the animal, if applicable, may be required to ~~will~~ be surrendered or seized for euthanasia.

(References see N.C.G.S. § 67.4.1, 67-4.2, 67-4.3, 67-4.4, 67-4.5)

***Change in Ordinance 91.28. Removal of all sections in the ordinance that indicate or use the word or definition of "fierce, dangerous or vicious animals".**

§ 91.28 ANIMAL BITES.

(A) Any dog, cat or other animal which bites a person shall be immediately quarantined at a place and in a manner determined by the Animal Control Officer for the purpose of determining whether the animal has been infected with the rabies virus. If it is determined that the animal has the rabies virus, it shall be destroyed in a humane manner. If it is determined that the animal does not have the rabies virus, the animal may be returned to the owner, provided all licenses have been obtained and the animal has received an inoculation for the rabies virus. ~~If the animal is returned to the owner, it shall be returned subject to the provisions in division (B) below.~~

—(B) All ~~fierce, dangerous or~~ vicious animals, ~~including dogs and cats~~ which have a history of unlawful biting of humans, shall be confined by the owner within a building or secure enclosure or by the Animal Control Officer in the animal shelter. Such animals shall not be released from confinement unless securely muzzled.

(Ord. passed 9-18-95)

Commented [JC3]: revise as noted.

***Change in Ordinance 91.76. Removal of the word “vicious” and replace it with “dangerous”.**

§ 91.76 RESPONSIBILITIES.

The Animal Control Division shall be charged with the responsibility of:

(A) Seeing that all dogs and cats in the town are adequately inoculated against rabies;

(B) Cooperating with the County Health Director and county health officers and assisting in the enforcement of state laws with regard to the control of animals and especially with regard to the vaccination of dogs and cats against rabies and the confinement of ~~vicious~~vicious animals and dangerous dogs;

(C) Investigating all complaints with regard to animals covered by this chapter;

(D) Making such canvasses of the town, including the homes in the town, as it deems necessary and practical, for the purpose of ascertaining that all dogs and cats are vaccinated against rabies;

(E) Enforcing within the town all of the state laws and town ordinances for the care, control, and custody of animals covered by this chapter.

('71 Code, § 3-2) (Ord. passed 9-23-75; Am. Ord. passed 9-18-95)

*** Change in Town Ordinance 91.01 definitions section to add a definition of "DANGEROUS DOG"**

§ 91.01 DEFINITIONS.

VICIOUS ANIMAL. Any animal which constitutes a physical threat to human beings or other animals by virtue of the severity of an unprovoked attack or attacks of such number and severity as to cause property damage or physical injury. These animals are prohibited within the town limits.

DANGEROUS DOG. A dog that been deemed dangerous or potentially dangerous by the Animal Control officer as defined in N.C.G.S. § 67.4.1.

***Change in Town Ordinance 91.03 to remove distinctions between public nuisance animals, dangerous dogs and "vicious" animals (any animals can be a public nuisance).**

§ 91.03 ANIMALS CAUSING PUBLIC NUISANCE.

(A) It shall be unlawful to own, keep, or harbor a public nuisance animal within the town.

(B) *Complaint and notice.* Upon receipt of a written detailed and signed complaint being made to the Animal Control Officer or Police Officer by any resident that any person is maintaining a public nuisance animal as defined in this chapter, the Animal Control Officer shall cause the owner of the animal in question to be notified that a complaint has been received and shall cause the situation complained of to be investigated and make a written report of his findings.

(C) *Abatement.* If the written findings of the Animal Control Officer indicate that the complaint is justified and can be abated, then the Animal Control Officer shall cause the owner or keeper of the animal in question to be so notified in writing by certified mail, return receipt requested, ordered to abate such nuisance within seven days after notification. Upon failure to abate the nuisance, the Animal Control Officer or Police Officer shall cause a citation or summons to be issued against the owner.

(D) *Impoundment upon failure to abate.* If any person receiving notice in the manner described above fails or refuses to abate the nuisance upon order of the Animal Control Officer within the specified time, the animal shall be apprehended and impounded in accordance with the provisions contained in this chapter. If extenuating circumstances exist, the owner may consult with the Animal Control Officer and Chief of Police and request an extension of time in order to remove the nuisance or correct the facilities for maintaining the animal in accordance with this chapter.

(E) *Right of appeal.* Within the seven day period mentioned in division (C) above, the owner of the nuisance animal may appeal the findings of the Animal Control Officer to the Chief of Police.

(F) *Redemption; destruction.* If the owner shall so request, the animal may be redeemed pursuant to the provisions hereinafter set forth, and upon further condition

that the owner execute a written agreement to comply with the abatement order. If no redemption and execution is made by the owner within the time specified, then the animal shall be disposed of in accordance with the provisions of this chapter.

(G) *Impoundment based upon finding of vicious animal other than dangerous dogs.* If the written findings of the Animal Control Officer indicate that the animal in question is a vicious animal as defined in [§ 91.01](#), then the Animal Control Officer may immediately apprehend and impound the animal in accordance with the provisions contained in this chapter, provided that the Animal Control Officer provides the owner with written notice of the impoundment. Within seven days of receiving such notice, the owner of the animal may appeal the findings and actions of the Animal Control Officer to the Chief of Police. However, the animal shall remain impounded during the pendency of the appeal. If no appeal is made by the owner within the time specified or if the Chief of Police determines on appeal that the animal is a vicious animal as defined in [§ 91.01](#), then the animal shall be disposed of in accordance with the provisions of this chapter.

('71 Code, § 3-14) (Ord. passed 9-23-75; Am. Ord. passed 9-18-95; Am. Ord. passed 3-18-02) Penalty, see [§ 91.99](#)

***Request Proposed NEW ORDINANCE to address dangerous dogs by creating a new Town Ordinance number 91.30.**

PROPOSED NEW ORDINANCE: § 91.30 – DANGEROUS DOGS.

The Animal Control Officer is designated as the person to be responsible for determining that a dog is a "dangerous dog" or a "potentially dangerous dog" as defined in N.C.G.S. 67-4.1. Any appeal of that determination may be taken first to the Chief of Police and then to an appellate board, pursuant to G.S. 67-4.1(c), consisting of the town manager, a deputy town manager and a citizen of the Town who shall be designated by the Mayor. When a dog is declared to be potentially dangerous or dangerous, in addition to any requirements of state law, the Owner must adhere to the following:

- A. Any dog that has been declared to be potentially dangerous under G.S. 67-4.1(a)(2) or dangerous under G.S. 67-4.1(a)(1)a.2 or b shall be required to comply with all of the following:

- (1) *Permanent identification mark required.* Permanent identification by means of a tattoo located on the inside thigh or by electronic implant. The cost of said tattoo/implant will be paid for by the Owner. The Animal Control Officer will maintain a physical description and photograph of the dog. The Owner must allow and assist the Animal Control Officer in viewing the tattoo or reading the electronic implant at such times as deemed reasonable or at such time as the identification of the dog is in question.

(2) *Signage.* A "Beware of Dog" sign shall be placed at the residence of the dog in plain view of the public. Said signs will be placed in such a manner and of such size and clarity as to be visible from the common entrance(s) to the property, specifically but not limited to the driveway. The Owner must also place a "Beware of Dog" sign on the dog's pen. The owner has 20 days from the declaration of the dog as a potentially dangerous or dangerous dog to comply.

(3) *Sterilization.* The Owner shall have the dog spayed or neutered by a veterinarian licensed to practice in the state within 20 days of the declaration. All fees and costs are the responsibility of the Owner and must be paid in full to the satisfaction of the veterinarian prior to release.

(4) *A secure pen.* The dog will be kept in a secure enclosure that is constructed of materials strong enough to contain the dog. The owner must comply within 20 days and must construct any outdoor enclosure consistently with the following:

a) The enclosure shall be large enough for the dog (depending on the size of the dog) to move around freely. It shall provide the dog with adequate shelter and adequate shade.

b) The enclosure must have a floor, sides and a top from which the dog cannot escape.

c) The enclosure shall be constructed of a six-foot-high fence at least nine-gauge chain link. The enclosure will also have a fence or solid top constructed of the same material.

d) The structure must be constructed so that the dog may not dig under the sides. If the floor is constructed of dirt, the enclosure must include an eight-foot fence with two feet buried in the ground or sunken into a concrete pad which is 24 inches wide along the inside perimeter of the fence and four inches thick.

(5) *Inspection.* The Animal Control Officer may cause such inspections as deemed appropriate to be made of the premises of an owner of a dog subject to the provisions of this section.

(6) *Off Owner's premises.* Anytime the animal is off the owner's premises, the dog will be on a secure collar and leash not to exceed six feet, wearing a muzzle and restrained by a competent person.

(7) *Relocation.* An Owner of a dog subject to this section must notify the Animal Control Officer at least three (3) working days prior to moving the dog to a new address and give the Animal Control Officer the new address or location of the dog.

(8) *Notification of death.* The owner of a dog subject to this section must notify the Animal Control Officer within ten days after the dog dies.

(9) *Payment of annual registration fee.* The Owner shall pay annually a registration fee for each dog subject to this section in an amount of \$100.00.

(10) *Possession.* No dog subject to this section may be given away, sold, traded, placed for adoption, or otherwise transferred. The owner must retain ownership, possession, and responsibility for the dog until the dog dies or is surrendered to the Animal Control Officer for euthanasia.

(11) *Bites or attacks.* If a dog that is subject to this section subsequently bites or attacks a person, the dog will be surrendered or seized for euthanasia and the owner will be cited for the violation.

B. Any dog that has been declared to be dangerous under G.S. 67-4.1(a)(1)a.1 shall be required to be surrendered or seized for euthanasia and the owner will be cited for the violation.

C. *Violation.* Any violation of the terms of ownership of a "dangerous" or "potentially dangerous" dog will result in a citation and civil penalty of \$500.00 per offense. The dog will be impounded and held until the violation is remedied, except as provided in section A.(11) and B. above, and all fees, fines and penalties are paid in full. If the owner is found in violation of this section more than once, the animal, if applicable, may be required to be surrendered or seized for euthanasia.

(References see N.C.G.S. § 67.4.1, 67-4.2, 67-4.3, 67-4.4, 67-4.5)

***Change in Ordinance 91.28. Revise to reflect use the words "fierce, dangerous or vicious animals".**

§ 91.28 ANIMAL BITES.

(A) Any dog, cat or other animal which bites a person shall be immediately quarantined at a place and in a manner determined by the Animal Control Officer for the purpose of determining whether the animal has been infected with the rabies virus. If it is determined that the animal has the rabies virus, it shall be destroyed in a humane manner. If it is determined that the animal does not have the rabies virus, the animal may be returned to the owner, provided all licenses have been obtained and the animal has received an inoculation for the rabies virus. If the animal is returned to the owner, it shall be returned subject to the provisions in division (B) below.

(B) All fierce, dangerous or vicious animals, which have a history of unlawful biting of humans, shall be confined by the owner within a building or secure enclosure or by the Animal Control Officer in the animal shelter. Such animals shall not be released from confinement unless securely muzzled.

(Ord. passed 9-18-95)

***Change in Ordinance 91.76. Revise to add reference to "dangerous".**

§ 91.76 RESPONSIBILITIES.

The Animal Control Division shall be charged with the responsibility of:

(A) Seeing that all dogs and cats in the town are adequately inoculated against rabies;

(B) Cooperating with the County Health Director and county health officers and assisting in the enforcement of state laws with regard to the control of animals and especially with regard to the vaccination of dogs and cats against rabies and the confinement of vicious animals and dangerous dogs;

(C) Investigating all complaints with regard to animals covered by this chapter;

(D) Making such canvasses of the town, including the homes in the town, as it deems necessary and practical, for the purpose of ascertaining that all dogs and cats are vaccinated against rabies;

(E) Enforcing within the town all of the state laws and town ordinances for the care, control, and custody of animals covered by this chapter.

('71 Code, § 3-2) (Ord. passed 9-23-75; Am. Ord. passed 9-18-95)

**TOWN OF CLAYTON
AMENDMENT TO THE CODE OF ORDINANCES
CHAPTER 91: ANIMALS**

BE IT HEREBY ADOPTED THAT THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA amends its Code of Ordinances with the following:

Amend and add the following sections of CHAPTER 91; Definitions, Animal Causing Public Nuisance, Animal Bites, Vicious Animal, Dangerous Dogs and Responsibilities to read as follows:

§ 91.01 DEFINITIONS.

VIOIOUS ANIMAL. Any animal which constitutes a physical threat to human beings or other animals by virtue of the severity of an unprovoked attack or attacks of such number and severity as to cause property damage or physical injury. These animals are prohibited within the town limits.

DANGEROUS DOG. A dog that been deemed dangerous or potentially dangerous by the Animal Control officer as defined in N.C.G.S. § 67.4.1.

§ 91.03 ANIMALS CAUSING PUBLIC NUISANCE.

(A) It shall be unlawful to own, keep, or harbor a public nuisance animal within the town.

(B) *Complaint and notice.* Upon receipt of a written detailed and signed complaint being made to the Animal Control Officer or Police Officer by any resident that any person is maintaining a public nuisance animal as defined in this chapter, the Animal Control Officer shall cause the owner of the animal in question to be notified that a complaint has been received and shall cause the situation complained of to be investigated and make a written report of his findings.

(C) *Abatement.* If the written findings of the Animal Control Officer indicate that the complaint is justified and can be abated, then the Animal Control Officer shall cause the owner or keeper of the animal in question to be so notified in writing by certified mail, return receipt requested, ordered to abate such nuisance within seven days after notification. Upon failure to abate the nuisance, the Animal Control Officer or Police Officer shall cause a citation or summons to be issued against the owner.

(D) *Impoundment upon failure to abate.* If any person receiving notice in the manner described above fails or refuses to abate the nuisance upon order of the Animal Control Officer within the specified time, the animal shall be apprehended and impounded in accordance with the provisions contained in this chapter. If extenuating circumstances exist, the owner may consult with the Animal Control Officer and Chief of Police and request an extension of time in order to remove the nuisance or correct the facilities for maintaining the animal in accordance with this chapter.

(E) *Right of appeal.* Within the seven day period mentioned in division (C) above, the owner of the nuisance animal may appeal the findings of the Animal Control Officer to the Chief of Police.

(F) *Redemption; destruction.* If the owner shall so request, the animal may be redeemed pursuant to the provisions hereinafter set forth, and upon further condition that the owner execute a written agreement to comply with the abatement order. If no redemption and execution is made by the owner within the time specified, then the animal shall be disposed of in accordance with the provisions of this chapter.

(G) *Impoundment based upon finding of vicious animal other than dangerous dogs.* If the written findings of the Animal Control Officer indicate that the animal in question is a vicious animal as defined in [§ 91.01](#), then the Animal Control Officer may immediately apprehend and impound the animal in accordance with the provisions contained in this chapter, provided that the Animal Control Officer provides the owner with written notice of the impoundment. Within seven days of receiving such notice, the owner of the animal may appeal the findings and actions of the Animal Control Officer to the Chief of Police. However, the animal shall remain impounded during the pendency of the appeal. If no appeal is made by the owner within the time specified or if the Chief of Police determines on appeal that the animal is a vicious animal as defined in [§ 91.01](#), then the animal shall be disposed of in accordance with the provisions of this chapter.

§ 91.30 – DANGEROUS DOGS.

The Animal Control Officer is designated as the person to be responsible for determining that a dog is a "dangerous dog" or a "potentially dangerous dog" as defined in N.C.G.S. 67-4.1. Any appeal of that determination may be taken first to the Chief of Police and then to an appellate board, pursuant to G.S. 67-4.1(c), consisting of the town manager, a deputy town manager and a citizen of the Town who shall be designated by the Mayor. When a dog is declared to be potentially dangerous or dangerous, in addition to any requirements of state law, the Owner must adhere to the following:

- A. Any dog that has been declared to be potentially dangerous under G.S. 67-4.1(a)(2) or dangerous under G.S. 67-4.1(a)(1)a.2 or b shall be required to comply with all of the following:

(1) *Permanent identification mark required.* Permanent identification by means of a tattoo located on the inside thigh or by electronic implant. The cost of said tattoo/implant will be paid for by the Owner. The Animal Control Officer will maintain a physical description and photograph of the dog. The Owner must allow and assist the Animal Control Officer in viewing the tattoo or reading the electronic implant at such times as deemed reasonable or at such time as the identification of the dog is in question.

(2) *Signage.* A "Beware of Dog" sign shall be placed at the residence of the dog in plain view of the public. Said signs will be placed in such a manner and of such size and clarity as to be visible from the common entrance(s) to the property, specifically but not limited to the driveway. The Owner must also place a "Beware of Dog" sign on the dog's pen. The owner has 20 days from the declaration of the dog as a potentially dangerous or dangerous dog to comply.

(3) *Sterilization.* The Owner shall have the dog spayed or neutered by a veterinarian licensed to practice in the state within 20 days of the declaration. All fees and costs are the responsibility of the Owner and must be paid in full to the satisfaction of the veterinarian prior to release.

(4) *A secure pen.* The dog will be kept in a secure enclosure that is constructed of materials strong enough to contain the dog. The owner must comply within 20 days and must construct any outdoor enclosure consistently with the following:

- a) The enclosure shall be large enough for the dog (depending on the size of the dog) to move around freely. It shall provide the dog with adequate shelter and adequate shade.
- b) The enclosure must have a floor, sides and a top from which the dog cannot escape.
- c) The enclosure shall be constructed of a six-foot-high fence at least nine-gauge chain link. The enclosure will also have a fence or solid top constructed of the same material.
- d) The structure must be constructed so that the dog may not dig under the sides. If the floor is constructed of dirt, the enclosure must include an eight-foot fence with two feet buried in the ground or sunken into a concrete pad which is 24 inches wide along the inside perimeter of the fence and four inches thick.

(5) *Inspection.* The Animal Control Officer may cause such inspections as deemed appropriate to be made of the premises of an owner of a dog subject to the provisions of this section.

(6) *Off Owner's premises.* Anytime the animal is off the owner's premises, the dog will be on a secure collar and leash not to exceed six feet, wearing a muzzle and restrained by a competent person.

(7) *Relocation.* An Owner of a dog subject to this section must notify the Animal Control Officer at least three (3) working days prior to moving the dog to a new address and give the Animal Control Officer the new address or location of the dog.

(8) *Notification of death.* The owner of a dog subject to this section must notify the Animal Control Officer within ten days after the dog dies.

(9) *Payment of annual registration fee.* The Owner shall pay annually a registration fee for each dog subject to this section in an amount of \$100.00.

(10) *Possession.* No dog subject to this section may be given away, sold, traded, placed for adoption, or otherwise transferred. The owner must retain ownership, possession, and responsibility for the dog until the dog dies or is surrendered to the Animal Control Officer for euthanasia.

(11) *Bites or attacks.* If a dog that is subject to this section subsequently bites or attacks a person, the dog will be surrendered or seized for euthanasia and the owner will be cited for the violation.

B. Any dog that has been declared to be dangerous under G.S. 67-4.1(a)(1)a.1 shall be required to be surrendered or seized for euthanasia and the owner will be cited for the violation.

C. *Violation.* Any violation of the terms of ownership of a "dangerous" or "potentially dangerous" dog will result in a citation and civil penalty of \$500.00 per offense. The dog will be impounded and held until the violation is remedied, except as provided in section A.(11) and B. above, and all fees, fines and penalties are paid in full. If the owner is found in violation of this section more than once, the animal, if applicable, may be required to be surrendered or seized for euthanasia.

(References see N.C.G.S. § 67.4.1, 67-4.2, 67-4.3, 67-4.4, 67-4.5)

§ 91.28 ANIMAL BITES.

(A) Any dog, cat or other animal which bites a person shall be immediately quarantined at a place and in a manner determined by the Animal Control Officer for the purpose of determining whether the animal has been infected with the rabies virus. If it is determined that the animal has the rabies virus, it shall be destroyed in a humane manner. If it is determined that the animal does not have the rabies virus, the animal may be returned to the owner, provided all licenses have been obtained and the animal has received an inoculation for the rabies virus. If the animal is returned to the owner, it shall be returned subject to the provisions in division (B) below.

(B) All fierce, dangerous or vicious animals, which have a history of unlawful biting of humans, shall be confined by the owner within a building or secure enclosure or by the Animal Control Officer in the animal shelter. Such animals shall not be released from confinement unless securely muzzled.

§ 91.76 RESPONSIBILITIES.

The Animal Control Division shall be charged with the responsibility of:

- (A) Seeing that all dogs and cats in the town are adequately inoculated against rabies;
- (B) Cooperating with the County Health Director and county health officers and assisting in the enforcement of state laws with regard to the control of animals and especially with regard to the vaccination of dogs and cats against rabies and the confinement of vicious animals and dangerous dogs;
- (C) Investigating all complaints with regard to animals covered by this chapter;
- (D) Making such canvasses of the town, including the homes in the town, as it deems necessary and practical, for the purpose of ascertaining that all dogs and cats are vaccinated against rabies;
- (E) Enforcing within the town all of the state laws and town ordinances for the care, control, and custody of animals covered by this chapter.

Duly adopted this the 16th day of August, 2021 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

August 16, 2021

Agenda Location

New Business

Item Title

Real Property Purchase - 324 E. Horne St Budget Amendment

Presenter

Robert McKie, Finance Director

Summary/Description

The Finance Director will present a budget amendment to purchase real property that will be utilized for future expansion.

Requested Action

Approval

Funding Source (If Applicable):

Fund Balance Appropriation

Cost: N/A **Yes** ☒ **No** ☐

\$180,000

Additional Documents to be Included in Agenda Packet

324 E. Horne St. Budget Amendment

Meeting Timeline

Click or tap here to enter text.

NORTH CAROLINA
JOHNSTON COUNTY

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of August 5, 2021 ("Effective Date") by and between Kathryn Ann Creasy and husband, Donald J. Creasy, Joseph Minter Payne, Jr. and wife, Erin Elizabeth Diener Payne. ("Seller") whose address is 1577 Shotwell Rd., Clayton, NC 27520_ and the Town of Clayton, a body politic and corporate organized and existing under the laws of North Carolina ("Buyer") whose address is 111 East Second Street, Clayton, NC 27520, who for valuable consideration received, agree as follows.

1. **Purchase and Sale.** Buyer hereby agrees to purchase and Seller hereby agrees to sell all of Seller's right, title and interest in that certain real estate designated as 324 E Horne Street, Clayton, NC 27520 (PIN 166917-01-9725; RE ID 05015071) and more particularly identified on Exhibit A attached hereto and incorporated herein by reference (the "Property").

2. **Purchase Price.** The Purchase Price for the Property is One Hundred Seventy-five Thousand Dollars and No/100 (\$175,000.00) and shall be payable by Buyer on the Closing Date.

3. **Title.** At Closing, Seller shall convey to Buyer fee simple marketable title to the Property by general warranty deed, free and clear of defects or encumbrances, except for any easements of record. Seller shall satisfy at Closing any lien or unpaid delinquent taxes, deeds of trust, contractor's or materialmen's liens and any other liens that encumber the Property, except the lien of property taxes for the year of Closing, which shall be prorated at Closing.

4. **Closing Documents.**

(a) **Seller's Delivery.** At Closing, Seller shall deliver to Buyer the following:

- (i) An executed general warranty deed conveying to Buyer the Property.
- (ii) An executed affidavit regarding liens establishing that there are no lien claims of mechanics, laborers and materialmen.
- (iii) An executed settlement statement.
- (iv) An executed Non-foreign Affidavit.
- (v) Evidence of the authority of the Estate of Joseph M. Payne to convey marketable title to the Property.

(b) **Buyer's Documents.** At Closing, Buyer shall deliver to Seller the following:

- (i) An executed settlement statement.
- (ii) The Purchase Price.

5. **Closing and Closing Date.** The Closing shall be ten (10) days after the expiration of the Due Diligence Period as described in paragraph 6 herein unless extended in writing by the parties. Buyer shall be entitled to possession at Closing.

6. **Due Diligence Period.** The Due Diligence period shall commence on the Effective Date and shall terminate sixty (60) days after the Effective Date.

(a) On or before the date three (3) calendar days after the Effective Date, Seller shall deliver to Buyer, if not previously delivered, any survey of the property and all surveys, plans, specifications, environmental, engineering and mechanical data relating to the Property, and reports such as inspections, soils reports and environmental audits, which are in Seller's possession, if any. These Due Diligence Materials will be provided to Buyer without any representation or warranty of any kind or nature whatsoever and are merely provided to Buyer for Buyer's informational purposes. Until Closing, Buyer and Buyer's Designees shall maintain all Due Diligence Materials as confidential information. If the purchase and sale of the Property is not consummated in accordance with this Agreement, regardless of the reason or the party at fault, Buyer shall immediately return to Seller all copies of the Due Diligence Materials, whether such copies were actually delivered by Seller or are duplicate copies made by Buyer or Buyer's Designees.

(b) Buyer shall have the Due Diligence Period to investigate the Property, and the transaction contemplated by this Agreement, to decide whether Buyer, in Buyer's sole discretion, will proceed with or terminate the transaction. During the Due Diligence Period, Buyer or Buyer's agents or representatives, at Buyer's expense, shall be entitled to conduct all desired tests, surveys, appraisals, investigations, examinations and inspections of the Property as Buyer deems appropriate. Buyer shall, at Buyer's expense, promptly repair any damage to the Property resulting from any activities of Buyer and Buyer's agents and contractors. This repair obligation shall survive any termination of this Agreement.

(c) Buyer shall have the right to terminate the Agreement for any reason, by delivering to Seller written notice of termination (the "Termination Notice") during the Due Diligence Period (or any agreed-upon written extension of the Due Diligence Period). If Buyer timely delivers the Termination Notice, the Agreement shall be terminated.

7. **Risk of Loss Prior to Closing Date.** It is understood and agreed that all risk of loss with respect to the Property, except as may be caused by the acts or omissions of Buyer or its employees, agents, or contractors, shall remain with Seller through Closing. In the event that prior to the Closing Date, the Property is materially damaged, destroyed, or rendered unusable then Seller or Buyer may terminate this Agreement.

8. **Taxes, Closing Costs, Etc.** Taxes and assessments for the current calendar year shall be prorated at Closing. All costs associated with the conveyance of the property and closing of this transaction shall be paid as is customary in commercial transactions. Seller shall cancel its water, gas, electric and other utility accounts, if any, on the Closing Date. Any cost and/or fees incurred by Buyer, Lessee or Seller in executing this Agreement shall be borne by the respective party incurring such cost and/or fee. Each party shall pay their own respective attorney fees.

9. **Oral Agreements and Representations.** This Agreement represents the final and complete expression of the parties hereto with respect to the subject matter hereof. There are no oral or other agreements, including but not limited to any representations or warranties, which modify or affect this Agreement.

10. **Survival.** If any provision or indemnity herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties herein until fully observed, kept or performed.

11. **Brokers.** Seller and Buyer each represent to the other that they have not dealt with any real estate broker in connection with the negotiations leading to this Agreement.

12. **Counterparts/Facsimile.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. A facsimile signature to this Agreement and to any amendments thereto may be deemed an original and all purposes.

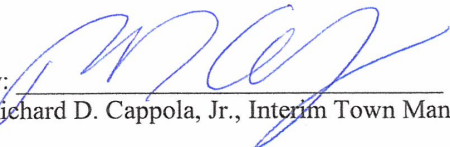
13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

17. **Contingent Upon Town Council Approval.** This Agreement is contingent upon formal approval by the Town of Clayton Town Council at a regular meeting. Buyer shall have the right to terminate this Agreement if this Agreement is not approved by the Town of Clayton Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

Buyer:

Town of Clayton

By: 
Richard D. Cappola, Jr., Interim Town Manager

Seller:

By: Kathryn Ann Creasy
Kathryn Ann Creasy

By: Donald J. Creasy
Donald J. Creasy

By: Joseph Minter Payne, Jr.
Joseph Minter Payne, Jr.

By: Erin Elizabeth Diener Payne
Erin Elizabeth Diener Payne

Exhibit A
Legal Description

PIN 166917-01-9725
RE ID 05015071
324 E Horne Street, Clayton, NC

Being all of Lot 1 as shown on the map dated May 14, 2019, entitled "Survey for: Kathryn Ann Creasy Joseph M. Payne Est." and recorded on August 1, 2019 at Book 89 Page 255 of the Johnston County Registry.

**Town of Clayton
Amendment to the FY 21-22 Budget**

BE IT HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON that the following amendments shall be made to the FY 21-22 Budget:

Fund: General Fund

<u>Line Item</u>	<u>Previous Appropriation</u>	<u>Adjustment</u>	<u>Revised Appropriation</u>
Revenue			
100-40-00-48 99	Fund Balance Appropriated \$1,150,424	+180,000	\$1,330,424
Expenditures			
100-40-95-58 00	Capital Projects \$0	+180,000	\$180,000

Explanation:

Amendment to appropriate fund balance to purchase property, including closing costs, that will be utilized for a future expansion. This amendment is required for compliance with G.S. 159-15.

Duly adopted this 16th day of August, 2021 while in regular session.

Jody L. McLeod
Mayor

Attest:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk