



TOWN COUNCIL MEETING INFORMATION

APRIL 20, 2020

THE TOWN OF CLAYTON WILL FOLLOW GUIDELINES FROM THE CENTERS FOR DISEASE CONTROL AND THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES WITH REGARDS TO SOCIAL DISTANCING.

BELOW PLEASE FIND CHANGES TO THE COUNCIL MEETING FORMAT:

- THE APRIL 20, 2020 CLAYTON TOWN COUNCIL MEETING WILL BE HELD REMOTELY.
- THE COUNCIL CHAMBERS WILL BE CLOSED TO THE PUBLIC.
- ANY PUBLIC COMMENT SHOULD BE FORWARDED TO THE TOWN CLERK NO LATER THAN NOON THE DAY OF THE MEETING. PLEASE INCLUDE YOUR NAME AND ADDRESS. PUBLIC COMMENT WILL BE READ INTO THE RECORD BY THE TOWN CLERK. EMAIL:
KMOFFETT@TOWNOFCLAYTONNC.ORG.

THE PUBLIC MAY VIEW THE LIVE COUNCIL MEETING ON THE TOWN'S YOU TUBE CHANNEL: <https://youtu.be/7T9hZNhfS68>



Town of Clayton
Regular Town Council Meeting Agenda
Monday, April 20, 2020 @ 6:00 PM

**ANY PUBLIC COMMENT SHOULD BE FORWARDED TO THE
TOWN CLERK NO LATER THAN NOON THE DAY OF THE
MEETING. PLEASE INCLUDE YOUR NAME AND ADDRESS.
PUBLIC COMMENT WILL BE READ INTO THE RECORD BY THE
TOWN CLERK.
EMAIL: KMOFFETT@TOWNOFCLAYTONNC.ORG**

1. CALL TO ORDER

Pledge of Allegiance and Invocation

2. ADJUSTMENT OF THE AGENDA

3. ITEM(S) OF SIGNIFICANT IMPORTANCE

- a. Rules of Procedures - Remote Meeting Participation

Presenter: Katherine Ross, Town Attorney

[Rules of Procedures - Remote Meeting](#)

POTENTIAL ACTION: Adoption of Remote Meeting Participation

4. 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. Utilities Policy As Related COVID-19

[Resolution #2020-11](#)

- b. Payton Drive Extension Project - Resolution Authorization to Acquire Certain Property of George & Janice Smith

[Cover](#)

[Resolution #2020-12](#)

- c. Payton Drive Extension Contract Award

[Cover](#)

[Payton Drive - Bid tab](#)

[Providence Construction Bid](#)

[Resolution #2020-13](#)

- d. Warranty Acceptance

- Bristol at Cobblestone, Phase 5

[Bristol at Cobblestone, Phase 5](#)

- e. Warranty Acceptance Correction - Parkview, Phases 4 & 6

[Cover](#)

[Warranty Acceptance Memo-Streets & ROW Only](#)

- f. Draft Minutes

- March 2, 2020 - Regular Session
- March 16, 2020 - Regular Session

POTENTIAL ACTION: Adoption of Consent Agenda as Presented

5. ADMINISTRATIVE ITEMS

6. INTRODUCTIONS AND SPECIAL PRESENTATIONS

7. PUBLIC HEARINGS

8. OLD BUSINESS

- a. Neuse River Water Reclamation Facility – Revenue Bonds Issuance

Presenter: Robert McKie, Finance Director

[Cover](#)

[Clayton 2020 Water and Sewer Bonds - 1st Supplemental Bond Order \(Final\)](#)

[Resolution #2020-14](#)

POTENTIAL ACTION: Approval of Bond Order

POTENTIAL ACTION: Adoption of Resolution #2020-14

9. NEW BUSINESS

- a. 2020 Audit Contract

Presenter: Robert McKie, Finance Director

[Cover](#)

[2020 Audit Contract](#)

POTENTIAL ACTION: Approval of Contract

- b. Budget Amendments

Presenter: Robert McKie, Finance Director

[Cover](#)

[Ordinance #2020-04-01](#)

[Ordinance #2020-04-02](#)

POTENTIAL ACTION: Adoption of Ordinances #2020-04-01 & #2020-04-02

10. STAFF REPORTS

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

11. OTHER BUSINESS

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

12. ADJOURNMENT

TOWN OF CLAYTON
Clayton Town Council
RULES OF PROCEDURE
Amendment
April 20, 2020

Rule 25: Special Rules of Procedures

Members of the Clayton Town Council ("Council") may remotely participate in official meetings of the Council when any of the following entities declare that a state of emergency or a disaster exists in an area including the Town of Clayton: the federal government of the United States of America; the Government of the State of North Carolina through the Governor of the State of North Carolina or other method permitted by Chapter 166A of the North Carolina General Statutes; Johnston County, North Carolina; or the Town of Clayton, through the Mayor or other methods permitted by the Clayton Code of Ordinances, subject to the following rules and procedures:

1. Remote participation may be allowed for regular, special, or emergency meetings of the Council.
2. Remote participation shall not be allowed for quasi-judicial hearings.
3. A Council Member needing to participate in a meeting remotely must notify the Clerk to the Town Council of the need for remote participation and request approval by the Mayor of his/her remote participation at least 24 hours prior to the start of the meeting, unless advance notice is impractical.
4. At the start of the official meeting and prior to participating in deliberations, the Mayor shall announce any Council Members participating remotely. Such Council Member shall identify himself or herself and state the reason that he/she is participating remotely.
5. A Council Member participating remotely shall be provided with documents to be considered during the meeting.
6. A Council Member participating remotely shall participate via simultaneous and/or electronic communication and must be fully heard, and if possible seen, by other members of the Council and other individuals in attendance at or listening to the meeting. Use of telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant to be clearly audible to one another is necessary. If clear audio is not available, the Mayor may elect to disallow or discontinue the remote participation.
7. A Council Member participating remotely shall provide a voice vote which can be heard and recorded if participating by telephone and shall provide a voice and hand vote if participating by video. Councilmembers participating remotely will not be permitted to vote on any quasi-judicial matters coming before the Council. Prior to taking a vote on any issue, the Mayor or other presiding officer shall inquire of each Council Member participating remotely if he or she is prepared to vote. A Council Member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present. A Council Member attending remotely that

withdraws from the meeting without being excused from further attendance shall not be considered an affirmative vote on items before Council. If a Council Member attending remotely becomes disconnected from the meeting, the Council Member shall not be counted as an affirmative.

DRAFT

**Town of Clayton
Temporary Changes Related to Town Utility Policy**

WHEREAS, COVID-19 (Coronavirus) is a severe respiratory illness that is spread from human to human, is highly contagious, and can cause severe injury or death; and

WHEREAS, COVID-19 has been declared a Public Health Emergency of International Concern by the World Health Organization; and

WHEREAS, the President of the United State has declared the COVID-19 outbreak a National Emergency and the United States Department of Health and Human Services the a public health state of emergency in the United States for COVID-19 under section 319 of the Public Health Services Act; and

WHEREAS, the Governor of North Carolina has declared a State of Emergency in order to coordinate protective actions and prevent the spread of COVID-19; and

WHEREAS, the undersigned has declared a State of Emergency for the Town of Clayton; and

WHEREAS, the Governor of North Carolina has entered a Stay at Home Order; and

WHEREAS, utility services are essential to the continued health and safety of utility customers, to the ability of workers and employers to engage in teleworking; and

WHEREAS, disconnections of utility services would exacerbate public health and safety risks because of dislocated customers.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Clayton that as of March 23, 2020 the following adjustments shall be made to the Town's utility policies:

1. The Town will not disconnect water, sewer or electric utility service to any residential or commercial customers for non-payment.
2. The Town will not charge the non-payment penalty of \$50.00 to commercial or residential accounts.

3. These temporary changes will remain in place until modified by the Town Council or the declaration of a State of Emergency for the Town of Clayton made March 16, 2020. is rescinded.

Duly adopted this the 20th day of April, 2020 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

Choose an item.

April, 20, 2020

Agenda Location

Consent Agenda

Item Title

RESOLUTION AUTHORIZING CONDEMNATION TO ACQUIRE CERTAIN PROPERTY OF GEORGE E. SMITH AND JANICE B. SMITH

Presenter

Joshua Baird, Town Engineer

Summary/Description

The Town has been in discussions with Mr. & Mrs. Smith to obtain temporary construction easements necessary for the Peyton Drive Extension Project. The resolution enables to the Town to proceed with filing a condemnation action if the Town is unable to come to final agreement with the Smiths and obtain the necessary easements. Condemnation will be pursued only if the Town is not able to come to agreement with the Smiths in the next week. The easements need to be in place in that timeframe to keep the project on time.

Requested Action

Approval

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Resolution

Meeting Timeline

Click or tap here to enter text.

TOWN OF CLAYTON RESOLUTION
AUTHORIZING CONDEMNATION TO ACQUIRE CERTAIN PROPERTY OF GEORGE E.
SMITH AND JANICE B. SMITH

WHEREAS, the Town Council of the Town of Clayton hereby determines that it is necessary and in the public interest to acquire certain property to build publicly owned utility facilities.

WHEREAS, the proper officials or representatives of the Town of Clayton have been unable to acquire the needed interest in these properties by negotiated conveyance.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Clayton that:

1. The Town of Clayton shall acquire by condemnation temporary construction easements, variable in width, on the property owned by George E. Smith and Janice B. Smith, being that certain tract of land, consisting of approximately 0.97 acres, and which is designated as Parcel Identifier: 16I01014B by the Johnston County Revenue Department, and which is more particularly described in that certain deed recorded in Deed Book 745, Page 451 Johnston County Registry, and of that certain tract of land, consisting of approximately 60.45 acres, and which is designated as Parcel Identifier: 16I01014G by the Johnston County Revenue Department, and which is more particularly described in that certain deed recorded in Deed Book 4198, Page 173 Johnston County Registry.

2. The easements will be used (a) for ingress, egress and regress and construction activities on the subject property associated with the opening, widening, extending and improving of roadways; (b) to cut and/or clear any or all vegetation and debris from the easements; and (c) to temporarily change the grade and drainage of the land in such easement areas.

3. The attorneys representing the Town of Clayton are directed to institute the necessary proceedings under Chapter 40A of the North Carolina General Statutes to acquire the property herein described.

Duly adopted this the 20th day of April, 2020 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

April 20, 2020

Agenda Location

New Business

Item Title

Payton Dr. Extension Construction Contract

Presenter

Joshua Baird, Town Engineer

Summary/Description

Requesting Town Council to authorize Town manager or designee to execute contract with Providence Construction for construction of Payton Dr Extension. Town Staff followed a formal bid process and received 3 sealed bids. Staff have reviewed the bids and recommend entering into a construction contract with the lowest bidder, Providence Construction, for \$378,638. The contract will include roadway work and waterline connection. Road and utility work will be booked separately to corresponding accounts. Funds have previously been budgeted and no further council budget action is required.

Requested Action

Approval

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☒ No ☐

Additional Documents to be Included in Agenda Packet

Bid-tab

Providence Construction Bid

Proposed Construction Contract with Addendum

Meeting Timeline

Click or tap here to enter text.

PAYTON DRIVE EXTENSION

(Note here)		Engineer's Estimate				Providence Construction		Fred Smith Company		Moffat		
Specification	Description	Unit	Est - Qty	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	
SITE GENERAL CONDITIONS												
1.01	40000	MOBILIZATION	LS	1	\$15,000.00	\$15,000.00	\$20,000.00	\$20,000.00	\$24,000.00	\$24,000.00	\$27,500.00	\$27,500.00
1.02	40000	CONSTRUCTION SURVEYING	LS	1	\$10,000.00	\$10,000.00	\$9,000.00	\$9,000.00	\$13,500.00	\$13,500.00	\$40,000.00	\$40,000.00
1.03	20000/40000	TRAFFIC CONTROL	LS	1	\$12,000.00	\$12,000.00	\$14,000.00	\$14,000.00	\$26,000.00	\$26,000.00	\$55,000.00	\$55,000.00
SITE GENERAL CONDITIONS SUBTOTAL =					\$37,000.00		\$43,000.00		\$63,500.00		\$122,500.00	
REMOVALS & RELOCATIONS												
2.01	03000/40000	CLEARING & GRUBBING	AC	0.9	\$9,500.00	\$8,550.00	\$12,800.00	\$11,520.00	\$25,000.00	\$22,500.00	\$55,000.00	\$49,500.00
2.02	40000	STORM PIPE REMOVAL	LF	43	\$30.00	\$1,290.00	\$16.00	\$688.00	\$56.00	\$2,408.00	\$20.00	\$860.00
2.03	40000	UTILITY RELOCATIONS & ADJUSTMENTS	LS	1	\$8,000.00	\$8,000.00	\$29,500.00	\$29,500.00	\$10,000.00	\$10,000.00	\$1,000.00	\$1,000.00
2.04	40000	INCIDENTAL MODIFICATIONS & DEMO ITEMS	LS	1	\$4,000.00	\$4,000.00	\$6,000.00	\$6,000.00	\$2,700.00	\$2,700.00	\$10,000.00	\$10,000.00
2.05	02930/40000	REMOVE & REPLACE PAVED DRIVEWAYS	SY	188	\$45.00	\$8,460.00	\$25.00	\$4,700.00	\$95.00	\$17,860.00	\$45.00	\$8,460.00
2.06	40000	RELOCATE EXISTING SPLIT RAIL FENCE	LS	1	\$2,500.00	\$2,500.00	\$3,000.00	\$3,000.00	\$4,500.00	\$4,500.00	\$1,250.00	\$1,250.00
2.07	40000	TREE REPLACEMENT AT SMITH PROPERTY	LS	1	\$1,500.00	\$1,500.00	\$1,200.00	\$1,200.00	\$700.00	\$700.00	\$1,875.00	\$1,875.00
REMOVALS & RELOCATIONS SUBTOTAL =					\$34,300.00		\$56,608.00		\$60,668.00		\$72,945.00	
EROSION CONTROL												
3.01	040001	GRAVEL CONSTRUCTION ENTRANCE	EA	2	\$4,000.00	\$8,000.00	\$1,800.00	\$3,600.00	\$5,800.00	\$11,600.00	\$2,000.00	\$4,000.00
3.02	040001	ROCK CHECK DAM	EA	27	\$375.00	\$10,125.00	\$300.00	\$8,100.00	\$400.00	\$10,800.00	\$300.00	\$8,100.00
3.03	040001	TEMPORARY SILT FENCE	LF	860	\$4.00	\$3,440.00	\$3.00	\$2,580.00	\$3.20	\$2,752.00	\$2.50	\$2,150.00
3.04	040001	SILT FENCE OUTLET	EA	2	\$350.00	\$700.00	\$59.00	\$118.00	\$370.00	\$740.00	\$150.00	\$300.00
3.05	040001	CONCRETE/ASPHALT WASHOUT AREA	LS	1	\$1,500.00	\$1,500.00	\$200.00	\$200.00	\$1,700.00	\$1,700.00	\$600.00	\$600.00
3.06	040001	DROP INLET PROTECTION	EA	7	\$350.00	\$2,450.00	\$300.00	\$2,100.00	\$365.00	\$2,555.00	\$225.00	\$1,575.00
3.07	040001	RIPRAP HORSESHOE INLET PROTECTION DEVICE	EA	1	\$500.00	\$500.00	\$740.00	\$740.00	\$700.00	\$700.00	\$500.00	\$500.00
3.08	040001	SKIMMER SEDIMENT BASIN	EA	1	\$7,000.00	\$7,000.00	\$10,000.00	\$10,000.00	\$19,000.00	\$19,000.00	\$45,000.00	\$45,000.00
3.09	02630/040001	RIPRAP DITCH LINING, CLASS B, 12" THICK W/ FILTER FABRIC	SY	475	\$40.00	\$19,000.00	\$38.00	\$18,050.00	\$35.00	\$16,625.00	\$50.00	\$23,750.00
3.10	02920/040001	TEMPORARY SEEDING & MULCHING	SY	9,680	\$0.45	\$4,356.00	\$0.40	\$3,872.00	\$0.40	\$3,872.00	\$0.25	\$2,420.00
EROSION CONTROL =					\$57,071.00		\$49,360.00		\$70,344.00		\$88,395.00	
SITE WORK												
4.01	02200	UNCLASSIFIED EXCAVATION	CY	4,448	\$6.50	\$28,912.00	\$13.00	\$57,824.00	\$19.00	\$84,512.00	\$0.01	\$44.48
4.02	02200/40000	UNDERCUT & REPLACE (BUDGET ESTIMATE)	CY	500	\$25.00	\$12,500.00	\$9.00	\$4,500.00	\$20.00	\$10,000.00	\$65.00	\$32,500.00
4.03	02930/40000	STOP SIGN WITH STREET SIGN	EA	1	\$500.00	\$500.00	\$500.00	\$500.00	\$530.00	\$530.00	\$500.00	\$500.00
4.04	02920/04001	PERMANENT SEEDING & MULCHING	SY	9,680	\$0.50	\$4,840.00	\$0.40	\$3,872.00	\$0.40	\$3,872.00	\$0.50	\$4,840.00
SITE WORK SUBTOTAL =					\$46,752.00		\$66,696.00		\$98,914.00		\$37,884.48	
STORM DRAINAGE												
5.01	02630	15" RCP CULVERTS, CLASS IV	LF	68	\$40.00	\$2,720.00	\$33.00	\$2,244.00	\$76.00	\$5,168.00	\$110.00	\$7,480.00
5.02	02630	18" RCP CULVERTS, CLASS IV	LF	30	\$45.00	\$1,350.00	\$25.00	\$750.00	\$90.00	\$2,700.00	\$115.00	\$3,450.00
5.03	02630	24" RCP CULVERTS, CLASS IV	LF	79	\$52.00	\$4,108.00	\$91.00	\$7,189.00	\$145.00	\$11,455.00	\$135.00	\$10,665.00
5.04	02630	15" CONCRETE FLARED END SECTION	LF	1	\$850.00	\$850.00	\$930.00	\$930.00	\$1,400.00	\$1,400.00	\$1,900.00	\$1,900.00
5.05	02630	24" CONCRETE FLARED END SECTION	EA	2	\$950.00	\$1,900.00	\$1,100.00	\$2,200.00	\$1,550.00	\$3,100.00	\$2,000.00	\$4,000.00
5.06	02630	24" CONCRETE ENDWALL, STD 838.01	EA	1	\$2,500.00	\$2,500.00	\$2,050.00	\$2,050.00	\$3,400.00	\$3,400.00	\$5,000.00	\$5,000.00
5.07	02630	TRAFFIC BEARING CONCRETE DROP INLET, STD 840.01	EA	1	\$4,800.00	\$4,800.00	\$2,000.00	\$2,000.00	\$3,500.00	\$3,500.00	\$4,500.00	\$4,500.00
5.08	02630	CONCRETE OPEN THROAT CATCH BASIN W/ SLAB TOP, STD 840.04	EA	1	\$3,000.00	\$3,000.00	\$2,500.00	\$2,500.00	\$3,100.00	\$3,100.00	\$5,000.00	\$5,000.00
5.09	02630/40000	VERTICAL ADJUSTMENT OF EXISTING DROP INLET RIM ELEV (6 IN.)	EA	1	\$1,000.00	\$1,000.00	\$590.00	\$590.00	\$900.00	\$900.00	\$700.00	\$700.00
STORM DRAINAGE SUBTOTAL =					\$22,228.00		\$20,453.00		\$34,723.00		\$42,695.00	
SITE UTILITIES												
6.01	02510	8" PVC WATERMAIN	LF	355	\$30.00	\$10,650.00	\$24.00	\$8,520.00	\$45.00	\$15,975.00	\$45.00	\$15,975.00
6.02	02510	8" DIP WATERMAIN	LF	25	\$34.00	\$850.00	\$80.00	\$2,000.00	\$58.00	\$1,450.00	\$90.00	\$2,250.00
6.03	02510	8"X12" TAPPING SLEEVE & VALVE	EA	1	\$7,000.00	\$7,000.00	\$5,200.00	\$5,200.00	\$7,650.00	\$7,650.00	\$7,000.00	\$7,000.00
6.04	02510	8"X6" TEE	EA	1	\$1,200.00	\$1,200.00	\$680.00	\$680.00	\$1,150.00	\$1,150.00	\$1,300.00	\$1,300.00
6.05	02275	ADDITIONAL STONE BEDDING (BUDGET ESTIMATE)	TN	15	\$40.00	\$600.00	\$31.00	\$465.00	\$50.00	\$750.00	\$50.00	\$750.00
6.06	02510	FIRE HYDRANT & VALVE ASSEMBLY	EA	1	\$4,800.00	\$4,800.00	\$5,000.00	\$5,000.00	\$6,100.00	\$6,100.00	\$6,000.00	\$6,000.00
SITE UTILITIES SUBTOTAL =					\$25,100.00		\$21,865.00		\$33,075.00		\$33,275.00	
ROADWORK												
7.01	02740	MILLING EXISTING ASPHALT PAVEMENT FOR LAP JOINT (0-3" DEPTH)	SY	318	\$15.00	\$4,770.00	\$11.00	\$3,498.00	\$25.00	\$7,950.00	\$12.00	\$3,816.00
7.02	02740	SAW CUT EXISTING PAVEMENT	LF	1,900	\$2.00	\$3,800.00	\$1.00	\$1,900.00	\$2.00	\$3,800.00	\$3.00	\$5,700.00
7.03	02740	ASPHALT CONCRETE SURFACE COURSE, TYPE SF9.5B	TN	222	\$75.00	\$16,650.00	\$110.00	\$24,420.00	\$85.00	\$18,870.00	\$145.00	\$32,190.00
7.04	02740	ASPHALT CONCRETE BASE COURSE, TYPE I19.0B	TN	260	\$85.00	\$22,100.00	\$110.00	\$28,600.00	\$76.00	\$19,760.00	\$110.00	\$28,600.00
7.05	02740	ASPHALT CONCRETE BASE COURSE, TYPE B25.0B	TN	63	\$100.00	\$6,300.00	\$156.00	\$9,828.00	\$185.00	\$11,655.00	\$135.00	\$8,505.00
7.06	02740	ASPHALT BINDER FOR PLANT MIX	TN	26	\$700.00	\$18,200.00	\$680.00	\$17,680.00	\$630.00	\$16,380.00	\$565.00	\$14,690.00
7.07	02740	AGGREGATE BASE COURSE	TN	678	\$23.00	\$15,594.00	\$35.00	\$23,730.00	\$50.00	\$33,900.00	\$65.00	\$44,070.00
7.08	02740/40000	THERMOPLASTIC PAVEMENT MARKINGS, SYMBOLS, AND STRIPING	LS	1	\$10,500.00	\$10,500.00	\$11,000.00	\$11,000.00	\$6,600.00	\$6,600.00	\$15,000.00	\$15,000.00
ROADWORK SUBTOTAL =					\$97,914.00		\$120,656.00		\$118,915.00		\$152,571.00	
TOTAL =					\$320,365.00		\$378,638.00		\$480,139.00		\$550,265.48	



WithersRavenel

Our People. Your Success.

TRANSMITTAL

DATE: March 13, 2020
TO: Prospective Bidders
FROM: Bradley D. Hart, PE

RE: **Payton Drive Extension (Project No. 02170831.01)**
Town of Clayton
ADDENDUM NO. 1

Attached is ADDENDUM NO. 1 for the above referenced project.

Bidder must acknowledge receipt of Addendum No. 1 by signing appropriately on the bottom of the page on Addendum No. 1 and submitting it with the other bid documents.

***** IMPORTANT *****

Please EMAIL this cover sheet to WithersRavenel immediately upon receipt of this Addendum.
Attention: Brad Hart, PE, email: bhart@withersravenel.com

The EMAIL will be deemed as evidence that the Bidder/Plan Holder has received the Addendum.

Company Name: Providence Construction Services LLC

Receipt Acknowledged By: Jaime T. Conley, Secretary

Date: 3-19-2020

115 MacKenan Drive | Cary, NC 27511

t: 919.469.3340 | f: 919.467.6008 | www.withersravenel.com | License No. C-0832

Cary | Greensboro | Pittsboro | Raleigh | Wilmington

ADDENDUM NO. 1

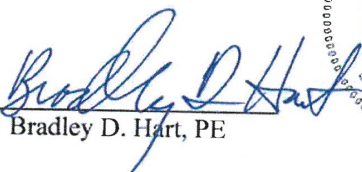
DATE ISSUED: March 13, 2020

BIDDING AND CONTRACT DOCUMENTS FOR TOWN OF CLAYTON

Payton drive Extension (Project No. 02170831.01)

SIGNED, SEALED, AND DATED THIS 3rd DAY OF March 20 20

By:


Bradley D. Hart, PE



Title: Project Manager

WITHERSPOON

The following changes and clarifications are applicable to the referenced project and are now a part of its contract documents. Where any article, division, or subparagraph of the original contract documents or other addenda is supplemented herein, the provisions of the original documents shall remain in effect. All the supplemental provisions shall be considered as added thereto. Where any such article, division, or subparagraphs are amended, voided, or superseded thereby, the provisions of such article, division, or subparagraph not so specifically amended, voided, or superseded shall remain in effect.

The attention of each contractor is called to the following clarifications, additions to, and changes in the Project Manual dated February 17, 2020 for the above-referenced project. It will be the responsibility of each Bidder to call such clarifications, additions, and changes in plans and specifications to the attention of subcontractors concerned. The Town of Clayton, as the Owner, in no way assumes any responsibility for notifying any subcontractor, material dealers, or others not having received the original contract documents.

Bidder must acknowledge receipt of Addendum No. 1 by signing appropriately on the bottom of page 2 and submitting it with the other bid documents.

A list of the requests for information received from plan holders is provided below, along with a response for each:

Request for Information:

Will a CAD file for Payton Drive Extension project be made available prior to bid?

Response:

A copy of the WithersRavenel End User License Agreement for Electronic Files is provided for reference as an attachment to this Addendum (following page 2). If you would like to receive a CAD file, please read the End User License Agreement and send an email to Brad Hart at bhart@withersravenel.com stating that you have read and agree to the End User License Agreement contained in this Addendum and that you would like to request a CAD file for Payton Drive Extension. Following that request, an AutoCAD file along with a PDF copy of the End User License Agreement will be forwarded via reply email.

Request for Information:

I see that there is an Unclassified bid item. Is there a possibility of borrow, and will a bid item for borrow be provided? Or is it possible to get a Lump Sum Grading item that we can put all the excavation in? Since there are no fine grade or dress out items, a Lump Sum Grading item would cover all of these. If all of these items are incidental, which items will they go to? Whatever item they go to if they are incidental would make that number high?

Response:

Refer to Appendix A4 of the Project Manual for earthwork calculations including estimates for onsite borrow. In accordance with Section 02200, Borrow applies only to offsite borrow. On Sheet 3.0 of the plans, you will see that the construction limits are expanded beyond what is needed for the roadway construction, and onsite borrow/waste area has been shown on the plan. No separate line item for fine grading or dress-out will be provided. It is presumed, although not required that those items would be incidental to Unclassified Excavation. The Bid Items have not been revised to include Lump Sum Grading.

Request for Information:

To aid in bid preparation (not to be submitted), can an Excel file of the bid form be provided?

Response:

An Excel file will not be provided.

Request for Information:

Can you clarify that all borrow material can be obtained onsite?

Response:

Refer to Appendix A4 of the Project Manual for earthwork calculations including estimates for onsite borrow, and to Sheet 3.0 for onsite borrow/waste area. Offsite borrow is not anticipated.

Request for Information:

Can you clarify that excess material and topsoil can be wasted on site?

Response:

Topsoil and excess material may be wasted onsite. Refer to Appendix A4 of the Project Manual for earthwork calculations and to Sheet 3.0 for onsite borrow/waste area.

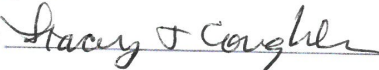
Request for Information:

Can item 2.03 be changed to a utility relocation allowance, such as Item to be paid as actual cost incurred by contractor plus 5% markup?

Response:

This item will bid Lump Sum.

Addendum Acknowledged by:



Date: 3-19-2020

- END OF ADDENDUM NO. 1 -

End User License Agreement - Electronic Files

Carefully read the terms and conditions of this end user license agreement ("AGREEMENT") before opening or using the electronic files transmitted with this agreement (THE "ELECTRONIC FILES"). This agreement contains important terms and conditions about your use of the electronic files provided and our obligations with respect to those electronic files. **BY OPENING OR OTHERWISE USING THE ELECTRONIC FILES, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. If you DO NOT AGREE to these terms and conditions, DO NOT OPEN OR USE THE ELECTRONIC FILES.**

Background. WithersRavenel, Inc. ("we" or "us") is providing to you ("Recipient"), electronic copies of certain hard copy documents we have prepared. You acknowledge that the hard copy documents are the documents upon which you should rely. Conversely, we cannot and do not guarantee the accuracy or completeness of the Electronic Files, or any information within them, and if you use the Electronic Files, you do so at your own risk. This Agreement sets forth the terms by which you may use the Electronic Agreements, if you choose to do so.

1. **License.** We hereby grant to you, and you accept, a limited, non-transferable license to access and use the Electronic Files, only as made available by us to you and as authorized in this Agreement.
2. **Use.** You may only use the Electronic Files internally within your organization. You agree that you will not (a) use the Electronic Files except as set forth in this Agreement, (b) copy the Electronic Files, in whole or in part, (c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Electronic Files or any part of it, (d) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Electronic Files or any part thereof, (e) store or place the Electronic Files on any web page or transmit the Electronic Files electronically via the Internet, (f) sell, distribute, loan, assign, sublicense, pledge, lease, rent, share or otherwise transfer the Electronic Files, or any portion or copy of the Electronic Files, or your rights and obligations under this Electronic Files, or (g) remove or alter any trademark, trade name, product name, logo, copyright, patent, or other proprietary notice, legend, symbol, or label in the Electronic Files.
3. **Ownership.** You acknowledge that the Electronic Files are provided under license, and not sold, to you. You do not acquire any ownership interest in the Electronic Files under this Agreement, or any other rights to the Electronic Files, other than the right to use the Electronic Files in accordance with the license granted under this Agreement, subject to all its terms, conditions, and restrictions. We and our licensors reserve and shall retain our entire right, title, and interest in and to the Electronic Files and all intellectual property rights arising out of or relating to the Electronic Files, subject to the license expressly granted to you in this Agreement. The Electronic Files contain trade secret and proprietary information owned by us or our licensors and is protected by copyright and other applicable laws. You shall safeguard the Electronic Files from infringement, misappropriation, theft, misuse, or unauthorized access.
4. **Compatibility.** Our electronic files were generated using industry standard software systems. It is the user's responsibility to confirm that their system will be compatible with the software package we used to produce the electronic files. If you are using a different software application, a different version of that software, or inadequate hardware, you may not be able to access the electronic files. Further, we may have converted files from our current software version to industry versions that are not current per Recipient request. The conversions may alter the quality and content of the file for which we are not responsible, and if any final hard copies of deliverables generated from the files are available, the Recipient shall use those as reference.
5. **No Warranty.** We license the electronic files "AS IS" and "AS AVAILABLE," with all faults and without warranty of any kind, and disclaim all implied and express warranties with regard to the electronic files, including any implied warranties of merchantability, fitness for a particular purpose, non-infringement, and title, or any warranty concerning the quality, functionality, availability, operability, accuracy, effort, use or performance of the electronic files. You expressly acknowledge and agree that your use of the electronic files is at your sole risk and that you assume the entire risk as to satisfactory quality, performance, accuracy, and effort. We have no obligation under this

agreement to correct any bugs, defects, or errors in the electronic files, recover any lost data, or otherwise support or maintain the electronic files during the term of this agreement.

6. **Limitation of Liability.** Under no circumstances and under no legal theory, whether tort, contract, or otherwise, will we be liable to you or anyone else for any damages, whether direct, indirect, or otherwise, arising out of or relating to the electronic files or your use of the electronic files, even if we have been advised of the possibility of damages.
7. **Basis of the Bargain.** The disclaimers and limitations of liability set forth above are fundamental elements of the basis of the agreement between you and us. We would not be able to provide the Electronic Files without such limitations.
8. **Qualification.** The terms and conditions of this Agreement apply to the maximum extent permitted by applicable law. Some jurisdictions do not allow the disclaimer of warranties in Section 5 above or the limitation of liability provisions described in Section 6 above, so those limitations may not apply to you. This Agreement gives you specific legal rights, and you may also have different or additional legal rights, depending on the applicable law in your jurisdiction.
9. **Government; Export.** The Electronic Files may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export or release the Electronic Files to, or make the Application accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation.
10. **Governing Law; Jurisdiction.** This Agreement and any dispute or controversy arising out of or relating to it shall in all respects be governed by and construed in accordance with the laws of the State of North Carolina, excluding its conflicts of laws principles. You consent to the jurisdiction and venue of the federal and state courts in Wake County, North Carolina for resolution of any disputes arising out of this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement.
11. **Notice.** Any notice you are required or permitted to give us under the Agreement will be effective if sent by FedEx to the following address: WithersRavenel, 115 MacKenan Drive, Cary, NC 27511.
12. **Assignment.** You shall not assign or otherwise transfer any of your rights, or delegate or otherwise transfer any of your obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without our prior written consent, which we may give or withhold in our sole discretion. Any purported assignment, delegation or transfer in violation of this section is void. We may freely assign or otherwise transfer all or any of our rights, or delegate or otherwise transfer all or any of our obligations or performance, under this Agreement without your consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
13. **General.** This Agreement is the entire agreement between you and us relating to the Electronic Files, and it supersedes all prior or contemporaneous oral or written communications, proposals, and representations with respect to its subject matter. This Agreement does not alter any agreement you may have with us concerning our preparation of hard copy documents for you or our performance of other services for you. You consent to receive communications from us electronically. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. We may modify this Agreement at any time by sending a copy of the modified Agreement to the e-mail address we have on file for you. Any other modification of this Agreement requires a writing signed by both parties. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability of such provision under other circumstances, or of the remaining provisions hereof under all circumstances. No waiver by us of any breach of any term or provision of this Agreement shall be construed to be a waiver of any preceding or succeeding breach of the same or any other term or provision hereof.

BID BOND

This is a Bid Bond that is subject to the provisions of Article 3 of Chapter 44A of the North Carolina General statutes.

This Bid Bond is executed on March 19, 2020, 20 .

The name of the PRINCIPAL is Providence Construction Services, LLC (1)

Corporation _____ (2)

The name of the SURETY is Philadelphia Indemnity Insurance Company

One Bala Plaza, Suite 100, Bala Cynwyd, PA 19004

The TOWN OF CLAYTON, NORTH CAROLINA is the OWNER.

The amount of the Bond is Five Percent of Amount Bid

(Dollars) (\$ 5%)

KNOW BY ALL MEN BY THESE PRESENTS, the Principal and Surety above named are hereby held and firmly bound unto the above-named OWNER hereinafter called the OWNER in the penal sum of the amount stated above in lawful money of the United States, for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of the above obligation is such that whereas the Principal has submitted to the OWNER a certain Bid Proposal, attached hereto and hereby made a part hereof to enter into a Contract in writing, for the construction of:

Payton Drive Extension Project – Clayton, NC as described by a document entitled “Project Manual for Payton Drive Extension Project, Project No. 02170831.01 dated, February 17, 2020 as prepared by WithersRavenel, Inc.

NOW, THEREFORE

- (a) If said Bid Proposal shall be rejected; or in the alternate,
- (b) If said Bid Proposal shall be accepted and the Principal shall execute and deliver a Contract in the form of Contract attached hereto (properly completed in accordance with said Bid Proposal) and shall furnish a bond for his faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid Proposal, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its Bid Bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid Proposal; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

ATTEST:

Sharon J. Conghen
(Principal) Secretary
(SEAL)

Providence Construction Services, LLC
Principal

BY: [Signature] (3)

114 W. Main Street, Suite 102, Clayton, NC 27520
(Address)

Chris Carr
Witness as to Principal

114 West Main St
(Address) Clayton NC

ATTEST:

Julia C. McElligott
N. C. Resident Agent
(SEAL) Julia C McElligott

Philadelphia Indemnity Insurance Company
Surety

By: Heather Burroughs
Heather Burroughs (Attorney-In-Fact) (4)

One Bala Plaza, Suite 100, Bala Cynwyd, PA 19004
(Name)
(919) 281-4500 (Address)
(Phone Number)

Margo J. Roberts
Witness as to Surety

4309 Emperor Blvd., Ste., 300, Durham, NC 27703
(Address)

- (1) Insert the correct name of Principal.
- (2) Insert whether the Principal is a corporation, a partnership, a limited liability company or an individual.
- (3) If Principal is a partnership, all partners should execute the Bid Bond. If Bidder is a limited liability company, all managers (or all members, if the company is member-managed) should execute the Bond.
- (4) Provide contact name, address and phone number for bid bond surety.

**POWER OF ATTORNEY
(Attach)**

WR# 02170831.01

00300-11

Payton Drive Extension Project

PHILADELPHIA INDEMNITY INSURANCE COMPANY

One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That **PHILADELPHIA INDEMNITY INSURANCE COMPANY** (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint **Phoebe C. Honeycutt; Bobbi D. Pendleton; Heather Burroughs; Kenneth J. Peeples; Christopher A. Lydick; Julia C. McElligott; Adam Pfanmiller; Jason Lee Sayers; Brooke Gagne; and Megan S. Bartman of McGriff Insurance Services**, its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed **\$50,000,000**.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14th of November, 2016.

RESOLVED:

That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

**FURTHER
RESOLVED:**

That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

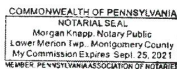
IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 27TH DAY OF OCTOBER, 2017.

(Seal)



Robert D. O'Leary Jr., President & CEO
Philadelphia Indemnity Insurance Company

On this 27th day of October, 2017, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the **PHILADELPHIA INDEMNITY INSURANCE COMPANY**; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.



(Notary Seal)

Notary Public:

residing at:

Bala Cynwyd, PA

My commission expires:

September 25, 2021

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 27th day of October, 2017 are true and correct and are still in full force and effect. I do further certify that Robert D. O'Leary Jr., who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 19 day of March 202020



Edward Sayago, Corporate Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY

PROVIDENCE CONSTRUCTION SERVICES LLC
WRITTEN CONSENT OF THE SOLE DIRECTOR TO ACTION
WITHOUT MEETING

The undersigned, being the sole member of the Board of Directors of Providence Construction Services LLC, a North Carolina corporation (the "Corporation"), hereby takes the following actions and adopts the following preambles and resolutions by signing his written consent hereto, in lieu of a meeting of the Board of Directors, pursuant to Section 55-8-21 of the North Carolina Business Corporation Act and the Bylaws of the Corporation.

1. Election and Ratification of Officers.

WHEREAS, it is in the best interest of the Corporation to elect, or ratify and confirm the identity of, its officers;

NOW, THEREFORE, BE IT RESOLVED, that the following are hereby elected or ratified and confirmed as the sole officers of the Corporation, each to serve until he or she shall die, resign, be removed, or until his or her successor is duly elected and qualified:

<u>Name</u>	<u>Position</u>
Reid M Smith	Chief Executive Officer
Harrison J Smith	President
Eric Curran	Treasurer
Stacey Coughlin	Secretary

2. Approval and Ratification of Officers' Acts.

RESOLVED, that any and all officers of the Corporation shall be, and each hereby is, authorized and empowered, on behalf of and in the name of the Corporation, to execute and deliver any and all such other agreements, instruments, documents, papers and certificates and to take any and all such other lawful actions and to do any and all such other lawful things which such officers, or any of them, deem necessary or appropriate in order to carry out the full intent and purposes of the foregoing resolutions, and

FURTHER RESOLVED, that these resolutions may be executed in one or more counterparts, all of which, when taken together, shall be considered one and the same resolutions. Facsimile signatures shall be sufficient for execution of these resolutions.

The undersigned Director hereby consents that the actions set forth in the foregoing preambles and resolutions shall have the same force and effect as if taken at a duly constituted meeting of the Board of Directors of the Corporation, effective as of the date hereof, and directs that this document be filed with the minutes of the Corporation.

[The next page is the signature page]

This document is dated and effective November 1, 2019.

DIRECTOR:


A handwritten signature in black ink, appearing to read 'R. Smith', is written over a horizontal line.

Reid M. Smith

Signature Page to Consent of Sole Director

**PROJECT MANUAL
FOR
TOWN OF CLAYTON**



**PAYTON DRIVE
EXTENSION PROJECT**

PROJECT NO. 02170831.01
February 17, 2020



WithersRavenel
Our People. Your Success.

Prepared by: WithersRavenel, Inc.
115 MacKenan Drive
Cary, North Carolina 27511
License No. C-0832

SECTION 00100
CERTIFICATION

Project Name: PAYTON DRIVE EXTENSION PROJECT
Project No.: 02170831.01

I HEREBY CERTIFY THAT THE SPECIFICATIONS CONTAINED HEREIN AND THE
ACCOMPANYING PLANS WERE PREPARED BY ME OR UNDER MY DIRECT
SUPERVISION.

SIGNED, SEALED, AND DATED THIS 17th DAY OF February, 2020.

BY: _____

Bradley D. Hart, PE
bhart@withersravenel.com
WithersRavenel, Inc.



Engineer's Contact Information
WithersRavenel, Inc.
919.469.3340
115 MacKenan Drive
Cary, North Carolina 27511
License No. C-0832

END OF SECTION 00100

Reference Sheet
(To be filled out with each submittal package)

Company Name	Address	Phone	E-mail	Contact Person Name	Contact Person Position	Type of Work Completed
PrideOne Construction	2211 Medina Road Suite 100 Medina, Ohio 44256	330-351-2782	awhitl@prideone.cc	Tony Whitt	General Superintendent	Sewer, storm, grading, sidewalk landscaping
Fred Smith Company	701 Corporate Center Drive Suite 101 Raleigh, NC 27606	919-781-5700	phillip.bunn@fredsmithcomp.any.net	Phillip Bunn	Division Manager	Storm, water, sewer, underground demolition
Capital Construction	5215 Beryl Road Raleigh, NC 27606	919-400-8085	jay@capconnc.com	Jay Hughey	Owner	Sewer, water, storm installation
Badgergate, LLC	114 West Main Street Clayton, NC 27520	919-901-3178	david@riverwild.com	David De Young	Development Manager	Sewer, water, storm, grading, clearing, curb, stone, asphalt

WR# 02170831.01

00250- 5

Payton Drive Extension Project

SECTION 00300
BID PROPOSAL ("Proposal")

TO: THE TOWN OF CLAYTON, NORTH CAROLINA ("Owner")

FROM: "BIDDER" Providence Construction Services, LLC

ADDRESS 114 West Main Street, Clayton, NC 27520

DATE OF BID March 19, 2020

The Bidder hereby signifies that it is his/her/its intention and purpose to enter into a formal Contract with the Town of CLAYTON, North Carolina, to furnish all labor, materials, tools, equipment, apparatus, supplies, and the like required, and to do all the work necessary, for and because of the construction, erection, and/or installation of the proposed "Project":

Payton Drive Extension Project

for the Town of CLAYTON, North Carolina in accordance with the Contract Documents, including Addenda thereto. ** There is deposited, herewith, a certified check in the amount of: _____ Dollars (\$ _____), or a Bid Bond, in the amount of five percent (5%) of the total aggregate amount of the Bid, made payable to the Owner, the same to be refunded to the Bidder under the conditions of and in accordance with the terms of this Proposal, which are as follows:

BASE BID:

Base bid scope of work includes work associated with construction of the Extension of Payton Drive including construction of the road widening of Covered Bridge Road and associated stormwater drainage revisions. See plans for details on base bid scope of work. This is a UNIT PRICE BID as indicated in the Itemized Bid Proposal that follows.

THAT: The Bidder has carefully examined the Plans and Specifications and all other Contract Documents and fully understands them.

THAT: The Bidder has carefully examined the site of the Project and is familiar with the conditions under which the work, or any part thereof, is to be performed and the conditions which must be fulfilled in furnishing and/or installing, erecting or constructing any or all items of the Project.

THAT: The Bidder shall provide all necessary tools, machinery, equipment, apparatus, and all other means necessary to do all the work and shall furnish all labor, materials and all else required to complete such Contract as may be entered into, in the manner prescribed in and in accordance with the terms of the Specifications and the Contract and in accordance with the true intent and meaning thereof, and in accordance with the Plans and/or Drawings and the requirements of the Consulting Engineers under them, in a first class manner.

[Terms continued on the following page.]

** Fill in appropriate Addenda number(s): Addendum # 1 Dated March 13, 2020
Addendum # _____ Dated _____
Addendum # _____ Dated _____
Addendum # _____ Dated _____
Addendum # _____ Dated _____
Addendum # _____ Dated _____

THAT: The rights of the Owner and the recommendations of the Consulting Engineers shall not be questioned in the Award of the Contract.

THAT: It is the intention of the Owner to let contracts on the basis of the Bids received in accordance with G.S. 143-129 and in such manner as the Owner may deem to be for the best interests of the Owner.

THAT: The Owner reserves the right to reject any or all proposals.

THAT: The work under each Section will be awarded under one Contract and that the Owner shall have the right to include such item or items as the Owner may deem to be in the best interests of the Owner.

THAT: On being awarded the Contract, the Bidder shall execute a Performance Bond and a Payment Bond, on the forms included herein, each equal to one hundred percent (100%) of the Awarded Contract Price (Contract Sum), as security for the faithful performance of the Contract.

THAT: The Bidder shall submit, in the blank spaces provided, all data, guarantees and other information called for.

THAT: The Bidder shall submit, herewith, drawings, or cuts and Specifications showing and describing in detail the equipment and/or apparatus which the undersigned proposes to furnish.

THAT: This Proposal shall be signed and submitted in the manner prescribed in the Instructions to Bidders.

THAT: Should this Proposal not be accepted by the Owner, the certified check, in the amount of: _____ Dollars (\$ _____) or the five percent (5%) Bid Bond, as applicable, deposited herewith shall be returned to the Bidder.

THAT: Should this Proposal be accepted by the Owner and the Bidder fail or neglect to execute the Contract and furnish the required Bonds within fifteen (15) days after receiving notifications of the acceptance of the Proposal and/or receipt of the formal Contract and Bond forms, the certified check, in the amount of: _____ Dollars (\$ _____), or the Bid Bond, deposited herewith shall be retained by the Owner as liquidated damages, it being understood that the Owner reserves the right to extend the time allowed for executing the Contract and/or furnishing the Bond in its sole discretion.

[Terms continued on the following page.]

THAT: The Bidder shall complete such Contract as may be entered into within the number of consecutive calendar days specified in the Contract from the date of the Notice to Proceed.

THAT: The Bidder proposes to enter into a Contract in accordance with this Proposal, the Plans and Specifications and the Contract Documents included herein, for the prices shown on the following pages.

THAT: The Bidder shall be required to submit a complete detailed itemized unit cost breakdown of the Bid Items on the Itemized Bid Proposal form in Section 00510 along with a computed Total Bid Price amount with this proposal.

THAT: It is the intent of these Contract Documents to obtain a Contract based on Unit Prices with project awarded based upon the lowest qualified total bid based upon unit prices applied to the estimated quantities. Where a discrepancy exists between words and numbers in the Bid amount, the written words shall govern. Where a discrepancy exists between unit prices and mathematical computations in the Itemized Proposal, the unit prices and quantities in the Itemized Proposal shall govern.

THAT: The successful bidder shall have all proper Bidder licenses and privilege licenses required under North Carolina state laws governing their respective trade(s).

THAT: The Town is willing to have a flexible construction start date and that Notice to Proceed and project available shall occur within 0-90 days of award of contract by the Town Council. The Town shall coordinate Notice to Proceed with the Contractor prior to issuance.

BID PROPOSAL

GENERAL CONSTRUCTION
FOR THE

Payton Drive Extension Project - Clayton, NC

Town of Clayton Project No. 02170831.01
(the "Project")

ITEMIZED PROPOSAL

The attached itemized list of work items and materials shall be made a part of this contract along with the completed price per unit of work item. The itemized bid proposal shall consist of the full completion of this list supplemented with any work item the contractor deems necessary to complete the project.

TOTAL "BID" PRICE for the construction of the Project complete as indicated by the Contract Documents (in words and figures):

Three hundred Seventy-eight thousand ^{Six hundred thirty-eight} Dollars
and zero Cents (\$ 378,638.00)

Bidder Providence Construction Services, LLC
(Print)

NOTE: PROPOSAL SIGNATURE REQUIRED ON PAGE 00300-6. ALL PROPOSALS MUST BE PROPERLY EXECUTED TO BE CONSIDERED A VALID BID.

CERTIFIED LIST OF EQUIPMENT/MATERIAL MANUFACTURERS

The Bidder, as part of the procedure for the submission of Bids on the Project, submits the following list of Equipment/Materials Manufacturers to be used in the performance of work to be done on said Project. The list of Manufacturers and all equipment/materials furnished shall be based on requirements of the Contract Documents. Changes to this list after the Bid opening shall only be as approved by the Owner upon request by the Bidder or as required by the Owner based upon review of Bidder's submittals:

<u>EQUIPMENT/MATERIALS</u>	<u>MANUFACTURER</u>
Hanson Aggregates	
See Attached	
Blyth Asphalt	
Wack Stone	
	Mack Industries Precast

It is understood and agreed that, if awarded a Contract, the Bidder shall not make any additions, deletions or substitutions to this certified list without the consent of the Owner. Failure to identify a manufacturer for any or all of the items listed shall constitute an entry of one of the manufacturers listed in its respective technical specification.

CERTIFICATION AFFIDAVIT

THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED A CONTRACT, THIS CERTIFICATION SHALL BE ATTACHED THERETO AND BECOME A PART THEREOF.

Providence Construction Services, LLC

[If Bidder is not an individual, enter entity name here]

By: 
(Signature)

NAME OF SIGNER: **Harrison Smith**
(Please Print or Type)

TITLE OF SIGNER: **President**
(Please Print or Type)

DATE: **March 19, 2020**

BID SECURITY:

Accompanying this Proposal is a (1) Bid Bond in the amount of
(2) 5% of bid Dollars
(\$).

NOTE: (1) Insert the words "bank draft," "certified check," "bid bond", "cash", or "cashiers check", as the case may be.

(2) Amount must be equal to at least five percent (5%) of the total Bid.

BIDDER'S LICENSE:

The Bidder certifies that (he/she/it) is licensed as a Bidder under the specific North Carolina state law regulating his/her/its particular trade and that the number of the license under which he/she/it now operates is 82890.

BIDDER'S CERTIFICATION AS TO ORGANIZATION AND AUTHORITY:

The Bidder certifies that the Affidavit of Organization and Authority, like the other documents attached hereto, form an integral part of the Proposal, and the Bidder acknowledges that the Owner will rely on the information provided therein in reviewing the Proposal and awarding a Contract.

LIQUIDATED DAMAGES:

The Bidder agrees, further, that the Owner may retain those amounts indicated in the Contract from the amount of compensation due the Bidder, under the terms of the Contract, for each and every day that the work remains incomplete and/or unsatisfactory beyond the completion date(s) specified in the Notice to Proceed. This amount is agreed upon as the proper measure of liquidated damages the Owner will sustain, per day, by the failure of the Bidder to complete the work within the stipulated time, and it is not to be construed in any sense as a penalty.

The Bidder shall not have or bring a claim against the Owner, or raise as a defense against the imposition of liquidated damages, other construction purportedly impeding Bidder's progress or timely project completion.

(SIGNATURE PAGE)

Dated March 19, 2020.

Providence Construction Services, LLC
(SEAL)
Bidder—Legal Entity

By: [Signature] (SEAL)
(SIGN HERE)

SEAL-if corporation

Harrison Smith
Printed Name

114 West Main St
Clayton, NC 27520
Address

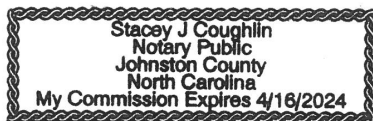
(919) 697-1101
Telephone No.

Subscribed and sworn to before me this 19th day of March, 2020

[Signature]
Notary Public

My Commission Expires:

4-16-2024



WR# 02170831.01

00300-8

Payton Drive Extension Project

**BIDDER'S CERTIFICATES
AFFIDAVIT OF ORGANIZATION AND AUTHORITY
SWORN STATEMENT**

STATE OF NC)

COUNTY OF Johnston)

Harrison Smith being first duly sworn on oath deposes and says that the Bidder on the attached Bid Proposal is organized as indicated below and that all statements herein made are made on behalf of such Bidder and that this deponent is authorized to make them.

(Fill Out Applicable Paragraph)

CORPORATION:

The Bidder is a corporation organized and existing under the laws of the State of North Carolina, it operates under the legal name of Providence Construction Services, LLC, and the full names of its officers are as follows:

President	<u>Harrison Smith</u>
Secretary	<u>Stacey Coughlin</u>
Treasurer	<u>Eric Curran</u>
Manager	<u></u>

and it does not have a corporate seal. The President ☒ is/are authorized to sign construction proposals and contracts for the company by action of its Board of Directors taken 10/4/2018 11/1/2019, a certified copy of which is hereto attached. (Strike out this last phrase if not applicable.)

PARTNERSHIP:

The Bidder is a [limited/general] partnership consisting of individual/corporate partners as follows:

General Partners

Limited Partners

The partnership does business under the name of:

LIMITED LIABILITY COMPANY:

The bidder is a [member-managed/manager-managed] limited liability company consisting of the following individual/corporate members/managers:

Managers

Members

INDIVIDUAL:

The Bidder is an individual whose full name is:

_____ and if operating under a trade name, said trade name is as follows:

The business address of the Bidder is: 114 West Main Street, Clayton, NC 27520

Its phone number is: 919-697-1101

The contact person for this Proposal is: Harrison Smith

Providence Construction Services, LLC

Bidder

By: _____



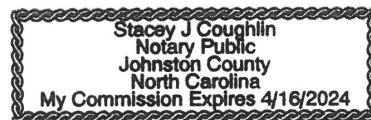
Subscribed and sworn to before me this 19th day of March, 2020

Stacey J. Coughlin
Notary Public

Johnston
County

My Commission Expires:

4-16-2024



EQUAL EMPLOYMENT OPPORTUNITY ADDENDUM

During the performance of the Contract the Bidder agrees as follows:

- a. The Bidder shall not discriminate against any employee or applicant because of race, color, religion, sex, or national origin. The Bidder shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.
- b. The Bidder shall, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- c. The Bidder shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract understanding, a notice, to be provided, advising the labor union or worker's representative of the Bidder's commitments under the Equal Employment Opportunity Section of the Contract, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. In the event of the Bidder's noncompliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations, or orders, the Contract may be canceled, terminated, or suspended in whole or in part and the Bidder may be declared ineligible for further OWNER contracts.
- e. The Bidder will include the provisions of this Addendum in every subcontract or purchase order unless exempted by rules, regulations, or orders of the OWNER so that such provisions will be binding upon each Subcontractor or vendor.

(Use the following form for execution by a CORPORATION):

Providence Construction Services, LLC

Corporate Name

ATTEST:

Steven J. Carlier
(Assistant) Secretary

BY: *[Signature]*
(Vice) President

(CORPORATE SEAL)

(Use the following form for execution by a PARTNERSHIP):

_____(SEAL)
Partnership Name

BY: _____(SEAL)
General Partner

(Use the following form for execution by a LIMITED LIABILITY COMPANY):

_____(SEAL)
Company Name

BY: _____(SEAL)
Manager/Member

(Use the following form for execution by an INDIVIDUAL):

BY: _____(SEAL)

WITNESS:

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

County

My Commission Expires:

QUALIFICATIONS OF BIDDERS

In order to assist the Owner in determining whether the Bidder is qualified to perform the Work, as set forth in the Contract Documents, the Bidder shall furnish the following information.

1. List of references who are qualified to judge as to his financial responsibility and his experience in work of similar nature to that bid upon:

See Attached

2. List of previous contracting experience, including dollar values of contracts:

Ashcroft Phases 4-5-6A \$2,883,728
Academy Pointe \$3,213,502

RCE Development \$1,377,334
Sunnybrook \$74,000
Point Apartments \$537,838

3. List of facilities or equipment that is available for use:

See attached

4. Name, residence, and title of the individual who will give personal attention to the work:
Harrison Smith
245 Beckwith Ave
Clayton, NC 27527

5. Financial Statement:

ASSETS

CURRENT ASSETS:

Cash	\$ 137,617
Notes and Accounts Receivable	2,128,234
Inventories Other Assets	466,464

PLANT ASSETS:

Real Estate	\$ —
Machinery	9,398,445
Good Will, Patents, etc.	—
Total Assets	\$ 12,130,760

LIABILITIES:

Notes Payable	\$ 8,259,549	
Accounts Payable	1,271,383	
Accrued Wages	69,234	
Other Liabilities	1,090,360	\$ 10,690,526
		Total Liabilities
	EXCESS OF ASSETS OR NET WORTH	\$ 1,440,234

6. List all pending claims or lawsuits, and any lawsuit within the last 10 years, filed by or against the Bidder, and describe the resolution of each claim or lawsuit:

<u>Opposing Party</u>	<u>Date of Claim</u>	<u>Resolution, if any</u>
None		

The existence of unresolved claims against Bidder may disqualify the Bidder from making a Bid Proposal and entering into a Contract.

Notes:

- A. The above is a suggested form for the Financial Statement, but the Bidder is not required to follow the form explicitly. The Financial Statement submitted must clearly show to the satisfaction of the Owner the Bidder's current financial condition. The Owner reserves the privilege of requiring additional information as to financial responsibility of the Bidder prior to awarding Contract.
- B. Bidder shall attach additional pages, if necessary, in order to complete the required information.
- C. The Bidder shall submit detailed information required for above items 1 through 4 with his Bid Proposal package and, at the discretion of the Bidder, the information required under Item 5 may be furnished after Bid Proposals are received if required by the Owner and Engineer to evaluate the financial qualifications of a prospective Bidder.

**AFFIDAVIT OF
STATEMENT OF NON-COLLUSIVE**

State of NC)
County of Johnston) ss.

Harrison Smith being first duly sworn,
deposes and says that:

- (1) He/she is the President
(Owner, Partner, Officer, Representative or Agent)
of Providence Construction Services LLC, the BIDDER that has
submitted the attached BID PROPOSAL;
- (2) He is fully informed respecting the preparation and contents of the attached BID
PROPOSAL and of all pertinent circumstances respecting such BID PROPOSAL;
- (3) Such BID PROPOSAL is genuine and is not a collusive or sham BID PROPOSAL;
- (4) Neither the said BIDDER nor any of its officers, partners, owners, agents,
representatives, employees or parties in interest, including this affiant, have in any way
colluded, conspired, connived or agreed, directly or indirectly, with any other BIDDER,
firm, or person to submit a collusive or sham BID PROPOSAL in connection with the
Contract for which the attached BID PROPOSAL has been submitted; or to refrain from
bidding in connection with such Contract; or have in any manner, directly or indirectly,
sought by agreement or collusion, or communication, or conference with any BIDDER,
firm, or person to fix the price or prices in the attached BID PROPOSAL or of any other
BIDDER, or to fix any overhead, profit, or cost elements of the BID PROPOSAL price or
the BID PROPOSAL price of any other BIDDER, or to secure through any collusion,
conspiracy, connivance, or unlawful agreement any advantage against The Town of
CLAYTON, or any person interested in the proposed Contract;
- (5) The price or prices quoted in the attached BID are fair and proper and are not tainted by
any collusion, conspiracy, connivance, or unlawful agreement on the part of the BIDDER
or any other of its agents, representatives, owners, employees or parties in interest,
including this affidavit.

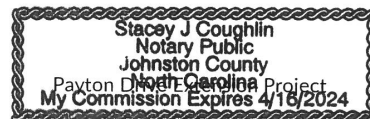
Providence Construction Services, LLC
BIDDER
BY [Signature]
ITS President
(Title)

Subscribed and sworn to before me this 19th day of March, 2020

My commission expires 4-16-24
END OF AFFIDAVIT

WR# 02170831.01

00300-18



Town of Clayton

AFFIDAVIT A

AFFIDAVIT of Intent to Perform Contract with Own Workforce.

County of **JOHNSTON**

Affidavit of Providence Construction Services, LLC

(Name of Bidder)

I hereby certify that it is our intent to perform a minimum of 25% of the work required for the

Payton Drive Extension

contract.

(Name of Project)

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

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

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: 3.14.2020

Name of Authorized Officer: Harrison Smith

Signature: 

Title: President

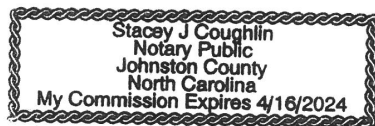
SEAL

State of North Carolina, County of Johnston

Subscribed and sworn to before me this 19th day of March 2020

Notary Public Stacey J. Coughlin

My commission expires 4.16.2024



WR# 02170831.01

00300-19

Payton Drive Extension Project

00300-\$ 16-3
 Providence Const

Equipment#	Eq type	EQ Type Description	Description	Serial#
1703	20	Skid Steers	18 JD 323 Compat Track Loader	1TO323EKLHJ315072
1704	16	47k - 66k Excavators	18 JD 210 w/ Thumb	1FF210GXTHF525376
1705	10	<7K Excavators	18 JD 60G with Thumb	1FF060GXJHJ288883
1706	01	Pick-ups	18 GMC 2500 4x4	1GT12REG2JF129056
1707	01	Pick-ups	18 Chevy 3500 Tool Body	1GB4CYCG8HF210620
1708	17	67k - 100k Excavators	18 JD 350 Excavator w/ GPS	1FF350GXVHF812197
1709	30	30 Ton Offroad Truck	18 JD 30 Ton Offroad Truck	1DW310EXAHF684845
1710	30	30 Ton Offroad Truck	18 JD 30 Ton Offroad Truck w	1DW310EXLHF684703
1711	45	34k - 48k Dozer	jd 750	1TO750KXPHF316031
1712	44	19K - 33K Dozer	18 JD 650 LGP	1TO650KKAHF308065
1712	45	34k - 48k Dozer	JD 850	1TO650KKAHF308065
1714	35	84" Rollers	18 HAMM 84" Combo Rollers	WGH0H235EHAA00466
1715	35	84" Rollers	18 HAMM 84" Combo Rollers	H2350034
1716	16	47k - 66k Excavators	18 JD 210 w/ Thumb	1FF210GXPHF525413
1717	17	67k - 100k Excavators	18 CAT 336F Excavator	RKB10878
1718	21	Wheel Loader	18 JD 544k	1DW544KZKHF684285
1721	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX2JJ200117
1722	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX4JJ200118
1723	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX5JJ200113
1724	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX9JJ200115
1725	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX0JJ200116
1726	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX4JJ200104
1727	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX0JJ200102
1728	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX9JJ200101
1729	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX7JJ200100
1730	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTXXJJ196821
1731	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX1JJ196819
1732	63	Quad Axle Dump Truck	18 Mack GU713	1M2AX04C8JM039364
1733	63	Quad Axle Dump Truck	18 Mack GU713	1M2AX09C5JM037080
1734	63	Quad Axle Dump Truck	18 Mack GU713	1M2AX04C3JM039367
1735	63	Quad Axle Dump Truck	18 Mack GU713	1M2AX09CXJM040766
1736	63	Quad Axle Dump Truck	18 Mack GU713	1M2AX09C1JM040767
1800	78	Trailers	18 PJ Equipment Trailer	4P5FB2420J3031166
1801	44	19k - 33k Dozer	18 JD 650 Smart Grade	1TO650KKPJF325169
1802	16	47k - 66k Excavators	18 JD 210 w/ Thumb & GPS	1FF210GXAJF526364
1803	50	Rubber tire backhoe	CAT 420 IT RTBH	CAT0420FCHWC03269
1804	16	47k - 66k Excavators	18 CAT 325 LCR	NDJ20208/NBC28191
1805	30	30 Ton Offroad Truck	18 CAT 730C2 Offroad truck	2T400822
1809	35	84" Rollers	CS54B Soil Compactor	CATCS54BKCS500328
1814	17	67k - 100k Excavators	18 JD 350 Excavator	1FF350GXVJF813100
1817	21	Wheel Loader	18 JD 544k	1DW544KZHF689419
1819	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX4KJ285737
1820	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX5KJ285746
1821	63	Quad Axle Dump Truck	18 KW T880 Dump Truck	1NKZXPTX6KJ285741
1822	01	Service Trucks	17 Chevy Silverado 3500	1GB4CYCG9HF217412
1900	10	JD mini 50 Excavator	JD50G	288637
1902	16	JD 135G		1FF135GXVJF500896
1907	20	Skid Steers	JD333G	1T0333GMCJF332480

	1908	89	MISC	Mulcher head	1T0MH60CKJ0000698	
	1910	17	67k - 100k Excavators	18 JD 350 Excavator w/ GPS	1FF350GXAJF813194	
	1911	25	25 Ton Off Road Truck	Volvo Off Road Truck A25D	A25DV15120	
	1913	17	67k - 100k Excavators	JD 350	1FF350GXTKF813673	
	1914	21	Wheel Loader	19 JD 544L	1DW544LZKKF699729	
RENTAL						
	8008	40	Bomag BMP8500 125382 Trench Roller		10055015 (Sunbelt #)	
	8009	40	Bomag BMP8500 124175 Trench Roller		744822 (sunbelt #)	
	8013	40	Sunbelt Trench Roller		768373 (Sunbelt #)	
	8021	51	Sweeper Laymor 8HC			38535
	8023	40	Trench Roller		10053166 (Sunbelt #)	
	8030	03	United Rentals Flatbed			
	8032	07	Water Truck Rental			
	8035	40	Trench Roller Rental			24431576
	8036	33	54" Smooth Drum, Sunbelt		948816 (Sunbelt #)	
	8038	50	RTBH (G Poole)			
	8041	35	84" Rollers - 2018 Bomag		10050707 (sunbelt # - serial 10158610 1057)	
	8042	35	84" Rollers - 2012 Hamm		558356 (replaced 532939 sunbelt #, 10/28)	
	8046	35	84" smooth drum Hamm Roller Rental		sunbelt # 10007704	
	8047	33	54" Sheepsfoot roller		sunbelt # 10164654	
	8048	35	84" Smooth Drum Roller CAT rental GPoole		CATCS56BLS5600284	
	8050	35	84" smooth drum Hamm Roller Rental		sunbelt #10003584	
	8051	33	54" Smooth Drum, Hamm #222239		H1880483 (Sunbelt)	
	8052	10	Bobcat Min-Exc (Sunbelt)		AJ1814519	
	8053	44	JD 650 Dozer		1T0650KXJGF293007	

Reference Sheet
(To be filled out with each submittal package)

Company Name	Address	Phone	E-mail	Contact Person Name	Contact Person Position	Type of Work Completed
PrideOne Construction	2211 Medina Road Suite 100 Medina, Ohio 44256	330-351-2782	awhitt@prideone.cc	Tony Whitt	General Superintendent	Sewer, storm, grading, sidewalk landscaping
Fred Smith Company	701 Corporate Center Drive Suite 101 Raleigh, NC 27606	919-781-5700	phillip.bunn@fredsmithcompany.net	Phillip Bunn	Division Manager	Storm, water, sewer, underground demolition
Capital Construction	5215 Beryl Road Raleigh, NC 27606	919-400-8085	jay@capconnc.com	Jay Hughey	Owner	Sewer, water, storm installation
Badgergate, LLC	114 West Main Street Clayton, NC 27520	919-901-3178	david@riverwild.com	David DeYoung	Development Manager	Sewer, water, storm, grading, clearing, curb, stone, asphalt
ASD	Short Journey Rd Smithfield	919-524-1939	tim o'donnell	tim o'donnell	PM	

ASD INC. com Tim O'Donnell Paving S/b
 Town of Smithfield Ted Credle, PE Director Site work & Utility
 ted.credle@smithfield-nc.com
 00300-76

WR# 02170831.01

Payton Drive Extension Project

00250-5

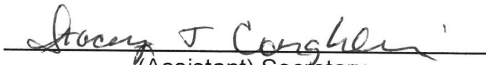
NONDISCRIMINATION CLAUSE

It is specifically agreed as part of the consideration of the signing of this Bid Proposal, and the resulting execution of a Contract, that the parties hereto, their agents, officials, employees or servants shall not discriminate in any manner on the basis of age, handicap, race, color, creed, gender, religious affiliation, or national origin with reference to the subject matter of the Contract, no matter how remote.

This provision, being incorporated for the benefit of the Town of CLAYTON and its residents, may be enforced as set out in the ordinances of the Town of CLAYTON, enforcement of this provision shall be by action for specific performance, injunctive relief, or other remedy as by law provided.

This provision shall be binding on the successors and assigns of the parties hereto with reference to the subject matter of the Contract.

(Use the following form for signatures by a CORPORATION):

ATTEST:	Providence Construction Services, LLC
	Corporate Name
	BY: 
(Assistant) Secretary	(Vice President)
Stacey Coughlin	Harrison Smith
(Printed Name)	(Printed Name)

(Corporate Seal)

(Use the following form for signatures by a PARTNERSHIP):

_____	_____(SEAL)
WITNESS	Partnership Name
_____	BY: _____(SEAL)
(Printed Name)	General Partner

(Use the following form for signatures by a LIMITED LIABILITY COMPANY):

WITNESS

(Printed Name)

Company Name (SEAL)
BY: _____ (SEAL)
Manager/Member

(Use the following form for signatures by an INDIVIDUAL):

(SEAL)

(Printed Name)

WITNESS

(Printed Name)

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public _____ County

My Commission Expires:

NOTICE OF AWARD

TO: CONTRACTOR/BIDDER: Providence Construction Services, LLC

ADDRESS: 114 West Main Street, Clayton, NC 27520

FROM: _____

OWNER: Town of CLAYTON
Engineering Department
CLAYTON, North Carolina

PROJECT: Payton Drive Extension Project – Clayton, NC
Project No. 02170831.01

You are hereby notified that the Owner has considered the Bid Proposal submitted by you for the above-described project in response to its Invitation to Bid dated 3/19/2020.

It appears that it is to the best interest of said Owner to accept your Bid Proposal in the amount of: three hundred seventy-eight thousand six hundred thirty eight even Dollars (\$ 378,638.00). You are therefore hereby notified that your Bid Proposal has been accepted for _____

The Bidder is required by as a condition of its Award of the Contract to execute and deliver the formal Contract with the Owner and to furnish the required Bidder's Performance and Payment Bonds within fifteen (15) days from the date of the delivery of this Notice to you.

If you fail to execute said Contract and to furnish said Bonds within fifteen (15) days from the date of delivery of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid Proposal as abandoned and to award the work covered by your Bid Proposal to another bidder, or to readvertise the work or otherwise dispose thereof as the Owner may see fit.

Dated this _____ day of _____, 20____.

Town of CLAYTON, North Carolina

By: _____

Title: _____

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged this _____day of _____, 20_____.

Bidder

By: _____

Title: _____

END OF SECTION 00300

WR# 02170831.01

00300-24

Payton Drive Extension Project

**SECTION 00510
ITEMIZED BID PROPOSAL**

UNIT PRICES

A unit price is an amount stated in the Construction Agreement as a price per unit of measurement for materials or service and shall be added to or deducted from the contract Sum by Change order in the event that a specific material and/or service provided by the Contractor is increased or decreased from the Estimated Quantity Bid in the Construction Agreement.

Unit prices are complete for labor, equipment, material, overhead and profit. Base Bid includes the quantity of each item to be furnished complete according to the work shown on the plans and specifications and as estimated herein, inclusive of all appurtenances, as shown and specified. Any unused amount will be credited to the Owner by change order at the end of the project. Likewise, any item installed and accepted by the Owner that exceed the Contract Quantity estimated for that particular Bid item will be paid to the Contractor by Change Order at the Progress Payment that follows approval of the installation of the additional work items.

SPECIFICATION		DESCRIPTION	UNIT	EST - QTY	UNIT PRICE	TOTAL
SITE GENERAL CONDITIONS						
1.01	40000	MOBILIZATION	LS	1	20,000.00	20,000.00
1.02	40000	CONSTRUCTION SURVEYING	LS	1	9,000.00	9,000.00
1.03	20000/40000	TRAFFIC CONTROL	LS	1	14,000.00	14,000.00
		SITE GENERAL CONDITIONS SUBTOTAL =				43,000.00
REMOVALS & RELOCATIONS						
2.01	03000/40000	CLEARING & GRUBBING	AC	0.9	12,800.00	11,520.00
2.02	40000	STORM PIPE REMOVAL	LF	43	16.00	688.00
2.03	40000	UTILITY RELOCATIONS & ADJUSTMENTS	LS	1	29,500.00	29,500.00
2.04	40000	INCIDENTAL MODIFICATIONS & DEMO ITEMS	LS	1	6,000.00	6,000.00
2.05	02930/40000	REMOVE & REPLACE PAVED DRIVEWAYS	SY	188	25.00	4,700.00
2.06	40000	RELOCATE EXISTING SPLIT RAIL FENCE	LS	1	3,000.00	3,000.00
2.07	40000	TREE REPLACEMENT AT SMITH PROPERTY	LS	1	1,200.00	1,200.00
		REMOVALS & RELOCATIONS SUBTOTAL =				56,608.00
EROSION CONTROL						
3.01	04001	GRAVEL CONSTRUCTION ENTRANCE	EA	2	1,800.00	3,600.00
3.02	04001	ROCK CHECK DAM	EA	27	300.00	8,100.00
3.03	04001	TEMPORARY SILT FENCE	LF	860	3.00	2,580.00
3.04	04001	SILT FENCE OUTLET	EA	2	59.00	118.00
3.05	40000	CONCRETE/ASPHALT WASHOUT AREA	LS	1	200.00	200.00
3.06	04001	DROP INLET PROTECTION	EA	7	300.00	2,100.00
3.07	04001	RIPRAP HORSESHOE INLET PROTECTION	EA	1	740.00	740.00
3.08	04001	SKIMMER SEDIMENT BASIN	EA	1	10,000.00	10,000.00
3.09	02630/04001	RIP RAP DITCH LINING, CLASS B, 12" THICK w/ FILTER FABRIC	SY	475	38.00	18,050.00
3.10	02920/04001	TEMPORARY SEEDING & MULCHING	SY	9,680	.40	3,872.00
		EROSION CONTROL =				49,360.00
SITE WORK						
4.01	02200	UNCLASSIFIED EXCAVATION	CY	4,448	13.00	57,824.00
4.02	02200/40000	UNDERCUT & REPLACE (BUDGET ESTIMATE)	CY	500	9.00	4,500.00
4.03	02930/40000	STOP SIGN WITH STREET SIGN	EA	1	500.00	500.00
4.04	02920/04001	PERMANENT SEEDING & MULCHING	SY	9,680	.40	3,872.00
		SITE WORK SUBTOTAL =				66,696.00
STORM DRAINAGE						
5.01	02630	15" RCP CULVERTS, CLASS IV	LF	68	33.00	2,244.00
5.02	02630	18" RCP CULVERTS, CLASS IV	LF	30	25.00	750.00
5.03	02630	24" RCP CULVERTS, CLASS IV	LF	79	91.00	7,189.00
5.04	02630	15" CONCRETE FLARED END SECTION	EA	1	930.00	930.00
5.05	02630	24" CONCRETE FLARED END SECTION	EA	2	1,100.00	2,200.00
5.06	02630	24" CONCRETE ENDWALL, STD 838.01	EA	1	2,050.00	2,050.00
5.07	02630	TRAFFIC BEARING CONCRETE DROP INLET, STD 840.14	EA	1	2,000.00	2,000.00

[OR: Contractor's Signature, if a corporation]

CONTRACTOR:

Providence Construction Services LLC
a NC corporation

ATTEST:

Stacey J. Coughlin
Secretary
(SEAL)

By: [Signature]
Name: Harrison Smith
Title: President

STATE OF NC

COUNTY OF Johnston

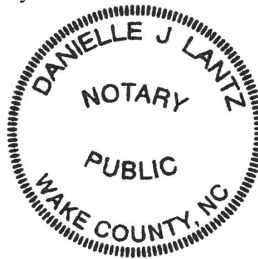
I, Danielle J. Lantz, a Notary Public of Wake County, State of North Carolina, do hereby certify that Stacey J. Coughlin personally came before me this day and acknowledged that he/she is Secretary of Providence Construction Services LLC a NC corporation, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself/herself as its Secretary.

Witness my hand and official seal, this the 19th day of MARCH, 2020

[Signature]
Notary Public

My Commission Expires: 3-11-2024

[OFFICIAL SEAL]



IMPORTANT

NOTE: If the Contractor is a Corporation, the legal name of the Corporation shall be set forth above, together with the signature of the officer or officers authorized to sign Contracts on behalf of the Corporation. If the signature is by an agent other than an authorized officer of the Corporation, a Resolution must be attached hereto. The signature of the Contractor shall also be acknowledged before a Notary Public or other person authorized by law to execute such acknowledgment.

LIQUIDATED DAMAGES

The parties recognize and acknowledge that Owner will suffer financial losses if the Work is not completed as required within the Contract Times. They also recognize and acknowledge that the damages caused by the contractor's delays are difficult to ascertain and that the expense and difficulty to both parties in proving or contesting the amounts of those losses would be substantial. Instead of requiring proof of those amounts, it is agreed that Contractor shall be liable for and shall pay owner the following amounts under owner's damages, and engineering charges, all as liquidated damages, and not as a penalty in the event the Work remains incomplete at the end of the contract time specified in the Notice to Proceed.

The Contractor agrees further that the Owner may retain those amounts indicated below from the amount of Compensation due the Contractor for each day that the work remains incomplete beyond the completion date specified in the Notice to Proceed. Payment by the Owner to the Contractor in lieu of retainage does not constitute a waiver by the Owner. This amount is agreed upon as the proper measure of liquidated damages the Owner will sustain, per day, by the failure of the undersigned to complete the work within the stipulated time, and it is not to be construed, in any sense, as a penalty. The parties agree this is a reasonable amount.

No Contractor shall have a claim against the Owner as a result of a third party's lack of progress or project completion.

Contract	Owner's Damages	Engineering Charges	Total Liquidated Damages
<u>Substantial Completion</u> <u>90 Days from Notice to Proceed</u>	<u>\$300 /day</u>	<u>\$200 /day</u>	<u>\$500 /day</u>
<u>Final Completion</u> <u>150 Days from Notice to Proceed</u>	<u>\$300 /day</u>	<u>\$200 /day</u>	<u>\$500 /day</u>

Payment of the charges described herein shall not excuse or relieve the Contractor for any other liability under the Contract Documents for delay in the progress schedule of the Work, and all other penalties imposed on the Contractor and remedies available to the Owner under the Contract Documents shall remain in full force and effect.

IN WITNESS WHEREOF, said Contractor and Owner, being duly authorized, have caused these presents to be signed in their names as of the day and year first above written.

ATTEST:

TOWN OF CLAYTON,
a North Carolina municipality

By: _____
Name: Kimberly Moffett
Title: Town Clerk

By: _____
Name: Adam Lindsay
Title: Town Manager

(SEAL)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of _____ County,
State of _____, do hereby certify that _____ personally came
before me this day and acknowledged that he/she is the Town Clerk of the Town of Clayton, a North
Carolina municipality, and that, by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its Town Manager, sealed with its seal, and attested by
himself/herself as its Town Clerk.

Witness my hand and official seal, this the _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

[OFFICIAL SEAL]

that it will well and faithfully comply with and perform each and every obligation imposed upon it by said Contract Documents and the terms of said Award.

The Contractor shall commence the Work on the commencement date specified in a written order of the Owner (the "Notice to Proceed"). The Work described to be completed in these contract documents shall be started on or before the date stated on the Notice to Proceed. The project in its entirety shall be completed so that it is ready for final payment, as evidenced by the Engineer's written recommendation, within 150 CONSECUTIVE CALENDAR DAYS of the commencement date specified in the Notice to Proceed (such deadlines being referred to herein and in the Contract Documents as the "Contract Time" or the "Contract Times"). In the event that the Work is not completed to the standards and degrees required by the Contract Times, or either of them, liquidated damages shall be assessed against the Contractor for each day of delay as described herein below.

Contract	Date
<u>Substantial Completion</u>	<u>90 Days from Notice to Proceed</u>
<u>Final Completion</u>	<u>150 Days from Notice to Proceed</u>

AGREEMENT

This Agreement (the "Agreement ") is made this ____ day of _____, in the year 2020, by and between the Town of Clayton, North Carolina, (the "Owner") and _____ of _____, (the "Contractor").

WITNESSETH

THAT, WHEREAS, an Award of Contract (the "Award") for:

Town of Clayton Payton Drive Extension Project
Clayton, NC - Project No. 02170831.01

as prepared by the WithersRavenel, Inc. (hereinafter called "Engineer's Consultant"), has recently been awarded to the Contractor by the Owner.

AND WHEREAS, the work to be performed by the Contractor or its subcontractors, and the labor, materials, equipment, apparatus, and supplies to be provided in connection therewith (collectively, the "Work") is more particularly described in the Proposal (the "Proposal") attached hereto.

AND WHEREAS, the aggregate cost of the Work (referred to as either the "Contract Price" or the "Contract Sum") and the individual prices and rates of the various components of the Work that together comprise the Contract Price, are more particularly described in the Proposal.

AND WHEREAS, it was one of the conditions of said Award that a formal contract should be executed by and between the Owner and the Contractor, evidencing the terms of said Award.

NOW THEREFORE, THIS AGREEMENT FURTHER WITNESSETH THAT the Owner and the Contractor represent, warrant, covenant and agree as follows:

It is agreed and understood that the terms and conditions of the following documentation of are a part of and parcel to this Agreement to the same extent as if incorporated herein in full:

Standard General Conditions of the Construction Contract (EJCDC Document No. 1910-8, 1996 edition), as amended, revised, and supplemented by the Supplementary Conditions (the "Supplementary Conditions") and the Special Conditions (the "Special Conditions") thereto (as so amended, revised and supplemented, the "General Conditions"), 2013 NCDENR Erosion and Sediment Control Planning and Design Manual, 2012 NCDOT Standard Specifications for Roads and Structures and Town of Clayton Manual of Specifications, Standards, and Design.

The Contractor hereby covenants and agrees with the Owner that it will, for a sum equal to the Contract Price, well and faithfully perform, provide and execute the Work in accordance with each and every one of the conditions, covenants, stipulations, terms and provisions contained in the Notice to Bidders/Invitation to Bid, the Instructions to Bidders, the Proposal, the Plans, the Specifications, the General Conditions and the Contract Documents (as that term is defined in the General Conditions), all of which are a part of and parcel to this Agreement to the same extent as if incorporated herein in full. And the Owner does hereby covenant and agree with the Contractor that it will pay to the Contractor, when due and payable under the terms of the Contract Documents and the Award, the Contract Price, and

9. Pages 00500-11 through 00500-16: Complete in their entirety.
10. Page 00500-17: Certificate of Insurance. The General Conditions of the Contract, as modified by the Supplementary Conditions and the Special Conditions, require the Certificate of Insurance to include the Indemnification Agreement on the reverse side of the Certificate. All parties required to be named as additional insured parties by the Contract Documents in connection with the attached Agreement shall be named on the Certificate of Insurance for each policy.
11. Most Certificates of Insurance state under the cancellation clause that “the issuing company will endeavor to mail 30 days written notice to the ...” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the Company, its agents or representatives”. If your certificate states this, the words “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the Company, its agents or representatives” must be stricken in order to comply with the Contract Documents.
12. Four copies of the Agreement are sent to the Contractor. The original and duplicates should be signed and returned to the Engineer or Architect for signature by the Owner, after which one duplicate will be returned to the Contractor and one copy will be sent to the Contractor’s Bonding Company(ies).
13. Failure to fully complete all four sets of the Agreement will cause delays in the approval by the Owner and therefore delay the issuance of the Notice to Proceed.

SECTION 00500
AGREEMENT (CONTRACT)

**INSTRUCTIONS TO CONTRACTORS AND
REQUIREMENTS AS TO FORM FOR TOWN OF CLAYTON, NC AGREEMENTS**

DO NOT REMOVE FROM AGREEMENT

Please observe the following in executing the attached Agreement:

1. The Owner may contract with four types of legal entities.
 - (a) If the Agreement is with an individual, that individual should sign the Agreement exactly as his/her name is set out. If the Agreement is with an individually-owned business, the Agreement should be with the individual owner, and not the named business.
 - (b) Execution on behalf of a corporation should be by the president or a vice president, attested by the corporate secretary, with the corporate seal affixed. An official other than president or vice president should attach documentation of his/her authority to execute and bind the corporation.
 - (c) If the Agreement is with a partnership, all general partners of the partnership should execute the Agreement unless an authorized partner is designated to execute, in which case documentation of such authorization should be attached.
 - (d) If the Agreement is with a limited liability company, all managers of the limited liability company should execute the Agreement. If the limited liability company is member-managed, all members should sign the Agreement. If only certain manager(s) or member(s) of the limited liability company are authorized to execute the Agreement, documentation of such authorization should be attached.
2. After signing the Agreement, the appropriate notary's acknowledgement, in the individual, corporate or partnership form should be completed.
3. The Performance Bond and Payment Bond should be attached to the Agreement package. They should be signed by the Contractor, and its signature should be acknowledged with the appropriate acknowledgement form. Next, the Bonds, in approved form, must be signed by the authorized agent of the Surety Company issuing the Bonds, and an executed Power of Attorney document authorizing the agent to sign must accompany the Bond Documents.
4. The Agreement and Bonds should not be dated, except by the last person executing the Agreement, normally the Town Clerk.
5. The Bid Form and all other documents submitted with the Bid shall be included with the Agreement.
6. Bid Proposal: Complete the Acceptance of Notice section within Section 00300.
7. Page 00500-3: Fill in the Contractor name and address.
8. Pages 00500-7 through 00500-10: Choose the appropriate signature page and complete it in its entirety.

TOWN OF CLAYTON, NORTH CAROLINA
"GOOD FAITH EFFORT"

County of Johnston

Affidavit of Providence Construction Services, LLC
(Name of Bidder)

I have made a good faith effort to comply under the following areas checked:
(A minimum of 50 points is required to have achieved a "good faith effort")

(Y/N)

- y (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. Value = 10 points
- y (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. Value = 10 points
- y (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. Value = 10 points
- n (4) Working 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. Value = 10 points.
- n (5) Attending any pre-bid meetings scheduled by the public owner. Value = 10 points.
- y (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. Value = 20 points.
- y (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of minority business based on lack of qualification should have the reasons documented writing. Value = 15 points.
- n (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 is required. Assisting minority businesses in obtaining the 'same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. Value = 25 points.

- n (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. Value = 20 points.
- n (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. Value = 20 points.

In accordance with GSI43-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract.

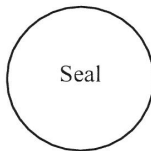
The undersigned hereby certified that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: 3-19-2020

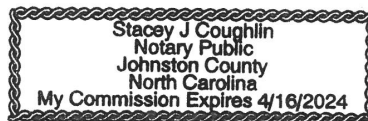
Name of Authorized Harrison Smith

Officer: Signature: [Signature]

Title: President



State of North Carolina, County of Johnston
Subscribed and sworn to before me this 19th day of March 20 20
Notary Public Stacey J. Coughlin
My commission expires 4-16-2024



I, Harrison Smith, Providence Construction Services, LLC
(Name of Bidder)

[illegible]

The total value of minority business contracting will be (\$) 40,000.00

**TOWN OF CLAYTON
RESOLUTION OF AWARD OF BID
FOR THE
PAYTON DRIVE EXTENSION PROJECT**

WHEREAS, the Town of Clayton requested by invitation for bids to be received for the Payton Drive Extension Project to be opened March 19, 2020; and

WHEREAS, the bids were publicly opened on the stated date; and

WHEREAS, the low Bidder is Providence Construction for the Bid Amount of \$378,368; and

WHEREAS, the Town of Clayton intends to construct the project in accordance with the plans and specifications.

NOW THEREFORE BE IT RESOLVED, BY THE CLAYTON TOWN COUNCIL THAT the Town of Clayton awards the Payton Drive Extension Project contract to Providence Construction in the amount of \$378,368.

Duly adopted this the 20th day of April, 2020 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

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: Danny Blackburn, Blackburn Consulting Engineering
Karen Durham, Engineering & Inspections Coordinator

Date: March 16, 2020

Subject: Bristol at Cobblestone, Phase 5

Please place a warranty acceptance request for the subject public water, sewer, associated storm drainage utilities, all pertinent easements, and the asphalt street sections on the next available agenda. Record drawings have been reviewed and accepted. Following acceptance, the utilities and roadways will be subject to a one-year warranty period. Following warranty expiration, a final inspection will be done with all deficient items corrected by the developer prior to final acceptance.



Town Council Agenda Cover Sheet

Meeting Date

April 20, 2020

Agenda Location

Consent Agenda

Item Title

Warranty Acceptance - Correction

Presenter

Chris Rowland

Summary/Description

Parkview, Phases 4 & 6

These are streets that were mistakenly included in a memorandum for placement on agenda for acceptance along with the utilities back in March/April of 2019.

The utility portion is correct, however, the street sections need to be placed under warranty now per the attached memo.

Requested Action

Informational Only

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Memo

Meeting Timeline

MEMORANDUM

To: Kimberly Moffett, Town Clerk

From: Chris Rowland, Construction Project Administrator _____

Copy: Donnie Adams, Adams & Hodge Engineering
Karen Durham, Engineering & Inspections Coordinator
David DeYoung, RiverWild

Date: April 3, 2020

Subject: Parkview, Phases 4 & 6

Please place a warranty acceptance request for the subject public street and right of way sections along with all pertinent easements on the next available agenda. The final lift of asphalt has been installed and approved by the Engineering Department. The streets will be subject to a one-year warranty period. Following warranty expiration, a final inspection will be done with all deficient items corrected by the developer prior to final acceptance.



Town of Clayton
Regular Town Council Meeting Minutes
Monday, March 2, 2020 @ 6:00 PM
Council Chambers

COUNCIL PRESENT:

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

STAFF PRESENT:

Adam Lindsay, Town Manager
Nancy Medlin, D/Town Manager
Katherine Ross, Town Attorney
Kimberly Moffett, Town Clerk
Byron Poelman, Distribution & Collection
System Manager
Samantha Wullenwaber, Planning Director
Rich Cappola, Public Services Director
Robert McKie, Finance Director
Joy Garretson, Library Director
Stacy Beard, Communications Director

COUNCIL ABSENT:

1 CALL TO ORDER

Pledge of Allegiance and Invocation

- a) Mayor McLeod called the meeting to order at 6:01 p.m. He led everyone in the Pledge of Allegiance as well as offering the Invocation.

2 ADJUSTMENT OF THE AGENDA

- a) Item 5a was requested to be removed from the agenda and will be rescheduled at a later date. It was also requested to add an additional Closed Session under NCGS 143-318.11(a)(3)

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) Draft Minutes - February 17, 2020
- b) Wastewater Allocation Policy
- c) Warranty Acceptance
 - Gordon Park, Phases 4, 5 & 7
 - Riverwood Villas II - Phase III - SP 2013-39 (FINAL)

ACTION: Adoption of Consent Agenda as Presented

Motion: Mayor Pro Tem Thompson
Second: Council Member Holder
Vote: Unanimous

4 ADMINISTRATIVE ITEMS

5 INTRODUCTIONS AND SPECIAL PRESENTATIONS

- a) ~~East Clayton Disc Golf Course – Clayton Area Disc League (CADL) Donation~~
~~Presenter: Matt Lorion, Recreational Superintendent & Jay Pontier, CADL~~
~~Disc Golf Group~~
Item was removed from agenda and will be rescheduled
- b) Community Garden Volunteer Acknowledgement
Presenters: Scott Barnard, Parks & Recreation Director and Roy Lewis, Community Garden Volunteer

Mr. Barnard was present and acknowledged all volunteers of the Community Garden. A short video was shared that showed all the areas of the garden including a bee hive. Much of the produce grown in the garden is shared with Clayton Area Ministries. Mr. Lewis, who is a Master Gardner and volunteer at the Garden was present and shared a few words. He stated over last year a total of 15,000 lbs. of food had been grown and donated. There are a total of 26 volunteers. All members were presented with a Certificate of Appreciation and a photo was taken with the Mayor. The Mayor offered sincere appreciation for all the work that goes into the garden.

6 PUBLIC HEARINGS

- a) 2019-239-SUP - Meadow View - Special Use Permit (Quasi-Judicial)
Presenter: Samantha Wullenwaber, Planning Director

Attorney Ross shared details regarding a Quasi-Judicial proceeding including the types of evidence and testimony that can be presented and considered. All those wishing to offer testimony were issued the Oath of Affirmation by the Town Clerk.

Ms. Wullenwaber stated she would be presenting both Items 6a and 6b together. Request is to modify a previously approved Preliminary Plat and a Special Use Permit. This is to develop 188 townhomes and to modify original dimensional standards. The property is located off of Old US 70, Shotwell Road and South of Highgate Subdivision. The property is 38.9 acres and the zoning is R-10. The right in only off of Old US 70 has been removed. This development is a mix of alley and front loaded units. The amenity center has been relocated. The plan is subject to all original traffic improvements. This project has gone through the Technical Review process and staff is in agreement with proposed dimensional standards. A proposed layout design was shown. This project is consistent with the Future Land Use Map. Applicant has addressed Findings of Fact. Staff recommends conditions be placed upon both applications as outlined in the Staff Report.

Council Member Bunn asked about street size. Ms. Wullenwaber stated streets are designed to current standards. Council Member Grannis asked about timing for traffic light. Ms. Wullenwaber stated there is a meeting scheduled for March 23, 2020.

The applicant, Sean - Timmons Group, was present and stated he was happy to answer any questions or address any concerns regarding this project. Council Member Grannis asked for his credentials. He stated he was a licensed home surveyor. Council Member Grannis asked how FOF #1 would be accomplished. He spoke about new access due to rear alley loaded access. Council Member Grannis also asked about FOF #3 and asked him to expand a bit about not hindering adjacent properties. He spoke about improvements and the buffer along Lakewood Acres. Council Member Grannis asked if home prices would be comparable. He stated he would need to get that information but stated these are new construction versus existing. The developer was present and stated the price point would be mid 200's. Council Member Grannis asked about timing of amenity center. He stated it would take place during Phase 2, which would be at approximately the 100 home occupancy. Council Member Grannis asked about cul-de-sac and it was stated it was thought it was a better idea. Council Member Everett asked about 3 access points and timing of construction. The timing of construction of access points was explained. Council Member Everett asked about length of buffer. Information regarding the buffer was explained. Council Member Holder stated he like that this development would be providing an additional access point. Mayor Pro Tem Thompson asked if the traffic engineer or appraiser were available this evening. Applicant stated they were not present as nothing had changed from previous approval. Ms. Wullenwaber stated that since plan was actually down one less unit, no new triggers would have required an updated Traffic Impact Analysis.

No one wished to speak in opposition. Item was turned over to council for their deliberations.

Mayor Pro Tem Thompson confirmed that since this was a modification, there was no requirement for expert testimony regarding traffic. Attorney Ross confirmed.

ACTION: Approval of 2019-239-SUP

Motion: Mayor Pro Tem Thompson

Second: Council Member Everett

Vote: Unanimous

- b) 2019-241-SD - Meadow View - Preliminary Plat Major Modification (Quasi-Judicial)
Presenter: Samantha Wullenwaber, Planning Director

Mr. Baird stated there were some changes to the original wastewater allocation. The original allocation was 59,340 and request is for 48,020.

ACTION: Approval of 2019-241-SD

Motion: Mayor Pro Tem Thompson
Second: Council Member Everett
Vote: Unanimous

ACTION: Adoption of Resolution #2020-08 (Wastewater Allocation)

Motion: Mayor Pro Tem Thompson
Second: Council Member Holder
Vote: Unanimous

- c) **2020-02-SD - Steeplechase Meadows - Preliminary Plat Major Modification**
(Quasi-Judicial)
Presenter: Samantha Wullenwaber

Attorney Ross provided details regarding Quasi-Judicial. Those wishing to offer testimony were issued the Oath of Affirmation by the Town Clerk.

Ms. Wullenwaber stated this request is modify a previously approved master plan which was approved in 2018. The new request is to develop up to 660 residential units. 660 unit maximum with 435 single homes and 182 townhomes. Open space is provided. A total of four access points and four stub-outs for a total of 8 potential access points. Subject to all original requirement traffic improvements. An updated trip generation letter was submitted. There is a decrease in daily trip from original master plan by 1800. This will be an age-restricted community. There will be numerous amenities to include an 18,000 SF clubhouse, an indoor pool, neighborhood park, pocket parks, walking trails and a dedicated 9.71 acres for future park land. Mr. Barnard was present and shared information regarding the proposed land donation. He stated staff did not recommend acceptance of the land donation.

Council Member Grannis stated he had some concerns about a new TIA not being completed. Ms. Wullenwaber stated that an updated trip generation letter was provided and stated that applicant could provide additional information. Staff stated since this would now be age-restricted it is believed this will generate less trips. Council Member Grannis asked about the wastewater allocation. Mr. Baird stated the original request was higher and there will now be a reduction.

The applicant ESP & Associates was present. She shared details about the project. Council Member Grannis asked about using an existing TIA which is 21 months old. Rynal Stephenson of Ramey Kemp & Associates, stated that original TIA was done to include a normal growth rate of 3%. He stated the current plan is now for an age-restricted community which reduces the trip generation by half. He stated further that road improvements identified previously would be completed.

There were no further questions for applicant.

Mr. Salupo, citizen, was present and had concerns regarding the daily trip generation on what is considered two of the busiest roads in Clayton. He asked if it would be an appropriate request to have additional access points to alleviate traffic, donating land for school and having the traffic analysis completed by the town versus the developer. He asked Council to hold off on approval. Mayor Pro Tem Thompson asked for any qualifications regarding his testimony. Mr. Salupo stated he is simply a homeowner and travels the road on a daily basis. Mayor McLeod stated he didn't believe it was the burden of the developer to alleviate all the traffic burdens and further that this developer has gone above and beyond with road improvements. Mayor McLeod stated it is the burden of the developer to bring results of traffic studies, not the town. He further stated that in a quasi-judicial hearing, all testimony and evidence allowed must be evidence based.

The floor was turned over to applicant for rebuttal. Mr. King, civil engineer for over 30 years, stated he believed staff did an excellent job bringing this project forward. He stated he was happy to answer any additional questions or concerns. He again addressed the number of anticipated daily generated trip count.

With no one further wishing to speak, the item was turned over to council for deliberation.

Attorney Ross clarified that acceptance of proposed land donation for recreational open space would be a separate motion. This could be addressed now or at another time.

ACTION: Approval of 2020-02-SD

Motion: Council Member Grannis

Second:

Vote:

There was a motion to approve the project. Prior to this motion being completed, Council Member Grannis amended his motion. There was discussion regarding clarification of Condition #20. Council Member Grannis stated approval be based on fact that town does not approve acceptance of recreational open space.

Mr. Baird addressed the wastewater request which is for request of a total of 166,100 gallons. Council Member Grannis asked if this was the original amount that was previously approved, Mr. Baird stated this amount is less than the originally approved amount of 244,000 gallons.

Council Member Holder asked for further clarification. It was explained the acceptance of recreational open space would not be approved. There was discussion and a suggestion to make another motion based on this discussion.

ACTION: Reconsider Motion to Accurately Reflect Terms of Approval

Motion: Council Member Grannis
Second: Mayor Pro Tem Thompson
Vote: Unanimous

Council Member Holder asked for clarification regarding the Ashcroft Subdivision utilizing the tunnel to access the proposed space. Discussion continued and it was consensus there would be no acceptance of the open space.

ACTION: Approval with Amended Condition that Open Space Will Not Be Accepted.

Motion: Council Member Grannis
Second: Mayor Pro Tem Thompson
Vote: Unanimous

ACTION: Adoption of Resolution #2020-09 (Wastewater Allocation)

Motion: Council Member Grannis
Second: Mayor Pro Tem Thompson
Vote: Unanimous

7 OLD BUSINESS

- a) Nutrient Credit Purchase Agreement
Presenter: Rich Cappola, Public Services Director

Mr. Cappola presented this item and stated this was a continuation of previous discussions. He shared additional background details. He stated this was a great opportunity and hoped to close sometime in July. Council Member Grannis asked if this was a good price. Mr. Cappola stated it was and that buying in bulk offered an even greater opportunity. Council Member Holder asked about the funding, Mr. Lindsay stated this was part of our Capital Improvement Plan for the Neuse River Water Reclamation project.

ACTION: Authorize Nutrient Credit Purchase Agreement

Motion: Mayor Pro Tem Thompson
Second: Council Member Grannis
Vote: Unanimous

- b) Neuse River Water Reclamation Facility Financing Approval
Presenter: Robert McKie, Finance Director

Mr. McKie was present and provided details about this financing. He stated staff is working with LGC and will return to council with additional recommendation.

ACTION: Adoption of Resolution #2020-10

Motion: Council Member Grannis
Second: Mayor Pro Tem Thompson
Vote: Unanimous

8 NEW BUSINESS

- a) 2020-18-SNA - Steeplechase Meadows - Alternative Sign Plan
Presenter: Samantha Wullenwaber, Planning Director

Ms. Wullenwaber stated the request is to allow residential identification signs that exceed the maximum height and sign face area. The request is for two signs proposed per entrance. A conceptual vision of the proposed design was shown. Staff recommended approval with conditions as listed in Staff Report. Council Member Grannis confirmed 12' height.

ACTION: Approval of 2020-18-SNA

Motion: Council Member Grannis
Second: Council Member Holder
Vote: Unanimous

- b) 2018 Local Water Supply Plan
Presenter: Rich Cappola, Public Services Director

Mr. Cappola presented this annual approval which included information such as usage data for the previous year, what the current holdings are in terms of capacity and what it looked like for future projections. He stated we have received conditional approval from the state.

ACTION: Approval of Plan

Motion: Council Member Bunn
Second: Council Member Everett
Vote: Unanimous

- c) LED Project Budget Amendments
Presenter: Robert McKie, Finance Director

Mr. McKie requested approval of two ordinances regarding the LED project.

ACTION: Adoption of Ordinances #'s 2020-03-01 & 2020-03-02

Motion: Council Member Grannis
Second: Council Member Everett
Vote: Unanimous

9 STAFF REPORTS

- a) Town Manager

- b) Town Attorney
 - c) Town Clerk
 - d) Other Staff
 - Census Update
- Presenter: Joy Garretson, Library Director*

Ms. Garretson provided an update on the current census. Starting in mid-March, folks will start to receive information to begin census completion. Additional public service announcements are being created and will be distributed shortly. It was reminded how vitally important this census is with reference to federal funding and area representation for the next 10 years. Ms. Garretson also provided information regarding the Coronavirus and what the library is doing. Library books are being wiped down with disinfecting cleaner, as are computers and work space. Mayor McLeod asked if this cleaning was taking place in other departments. He felt this is good due diligence. Ms. Medlin stated that Customer Service and Parks & Recreation are looking at efforts that can be done as well. Council Member Grannis offered his thanks for staff being proactive. Mayor Pro Tem Thompson offered his thanks to Ms. Garretson for taking the reins on so many projects like the census.

10 OTHER BUSINESS

- a) Informal Discussion & Public Comment

Jill Burkhard, a biological certified safety professional was present. She stated she has worked for 30 years in this field and stated she was happy to offer her services with reference to any issues with the coronavirus. Additionally she stated she was a master gardener and involved with the Community Garden. She stated she has concerns about some of the chemical products used in our parks, etc. that may be problematic for some. She would prefer to see us using organic products. She asked if our water had ever been tested for glyphosate. Mayor McLeod stated he felt that would be a county question.

- b) Council Comments

11 CLOSED SESSION

- a) Closed Session Pursuant to § NCGS 143-318.11(a)(5) & § NCGS 143-318.11(a)(3) at 8:01 p.m.

ACTION: Motion to Go into Closed Session

Motion: Council Member Grannis

Second: Council Member Holder

Vote: Unanimous

12 RETURN FROM CLOSED SESSION

- a) Council returned from Closed Session at 8:47 p.m.

ACTION: Approve Memorandum of Understanding/Settlement with Shenandoah Homes

Motion: Council Member Grannis
Second: Mayor Pro Tem Thompson
Vote: Unanimous

13 ADJOURNMENT

- a) With there being nothing further, the meeting was adjourned at 8:48 p.m.

ACTION: Adjourn the Meeting

Motion: Mayor Pro Tem Thompson
Second: Council Member Grannis
Vote: Unanimous

Duly adopted this the 20th day of April, 2020 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

March 2, 2020
Minutes



Town of Clayton
Regular Town Council Meeting Minutes
Monday, March 16, 2020 @ 6:00 PM
Council Chambers

COUNCIL PRESENT:

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

STAFF PRESENT:

Adam Lindsay, Town Manager
Nancy Medlin, D/Town Manager
Katherine Ross, Town Attorney
Kimberly Moffett, Town Clerk
Samantha Wullenwaber, Planning Director
Rich Cappola, Public Services Director
Robert McKie, Finance Director
Stacy Beard, Communications Director
Lee Barbee, Fire Chief

COUNCIL ABSENT:

1 CALL TO ORDER

Pledge of Allegiance and Invocation

- a) Mayor McLeod called the meeting to order at 6:03 p.m. He led everyone in the Pledge of Allegiance as well as offering the Invocation.

2 ADJUSTMENT OF THE AGENDA

- a) It was requested that Items 7a, 7c and 8d be removed. These are non-action items and information about these items will be forwarded to Council. Added was an update from Stacy Beard, Communications Director, regarding COVID19 and town preparation. Also added was Closed Session 143-318.11(a) (3) Attorney Client Privilege and 143-318.11(a) (6) Personnel.

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) DRAFT Minutes
 - February 24 & 25, 2020 Draft Minutes - Town Council Retreat
- b) Proclamations
 - Arbor Day
 - Traumatic Brain Injury Awareness
 - Developmental Disabilities Awareness

- c) **Warranty Acceptance**
- Parkview, Phases 12, 16 & 17
 - Village at Little Creek Subdivision, Phase I
 - RWAC Alpine Valley - 6D-3
 - RWAC Alpine Valley - 6D-3 (FINAL ASPHALT)

ACTION: Adoption of Consent Agenda as Presented

Motion: Council Member Holder
Second: Council Member Everett
Vote: Unanimous

4 PUBLIC HEARINGS

- a) **Amendment to Comprehensive List of Fees & Charges - After Hours Inspection Fees**

Presenter: Rich Cappola, Public Services Director

Mr. Cappola provided information and stated we have received numerous requests for after-hour inspections for non-residential projects. He stated based on benchmarking the fees for surrounding municipalities ranged from \$125-\$240 per hour with a 3-hour minimum. Staff is recommending we add this fee to our current Comprehensive List of Fees and Charges at the rate of \$200 per hour with a 3-hour minimum and a 72 hour notice.

Council Member Grannis asked why residential was not included. Mr. Cappola stated this is a pilot program. He further stated requests are normally from non-residential projects. He further stated we may consider expanding this program if there is a demand. Council Member Grannis asked if it might be good to open it up to residential projects. Mr. Cappola stated currently residential inspections don't require this. Mayor Pro Tem Grannis asked what the current rate was. Mr. Cappola stated it is currently based on numerous factors to include size etc. This would be an additional fee based in addition to current fees/charges... Council Member Bunn asked for benchmarking results. Mr. Cappola stated that Raleigh, Charlotte, Holly Springs were benchmarked. Currently Holly Springs charges \$240 per hour with 3-hour minimum. There were no further questions for staff.

No one further wishing to speak, hearing was closed at 6:12 p.m.

Council Member Grannis stated he was disappointed that residential projects were not included.

ACTION: Adoption of After Hours Inspection Fee Policy

Motion: Mayor Pro Tem Thompson
Second: Council Member Everett
Vote: 4-1 (Opposed: Council Member Grannis)

ACTION: Adoption of Ordinance #2020-03-03

Motion: Mayor Pro Tem Thompson

Second: Council Member Everett

Vote: 4-1 (Opposed: Council Member Grannis)

- b) 2019-243-OA - Code of Ordinance Amendment - Chapter 400 - Access
Presenter: Samantha Wullenwaber, Planning Director

Ms. Wullenwaber provided information regarding proposed access. This amendment seeks to clarify the general development standards for residential and non-residential development. The amendment includes access point's clarification, sidewalk, and fee-in-lieu clarification among other items. Also provided was a table originally presented at 250 now at 300. Also changed was a variance that would need to be applied for versus waiver. There was discussion on sidewalks and clarification provided for construction versus fee in lieu, fee in lieu of sidewalk may be accepted if there is no exiting sidewalk within 300' of the subject property.

Staff and Planning Board recommend approval.

Council Member Bunn stated he would like to see a waiver versus variance. Council Member Grannis agreed. Council Member Grannis questioned about driveway length, Ms. Wullenwaber stated that this has not been amended but could be addressed. Mayor McLeod asked difference between variance vs. waiver. A variance meets findings of fact, is an evidentiary hearing and must go to the Planning Board and a waiver can be granted by Council. Ms. Wullenwaber stated again this is a quasi-judicial. Mayor McLeod stated he is more in agreement with a variance. He stated that if we have these boards to help guide this Council then we need to do that. Mayor Pro Tem Thompson feels he is torn and feels Council is capable to make these decisions, but also feels that a variance has more teeth that somebody has to provide evidence. Staff preference is for a variance.

This item was noted as a public hearing, at 6:22 p.m. was opened to the public for comment. Dave DeYoung, Riverwild, stated staff did an excellent job with taking development community input on this. He stated he did believe that a waiver is the way to go at this time. He discussed the upcoming code re-write. He stated Clayton would be the only municipality that would handle it this way. He asked for clarification that two access points are outside access points.

Council Member Holder stated he heard from some folks that had wanted to attend but were not able to.

ACTION: Continue to first meeting in April

Motion: Council Member Holder

Second: Council Member Grannis

Vote: Opposed Everett

- c) 2020-10-RZ - 2900 NC Highway 42 W - Rezoning
Presenter: Samantha Wullenwaber, Planning Director

Ms. Wullenwaber provided details for this item. Staff recommends approval of this rezoning. This item is consistent with Comprehensive Plan and applicant has addressed criteria. Planning Board recommends approval.

There were no questions for staff.

This item was noted as public hearing at 6:27 p.m. With no one wishing to speak, this item was turned over to Council for deliberation. Council Member Bunn asked what use of this site would be. Ms. Wullenwaber stated that right now it is just an open ended rezoning, anything under B-3 would be allowed. Examples include nursing home, convenience store with gas sale, office, general, restaurant, daycare facility. Council Member Grannis also asked if it would include medical facility or doctor office. Ms. Wullenwaber stated yes.

ACTION: Adoption of Ordinance #2020-03-05

Motion: Mayor Pro Tem Thompson
Second: Council Member Holder
Vote: Unanimous

5 COVID 19 UPDATE

- a) Ms. Beard provided an update, stated this is a fluid situation and ever changing. Department Heads all joined in on the governor's address last week. Staff began to think what does this mean to us. Decision was made to cancel all of The Clayton Center events in abundance of caution and our senior population. A decision was made to cancel any advisory boards for the remainder of the month. Many other items were cancelled as well to include active shooter training, subcommittees of advisory boards and summer camp registration. An executive order means guidelines are now law. The community and library center are now closed. Information was pushed out to residents letting them know we would work with everyone regarding any refunds, etc. The latest information from President of the USA was no more than 10 people meeting in a single location. Provided was information about the county hotline. A conference call with county officials was held today at 4:00 p.m. We are talking internally about our future plans. Ms. Beard reminded everyone that everyone staying at home would result increased usage of water, flushing, etc... She discussed about ease and convenience to do services on line, she stated this is something we will push that out. She further stated we are taking questions from the community telling folks to look at the CDC Health Department guidelines. She stated right now we are saying this would last to the end of the month but that could change.

6 OLD BUSINESS

- a) Neuse River Water Reclamation Facility Update
Presenter: JD Solomon

Mr. Solomon stated he did not plan for this pandemic regarding the timeline. Currently this is not affecting the project. A quarterly update will be provided to Council. Two items of most concern are short term financing which is currently before Local Government Commission. He stated they are hesitant due to what happens if the project doesn't take place. We have reassured them that this is replacing the current facility. Secondly, the nutrient credits we received had some pushback from DEQ but we believe we are getting some positive hope. He stated we had located a second source for nutrient credits if required. Everything else is on track and looking good. He stated there is a little bad news with the fire range but stated all the lead would be removed this summer, however, it is a bit of an inconvenience as we displace the police department. A scoping meeting was held with DEQ last week and this was a huge milestone. Information has been added to the website. He further stated the presentation is currently being worked on to ensure that staff and Council have all the information needed. Council Member Grannis asked for additional information on why DEQ is pushing back regarding nutrient credits. Mr. Solomon provided details regarding point to point formula and stated he feels there is a shade of gray. He stated the formula is quite complicated.

ACTION: None - Informational Only

Motion: Council Member
Second: Council Member
Vote: Unanimous

- b) Neuse River Water Reclamation Facility - Financing RRP Recommendation
Presenter: Robert McKie, Finance Director

Mr. McKie provided information on this item. He stated 5 bids have been received. He stated staff in conjunction with Davenport to accept bid from Chase at a 25 year term with 2.22%

ACTION: Authorization to Proceed with Recommendation

Motion: Council Member Grannis
Second: Council Member Holder
Vote: Unanimous

7 NEW BUSINESS

- a) ~~Application for Library Grants~~ * Removed from Agenda
~~*Presenter:* Joy Garretson, Library Director~~
- ~~• Eco Explore Grant~~
 - ~~• Humanities Council Grant~~
 - ~~• Library Services & Technical Act (LSTA) Grant~~

~~**ACTION:** Authorization to Proceed with Applications~~

- b) Budget Amendments - Design Contract Recreational Facilities
Presenter: Robert McKie, Finance Director

ACTION: Adoption of Ordinance #2020-03-06

Motion: Mayor Pro Tem Thompson
Second: Council Member Bunn
Vote: Unanimous

- c) ~~Electric System Update~~ *Removed from Agenda
~~*Presenter:* Dale Medlin, Electric System Supervisor~~

~~**ACTION:** None - Informational Only~~

8 STAFF REPORTS

- a) Town Clerk
- b) Town Manager
- c) Town Attorney
- d) Other Staff
 - ~~Firefighter High School Update~~ * Removed from Agenda
 - ~~*Presenter:* Lee Barbee, Fire Chief~~

9 OTHER BUSINESS

- a) Council Comments

Mayor Pro Tem Thompson offered thanks to staff and department heads for the great job handling this pandemic and offered his appreciation. Mayor McLeod asked for an update from Human Resources. Ms. Barnes stated the situation is continuing to evolve and as of right now department heads are reviewing all our options to include telework, time off policies etc. Staff has been notified that HR is direct contact for all personnel, PIO would be the contact for the public interaction. School of Government would be used as a source with a webinar being held on Wednesday. Council Member Grannis offered his appreciation and stated staff has far exceeded any expectations. He stated his concern is that none of us have ever faced anything like this. He offered his sincere appreciation to emergency services personnel.

- b) Informal Discussion & Public Comment*
* *We will asking that all public comments be limited to three minutes.*

10 CLOSED SESSION

Closed Session Pursuant to NCGS 143-318.11(a)(3)&(6)

ACTION: Motion to Go Into Closed Session

Motion: Mayor Pro Tem Thompson
Second: Council Member Grannis
Vote: Unanimous

11 ADJOURNMENT

With there being nothing further the meeting was adjourned at 7:49 p.m.

ACTION: Motion to Adjourn

Motion: Mayor Pro Tem Thompson
Second: Council Member Grannis
Vote: Unanimous

Duly adopted this the 20th day of April, 2020 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

March 16, 2020
Minutes



Town Council Agenda Cover Sheet

Meeting Date

April 20, 2020

Agenda Location

Old Business

Item Title

Neuse River Water Reclamation Facility – Revenue Bonds Issuance

Presenter

Robert McKie, Finance Director

Summary/Description

The Finance Director will present the first supplemental bond order and series resolution for a private placement with Capital One Public Funding for \$15 million in Revenue Bonds issued by the Town's Water and Sewer System. The Town will purchase nutrient credits, fund site remediation, and cover closing costs with the proceeds. The LGC Commission approved the financing on April 7, 2020.

Requested Action

Approval

Funding Source (If Applicable):

Revenue Bonds

Cost: N/A **Yes** ☒ **No** ☐

15,000,000

Additional Documents to be Included in Agenda Packet

First Supplemental Bond Order
Series Resolution

Meeting Timeline

Click or tap here to enter text.

**FIRST SUPPLEMENTAL BOND ORDER AMENDING CERTAIN
PROVISIONS OF THE BOND ORDER ADOPTED BY THE TOWN
COUNCIL OF THE TOWN OF CLAYTON ON FEBRUARY 12, 2012**

WHEREAS, on February 20, 2012, the Town Council of the Town adopted pursuant to the provisions of The State and Local Government Revenue Bond Act (Article 5 of Chapter 159 of the General Statutes of North Carolina, as amended), a bond order authorizing the Town to issue revenue bonds to finance improvements to the Town's water and sewer system (the "Original Bond Order") entitled:

"BOND ORDER OF THE TOWN OF CLAYTON, NORTH CAROLINA AUTHORIZING THE ISSUANCE OF WATER AND SEWER SYSTEM REVENUE BONDS TO PROVIDE FUNDS TO CONSTRUCT IMPROVEMENTS TO ITS WATER AND SEWER SYSTEM, INCLUDING CONSTRUCTION OF AN ELEVATED WATER STORAGE TANK; PROVIDING FOR THE ISSUANCE OF ADDITIONAL REVENUE BONDS FOR VARIOUS PURPOSES; PROVIDING FOR THE ISSUANCE OF REVENUE BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF REVENUE BONDS; PROVIDING FOR THE CREATION OF CERTAIN SPECIAL FUNDS; PLEDGING TO THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE REVENUE BONDS AND NOTES CERTAIN REVENUES OF THE WATER AND SEWER SYSTEM; SETTING FORTH THE RIGHTS AND REMEDIES OF HOLDERS; AND SETTING FORTH THE DETAILS OF CERTAIN RELATED MATTERS"; and

WHEREAS, the Town Council desires to provide for the issuance of a Water and Sewer System Revenue Bond, Series 2020, in the principal amount of \$15,000,000 (the "2020 Bond") as Additional Bonds under the Bond Order to finance the acquisition of nutrient credits and pay preliminary design and engineering costs related to the construction of a new Neuse River Water Reclamation Facility, which constitute "System Improvements";

WHEREAS, the Town has determined that to facilitate the issuance of the 2020 Bond and any Additional Bonds issued under the Original Bond Order in the future, it is in the best interest of the Town to amend certain provisions of the Original Bond Order by this First Supplemental Bond Order pursuant to Section 10.01 of the Original Bond Order; and

WHEREAS, the Town has determined that this First Supplemental Bond Order will only be effective with respect to the Bonds issued after the adoption of this First Supplemental Bond Order.

NOW, THEREFORE, BE IT ORDERED by the Governing Body of the Town as follows:

Section 1.01. Section 1.02 of the Bond Order is hereby amended by amending the definition of "Bond Order" to read as follows:

“Bond Order” means this Bond Order, as amended by the First Supplemental Bond Order adopted on April 20, 2020, together with all orders amendatory hereof and all orders supplemental hereto as herein permitted.

Section 1.02. Section 3.02 of the Bond Order is hereby amended by replacing Sections (f) and (g) thereof with the following:

(f) a certificate, signed by a Town Representative, stating that the Net Revenues for each of the two complete Fiscal Years next preceding the issuance of the proposed Additional Bonds were equal to at least 125% of the Debt Service Requirement on all Bonds then outstanding during each such Fiscal Year, 100% of the amount necessary to pay annual debt service obligations on Subordinated Indebtedness, if any, and 100% of the amount necessary to pay annual debt service obligations coming due in that Fiscal Year with respect to the Town’s general obligation bonds and installment financing obligations, if any, used to finance System Improvements; and

(g) a statement, signed by a Town Representative, to the effect that the estimated Net Revenues for each of the first two complete Fiscal Years following the date of issuance of the Additional Bonds will be at least 125% of the Debt Service Requirements on all outstanding Bonds and the proposed Additional Bonds for each such Fiscal Year, 100% of the amount necessary to pay annual debt service obligations on Subordinated Indebtedness, if any, and 100% of the amount necessary to pay annual debt service obligations coming due in that Fiscal Year with respect to the Town’s general obligation bonds and installment financing obligations, if any, used to finance System Improvements.

Section 1.03. Section 5.02(a) of the Bond Order is hereby deleted in its entirety and replaced with the following:

5.02 Rate Covenant. (a) The Town covenants to fix, charge and collect rates, fees, rentals and charges for the use of and for services furnished or to be furnished by the System, and that from time to time and as often as it shall appear necessary, it shall revise such rates, fees, rentals and charges as may be necessary or appropriate, in order that for each Fiscal Year the Net Revenues (calculated in accordance with generally accepted accounting principles) will be not less than one hundred and twenty-five percent (125%) of the Debt Service Requirement for such Fiscal Year and one hundred percent (100%) of the Subordinated Indebtedness Debt Service Requirement for such Fiscal Year and one hundred percent (100%) the amount necessary to meet annual debt service obligations coming due in that Fiscal Year with respect to the Town’s general obligation bonds and installment financing obligations, if any, used to finance System Improvements..

Section 1.04. Headings, Etc. Any headings preceding the texts hereof and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of

reference and shall not constitute a part of this First Supplemental Bond Order, nor shall they affect its meaning, construction or effect.

Section 1.05. Effective Date. Except as set forth below, this First Supplemental Bond Order shall be effective immediately upon its adoption. The modifications to Sections 1.02, 3.02 and 5.02 of the Bond Order shall be effective only for Bonds issued after the date of this First Supplemental Bond Order. The modifications to Section 3.02 shall not become effective until no Bonds are Outstanding under the Bond Order other than Bonds issued after the date of this First Supplemental Bond Order.

Councilman _____ moved the passage of the foregoing First Supplemental Bond Order and Councilman _____ seconded the motion and the First Supplemental Bond Order was passed by the following vote:

Ayes: Councilmen _____
Nays: Councilmen _____
Not voting: Councilmen _____

* * * * *

I, Kimberly Moffett, Clerk for the Town of Clayton, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and complete copy of so much of the proceedings of the Town Council for the Town at a regular meeting duly called and held April 20, 2020, as it relates in any way to the First Supplemental Bond Order hereinabove referenced. Pursuant to G.S. § 143-318.12, a current copy of a schedule of regular meetings of the Town Council for the Town is on file in my office.

WITNESS my hand and the common seal of the Town, this ____ day of April, 2020.

Kimberly Moffett, Clerk
Town of Clayton, North Carolina

(SEAL)

**SERIES RESOLUTION AUTHORIZING THE ISSUANCE
AND SALE OF WATER AND SEWER SYSTEM REVENUE
BONDS, SERIES 2020 OF THE TOWN OF CLAYTON,
NORTH CAROLINA IN THE AGGREGATE PRINCIPAL
AMOUNT OF \$15,000,000**

WHEREAS, the Town of Clayton, North Carolina (the “Town”) acting by and through its Town Council (the “Council”), is authorized by The State and Local Government Revenue Bond Act of North Carolina, NCGS § 159-80 to issue revenue bonds and notes (the “Act”); and

WHEREAS on February 20, 2012, the Town Council for the Town adopted a bond order (the “Original Bond Order”) entitled:

**“BOND ORDER OF THE TOWN OF CLAYTON, NORTH CAROLINA
AUTHORIZING THE ISSUANCE OF WATER AND SEWER SYSTEM
REVENUE BONDS TO PROVIDE FUNDS TO CONSTRUCT
IMPROVEMENTS TO ITS WATER AND SEWER SYSTEM, INCLUDING
CONSTRUCTION OF AN ELEVATED WATER STORAGE TANK;
PROVIDING FOR THE ISSUANCE OF ADDITIONAL REVENUE
BONDS FOR VARIOUS PURPOSES; PROVIDING FOR THE ISSUANCE
OF REVENUE BOND ANTICIPATION NOTES IN ANTICIPATION OF
THE ISSUANCE OF REVENUE BONDS; PROVIDING FOR THE
CREATION OF CERTAIN SPECIAL FUNDS; PLEDGING TO THE
PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE
REVENUE BONDS AND NOTES CERTAIN REVENUES OF THE
WATER AND SEWER SYSTEM; SETTING FORTH THE RIGHTS AND
REMEDIES OF HOLDERS; AND SETTING FORTH THE DETAILS OF
CERTAIN RELATED MATTERS”**; and

WHEREAS, on the date hereof, the Governing Body of the Town adopted a First Supplemental Bond Order (the “First Supplemental Bond Order”) amending certain provisions of the Original Bond Order (such Original Bond Order, as amended and supplemented by the First Supplemental Bond Order, referred to herein as the “Bond Order”); and

WHEREAS, the Bond Order authorizes the issuance of Additional Bonds (as defined in the Bond Order) in accordance with Section 3.02 thereof in order to finance System Improvements (as defined in the Bond Order); and

WHEREAS, the Council desires to provide for the issuance of a Water and Sewer System Revenue Bond, Series 2020, in the principal amount of \$15,000,000 (the “2020 Bond”) as Additional Bonds under the Bond Order to finance the acquisition of nutrient credits pursuant to purchase and sale agreements relating to the acquisition of nitrogen credits from two separate providers (the “Nutrient Credit Contracts”), and to pay certain costs relating to the remediation of a portion of the site of the proposed new wastewater treatment plant in the Town (the “Soil

Remediation Project”, and collectively with the Nutrient Credit Contracts, the “Project”), all of which constitute “System Improvements”;

NOW, THEREFORE, the Town Council for the Town, meeting in regular session in Clayton, North Carolina, on April 20, 2020, does the following:

BE IT RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA:

ARTICLE I DEFINITIONS

Section 1.01 Meaning of Words and Terms. Unless otherwise required by the context, capitalized words and terms used herein which are defined in the Bond Order shall have the meanings assigned to them therein, and the following capitalized words and terms shall have the following meanings:

“Bond Order” means the Bond Order adopted by the Governing Body on February 20, 2012, as amended by the First Supplemental Bond Order adopted by the Governing Body on April 20, 2020, and all orders amendatory hereof and all orders supplemental hereto as herein permitted.

“Bond Registrar” means the Finance Officer of the Town, as designated by Section 2.01.

“Business Day” means a day that is not a Saturday or a Sunday and is a day that the Bond Registrar is open for the conducting of business.

“Closing” means the delivery of and payment for the Series 2020 Bond.

“Closing Date” means the date of the Closing.

“Escrow Agent” means U.S. Bank National Association or any successor escrow agent appointed pursuant to the terms of the Escrow Agreement.

“Escrow Agreement” means the Escrow Agreement dated the Closing Date among the Town, the Escrow Agent and the Lender.

“Holder” or “Owner” means any registered owner of the Series 2020 Bond. Initially, the Holder is the Lender.

“Interest Payment Date” means each June 1 and December 1, beginning December 1, 2020.

“Lender” means Capital One Public Funding, LLC.

“Project Fund” means the fund created and so designated by Section 4.02, which shall be held by the Escrow Agent under the Escrow Agreement.

“Regular Record Date” means the Business Day next preceding any Interest Payment Date.

“Series 2020 Bond” means the \$15,000,000 Town of Clayton, North Carolina, Water and Sewer System Revenue Bond, Series 2020 issued pursuant to the Bond Order and this Series Resolution.

Section 1.02 Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words used herein shall include the plural as well as the singular number. References herein to particular articles or sections are references to articles or sections of this Series Resolution unless some other reference is indicated.

ARTICLE II

AUTHORIZATION, FORM, ISSUANCE AND DELIVERY OF THE SERIES 2020 BOND

Section 2.01 Authorization and Issuance of Series 2020 Bond. The Town hereby authorizes the issuance of the Series 2020 Bond designated “Town of Clayton, North Carolina Water and Sewer System Revenue Bond, Series 2020” in the aggregate principal amount of \$15,000,000 for the purpose of providing funds, together with any other available funds, to (a) pay the costs of the Project and (b) pay the other costs and expenses incurred in connection with the issuance of the Series 2020 Bond. The Series 2020 Bond shall be issued under and pursuant to the Constitution and the laws of the State, including the Act, the Bond Order and this Series Resolution, subject to the conditions set forth herein and therein. The Series 2020 Bond constitutes an Additional Bond under the Bond Order.

The Finance Officer of the Town is hereby appointed as Bond Registrar for the Series 2020 Bond pursuant to the provisions of the Bond Order and this Series Resolution.

Section 2.02 Form of Series 2020 Bond. The definitive Series 2020 Bond shall be initially issued as one fully registered bond without coupons numbered R-1 in the aggregate principal amount of \$15,000,000, and shall be initially registered in the name of the Lender. The definitive Series 2020 Bond shall be substantially in the form set forth in Exhibit A attached hereto and made a part hereof, with such appropriate variations, omissions and insertions as are permitted or required by the Bond Order or this Series Resolution. Notwithstanding anything in the Bond Order to the contrary, the Series 2020 Bond may be transferred in the manner specified in the Bond Order, but may not be exchanged for any denomination other than the outstanding principal amount thereof.

Notwithstanding any other provisions of the Bond Order or this Series Resolution to the contrary, the Bond Registrar shall not register the transfer of the Series 2020 Bond to any person other than a bank, insurance company or similar financial institution unless such transfer has been previously approved by the Commission. The provisions of this paragraph may not be amended without the prior written consent of the Commission.

Section 2.03 Details of Series 2020 Bond. The Series 2020 Bond shall be dated the Closing Date, shall bear interest at the rate of 2.88% per annum (computed on the basis of a 360-day year consisting of twelve 30-day months), except as provided below, with interest being

payable semi-annually in arrears on each Interest Payment Date, and principal payable annually on each June 1, beginning June 1, 2021, with all unpaid principal and accrued interest due and payable on June 1, 2045 (the “Maturity Date”) (subject to the right of prior redemption), all as set forth in the form of the Series 2020 Bond included in Exhibit A attached hereto and made a part hereof.

Both principal of and interest on the Series 2020 Bond shall be paid by wire transfer of immediately available funds or by check mailed to the Holder thereof in the manner specified by the Holder of the Series 2020 Bond to the Town.

Section 2.04 Terms and Conditions for Issuance of Series 2020 Bond. The Series 2020 Bond shall be executed substantially in the form and in the manner herein and in the Bond Order set forth and shall be deposited with the Bond Registrar for authentication, but before the Series 2020 Bond shall be authenticated and delivered to the State Treasurer for redelivery to the Lender, there shall be filed with the Bond Registrar and the Lender, in addition to the items required to be delivered pursuant to Section 3.02 of the Bond Order, the following:

- (a) a certified copy of the Original Bond Order and the First Supplemental Bond Order;
- (b) an opinion of bond counsel to the Town to the effect that the Series 2020 Bond has been validly issued in accordance with the provisions of the Bond Order and this Series Resolution in form and substance satisfactory to the Lender;
- (c) a certificate of the Commission showing the award of the Series 2020 Bonds and specifying the interest rate thereof;
- (d) a fully executed Escrow Agreement;
- (e) a closing memorandum (the “Closing Memorandum”) provided by the Town’s financial advisor and approved by the Town and the Lender; and
- (f) such other documentation or opinions as may reasonably be requested by the Bond Registrar, the Lender or bond counsel.

When the documents mentioned in Section 3.02 of the Bond Order and subsections (a) to (f), inclusive, of this Section shall have been filed with the Bond Registrar and the Lender, and when the Series 2020 Bond shall have been executed and authenticated as required by the Bond Order and this Series Resolution, the Series 2020 Bond shall be delivered to or upon the order of the State Treasurer for redelivery to or upon the order of the Lender, but only upon the deposit with the Bond Registrar of the purchase price of the Series 2020 Bond.

Simultaneously with the Closing and the deposit of the proceeds of the Series 2020 Bond with the Bond Registrar, the Bond Registrar shall cause the proceeds of the Series 2020 Bond in the amount of \$15,000,000 (representing the par amount of Series 2020 Bond) to be delivered and deposited in accordance with the Closing Memorandum.

ARTICLE III
REDEMPTION OF SERIES 2020 BOND

Section 3.01 Redemption of Series 2020 Bond.

(a) The principal installment of the Series 2020 Bond shall not be subject to redemption prior to its maturity or payment dates except as provided in this Article and in Article IV of the Bond Order.

(b) The principal installments of the Series 2020 Bond are not subject to optional redemption prior to June 1, 2033. On and after June 1, 2033, the Outstanding principal amount of the Series 2020 Bond is subject to redemption, at the option of the Town, from any moneys that may be available for such purpose, in whole on any date at a redemption price equal to 100% of the principal amount of the Series 2020 Bond outstanding, plus accrued interest to the redemption date, without premium or penalty.

(c) In addition to the foregoing, the principal installments of the Series 2020 Bond can be redeemed in part on any Interest Payment Date from funds of the Town other than the proceeds of any indebtedness, in an amount of not less than \$500,000 and not more than \$1,000,000. Not more than one optional redemption pursuant to this subsection 3.01(c) shall be permitted in any calendar year.

(d) In connection with any partial redemption of the principal installments of the Series 2020 Bonds in accordance with this Section, such redemption shall be applied in inverse order of the maturing principal installments unless otherwise agreed to by the Holder in writing, and the schedule for payment of principal and interest on the Series 2020 Bond shall be modified accordingly from and after the redemption date to reflect such partial redemption.

Section 3.02 Redemption Notice. At least ten (10) days but not more than sixty (60) days prior to the redemption date of any principal amount of the Series 2020 Bond to be redeemed, the Bond Registrar shall cause a notice of any such redemption signed by the Bond Registrar to be mailed, first class, postage prepaid, to the Holder of the Series 2020 Bond. A copy of such notice shall also be given by first class mail, postage prepaid, to the Commission; provided, however, that failure to give such notice to the Commission or any defect therein shall not affect the sufficiency of the proceedings for redemption.

Each such notice shall set forth the designation and date of the Series 2020 Bond, the date fixed for redemption, the principal installments and amounts of the Series 2020 Bond to be redeemed, the Redemption Price to be paid, the address and phone number of the Bond Registrar and the date of the redemption notice.

Any notice of redemption may state that the redemption to be effected is conditioned upon the receipt by the Bond Registrar on or prior to the redemption date of moneys sufficient to pay the principal of and premium, if any, and interest on the principal installments of the Series 2020 Bond to be redeemed and that if such moneys are not so received such notice shall be of no force or effect and such principal installments of the Series 2020 Bond shall not be required to be redeemed. In the event that such notice contains such a condition and moneys sufficient to pay the principal of and premium, if any, and interest on such principal installments of the Series

2020 Bond to be redeemed are not received by the Bond Registrar on or prior to the redemption date, the redemption shall not be made, and the Bond Registrar shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

ARTICLE IV

ACCOUNTS, REVENUES AND FUNDS; OTHER COVENANTS

Section 4.01 Payment of Series 2020 Bonds. The Town shall, subject to the provisions of Section 5.04 of the Bond Order, cause the Net Revenues deposited in the Revenue Fund to be used to pay the principal of, premium, if any, and interest on the Series 2020 Bond on each Interest Payment Date or any redemption date for the Series 2020 Bond.

Section 4.02 Establishment of Project Fund; Disbursement of Money in Project Fund.

(a) The Town and the Escrow Agent have entered into the Escrow Agreement, pursuant to which the Escrow Agent is holding an escrow fund called the “Town of Clayton, North Carolina Series 2020 Project Fund” (the “Project Fund”). Money deposited in the Project Fund in accordance with Section 204 shall be applied to pay the costs of design, planning, constructing, testing, hauling, disposal, and adding new soil necessary for the Soil Remediation Project (“Project Costs”) and the costs and expenses incurred in connection with the issuance of the Series 2020 Bond in accordance with the procedures set forth in the Escrow Agreement. If the moneys held in the Project Fund and any other moneys provided by the Town are insufficient to pay all of the Project Costs and costs and expenses incurred in connection with the issuance of the Series 2020 Bond, the Town shall provide any balance of the funds needed to complete the Soil Remediation Project. Any moneys remaining in the Project Fund after completion of the Soil Remediation Project, as evidenced by a written certificate of completion executed by a Town Representative and delivered to the Lender and the Escrow Agent stating that the Project has been completed and there are no mechanic’s or other liens against the Soil Remediation Project for labor or materials furnished in connection with the Project, may be applied first to the payment of interest on the Series 2020 Bond on the next Interest Payment Date, and then to the repayment of principal on the next Interest Payment Date on which principal payment is due until such time as such moneys are expended.

Section 4.03 Investment of Money. Money held for the credit of the Project Fund shall be continuously invested and reinvested by the Town in Qualified Investments to the extent practicable. Any such Qualified Investments shall mature not later than the dates when the money held for the credit of the Project Fund will be required for the purposes intended. The Town shall cause the Escrow Agent to sell or reduce to cash in a commercially reasonable manner a sufficient amount of such Qualified Investments whenever it is necessary to do so in order to provide money to make any payment from the Project Fund.

Section 4.04 Payment of Principal, Interest and Premium and Pledge of Net Revenues. The Town covenants that it will promptly pay the principal of and the interest on the Series 2020 Bond issued under the provisions of this Series Resolution at the place, on the dates and in the manner provided herein and in the Series 2020 Bond, and any premium required for the retirement of the Series 2020 Bond in whole or in part by purchase or redemption, according to

the true intent and meaning thereof. The Town further covenants that it will faithfully perform at all times all of its covenants, undertakings and agreements contained in this Series Resolution and the Bond Order, or in any Series 2020 Bond executed, authenticated and delivered hereunder or in any proceedings of the Town pertaining thereto. The Town represents and covenants that it is duly authorized under the Constitution and laws of the State, particularly the Act, to issue the Series 2020 Bond authorized hereby and to pledge the Net Revenues in the manner and to the extent herein and in the Bond Order set forth; that all action on its part for the issuance of the Series 2020 Bond has been duly and effectively taken; and that such Series 2020 Bond in the hands of the Holders thereof is and will be a valid and binding special obligation of the Town payable according to its terms. The Series 2020 Bond shall be secured pari passu as to the pledge of Net Revenues and shall be entitled to the same benefit and security under the Bond Order as all other Bonds issued or incurred thereunder and then outstanding.

Section 4.05 No Debt Service Reserve Fund. The Series 2020 Bond is not secured by the Debt Service Reserve Fund established under the Bond Order, and no deposit to the Debt Service Reserve Fund with respect to the Series 2020 Bond is required to be made from Revenues under Section 5.04(c)(ii) of the Bond Order.

ARTICLE V OTHER COVENANTS

Section 5.01 Tax Covenants. The Town covenants to do and perform all acts and things permitted by law in order to assure that interest paid on the Series 2020 Bond which was excludable from the gross income of its Holders for federal income taxes on the date of its issuance shall continue to be so excludable.

ARTICLE VI THE TRUSTEE

Section 6.01 Designation of Trustee. The Town may at any time, with the approval of the Commission, appoint a Trustee to administer the provisions of the Bond Order and this Series Resolution and may adopt such supplements to the Bond Order and this Series Resolution as shall be necessary or desirable to effectuate such appointment. The Town anticipates amending and restated the Bond Order in order to provide for a Trustee to hold various funds and accounts created or permitted by the Bond Order and to administer payment of principal and interest on the Bonds. By purchasing the Series 2020 Bond, the Holder thereof shall be deemed to have consented to such amendment and restatement of the Bond Order.

ARTICLE VII SUPPLEMENTAL RESOLUTIONS

Section 7.01 Modification Without Consent of Holders. The Town may, from time to time and at any time, without the consent of any Holders of the Bonds, execute and deliver such resolutions supplemental hereto (which supplemental resolutions shall thereafter form a part hereof) as shall be substantially consistent with the terms and provisions of this Series Resolution and shall not materially and adversely affect the interest of the Holders:

(a) to cure any ambiguity or formal defect or omission, to correct or supplement any provision herein that may be inconsistent with any other provision herein, to make any other provisions with respect to matters or questions arising under this Series Resolution or to modify, alter, amend, add to or rescind, in any particular manner, any of the terms or provisions contained in this Series Resolution, as is substantially consistent with the terms and provisions of this Series Resolution and does not materially and adversely affect the interest of the Holders ;

(b) to grant or to confer upon the Holders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Holders;

(c) to add to the covenants and agreements of the Town in this Series Resolution other covenants and agreements thereafter to be observed by the Town or to surrender any right or power herein reserved to or conferred upon the Town; or

(d) to permit the qualification of this Series Resolution under any federal statute now or hereafter in effect or under any state blue sky laws, and, in connection therewith, if the Town so determines, to add to this Series Resolution or any supplemental series resolution such other terms, conditions and provisions as may be permitted or required by such federal statute or blue sky laws.

At least ten (10) days prior to the execution and delivery of any supplemental series resolution for any of the purposes of this Section, the Bond Registrar shall cause a notice of the proposed supplemental series resolution to be mailed first-class, postage prepaid, to the Commission and to the Holder of the Series 2020 Bond. Such notice shall briefly set forth the nature of the proposed supplemental series resolution and shall state that copies thereof are on file at the principal office of the Bond Registrar for inspection by the Holders of the Series 2020 Bond. A failure on the part of the Bond Registrar to mail the notice required by this Section shall not affect the validity of such supplemental series resolution.

Section 7.02 Modification of Series Resolution With Consent of Holder. Subject to the terms and provisions contained in this Section, and not otherwise, the Holder of the Series 2020 Bond shall have the right, from time to time, anything contained in this Series Resolution to the contrary notwithstanding, to consent to and approve the adoption by the Town of such supplemental series resolutions as shall be deemed necessary or desirable by the Town for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Series Resolution or in any supplemental series resolution. Nothing herein contained, however, shall be construed as making necessary the approval by the Holder of the Series 2020 Bond of the execution and delivery of any amended and restated bond order authorized by Section 6.01 or any supplemental series resolution as authorized in Section 7.01.

The Bond Registrar shall, at the expense of the Town, such expense to be paid from the Revenue Fund or from any other available moneys, cause notice of the proposed supplemental series resolution to be mailed, postage prepaid, to the Commission and the Holder of the Series 2020 Bond as of the date such notice is mailed. Such notice shall briefly set forth the nature of the proposed supplemental series resolution and shall state that copies thereof are on file at the principal office of the Bond Registrar for inspection by such Holder.

Whenever, at any time after the date of the mailing of such notice, the Town receives an instrument in writing purporting to be executed by the Holder of the Series 2020 Bond, which instrument shall refer to the proposed supplemental series resolution described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the Town may adopt such supplemental series resolution in substantially such form, without liability or responsibility to such Holder.

If the Holder of the Series 2020 Bond has consented to and approved the adoption thereof as herein provided, to the extent permitted by law, the Holder shall have no right to object to the adoption of such supplemental series resolutions, to object to any of the terms and provisions contained therein or the operation thereof, to question the propriety of the adoption thereof, or enjoin or restrain the Town from adopting the same or from taking any action pursuant to the provisions thereof.

Upon the adoption of any supplemental series resolution pursuant to the provisions of this Section or Section 7.01, this Series Resolution shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Series Resolution of the Town, the Bond Registrar and the Holder of the Series 2020 Bond shall thereafter be determined, exercised and enforced in all respects pursuant to the provisions of this Series Resolution, as so modified and amended.

Section 7.03 Responsibilities of Town Under this Article. The Town shall be entitled to exercise its discretion in determining whether or not any proposed supplemental series resolution or any term or provision therein contained is desirable, after considering the purposes of such instrument, the needs of the Town and the rights and interests of the Holder of the Series 2020 Bond.

ARTICLE VIII MISCELLANEOUS PROVISIONS

Section 8.01 Manner of Giving Notice. All notices, demands and requests to be given to or made hereunder by the Town, the Commission or the Bond Registrar shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered or certified mail, return receipt requested, addressed as follows:

- (a) As to the Town or Bond Registrar

Town of Clayton, North Carolina
Post Office Box 879
Clayton, North Carolina 27528-0879
Attention: Finance Officer

- (b) As to the Local Government Commission

North Carolina Local Government Commission
325 N. Salisbury Street
Raleigh, North Carolina 27603-1385

Attention: Secretary

(c) As to the Lender

Capital One Bank
1307 Walt Whitman Road
Melville, New York 11747
Attention: Jonathan A. Lewis

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by telegram or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

Any of such addresses may be changed at any time upon written notice of such change sent by United States registered or certified mail, postage prepaid, to the other parties by the party effecting the change.

Section 8.02 Substitute Mailing. If, because of the temporary or permanent suspension of postal service, the Town, the Commission or the Bond Registrar shall be unable to mail any notice required to be given by the provisions of this Series Resolution, such party shall give notice in such other manner as in the judgment of such party shall most effectively approximate mailing, and the giving of notice in such manner shall for all purposes of this Series Resolution be deemed to be in compliance with the requirement for the mailing thereof.

Section 8.03 Town, Bond Registrar and Holder Alone Have Rights Under Series Resolution. Except as herein otherwise expressly provided, including, without limitation, nothing in this Series Resolution, express or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the Town, the Bond Registrar and the Holder of the Series 2020 Bond, any right, remedy or claim, legal or equitable, under or by reason of this Series Resolution or any provision being intended to be and being for the sole and exclusive benefit of the Town, the Bond Registrar and the Holder of the Series 2020 Bond.

Section 8.04 Application to the Commission. The Local Government Commission of North Carolina is hereby requested to sell the Series 2020 Bond at private sale and without advertisement pursuant to G.S.159-123 to the Lender.

Section 8.05 Effect of Partial Invalidity. In case any one or more of the provisions of this Series Resolution or the Series 2020 Bond shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Series Resolution or the Series 2020 Bond, but this Series Resolution and the Series 2020 Bond shall be construed and enforced as if such illegal or invalid provisions had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in this Series Resolution or the Series 2020 Bond shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Town to the full extent permitted by law.

Section 8.06 Effect of Covenants; Governing Law. All covenants, stipulations, obligations and agreements of the Town contained in this Series Resolution shall be deemed to be covenants, stipulations, obligations and agreements of the Town to the full extent permitted by the Constitution and laws of the State. This Series Resolution is executed and delivered with the intent that the laws of the State shall govern this construction.

Section 8.07 Headings. Any heading preceding the text of the several articles hereof, any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Series Resolution, nor shall they affect its meaning, construction or effect.

Section 8.08 Further Authority. The officers, attorneys, employees and other agents of the Town are hereby authorized to do all acts and things required of them by this Series Resolution for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Series 2020 Bond and this Series Resolution.

The Mayor, the Town Manager, the Finance Officer and the Clerk, or any of them or their deputies, are further authorized and directed (without limitation except as expressly provided herein) to take such action and to execute and deliver such documents, certificates, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by the Order and this Series Resolution, including the Escrow Agreement. In Mayor, the Town Manager, the Finance Officer and the Clerk are authorized and directed to make such modifications to the form of the Bond and the provisions of this Series Resolution as may be required by the Lender; provided that the interest rate shall not exceed 2.88%, the term shall be not later than December 31, 2045, and the amount of the Bond shall be not more than \$15,000,000.

Section 8.09 Payment Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right as provided in this Series Resolution is not a Business Day, such payment may be made or act performed or right exercised on the next Business Day with the same force and effect as if done on the date provided in this Series Resolution.

Section 8.10 Multiple Counterparts. This Series Resolution may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

Section 8.11 Series Resolution Effective. This Series Resolution shall take effect upon its adoption.

* * * *

Councilman _____ moved the passage of the foregoing resolution and Councilman _____ seconded the motion and the resolution was passed by the following vote:

Ayes: Councilmen _____

Nays: Councilmen _____

Not voting: Councilmen _____

* * * * *

Duly adopted this the 20th day of April, 2020 while in regular session.

Jody McLeod
Mayor

I, Kimberly Moffett, Clerk for the Town of Clayton, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and complete copy of so much of the proceedings of the Town Council for the Town at a regular meeting duly called and held April 20, 2020, as it relates in any way to the resolution hereinabove referenced. Pursuant to G.S. § 143-318.12, a current copy of a schedule of regular meetings of the Town Council for the Town is on file in my office.

WITNESS my hand and the common seal of the Town, this ____ day of April, 2020.

Kimberly Moffett, Clerk
Town of Clayton, North Carolina

(SEAL)

EXHIBIT A

FORM OF SERIES 2020 BOND

R-1

\$15,000,000

United States of America
State of North Carolina

TOWN OF CLAYTON, NORTH CAROLINA
WATER AND SEWER SYSTEM REVENUE BOND
SERIES 2020

The Town of Clayton, North Carolina (the “Town”), a municipal corporation in existence under the laws of the State of North Carolina, for value received, hereby promises to pay, but solely from the sources and in the manner hereinafter provided, to Capital One Public Funding, LLC, or registered assigns or legal representative, the principal sum of FIFTEEN MILLION DOLLARS (\$15,000,000) in annual installments of principal on the days and in the years and amount set forth in Schedule A attached hereto and made a part hereof, and to pay, but solely from such sources, interest from the date hereof on the unpaid portion of such principal sum until payment thereof (computed on the basis of a 360-day year consisting of twelve 30-day months) at the rate of 2.88% per annum (subject to adjustment as provided below), such interest being payable semiannually in arrears on June 1 and December 1 of each year, beginning December 1, 2020, as set forth in Schedule A attached hereto (each such date being an “Interest Payment Date”).

Payment of the final installment of principal shall be made only upon the presentation and surrender hereof at the principal office of the Finance Officer of the Town (the “Bond Registrar”). The interest so payable and punctually paid or duly provided for on any Interest Payment Date will be paid to the person in whose name this bond is registered at the close of business on the Regular Record Date for such interest, which shall be the Business Day next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the registered owner on such Regular Record Date, and may be paid to the person in whose name this bond is registered at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Bond Registrar, notice whereof being given to the registered owners not less than ten (10) days prior to such special record date. All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Both principal of and interest on this bond shall be paid by wire transfer of immediately available funds to the Holder thereof in the manner specified by the Holder of this bond.

This bond is a duly authorized revenue bond of the Town designated “Town of Clayton Water and Sewer System Revenue Bond, Series 2020” issued under and pursuant to the Constitution and laws of the State of North Carolina, including the Act, an order of the Town adopted on February 20, 2012, as supplemented by a First Supplemental Bond Order adopted on April 20, 2020, as further amended and supplemented (the “Bond Order”), and a Series Resolution adopted on April 20, 2020 (the “Series Resolution”), authorizing the issuance of this

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bond. This bond is being issued for the purpose of providing funds, together with any other available funds, to (a) pay the costs of acquiring, constructing and equipping the Project (as defined in the Series Resolution) and (b) pay the costs and expenses incurred in connection with the issuance of this bond. Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Bond Order and the Series Resolution.

The Bond Order provides for the issuance or incurrence from time to time under the conditions, limitations and restrictions set forth therein of additional bonds, notes or other evidences of indebtedness secured pari passu as to the pledge of Net Revenues with this bond and any additional bonds, notes or other evidences of indebtedness issued or incurred pursuant to the Bond Order.

This bond is a special obligation of the Town secured by a pledge, charge and lien upon Net Revenues on a pari passu basis with any outstanding Bonds issued or incurred pursuant to the Bond Order. The Town is not obligated to pay the principal of or the interest on this bond except as provided in the Bond Order from Net Revenues or certain other monies made available therefor under the Bond Order, and neither the faith and credit nor the taxing power of the State of North Carolina or any political subdivision thereof or the Town is pledged to the payment of the principal of and the interest on this bond.

Reference is made to the Bond Order and the Series Resolution for a more complete statement of the provisions thereof and of the rights of the Town and the registered owner of this bond. Copies of the Bond Order and the Series Resolution are available for inspection by the registered owner of this bond at all reasonable times at the principal office of the Bond Registrar. By the purchase and acceptance of this bond, the registered owner hereof signifies assent to all of the provisions of the Bond Order and the Series Resolution.

The Bond Registrar shall keep at its principal office books for the registration of transfer of this bond. The transfer of this bond may be registered only upon such books and as otherwise provided in the Bond Order upon the surrender hereof to the Bond Registrar together with an assignment duly executed by the registered owner hereof or his attorney or legal representative in such form as shall be satisfactory to the Bond Registrar. Upon any such registration of transfer, the Bond Registrar shall deliver in exchange for this bond a new bond registered in the name of the transferee in an aggregate principal amount equal to the principal amount of this bond, containing the same principal installments and bearing interest at the same rate. This bond may not be exchanged for any denomination other than the outstanding principal amount thereof.

Notwithstanding any other provisions of the Bond Order or the Series Resolution to the contrary, the Bond Registrar shall not register the transfer of this bond to any person other than a bank, insurance company or similar financial institution unless such transfer has been previously approved by the Commission.

The principal installments of this bond are not subject to optional redemption prior to June 1, 2033. On and after June 1, 2033, the Outstanding principal amount of this bond is subject to redemption, at the option of the Town, from any moneys that may be available for such purpose, in whole on any date at a redemption price equal to 100% of the principal amount

of the bond outstanding, plus accrued interest to the redemption date, without premium or penalty.

In addition to the foregoing, the principal installments of this bond can be redeemed in part on any Interest Payment Date from funds of the Town other than the proceeds of any indebtedness, and in an amount of not less than \$500,000 and not more than \$1,000,000. Not more than one optional redemption pursuant to this subsection shall be permitted in any calendar year.

In connection with any partial redemption of the principal installments of this bond in accordance with the preceding paragraph, such redemption shall be applied in inverse order of the maturing principal installments unless otherwise agreed to by the Holder in writing, and the schedule for payment of principal and interest on this bond shall be modified accordingly from and after the redemption date to reflect such partial redemption.

At least ten (10) days but not more than sixty (60) days prior to the redemption date of any principal amount of the Bonds to be redeemed, the Bond Registrar shall cause a notice of any such redemption signed by the Bond Registrar to be mailed, first class, postage prepaid, to the registered owner of this bond.

Any notice of redemption may state that the redemption to be effected is conditioned upon the receipt by the Bond Registrar on or prior to the redemption date of moneys sufficient to pay the principal of and premium, if any, and interest on the principal installments of this bond to be redeemed and that if such moneys are not so received such notice shall be of no force or effect and such principal installments shall not be required to be redeemed. In the event that such notice contains such a condition and moneys sufficient to pay the principal of and premium, if any, and interest on such principal installments of this bond to be redeemed are not received by the Bond Registrar on or prior to the redemption date, the redemption shall not be made, and the Bond Registrar shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

On the date designated for redemption, notice having been given as aforesaid, the portion of the principal installment of this bond so called for redemption shall become due and payable at the redemption price provided for redemption of such principal installments on such date plus accrued interest to such date.

The registered owner of this bond shall have no right to enforce the provisions of the Bond Order or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Bond Order, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Bond Order.

Modifications or alterations of the Bond Order and the Series Resolution or in any supplement series resolution thereto may be made only to the extent and in the circumstances permitted by the Bond Order and the Series Resolution, as the case may be. Notwithstanding the foregoing, by purchasing this bond, the Holder is deemed to have consented to the amendment and restatement of the Bond Order described in Section 6.01 of the Series Resolution.

Notwithstanding the provisions for registration of transfer stated in this Bond and contained in the Bond Order and the Series Resolution and notwithstanding that this bond was acquired by the initial Holder hereof with funds disbursed to the Town in the form of a loan, this bond shall constitute an “investment security” within the meaning of and solely for the purposes of Article 8 of the Uniform Commercial Code of North Carolina. This bond is issued with the intent that the laws of the State of North Carolina shall govern its construction.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this bond and the execution and delivery of the Bond Order and the Series Resolution have happened, exist and have been performed as so required.

This bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Bond Order or the Series Resolution until it shall have been authenticated by the execution by the Bond Registrar of the certificate of authentication endorsed hereon.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Town of Clayton, North Carolina, by order duly passed by its Governing Body, has caused this bond to be manually signed by the Mayor and the Town Clerk and its official seal to be impressed hereon, all as of the 23rd day of April 2020.

[SEAL]

Mayor

Town Clerk

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The issuance of the within bond has been approved under the provisions of The State and Local Government Revenue Bond Act.

Secretary, Local Government Commission

CERTIFICATE OF AUTHENTICATION

This bond is a bond of the series designated therein and issued under the provisions of the within mentioned Bond Order and Series Resolution.

By: _____
Town Finance Officer, as Bond Registrar

Date of authentication: _____

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____

PLEASE INSERT SOCIAL SECURITY NUMBER
OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF TRANSFEREE

the within bond and all right thereunder, and hereby irrevocably constitutes and appoints _____
_____, attorney, to transfer the within bond on the books
kept for registration thereof, with full power of substitution in the premises.

Dated: _____

In the presence of:

NOTICE: Signature must be guaranteed by a
financial institution.

The signature to this assignment must
correspond with the name as it appears upon
the face of the within bond in every particular,
without alteration or enlargement or any
change whatever.

SCHEDULE A

Interest Payment Date	Principal Amount	Interest	Total Payment
12/01/2020		261,600.00	261,600.00
06/01/2021	375,000	216,000.00	591,000.00
12/01/2021		210,600.00	210,600.00
06/01/2022	431,000	210,600.00	641,600.00
12/01/2022		204,393.60	204,393.60
06/01/2023	443,000	204,393.60	647,393.60
12/01/2023		198,014.40	198,014.40
06/01/2024	456,000	198,014.40	654,014.40
12/01/2024		191,448.00	191,448.00
06/01/2025	469,000	191,448.00	660,448.00
12/01/2025		184,694.40	184,694.40
06/01/2026	483,000	184,694.40	667,694.40
12/01/2026		177,739.20	177,739.20
06/01/2027	497,000	177,739.20	674,739.20
12/01/2027		170,852.40	170,852.40
06/01/2028	511,000	170,852.40	681,582.40
12/01/2028		163,224.00	163,224.00
06/01/2029	526,000	163,224.00	689,224.00
12/01/2029		155,649.60	155,649.60
06/01/2030	541,000	155,649.60	696,649.60
12/01/2030		147,859.20	147,859.20
06/01/2031	557,000	147,859.20	704,859.20
12/01/2031		139,838.40	139,838.40
06/01/2032	573,000	139,838.40	712,838.40
12/01/2032		131,587.20	131,587.20
06/01/2033	589,000	131,587.20	720,587.20
12/01/2033		123,105.60	123,105.60
06/01/2034	606,000	123,105.60	729,105.60
12/01/2034		114,379.20	114,379.20
06/01/2035	624,000	114,379.20	738,379.20
12/01/2035		105,393.60	105,393.60
06/01/2036	642,000	105,393.60	747,393.60
12/01/2036		96,148.80	96,148.80
06/01/2037	660,000	96,148.80	756,148.80
12/01/2037		86,644.80	86,644.80
06/01/2038	679,000	86,644.80	765,644.80
12/01/2038		76,867.20	76,867.20
06/01/2039	699,000	76,867.20	775,867.20
12/01/2039		66,801.60	66,801.60
06/01/2040	719,000	66,801.60	785,801.60
12/01/2040		56,448.00	56,448.00
06/01/2041	740,000	56,448.00	796,448.00
12/01/2041		45,792.00	45,792.00

Interest Payment Date	Principal Amount	Interest	Total Payment
06/01/2042	760,000	45,792.00	805,792.00
12/01/2042		34,848.00	34,848.00
06/01/2043	785,000	34,848.00	819,848.00
12/01/2043		23,544.00	23,544.00
06/01/2044	805,000	23,544.00	828,544.00
12/01/2044		11,952.00	11,952.00
06/01/2045	830,000	11,952.00	841,952.00



Town Council Agenda Cover Sheet

Meeting Date

April 20, 2020

Agenda Location

New Business

Item Title

2020 Audit Contract

Presenter

Robert McKie, Finance Director

Summary/Description

The Finance Director will present the audit contract proposal from Anderson Smith & Wike PLLC that contains no overall fee increase. The firm received a peer review rating of pass in July 2019, which is the highest rating an audit firm can receive.

Requested Action

Approval

Funding Source (If Applicable):

Cost: N/A Yes ☐ No ☐

Additional Documents to be Included in Agenda Packet

2020 Audit Contract

Meeting Timeline

Click or tap here to enter text.

The	Governing Board COUNCIL
of	Primary Government Unit (or charter holder) TOWN OF CLAYTON
and	Discretely Presented Component Unit (DPCU) (if applicable) NA

Primary Government Unit, together with DPCU (if applicable), hereinafter referred to as Governmental Unit(s)

and	Auditor Name ANDERSON SMITH & WIKE PLLC
	Auditor Address PO BOX 697; ROCKINGHAM, NC 28380

Hereinafter referred to as Auditor

for	Fiscal Year Ending 06/30/20	Audit Report Due Date 10/31/20
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Must be within four months of FYE

hereby agree as follows:

1. The Auditor shall audit all statements and disclosures required by U.S. generally accepted auditing standards (GAAS) and additional required legal statements and disclosures of all funds and/or divisions of the Governmental Unit(s). The non-major combining, and individual fund statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion shall be rendered in relation to (as applicable) the governmental activities, the business- type activities, the aggregate DPCUs, each major governmental and enterprise fund, and the aggregate remaining fund information (non-major government and enterprise funds, the internal service fund type, and the fiduciary fund types).
2. At a minimum, the Auditor shall conduct his/her audit and render his/her report in accordance with GAAS. The Auditor shall perform the audit in accordance with *Government Auditing Standards* if required by the State Single Audit Implementation Act, as codified in G.S. 159-34. If required by OMB *Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and the State Single Audit Implementation Act, the Auditor shall perform a Single Audit. This audit and all associated audit documentation may be subject to review by Federal and State agencies in accordance with Federal and State laws, including the staffs of the Office of State Auditor (OSA) and the Local Government Commission (LGC). If the audit requires a federal single audit performed under the requirements found in Subpart F of the Uniform Guidance (§200.501), it is recommended that the Auditor and Governmental Unit(s) jointly agree, in advance of the execution of this contract, which party is responsible for submission of the audit and the accompanying data collection form to the Federal Audit Clearinghouse as required under the Uniform Guidance (§200.512).

If the audit and Auditor communication are found in this review to be substandard, the results of the review may be forwarded to the North Carolina State Board of CPA Examiners (NC State Board).

3. If an entity is determined to be a component of another government as defined by the group audit standards, the entity's auditor shall make a good faith effort to comply in a timely manner with the requests of the group auditor in accordance with AU-6 §600.41 - §600.42.

4. This contract contemplates an unmodified opinion being rendered. If during the process of conducting the audit, the Auditor determines that it will not be possible to render an unmodified opinion on the financial statements of the unit, the Auditor shall contact the LGC staff to discuss the circumstances leading to that conclusion as soon as is practical and before the final report is issued. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.

5. If this audit engagement is subject to the standards for audit as defined in *Government Auditing Standards*, 2018 revision, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he/she has met the requirements for a peer review and continuing education as specified in *Government Auditing Standards*. The Auditor agrees to provide a copy of the most recent peer review report to the Governmental Unit(s) and the Secretary of the LGC prior to the execution of an audit contract. Subsequent submissions of the report are required only upon report expiration or upon auditor's receipt of an updated peer review report. If the audit firm received a peer review rating other than pass, the Auditor shall not contract with the Governmental Unit(s) without first contacting the Secretary of the LGC for a peer review analysis that may result in additional contractual requirements.

If the audit engagement is not subject to *Government Accounting Standards* or if financial statements are not prepared in accordance with U.S. generally accepted accounting principles (GAAP) and fail to include all disclosures required by GAAP, the Auditor shall provide an explanation as to why in an attachment to this contract or in an amendment.

6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to LGC staff within four months of fiscal year end. If it becomes necessary to amend this due date or the audit fee, an amended contract along with a written explanation of the delay shall be submitted to the Secretary of the LGC for approval.

7. It is agreed that GAAS include a review of the Governmental Unit's (Units') systems of internal control and accounting as same relate to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor shall make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his/her findings, together with his recommendations for improvement. That written report shall include all matters defined as "significant deficiencies and material weaknesses" in AU-C 265 of the *AICPA Professional Standards (Clarified)*. The Auditor shall file a copy of that report with the Secretary of the LGC.

8. All local government and public authority contracts for audit or audit-related work require the approval of the Secretary of the LGC. This includes annual or special audits, agreed upon procedures related to internal controls, bookkeeping or other assistance necessary to prepare the Governmental Unit's (Units') records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina. Approval is not required on contracts and invoices for system improvements and similar services of a non-auditing nature.

9. Invoices for services rendered under these contracts shall not be paid by the Governmental Unit(s) until the invoice has been approved by the Secretary of the LGC. (This also includes any progress billings.) [G.S. 159-34 and 115C-447] All invoices for Audit work shall be submitted in PDF format to the Secretary of the LGC for approval. The invoice marked 'approved' with approval date shall be returned to

the Auditor to present to the Governmental Unit(s) for payment. This paragraph is not applicable to contracts for audits of hospitals.

10. In consideration of the satisfactory performance of the provisions of this contract, the Governmental Unit(s) shall pay to the Auditor, upon approval by the Secretary of the LGC if required, the fee, which includes any costs the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (federal and state grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts. This does not include fees for any pre-issuance reviews that may be required by the NC Association of CPAs (NCACPA) Peer Review Committee or NC State Board of CPA Examiners (see Item 13).

11. If the Governmental Unit(s) has/have outstanding revenue bonds, the Auditor shall submit to LGC staff, either in the notes to the audited financial statements or as a separate report, a calculation demonstrating compliance with the revenue bond rate covenant. Additionally, the Auditor shall submit to LGC staff simultaneously with the Governmental Unit's (Units') audited financial statements any other bond compliance statements or additional reports required by the authorizing bond documents, unless otherwise specified in the bond documents.

12. After completing the audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include, but not be limited to, the following information: (a) Management's Discussion and Analysis, (b) the financial statements and notes of the Governmental Unit(s) and all of its component units prepared in accordance with GAAP, (c) supplementary information requested by the Governmental Unit(s) or required for full disclosure under the law, and (d) the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board upon completion.

13. If the audit firm is required by the NC State Board, the NCACPA Peer Review Committee, or the Secretary of the LGC to have a pre-issuance review of its audit work, there shall be a statement in the engagement letter indicating the pre-issuance review requirement. There also shall be a statement that the Governmental Unit(s) shall not be billed for the pre-issuance review. The pre-issuance review shall be performed prior to the completed audit being submitted to LGC Staff. The pre-issuance review report shall accompany the audit report upon submission to LGC Staff.

14. The Auditor shall submit the report of audit in PDF format to LGC Staff. For audits of units other than hospitals, the audit report should be submitted when (or prior to) submitting the final invoice for services rendered. The report of audit, as filed with the Secretary of the LGC, becomes a matter of public record for inspection, review and copy in the offices of the LGC by any interested parties. Any subsequent revisions to these reports shall be sent to the Secretary of the LGC along with an Audit Report Reissued Form (available on the Department of State Treasurer website). These audited financial statements, excluding the Auditors' opinion, may be used in the preparation of official statements for debt offerings by municipal bond rating services to fulfill secondary market disclosure requirements of the Securities and Exchange Commission and for other lawful purposes of the Governmental Unit(s) without requiring consent of the Auditor. If the LGC Staff determines that corrections need to be made to the Governmental Unit's (Units') financial statements, those corrections shall be provided within three business days of notification unless another deadline is agreed to by LGC staff.

15. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the

Secretary of the LGC, this contract may be modified or amended to include the increased time, compensation, or both as may be agreed upon by the Governing Board and the Auditor.

16. If an approved contract needs to be modified or amended for any reason, the change shall be made in writing, on the Amended LGC-205 contract form and pre-audited if the change includes a change in audit fee (pre-audit requirement does not apply to charter schools or hospitals). This amended contract shall be completed in full, including a written explanation of the change, signed and dated by all original parties to the contract. It shall then be submitted to the Secretary of the LGC for approval. No change to the audit contract shall be effective unless approved by the Secretary of the LGC, the Governing Board, and the Auditor.

17. A copy of the engagement letter, issued by the Auditor and signed by both the Auditor and the Governmental Unit(s), shall be attached to this contract, and except for fees, work, and terms not related to audit services, shall be incorporated by reference as if fully set forth herein as part of this contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract shall take precedence. Engagement letter terms that conflict with the contract are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item 28 of this contract. Engagement letters containing indemnification clauses shall not be accepted by LGC Staff.

18. Special provisions should be limited. Please list any special provisions in an attachment.

19. A separate contract should not be made for each division to be audited or report to be submitted. If a DPCU is subject to the audit requirements detailed in the Local Government Budget and Fiscal Control Act and a separate audit report is issued, a separate audit contract is required. If a separate report is not to be issued and the DPCU is included in the primary government audit, the DPCU shall be named along with the parent government on this audit contract. DPCU Board approval date, signatures from the DPCU Board chairman and finance officer also shall be included on this contract.

20. The contract shall be executed, pre-audited (pre-audit requirement does not apply to charter schools or hospitals), and physically signed by all parties including Governmental Unit(s) and the Auditor, then submitted in PDF format to the Secretary of the LGC.

21. The contract is not valid until it is approved by the Secretary of the LGC. The staff of the LGC shall notify the Governmental Unit and Auditor of contract approval by email. The audit should not be started before the contract is approved.

22. Retention of Client Records: Auditors are subject to the NC State Board of CPA Examiners' Retention of Client Records Rule 21 NCAC 08N .0305 as it relates to the provision of audit and other attest services, as well as non-attest services. Clients and former clients should be familiar with the requirements of this rule prior to requesting the return of records.

23. This contract may be terminated at any time by mutual consent and agreement of the Governmental Unit(s) and the Auditor, provided that (a) the consent to terminate is in writing and signed by both parties, (b) the parties have agreed on the fee amount which shall be paid to the Auditor (if applicable), and (c) no termination shall be effective until approved in writing by the Secretary of the LGC.

24. The Governmental Unit's (Units') failure or forbearance to enforce, or waiver of, any right or an event of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

25. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the LGC.

26. E-Verify. Auditor shall comply with the requirements of NCGS Chapter 64 Article 2. Further, if Auditor utilizes any subcontractor(s), Auditor shall require such subcontractor(s) to comply with the requirements of NCGS Chapter 64, Article 2.

27. For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct and Governmental Auditing Standards, 2018 Revision (as applicable). Financial statement preparation assistance shall be deemed a "significant threat" requiring the Auditor to apply safeguards sufficient to reduce the threat to an acceptable level. If the Auditor cannot reduce the threats to an acceptable level, the Auditor cannot complete the audit. If the Auditor is able to reduce the threats to an acceptable level, the documentation of this determination, including the safeguards applied, must be included in the audit workpapers.

All non-attest service(s) being performed by the Auditor that are necessary to perform the audit must be identified and included in this contract. The Governmental Unit shall designate an individual with the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the services and accept responsibility for the results of the services performed. If the Auditor is able to identify an individual with the appropriate SKE, s/he must document and include in the audit workpapers how he/she reached that conclusion. If the Auditor determines that an individual with the appropriate SKE cannot be identified, the Auditor cannot perform both the non-attest service(s) and the audit. See "Fees for Audit Services" page of this contract to disclose the person identified as having the appropriate SKE for the Governmental Unit.

28. Applicable to charter school contracts only: No indebtedness of any kind incurred or created by the charter school shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.

29. All of the above paragraphs are understood and shall apply to this contract, except the following numbered paragraphs shall be deleted (See Item 16 for clarification).

30. The process for submitting contracts, audit reports and invoices is subject to change. Auditors and units should use the submission process and instructions in effect at the time of submission. Refer to the N.C. Department of State Treasurer website at <https://www.nctreasurer.com/slg/Pages/Audit-Forms-and-Resources.aspx>.

31. All communications regarding audit contract requests for modification or official approvals will be sent to the email addresses provided on the signature pages that follow.

32. Modifications to the language and terms contained in this contract form (LGC-205) are not allowed.

FEES FOR AUDIT SERVICES

1. For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct (as applicable) and *Governmental Auditing Standards, 2018 Revision*. Refer to Item 27 of this contract for specific requirements. The following information must be provided by the Auditor; contracts presented to the LGC without this information will not be approved.

Financial statements were prepared by: ☐ Auditor ☒ Governmental Unit ☐ Third Party

If applicable: Individual at Governmental Unit designated to have the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the non-attest services and accept responsibility for the results of these services:

Name:

Title and Unit / Company:

Email Address:

ROBERT MCKIE

FINANCE DIRECTOR, CLAYTON

rmckie@townofclaytonnc.org

2. Fees may not be included in this contract for work performed on Annual Financial Information Reports (AFIRs), Form 990s, or other services not associated with audit fees and costs. Such fees may be included in the engagement letter but may not be included in this contract or in any invoices requiring approval of the LGC. See Items 8 and 13 for details on other allowable and excluded fees.

3. Prior to submission of the completed audited financial report, applicable compliance reports and amended contract (if required) the Auditor may submit invoices for approval for services rendered, not to exceed 75% of the total of the stated fees below. If the current contracted fee is not fixed in total, invoices for services rendered may be approved for up to 75% of the prior year billings. Should the 75% cap provided below conflict with the cap calculated by LGC staff based on the prior year billings on file with the LGC, the LGC calculation prevails. All invoices for services rendered in an audit engagement as defined in 20 NCAC 3 .0503 shall be submitted to the Commission for approval before any payment is made. Payment before approval is a violation of law. (This paragraph not applicable to contracts and invoices associated with audits of hospitals).

PRIMARY GOVERNMENT FEES

Primary Government Unit	TOWN OF CLAYTON
Audit Fee	\$ 28000-30000
Additional Fees Not Included in Audit Fee:	
Fee per Major Program	\$
Writing Financial Statements	\$
All Other Non-Attest Services	\$
75% Cap for Interim Invoice Approval (not applicable to hospital contracts)	\$ 22,500.00

DPCU FEES (if applicable)

Discretely Presented Component Unit	NA
Audit Fee	\$
Additional Fees Not Included in Audit Fee:	
Fee per Major Program	\$
Writing Financial Statements	\$
All Other Non-Attest Services	\$
75% Cap for Interim Invoice Approval (not applicable to hospital contracts)	\$

SIGNATURE PAGE

AUDIT FIRM

Audit Firm* ANDERSON SMITH & WIKE PLLC	
Authorized Firm Representative (typed or printed)* KENNETH ANDERSON	Signature* 
Date* 3-15-2020	Email Address* krandersoncpa@bellsouth.net

GOVERNMENTAL UNIT

Governmental Unit* TOWN OF CLAYTON	
Date Primary Government Unit Governing Board Approved Audit Contract* (G.S. 159-34(a) or G.S. 115C-447(a)) ☒	
Mayor/Chairperson (typed or printed)* JODY MCLEOD, MAYOR	Signature* ☒
Date ☒	Email Address mayor@townofclaytonnc.org

Chair of Audit Committee (typed or printed, or "NA") NA	Signature
Date	Email Address NA

GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1).
Not applicable to hospital contracts.

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

Primary Governmental Unit Finance Officer* (typed or printed) ROBERT MCKIE	Signature* ☒
Date of Pre-Audit Certificate* ☒	Email Address* rmckie@townofclaytonnc.org

SIGNATURE PAGE – DPCU
(complete only if applicable)

DISCRETELY PRESENTED COMPONENT UNIT

DPCU*	
NA	
Date DPCU Governing Board Approved Audit Contract* (Ref: G.S. 159-34(a) or G.S. 115C-447(a))	
DPCU Chairperson (typed or printed)*	Signature*
NA	
Date*	Email Address*
	NA

Chair of Audit Committee (typed or printed, or "NA")	Signature
NA	
Date	Email Address
	NA

DPCU – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1).
Not applicable to hospital contracts.

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

DPCU Finance Officer (typed or printed)*	Signature*
NA	
Date of Pre-Audit Certificate*	Email Address*
	NA

Remember to print this form, and obtain all
required signatures prior to submission.

PRINT

ASW ANDERSON SMITH & WIKE PLLC

Certified Public Accountants

220 East Washington Street
Post Office Box 697
Rockingham, North Carolina 28380
(910) 557-1176

Other Office Locations:
Seven Lakes, North Carolina
Gastonia, North Carolina
Statesville, North Carolina

March 15, 2020

To the Town of Clayton
P.O. Box 879
Clayton, NC 27528

We are pleased to confirm our understanding of the services we are to provide to the Town of Clayton for the year ended June 30, 2020. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component unit, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements, of the Town of Clayton as of and for the year ended June 30, 2020. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the Town of Clayton's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the Town of Clayton's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis
2. Law Enforcement Officers' Special Separation Allowance
3. GASB Required Supplementary Pension Schedules
4. Other Postemployment Benefits

We have also been engaged to report on supplementary information other than RSI that accompanies the Town of Clayton's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements.

1. Individual fund budgetary schedules and other schedules.

Audit Objectives

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. The objective also includes reporting on—

- Internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our Single Audit. Our reports will be addressed to the Clayton Town Council of the Town of Clayton. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or we may withdraw from this engagement.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government.

Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or on major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

Audit Procedures—Internal Control

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the Town of Clayton's compliance with provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

Other Services

We will also assist in preparing the financial statements, schedule of expenditures of federal awards, and related notes of Town of Clayton in conformity with U.S. generally accepted accounting principles and the Uniform Guidance based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statements, schedule of expenditures of federal awards, and related notes services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Management Responsibilities

Management is responsible for (1) designing, implementing, and maintaining effective internal controls, including internal controls over federal awards, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan. The summary schedule of prior audit findings should be available for our review on October 31, 2020.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to [include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon OR make the audited financial statements readily available to intended users of the schedule of expenditures of federal awards no later than the date the schedule of expenditures of federal awards is issued with our report thereon]. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are also responsible for the preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to [include the audited financial statements with any presentation of the supplementary information that includes our report thereon OR make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon]. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This

responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

You agree to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal awards, and related notes, and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

Engagement Administration, Fees, and Other

We may from time to time and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. The Data Collection Form and the reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditors' reports or nine months after the end of the audit period.

We will provide copies of our reports to the Town of Clayton, North Carolina; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Anderson Smith & Wike PLLC and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the Town of Clayton or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Anderson Smith & Wike PLLC personnel. Furthermore, upon request, we

may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by the Town of Clayton. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin our audit on approximately September 1, 2020 and to issue our reports no later than October 31, 2020. Kenneth Anderson is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them.

We appreciate the opportunity to be of service to the Town of Clayton and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

Anderson Smith + Wike PLLC

This letter correctly sets forth the understanding of the Town of Clayton, NC.

Management signature: _____

X Title: _____

Date: _____

Governance signature: _____

X Title: _____

Date: _____



Koonce, Wooten & Haywood, LLP
CERTIFIED PUBLIC ACCOUNTANTS

Report on the Firm's System of Quality Control

To the Partners of Anderson Smith & Wike, PLLC and the
Peer Review Committee, North Carolina Association
of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of Anderson Smith & Wike, PLLC (the firm) in effect for the year ended March 31, 2019. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at www.aicpa.org/prsummary. The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

Required Selections and Considerations

Engagements selected for review included engagements performed under *Government Auditing Standards*, including compliance audits under the Single Audit Act, and an audit of an employee benefit plan.

As part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

Opinion

In our opinion, the system of quality control for the accounting and auditing practice of Anderson Smith & Wike, PLLC in effect for the year ended March 31, 2019, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Anderson Smith & Wike, PLLC has received a peer review rating of *pass*.

Koonce, Wooten & Haywood, LLP

Koonce, Wooten & Haywood, LLP

July 17, 2019

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4060 Barrett Drive
Post Office Box 17806
Raleigh, North Carolina 27619

919 782 9265
919 783 8537 FAX

Durham
3500 Westgate Drive
Suite 203
Durham, North Carolina 27707

919 354 2584
919 489 8183 FAX

Pittsboro
579 West Street
Post Office Box 1399
Pittsboro, North Carolina 27312

919 542 6000
919 542 5764 FAX



Town Council Agenda Cover Sheet

Meeting Date

April 20, 2020

Agenda Location

New Business

Item Title

Budget Amendments

Presenter

Robert McKie, Finance Director

Summary/Description

The Finance Director will present budget amendments that will utilize restricted fund balance to supplement the procurement of a new cubicle system for the Police Department and relocation of the Inspections Department to the basement for operational efficiency in conjunction with a transfer from the Water & Sewer System to fully fund the Little Creek Outfall Sewer Line project.

Requested Action

Approval

Funding Source (If Applicable):

Restricted Fund Balance

Cost: N/A Yes ☒ No ☐

Additional Documents to be Included in Agenda Packet

General Fund Budget Amendment

Water & Sewer System Budget Amendment

Meeting Timeline

Click or tap here to enter text.

Town of Clayton
Amendment to the FY 19-20 Budget

BE IT HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON that the following amendments shall be made to the FY 19-20 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 \$1,335,190	+157,647	\$1,492,837
Expenditures			
100-50-95-58 03	Furniture Fixtures and Equipment \$30,000	+7,647	\$7,647
100-55-95-58 20	Building Improvements \$0	+150,000	\$150,000

Explanation:

1. Amendment necessary to reflect the appropriation of Fund Balance to supplement the purchase of a replacement cubicle system that will provide enhanced functionality with the proceeds from prior year unauthorized substance tax distributions (USTD) from the State that remain unspent. The General Statutes (G.S. 105-113.113) mandates the Department of Revenue to distribute 75% of the USTD funds to the local law enforcement agency that conducted the investigation of a dealer that led to the assessment. The State establishes a special non-reverting account for the USTD funds. All funds received from USTD are restricted to directly enhancing the law enforcement activities of the Clayton Police Department.
2. Relocate the Inspections Department to the basement for operational efficiencies in conjunction with providing flexibility for future growth in Town Hall. G.S. 160A-414 requires that inspection fees can only be spent for activities of the Inspections Department and for no other purpose.

Duly adopted this 20th day of April, 2020 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Town of Clayton
Amendment to the FY 19-20 Budget

BE IT HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON that the following amendments shall be made to the FY 19-20 Budget:

Fund: Water & Sewer Fund

<u>Line Item</u>	<u>Previous Appropriation</u>	<u>Adjustment</u>	<u>Revised Appropriation</u>
Expenditures			
300-56-00-59 23	Transfer to Capital Project Fund \$266,000	+1,712,750	\$1,978,750
300-56-95-58 30	Water Line Improvements \$350,000	-300,000	\$50,000
300-56-95-58 31	Sewer Line Improvements \$1,643,068	-1,412,750	\$230,318

Amendment necessary to realign the capital outlay budget to fund the Little Creek Outfall Sewer Line Capital Project Fund, which is required for compliance with G.S. 159-15.

Duly adopted this 20th day of April, 2020 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk