



**Town of Clayton
Regular Town Council Meeting Agenda
Monday, October 7, 2019 @ 6:00 PM
Council Chambers**

1. CALL TO ORDER

Pledge of Allegiance and Invocation

2. ADJUSTMENT OF THE AGENDA

3. CONSENT AGENDA

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

a. Draft Minutes

- September 16, 2019 - Regular Meeting

[September 16 2019 DRAFT Minutes](#)

b. Warranty Acceptance

- Gordon Park, Phase 6

[Gordon Park, Phase 6](#)

POTENTIAL ACTION: Adoption of Consent Agenda as Presented

4. ADMINISTRATIVE ITEMS

5. INTRODUCTIONS AND SPECIAL PRESENTATIONS

6. PUBLIC HEARINGS

a. 2019-144-ANX - Town of Clayton Regional Wastewater Pretreatment Facility
Presenter: Samantha Wullenwaber, Planning Director

[Cover](#)

[Application](#)

[Map](#)

[Map - Aerial](#)

[Newspaper Ad](#)

[Ordinance](#)

POTENTIAL ACTION: Adoption of Ordinance #2019-10-01

7. OLD BUSINESS

8. NEW BUSINESS

a. Acceptance of R. Steven Biggs Regional Wastewater Pretreatment Facility

Presenters: Rich Cappola - Public Services Director, Shaylah Nunn Jones - Novo Nordisk Government & Public Affairs Principal and Matthew Kuntz - Novo Nordisk Manager, Operations - Site Support, DAPI US

[Cover](#)

[Novo Nordisk Request to Town of Clayton for Acceptance of Facility](#)

[Operations & Maintenance Agreement](#)

[Services Agreement](#)

[Resolution of Acceptance & Naming of Facility](#)

POTENTIAL ACTION: Acceptance and Transfer of Facility

POTENTIAL ACTION: Adoption of Resolution #2019-41

b. Clayton Downtown Redevelopment Incentive Grants

Presenter: David DeYoung, Economic Development Director

- 114 West Main Street
- 800 East Main Street

[Cover - 114 West Main](#)

[Cover - 800 East Main](#)

[Agreement- 114 West Main](#)

[Resolution - 114 West Main](#)

[Agreement - 800 East Main](#)

[Resolution - 800 East Main](#)

POTENTIAL ACTION: Authorize Agreements

POTENTIAL ACTION: Adoption of Resolutions #2019-42 & #2019-43

c. Town of Clayton 2020 Holiday Schedule

Presenter: Kimberly Moffett, Town Clerk

[Cover](#)

[Resolution - 2020 Holiday Schedule](#)

POTENTIAL ACTION: Adoption of Resolution #2019-44

d. Clayton Town Council 2020 Meeting Schedule

Presenter: Kimberly Moffett, Town Clerk

[Cover](#)

[Resolution - 2020 Meeting Schedule](#)

POTENTIAL ACTION: Adoption of Resolution #2019-45

e. Fire Department SAFER (Staffing for Adequate Fire and Emergency Rescue) Grant

Presenter: Lee Barbee, Fire Chief

[Cover](#)

[Award Letter](#)

POTENTIAL ACTION: Authorization to Proceed with Acceptance of Grant

9. STAFF REPORTS

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

10. OTHER BUSINESS

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

11. ADJOURNMENT

- a. Adjourn the Meeting

POTENTIAL ACTION:

Motion to Adjourn

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



Town of Clayton
Regular Town Council Meeting Minutes
Monday, September 16, 2019 @ 6:00 PM
Council Chambers

COUNCIL PRESENT:

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

STAFF PRESENT:

Adam Lindsay, Town Manager
Nancy Medlin, D/Town Manager
Katherine Ross, Town Attorney
Kimberly Moffett, Town Clerk
Stacy Beard, Communications Director
Dave DeYoung, Economic Development Director
Rich Cappola, Public Services Director
Robert McKie, Finance Director
Samantha Wullenwaber, Planning Director
Scott Barnard, Parks & Recreation 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

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
- September 3, 2019 - Regular Meeting
 - September 3, 2019 - Closed Session
- b) Final Acceptance
- Lionsgate Subdivision, Phase 7B-7D
- c) Proclamation - 2019 Constitution Week

ACTION: Adoption of Consent Agenda as Presented

Motion: Council Member Holder
Second: Council Member Thompson

Vote: Unanimous

4 ADMINISTRATIVE ITEMS

5 INTRODUCTIONS AND SPECIAL PRESENTATIONS

a) Employee Introductions

Presenters: Samantha Wullenwaber, Planning Director & Rich Cappola, Public Services Director

- Josh Cotten - Code Enforcement Officer
- Joshua Baird - Town Engineer

Ms. Wullenwaber introduced Mr. Cotten. She stated prior to coming to the Town of Clayton, Josh was a member of the US Navy and prior to being selected as the new Code Enforcement Officer, Josh was with our Public Works Department. Mr. Cotten stated he was very happy for the opportunity. Council welcomed him to the team.

Mr. Cappola introduced Mr. Baird as the new Town Engineer and provided details about his vast experience. Mr. Cappola stated he is doing a great job and he is very happy to have him on board. Mr. Baird stated he appreciated the opportunity and was happy to be with the town. Council welcomed him to the team.

b) Art Project - "150 Reasons We Love Clayton"

Presenters: Clark Hipolito & Sara Perricone, Public Art Advisory Board

Ms. Perricone and Mr. Hipolito shared details about a new project the Public Art Advisory Board is undertaking. Details about the project entitled "150 Reasons Why We Love Clayton" were provided. Mr. Hipolito stated this project would give everyone an opportunity to share the reasons they love their hometown. The project will be mobile and will first be placed on Horne Square and will be able to be relocated during Harvest Festival. It will be photographed every day to capture the sentiments shared on a daily basis. It will be a fun interactive project and great for social media. The project will include the 150th logo. It will be in place shortly. Council offered their thanks to the entire board.

c) Presentation of 2019 Constitution Week Proclamation

Requestor: Smith-Bryan Chapter of Daughters of the American Revolution

Presenter: Jody McLeod, Mayor

Mayor McLeod presented a Proclamation to members of the Smith Bryan Chapter of Daughters of the American Revolution recognizing 2019 Constitution Week. Member invited everyone to attend a bell ringing ceremony on the Johnston County Courthouse steps on September 17, 2019, which is the anniversary of the day the Constitution was signed.

- d) **Harmony Playground Update**
Presenter: Dean Penny, Chairman of the Clayton Community Recreational Foundation

Mr. Penny was present and shared an update on the Harmony Playground Project. He shared details about the many styles of inclusive playground equipment to be included. This playground will service the entire Johnston County community. He shared that the ground breaking ceremony will be held on October 12, there will be a golf tournament on October 18 and the Annual Gala will be held on October 19, 2019. He stated to date a total of just under \$600,000 has been raised. It is hoped that an additional \$100,000 will be raised from both the golf tournament and gala. He shared information about some of the major sponsors to include Caterpillar, Novo Nordisk, Northeast Foods, Dean and Cathy Penny Family Fund, and T&T Creative Group. He stated public partnerships include both the Town of Clayton and Johnston County. He stated currently groundbreaking partners include both the Civitan Club of Clayton and the Woman's Club. There are several ongoing fundraisers to include t-shirts as well as the buy a brick leave a legacy. He shared information regarding the significant population that will be assisted with this playground. Details regarding project schedule was shared that included a target completion date of Fall 2020. He shared details about the Gala Lineup which include; Chris Archer, Deborah Holt Noel, Chris Hendricks and Lauren Potter. Mayor Pro Tem Grannis offered his sincere appreciation for all the work and effort that has gone into this project. Mayor McLeod asked about methods to contribute or donate. Mr. Penny stated information could be found at www.harmonyplayground.org. Council Member Thompson stated he was very impressed by the quality of this project and offered his sincere thanks and appreciation.

6 PUBLIC HEARINGS

- a) **2019-111-ANX - Town of Clayton Regional Wastewater Pre-Treatment Facility**
Presenter: Samantha Wullenwaber, Planning Director

Ms. Wullenwaber asked that this item be continued to the October 7, 2019 council meeting.

ACTION: Continued to October 7, 2019

Motion: Council Member
Second: Council Member
Vote: Unanimous

7 OLD BUSINESS

8 NEW BUSINESS

- a) **Amendments to By-Laws - Clayton Downtown Development Association Advisory Board**
Presenter: Dave DeYoung, Economic Development Director

Mr. DeYoung stated there were some modifications made to the CDDA Advisory Board to include clarifying the difference between the advisory board and 501c3, updated selection process for appointing new members, and redefining the downtown boundary for the CDDA into two areas.

ACTION: Adoption of Resolution #2019-39

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

- b) Resolution in Support of State Revolving Fund (SRF) Application Submittal for New Water Reclamation Facility (WRF)
Presenter: Robert McKie, Finance Director

Mr. McKie presented this item. He shared details about this resolution which included the adoption of the Capital Improvement Plan.

ACTION: Adoption of Resolution #2019-40

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

9 STAFF REPORTS

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

10 OTHER BUSINESS

- a) Informal Discussion & Public Comment

Avery Everett was present and introduced himself as a candidate for town council. He stated he has lived in Clayton for 15 years and has learned so much about the town. He stated he wanted to continue learning about the town and residents and wanted to be more involved. He stated he is excited about his candidacy and appreciated all the support council members have provided.

- b) Council Comments

Council Member Satterfield shared his concerns about a mosquito issue in Town Square and asked the area be sprayed prior to concerts. Mr. Lindsay stated we would look into to this request.

11 ADJOURNMENT

- a) With there being nothing further the meeting was adjourned at 6:33 p.m.

ACTION: Motion to Adjourn

Motion: Council Member Holder

Second: Council Member Bunn

Vote: Unanimous

Duly adopted this the 7th day of October, 2019 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: Jonathan Barnes, Dalton Engineering
Karen Durham, Engineering & Inspections Coordinator

Date: September 17, 2019

Subject: Gordon Park, Phase 6

Please place a warranty acceptance request for the subject public water, sewer, associated storm drainage utilities, roadway sections, and all pertinent easements 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

October 7 2019

Agenda Location

Public Hearings

Item Title

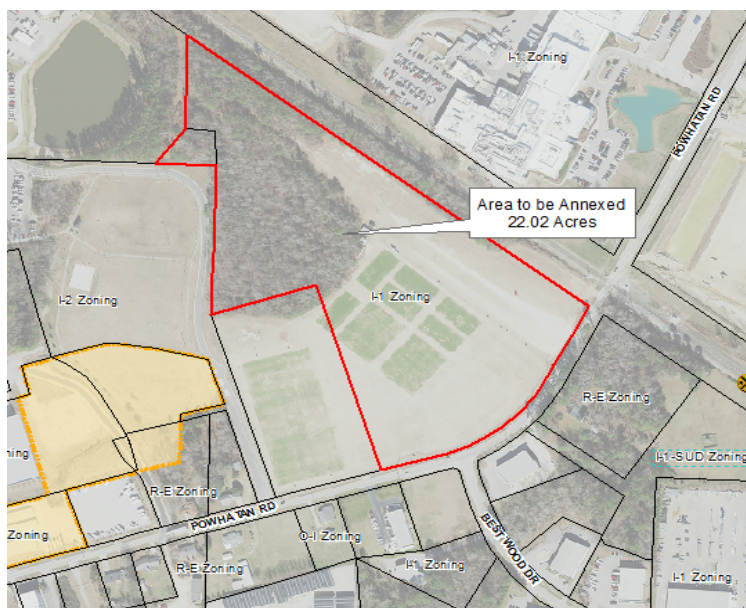
2019-144-ANX-TOC Regional WWPTF

Presenter

Planning Staff

Summary/Description

Annexation Petition 2019-144 Parcel Numbers 05I05019E and 05I05021D, Town of Clayton Regional Waste Water Pretreatment Facility located at 3798 Powhatan Rd. Site Plan 2017-190-SP was approved January 30, 2018.

**Requested Action**

Approval/Denial

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Application, Maps and Deed Descriptions

Meeting Timeline

July 15, 2019 Consent Agenda, July 15, 2019 Set date for Public Hearing and August 5, 2019 Public Hearing, Continue Public Hearing until September 16, 2019, Continue Public Hearing until October 7, 2019



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

PETITION FOR VOLUNTARY ANNEXATION

VOLUNTARY ANNEXATION: Upon receipt of a valid petition signed by all of the owners of real property in the area described therein, the Town may annex an area either contiguous or not contiguous to its primary corporate limits when the area meets the standards set out under North Carolina General Statutes 160A-31 and 160A-58.1.

Applications are due by 5pm on the first working day of each month.

REQUEST INFORMATION

☐ Contiguous Annexation

☒ Non-Contiguous Annexation

The following items must accompany an annexation petition:

To be completed by the applicant:	Included?	
	Yes	No
1. Petition for Annexation with original signatures	☒	☐
2. A boundary plat of the area to be annexed meeting requirements of the Plat Checklist (included in this application packet).	☒	☐
3. Legal Description (metes and bounds)	☒	☐

PROCESS:

Review by Staff: The Planning, Engineering and Public Works Departments review the annexation submission. Comments will be sent to the applicant.

Annexation Plat Submission: After the map and legal description are deemed sufficient by the Town, the applicant is required to submit two (2) Mylar annexation plats to the Planning Department.

Town Council Meeting: The Town Council will pass a resolution directing the Town Clerk to investigate the annexation petition. The Town Clerk will present to the Town Council a Certificate of Sufficiency indicating that the annexation petition is complete. A resolution setting the date of the public hearing is then approved.

Legal Advertisement: A legal advertisement will be published no more than 25 days and no less than 10 days prior to the date of the public hearing.

Public Hearing/Town Council Meeting: The Town Council will either adopt or deny an ordinance to extend the corporate limits of the Town of Clayton.

Recordation: If the annexation is approved by the Town Council, the Annexation Plats shall be recorded at the appropriate county Register of Deeds.

PETITION FOR VOLUNTARY ANNEXATION APPLICATION – PROPERTY INFORMATION

COMPLETE IF A CORPORATION:

Submittal Date: July 1, 2019

Petition No.: 2019-144-ANX

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

1. I/We the undersigned owner(s)* of real property respectfully request that the area described in Paragraph 2 below be annexed to the Town of Clayton, North Carolina.

*If the owner of real property is a corporation or religious entity, attach a copy of the articles of incorporation describing who is/are authorized to sign with the petition.

2. The area to be annexed is contiguous, ☒ non-contiguous to the Town of Clayton, North Carolina and the boundaries of such territory are as provided in the boundary plat attached hereto.
3. If contiguous, this annexation shall include all intervening rights-of-way for streets, railroads, and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.
4. Attached is a statement of the schedule for full development of the property to be annexed, which includes the type, number, and estimated value of planned improvements, if applicable.

Total acreage to be annexed: 22.02 acres
Existing housing units: NA
Population of acreage to be annexed: NA
Existing Zoning District*: I-1
Proposed Town Zoning District*: I-1 Fire District: Wilsons Mills
Reason for petitioner to annex: Receive Town Services
☒ Other (please specify): Town of Clayton Property

5. I/We acknowledge that any zoning vested rights acquired pursuant to G.S. 160A-385.1 or G.S. 153A-344.1 must be declared and identified on this petition. I/We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property. (If zoning vested rights are claimed, indicate below and attach proof.)

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its Secretary by order of its Board of Directors, this 9th day of July, 2019.

Corporate Name: Town of Clayton a North Carolina municipal corporation

SEAL

By:

Nancy Medlin
(Signature)

Attest:

Kimberly M. Schett
Secretary (Signature)

STATE OF NORTH CAROLINA, COUNTY OF JOHNSTON

Sworn and subscribed before me, Nancy Medlin, a Notary Public for the above State and County, this 9th day of July, 2019.

SEAL

JENNIFER PROCTOR
Notary Public
Johnston County
North Carolina

March 2019

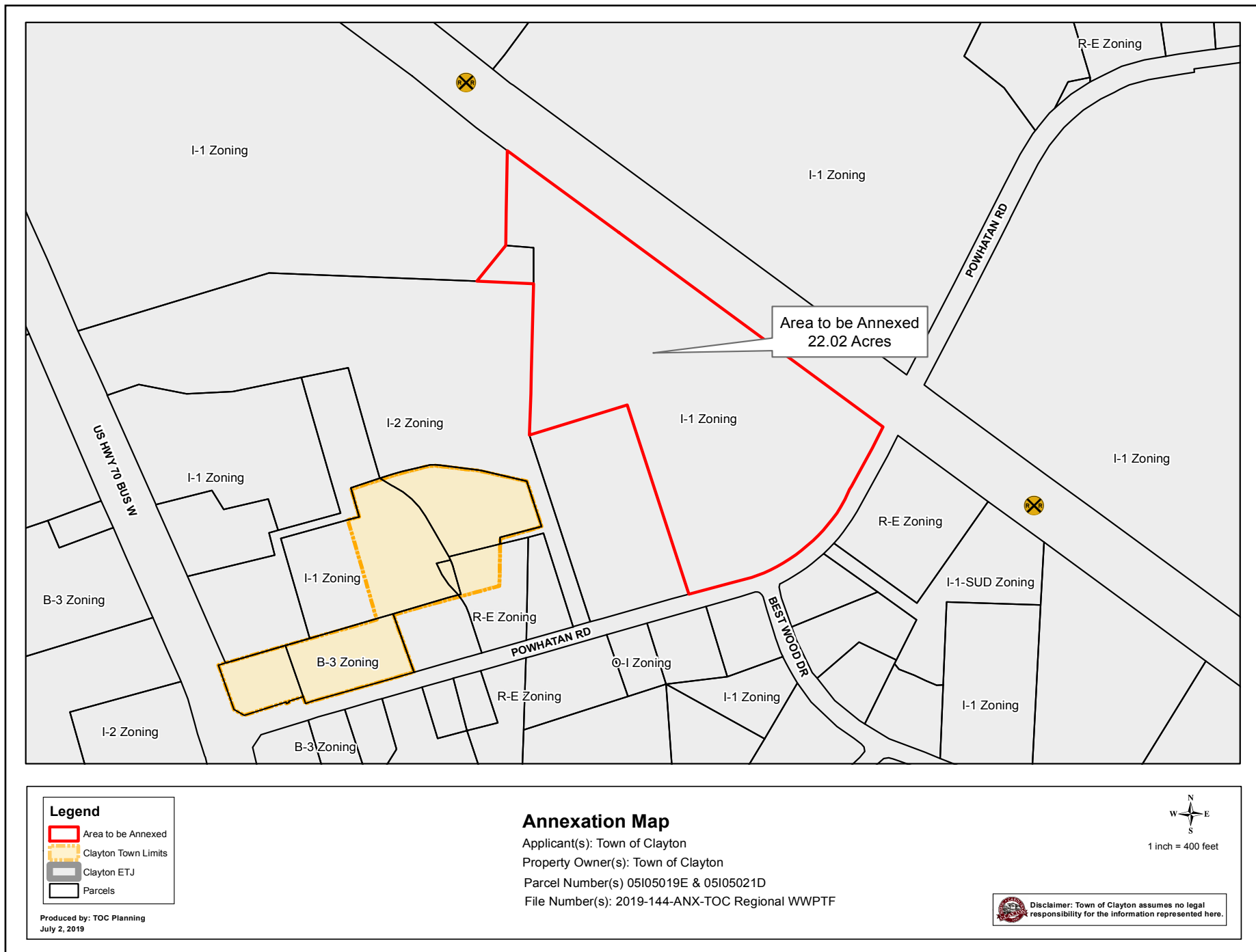
Jennifer Proctor
Notary Public

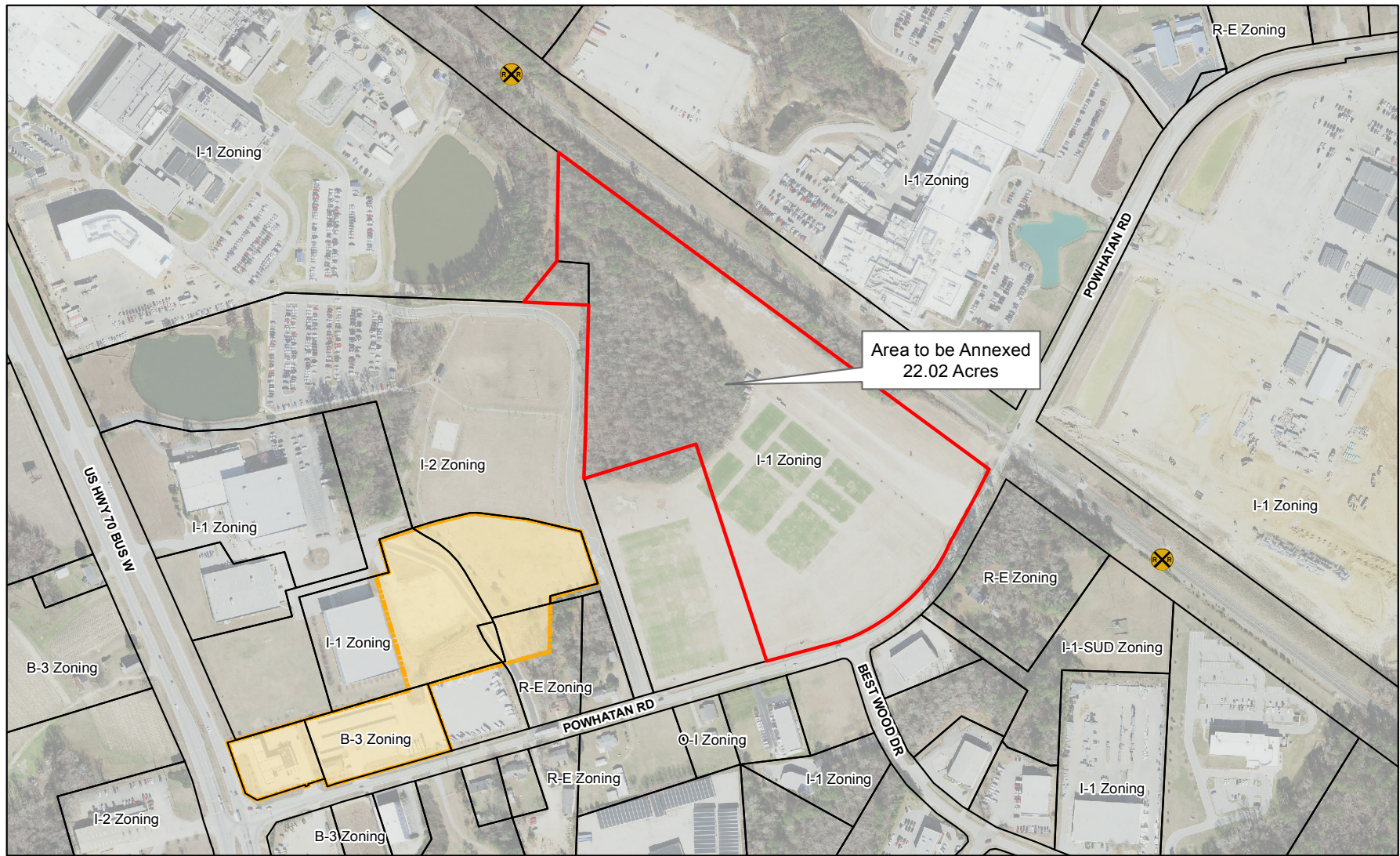
My Commission Expires: 3/1/2020

Page 2 of 3

VOLUNTARY ANNEXATION PLAT CHECKLIST

#	Required Plat Items
1.	Fully dimensioned by metes and bounds, and the location of intersecting boundary lines of the existing town limits, labeled and distinctly marked. Include full right-of-way if the area on both sides is or will be in the corporate limits.
2.	Any utility easements with metes and bounds.
3.	Accurate locations and descriptions of all monuments, markers and control points.
4.	Ultimate right-of-way widths on all streets.
5.	Entitle "ANNEXATION MAP FOR THE TOWN OF CLAYTON" OR "SATELLITE ANNEXATION MAP FOR THE TOWN OF CLAYTON," as appropriate.
6.	Name of property owner(s).
7.	Name, seal, and registration of Professionally Licensed Surveyor (PLS).
8.	Date of the survey and map preparation; a north arrow indicating whether the index is true magnetic North Carolina grid (NAD 83 of NAD 27) or deed; graphic scale; and declination.
9.	Names of the township, county, and state.
10.	A detailed vicinity map.
11.	Include address of property if assigned.
12.	Show all contiguous or non-contiguous town limits.
13.	The following certification must be placed on the map near a border to allow the map to be sealed: Annexation # _____ I, Samantha Wullenwaber, MPA, Planning Director, Clayton, North Carolina certify this is a true and exact map of annexation adopted the _____ day of _____, _____, by the Town Council. I set my hand and seal to the Town of Clayton, _____. Day/Month/Year _____ Samantha Wullenwaber, MPA
14.	Leave 2 inch by 2 inch space for the county Register of Deeds stamp on the plat. All final plats must be stamped and signed before they can be accepted by the Town.





Legend

- Area to be Annexed
- Clayton Town Limits
- Clayton ETJ
- Parcels

Produced by: TOC Planning
July 2, 2019

Annexation Map

Applicant(s): Town of Clayton

Property Owner(s): Town of Clayton

Parcel Number(s) 05105019E & 05105021D

File Number(s): 2019-144-ANX-TOC Regional WWPTF



1 inch = 400 feet



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

PUBLIC NOTICE

The Clayton Town Council has called a public hearing at 6:00 PM on Monday, August 5, 2019, at Town Hall, 111 E. Second Street, on the question of annexing the following described non-contiguous property owned by the Town of Clayton, requested by annexation petition 2019-144-ANX filed pursuant to G.S. 160A-58.1:

The area proposed for annexation is described as the following: Lying and being all of 22.02- acre tract of land as shown on Recombination Plat for Town of Clayton recorded in Plat Book 86, Page 30, recorded at Johnston County Register of Deeds and being more particularly described as follows:

BEGINNING AT A CONCRETE MONUMENT, SAID MONUMENT BEING THE SOUTHWEST CORNER OF A PARCEL OWNED BY TOWN OF CLAYTON (PIN # 167800309377); SAID POINT ALSO BEING THE SOUTHEAST CORNER OF A PARCEL OWNED BY GRIFOLS THERAPEUTICS INC. (PIN # 167800215181), HAVING COORDINATES OF N: 680412.56 AND E: 2173924.64 (NAD83/2011); THENCE FROM SAID POINT OF BEGINNING, N 41°05'15" E A DISTANCE OF 160.51' TO AN IRON PIPE; THENCE, N 00°44'27" E A DISTANCE OF 345.34' TO AN IRON PIPE; SAID IRON PIPE BEING LOCATED ON THE SOUTHERN RIGHT OF WAY OF THE RAILROAD; THENCE ALONG AND WITH SAID RIGHT OF WAY, S 53°10'17" E A DISTANCE OF 1647.46' TO AN IRON PIPE; SAID IRON PIPE BEING LOCATED ON THE NORTHERN RIGHT OF WAY LINE OF POWHATAN ROAD; THENCE LEAVING SAID RAILROAD RIGHT OF WAY AND ALONG AND WITH SAID ROAD RIGHT OF WAY, S 26°49'06" W A DISTANCE OF 264.20' TO AN IRON PIPE; THENCE, S 27°54'23" W A DISTANCE OF 45.44' TO A POINT; THENCE, S 30°30'29" W A DISTANCE OF 49.04' TO A POINT; THENCE, S 34°29'40" W A DISTANCE OF 46.21' TO A POINT; THENCE, S 40°10'15" W A DISTANCE OF 47.55' TO A POINT; THENCE, S 45°32'00" W A DISTANCE OF 46.88' TO A POINT; THENCE, S 50°31'57" W A DISTANCE OF 47.89' TO A POINT; THENCE, S 55°09'35" W A DISTANCE OF 47.58' TO A POINT; THENCE, S 59°45'06" W A DISTANCE OF 46.78' TO A POINT; THENCE, S 67°26'24" W A DISTANCE OF 96.73' TO A POINT; THENCE, S 72°09'10" W A DISTANCE OF 63.37' TO A POINT; THENCE, S 73°33'19" W A DISTANCE OF 168.47' TO AN IRON PIPE; THENCE LEAVING SAID RIGHT OF WAY, N 17°36'52" W A DISTANCE OF 715.23' TO AN IRON PIPE; THENCE, S 72°22'00" W A DISTANCE OF 359.01' TO AN IRON ROD; THENCE, N 01°20'21" E A DISTANCE OF 551.13' TO AN IRON PIPE; THENCE, N 87°39'24" W A DISTANCE OF 199.80' TO THE **POINT OF BEGINNING** CONTAINING 959,404.4 SF (22.02 ACRES) MORE OR LESS ACCORDING TO A RECOMBINATION PLAT FOR TOWN OF CLAYTON PREPARED BY DEWBERRY ENGINEERS INC. DATED NOVEMBER 28, 2017 AND RECORDED IN PLAT BOOK 86 PAGE 30 AT THE JOHNSTON COUNTY REGISTER OF DEEDS OFFICE.

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

Kimberly A. Moffett, CMC
Town Clerk
Town of Clayton
919-553-5002 ext. 5004

The Johnstonian Newspaper

Please advertise on the following date:

Wednesday, July 24, 2019

Affidavit of publication required.

Ordinance #2019-10-01

**ANNEXATION PETITION 2019-144-ANX
TOC Regional WWPTF
Parcel Numbers 05I05019E and 05I05021D
Owners: Town of Clayton
Non-Contiguous; 22.02 acres**

**AN ORDINANCE TO EXTEND THE
CORPORATE LIMITS OF THE TOWN OF
CLAYTON, NORTH CAROLINA**

WHEREAS, the Town of Clayton has been petitioned under G.S. 160A-31 to annex the area described below; and

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

WHEREAS, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Town Hall at 6:00 PM on October 7, 2019 with due notice of publication on July 24, 2019.

WHEREAS, the Town of Clayton finds that the petition meets the requirements of
G.S. 160A-31;

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

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the Town of Clayton as October 7, 2019:

BEGINNING AT A CONCRETE MONUMENT, SAID MONUMENT BEING THE SOUTHWEST CORNER OF A PARCEL OWNED BY TOWN OF CLAYTON (PIN # 167800309377); SAID POINT ALSO BEING THE SOUTHEAST CORNER OF A PARCEL OWNED BY GRIFOLS THERAPEUTICS INC. (PIN # 167800215181), HAVING COORDINATES OF N: 680412.56 AND E: 2173924.64 (NAD83/2011); THENCE FROM SAID POINT OF BEGINNING, N 41°05'15" E A DISTANCE OF 160.51' TO AN IRON PIPE; THENCE, N 00°44'27" E A DISTANCE OF 345.34' TO AN IRON PIPE; SAID IRON PIPE BEING LOCATED ON THE SOUTHERN RIGHT OF WAY OF THE RAILROAD; THENCE ALONG AND WITH SAID RIGHT OF WAY, S 53°10'17" E A DISTANCE OF 1647.46' TO AN IRON PIPE; SAID IRON PIPE BEING LOCATED ON THE NORTHERN RIGHT OF WAY LINE OF POWHATAN ROAD; THENCE LEAVING SAID RAILROAD RIGHT OF WAY AND ALONG AND WITH SAID ROAD RIGHT OF WAY, S 26°49'06" W A DISTANCE OF 264.20' TO AN IRON PIPE; THENCE, S 27°54'23" W A DISTANCE OF 45.44' TO A POINT; THENCE, S 30°30'29" W A DISTANCE OF 49.04' TO A POINT; THENCE, S 34°29'40" W A DISTANCE OF 46.21' TO A POINT; THENCE, S 40°10'15" W A DISTANCE OF 47.55' TO A POINT; THENCE, S 45°32'00" W A DISTANCE OF 46.88' TO A POINT; THENCE, S 50°31'57" W A DISTANCE OF 47.89' TO A POINT; THENCE, S 55°09'35" W A DISTANCE OF 47.58' TO A POINT; THENCE, S 59°45'06" W A DISTANCE OF 46.78' TO A POINT; THENCE, S 67°26'24" W A DISTANCE OF 96.73' TO A POINT; THENCE, S 72°09'10" W A DISTANCE OF 63.37' TO A POINT; THENCE, S 73°33'19" W A DISTANCE OF 168.47' TO AN IRON PIPE; THENCE LEAVING SAID RIGHT OF WAY, N 17°36'52" W A DISTANCE OF 715.23' TO AN IRON PIPE; THENCE, S 72°22'00" W A DISTANCE OF 359.01' TO AN IRON ROD; THENCE, N 01°20'21" E A DISTANCE OF 551.13' TO AN IRON PIPE; THENCE, N 87°39'24" W A DISTANCE OF 199.80' TO THE **POINT OF BEGINNING** CONTAINING 959,404.4 SF (22.02 ACRES) MORE OR LESS ACCORDING TO A RECOMBINATION PLAT FOR TOWN OF CLAYTON PREPARED BY DEWBERRY ENGINEERS INC. DATED NOVEMBER 28, 2017 AND RECORDED IN PLAT BOOK 86 PAGE 30 AT THE JOHNSTON COUNTY REGISTER OF DEEDS OFFICE.

Section 2: Upon and after October 7, 2019 the above described

territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Clayton and shall be entitled to the same privileges and benefits as other parts of the Town of Clayton. Said territory shall be subject to municipal taxes according to G.S> 160A-58.10.

Section 3. The Mayor of the Town of Clayton shall cause to be recorded in the office of the Register of Deeds of Johnston County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the County Board of Elections, as required by G.S. 163-288.1.

Duly adopted this the 7th day of October. 2019 while in regular session.

Mayor

Jody L. McLeod,

ATTEST:

Kimberly A. Moffett, CMC, NCCMC Katherine Ross,
Town Clerk Town Attorney

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This the _____ day of,  2019
_____ personally appeared before me, Kimberly A.
Moffett, Clerk of the Town of Clayton, who, being duly sworn by
me, says that she knows the common seal of the Town of
Clayton and is acquainted with Jody L. McLeod, who is the
Mayor and presiding member of said municipal corporation; and
that she saw the said Mayor sign the foregoing instrument and

saw the said common seal of said municipal corporation affixed to said instrument by said Mayor, and that she, the said Kimberly A. Moffett, signed her name in attestation of said instrument in the presence of said Mayor.

Witness my hand and notarial seal, this the day and year first above written.

Notary Public - Signature

(SEAL)

Notary Public – Printed Name

Commission Expires: _____

County of Commission: _____



Town Council Agenda Cover Sheet

Meeting Date

October 7 2019

Agenda Location

New Business

Item Title

Acceptance R. Steven Biggs Regional Wastewater Pretreatment Facility

Presenter(s)

Rich Cappola, Director of Public Services

Shaylah Nunn Jones, Novo Nordisk Government & Public Affairs Principal

Matthew Kuntz, Novo Manager, Operations – Site Support, DAPI US

Summary/Description

Pretreating industrial wastewater to meet the needs of industry, the economic development goals of the region and the environmental stewardship standards of the state are critical issues facing Clayton, Johnston County, and communities across this country. The East Clayton Industrial area (ECIA) and the Research & Training Zone (RTZ) are attractive locations for new and expanding businesses – businesses that bring more jobs and spur more investment and spending in our community. For several years, Clayton and Johnston County have been discussing wastewater challenges and solutions with industrial partners.

In 2017, Novo Nordisk Pharmaceutical Industries, LP (Novo Nordisk) and the Town of Clayton (Clayton) entered into an agreement which set forth the terms of their cooperative efforts on a facility that would be constructed by Novo Nordisk and dedicated to Clayton as public infrastructure for use as a regional wastewater pretreatment facility (the “WWPTF”).

The Town of Clayton has received \$10 million dollars in grants to support the construction of a regional pretreatment facility, including \$4 million from the Golden LEAF Foundation, which supports economic opportunity in North Carolina’s rural and tobacco-dependent communities often by awarding grants to support public infrastructure to help attract businesses to a region. The NC General Assembly, NC Department of Commerce, Federal Economic Development Administration, Golden LEAF Foundation, Johnston County, local industry leaders and Clayton Town Council have all recognized the value of this historic cooperative, regional solution.

Novo Nordisk has completed construction of the WWPTF and has offered to donate the WWPTF to Clayton pursuant to the September 2017 Agreement. Last month, Clayton and Johnston County renewed an interlocal agreement that permitted additional flow from the new regional wastewater pretreatment facility to be sent to Johnston County’s utilities system for final treatment if necessary, allowing the Town and County to leverage our long-standing partnership as we continue to address the wastewater needs of our growing region.

Before the Town Council is a request to approve acceptance of the WWPTF from Novo Nordisk and authorize execution of documents necessary for the transfer of ownership of the WWPTF to the Town.

The resolution before the Town Council also seeks approval for the naming of this new facility the **R. Steven Biggs Regional Wastewater Pretreatment Facility**, in honor of the former long-time Town Clayton Manager. It was his vision to see public and private entities partner to build a regional facility that would serve to solidify the community’s commitment to economic vitality and environmental stewardship.

Requested Action

Approval

PPAB 5151248v1

Funding Sources:

Golden LEAF Foundation grant - \$4 million
NC Department of Commerce Grant/ Legislative Appropriation - \$6 million
Novo Nordisk (donation of construction costs less grants)
Town of Clayton
Johnston County

Cost: N/A Yes ☒ No ☒

Additional Documents to be Included in Agenda Packet

Cover Sheet
Novo Nordisk Request to Town of Clayton for Acceptance of Facility
Operations & Maintenance Agreement
Services Agreement
Resolution of Acceptance and Naming of Facility



Offer by Novo Nordisk Pharmaceutical Industries, LP to donate
a Wastewater Pretreatment Facility to the Town of Clayton

WHEREAS, Novo Nordisk Pharmaceutical Industries, LP (as successor to Novo Nordisk Pharmaceutical Industries, Inc.) (“Novo Nordisk”) and the Town of Clayton (“Clayton”) entered into an “Agreement Concerning a Regional Wastewater Pretreatment Facility” on September 25, 2017 (the “WWPTF Agreement”);

WHEREAS, pursuant to the WWPTF Agreement, Clayton leased to Novo Nordisk certain land located at 3798 Powhatan Road, Clayton, North Carolina (the “Property”);

WHEREAS, Novo Nordisk designed and constructed, at a cost in excess of \$35,000,000, a wastewater pretreatment facility (“WWPTF”) on the Property;

WHEREAS, Clayton has received a grant from the North Carolina Department of Commerce for \$6,000,000 and a grant from the Golden LEAF Foundation for \$4,000,000 to be used for the construction of a regional WWPTF (the “Grant Funds”);

WHEREAS, the WWPTF Agreement contemplated the possibility that Novo Nordisk, upon completion of design and construction of the WWPTF, could offer to donate the WWPTF to Clayton for its use as a regional WWPTF as part of Clayton’s POTW and, if Clayton accepts that offer, Clayton would reimburse a portion of Novo Nordisk’s construction costs of the WWPTF using the Grant Funds;

WHEREAS, Novo Nordisk is in a position to donate the entire WWPTF, both real property and personal property, to Clayton for use as a regional WWPTF.

NOW, THEREFORE, subject to an affirmative vote of Clayton’s Town Council on October 7th, 2019, Novo Nordisk hereby offers to donate the WWPTF to Clayton, subject to the terms of the WWPTF Agreement (including the first and second amendments thereto), the transfer documents (the Termination of Lease and Quitclaim Bill of Sale), and the agreements relating to the on-going operation and maintenance of the WWPTF (the Wastewater Pretreatment Services Agreement and the Operation and Maintenance Services Agreement).

NOVO NORDISK PHARMACEUTICAL INDUSTRIES, LP

By: _____

Name: _____

Title: _____

**Novo Nordisk
Pharmaceutical
Industries, LP**

3612 Powhatan Road
Clayton, NC 27527-9217
USA

Telephone:
+1 919-550-2200

Internet:
www.novonordisk-clayton.com

NPGBO1:3041806.1

Final Draft
Subject to Review upon completion of construction and commissioning

OPERATION AND MAINTENANCE SERVICES AGREEMENT

BY AND BETWEEN

NOVO NORDISK PHARMACEUTICAL INDUSTRIES, LP

AND

THE TOWN OF CLAYTON, NORTH CAROLINA

ENTERED INTO THIS ____ DAY OF _____, 2019

OPERATION AND MAINTENANCE SERVICES AGREEMENT

THIS **OPERATION AND MAINTENANCE SERVICES AGREEMENT** ("Agreement"), is hereby made and entered into as of _____, 2019, by and between **THE TOWN OF CLAYTON, NORTH CAROLINA**, a municipal corporation in the State of North Carolina ("Clayton"), and **NOVO NORDISK PHARMACEUTICAL INDUSTRIES, LP**, a Delaware limited partnership ("NNPILP"), each or both also referred to herein as either a "**Party**" or cumulatively, the "**Parties.**"

RECITALS

WHEREAS, Clayton anticipates taking ownership of a new regional waste water pretreatment facility located in Johnston County, North Carolina (the "WWPTF");

WHEREAS, Clayton is desirous that the operation and maintenance of the WWPTF should be undertaken by NNPILP during the WWPTF's startup period, as described herein;

WHEREAS, NNPILP and Clayton agree to enter into this Agreement in order to set out the terms and conditions pursuant to which NNPILP will operate and maintain the WWPTF, accept delivery of certain quantities of Wastewater, pre-treat such Wastewater, and deliver the Pretreated Wastewater to Clayton and Clayton will accept delivery of such Pretreated Wastewater during the Term of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and other valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the Parties agree as follows:

AGREEMENT

1. Definitions. In this Agreement (and in the recitals above) in addition to the terms defined elsewhere in the Agreement:

- 1.1. "Agreement" means this Operation and Maintenance Services Agreement, together with all exhibits and attachments hereto, all as such may be modified, amended, supplemented or restated in writing from time to time.
- 1.2. "Applicable Laws" means any federal, state or local statute, ordinance, decree or other law, regulation, rule, code, direction, license, consent, permit authorization, or other approval including any conditions attached thereto, that are applicable to this Agreement or the Services.
- 1.3. "Commencement Date" means the date on which ownership of the WWPTF is transferred from NNPILP to Clayton.
- 1.4. "Corrective Maintenance and Repairs" means those non-routine/non-repetitive activities required for operational continuity, safety, and performance, generally to respond to or avert failure of the equipment on the WWPTF, or a component thereof.
- 1.5. "Governmental Approval" means any permit, license, approval, authorization, consent or other authorization which is required under the Applicable Laws for the operation and maintenance of the WWPTF, or for the performance of any of the obligations under this Agreement.

- 1.6. "Maintenance Program" means the maintenance program for the WWPTF that was provided by Gannett Fleming.
- 1.7. "Metering Points" means, collectively, the physical points where Wastewater and Pretreated Wastewater are delivered and received and which are measured by the Metering System.
- 1.8. "Metering System" means all meters, metering devices and related instruments that are being used as of the Commencement Date to measure and record the delivery and receipt of Wastewater and Pretreated Wastewater at the Metering Points.
- 1.9. "Operating Procedures" means the procedures specifically listed in the O&M manual provided by Gannett Fleming required to be met in pre-treating Wastewater and delivering Pretreated Wastewater to Clayton during the Term of this Agreement.
- 1.10. "Performance Guarantee" has the meaning set forth in Section 5.
- 1.11. "Planned Service Interruption" means any necessary interruption to normal services due to essential maintenance or operational changes of the WWPTF.
- 1.12. "Preventive and Predictive Maintenance" means routine and/or repetitive activities required to maintain the reasonably expected service life of the WWPTF and components thereof.
- 1.13. "Services" means the carrying out and doing of all things that are to be done by NNPILP pursuant to this Agreement.
- 1.14. "Service Charge" has the meaning given to it in Section 6.
- 1.15. "Sludge" means the residual waste generated by NNPILP in the pre-treatment of Wastewater pursuant to this Agreement.
- 1.16. "Standard of Performance" means the degree of care and skill ordinarily used by the wastewater pre-treatment industry as practiced in the United States on wastewater pre-treatment facilities of the nature and magnitude of the WWPTF, and shall be in compliance with all applicable federal, state and local laws, ordinances, and regulations having jurisdiction over the Services.
- 1.17. "Pretreated Wastewater" means the Wastewater pre-treated at the WWPTF which complies with the Pretreated Wastewater Specifications.
- 1.18. "Pretreated Wastewater Delivery Points" means the points of delivery of Pretreated Wastewater as set out in Exhibit B.
- 1.19. "Pretreated Wastewater Specifications" means the Pretreated Wastewater specifications set forth in Exhibit A.
- 1.20. "WWPTF" means all equipment, machinery, infrastructure, buildings and facilities, materials and other property that make up the WWPTF, including the land upon which it was constructed.

1.21. "Wastewater" means the wastewater delivered by Clayton to the WWPTF at the Wastewater Delivery Points.

1.22. "Wastewater Delivery Points" means the points of delivery for Wastewater as set out in Exhibit B.

1.23. "Wastewater Specifications" means the wastewater specifications set forth in the industrial user permit(s) of the users of the WWPTF.

2. Grant of Rights to NNPIILP.

2.1. Right to Operate and Maintain the WWPTF. Clayton grants to NNPIILP the right during the Term to:

2.1.1. manage, operate, repair and maintain the WWPTF; and

2.1.2. accept delivery of and pre-treat Wastewater and deliver Pretreated Wastewater in accordance with Section 5.0 at the WWPTF.

2.2. Limited Right of Access to Operate and Maintain the WWPTF.

2.2.1. Subject to the terms of this Agreement, Clayton hereby grants to NNPIILP, and its employees and subcontractors, a limited right of access to operate and maintain the WWPTF for the sole purpose of permitting NNPIILP to perform its obligations under this Agreement, and any matters incidental thereto.

Nothing in this Agreement shall be construed as granting NNPIILP a leasehold interest in the WWPTF, now owned by Clayton, following NNPIILP's termination of the Lease Agreement dated January 29, 2018, between Clayton (as landlord) and NNPIILP (as tenant).

2.2.2. NNPIILP, and its employees and approved subcontractors, shall abide by the relevant rules, procedures and policies of Clayton during the term of this Agreement.

2.3. Clayton Access. Clayton shall retain ownership of the WWPTF and the right to enter the WWPTF for any reason. In connection with such entry, Clayton and Clayton's employees and agents shall observe all health and safety rules established by NNPIILP (or its subcontractors) of which it has written notice.

3. **Term.** Subject to the other provisions of this Agreement, including the Termination provision in Section 10, the term of this Agreement shall be for a period commencing on the Commencement Date and ending on that date that is two (2) years after the Commencement Date (the "Term").

4. Operation and Maintenance Services.

4.1. Provision of Services. NNPIILP shall operate the WWPTF in a manner that causes the Wastewater received to be pre-treated in accordance with Section 5, and NNPIILP shall be responsible for the preparation and disposal of Sludge.

4.2. Obligations of NNPIILP. In addition to the other responsibilities of NNPIILP set forth in this Agreement, NNPIILP shall at all times during the Term of this Agreement be obligated to:

- 4.2.1.cause the WWPTF to be operated, managed and maintained, at its own cost and risk (excluding property insurance which will, at all times, be maintained by Clayton), in a manner consistent with the Standard of Performance and in compliance with the Operating Procedures;
- 4.2.2.staff the WWPTF with qualified personnel (including, at NNPIILP's sole discretion, to utilize subcontractors, but if such discretion is exercised notice will be provided to Clayton in advance of execution of any subcontract and Clayton shall be a third party beneficiary under any such contract);
- 4.2.3.ensure that the Services to be rendered by NNPIILP hereunder will not be interrupted except for Planned Service Interruptions, although a failure to satisfy this obligation shall not be deemed to be a breach so long as NNPIILP is the sole user of the WWPTF (NNPIILP shall promptly notify Clayton in the event that it receives notice from a subcontractor that service will be disrupted or suspended due to a force majeure event);
- 4.2.4.manage the collection and preparation and disposal of the Sludge;
- 4.2.5.maintain a daily operations and maintenance log (in written or electronic form) that shall include records of all required readings of the Metering System for which it is responsible;
- 4.2.6.comply, and ensure that each NNPIILP subcontractor complies, with all existing and future federal, state and local laws with respect to the provision of the services pursuant to this Agreement, including, without limitation, all Governmental Approvals issued in connection with the WWPTF;
- 4.2.7.obtain and maintain (or ensure any subcontracts obtains and maintains) any and all Governmental Approvals required by law of the operator of the WWPTF;
- 4.2.8.give to Clayton all the information and assistance which it shall reasonably require, including but not limited to requests in relation to applications for Government Approvals relating to the ownership, operation and maintenance of the WWPTF and any inquiries made by entities issuing Governmental Approvals as to compliance with said Governmental Approvals;
- 4.2.9.upon request from Clayton, prepare and submit (or cause its subcontractor to prepare and submit) within a reasonable time any and all monitoring reports required by any Governmental Approval; further, NNPIILP shall work with Clayton and its subcontractor on specific content and format of the subcontractor's monthly report that summarizes the Project activities performed at the WWPTF;
- 4.2.10. perform all maintenance for the WWPTF in accordance with the Maintenance Program provided by Gannett Fleming;
- 4.2.11. perform all required Corrective Maintenance and Repair of the WWPTF, with payment of the costs for such Corrective Maintenance and Repair being first paid out of any reserve fund applicable to the WWPTF;

- 4.2.12. purchase all chemicals, fuels, parts and supplies required to perform the Services (NNPILP shall provide to Clayton a copy of its subcontractor's initial equipment list promptly following NNPILP's receipt thereof);
 - 4.2.13. at reasonable times and upon reasonable advance notice, allow Clayton, and its outside auditors, access to all books and records of NNPILP or subcontractor related to NNPILP's performance of this Agreement and operation and maintenance of the WWPTF;
 - 4.2.14. upon expiration or termination of this Agreement, transfer to Clayton a copy of all records compiled by NNPILP with information and material gathered when performing this Agreement pertaining to the operation and maintenance of the WWPTF, to the extent that such records have not previously been provided to Clayton or do not reside at the WWPTF; and
 - 4.2.15. obtain written approval by Clayton, which shall not be unreasonably delayed or denied, prior to undertaking or approving (i) any maintenance, improvements, additions, alterations or any other work of any character whatsoever to the WWPTF properties which may affect the exterior appearance of such property and operational functionality of equipment and (ii) any maintenance work related to exterior or interior appearance of the WWPTF properties or pump stations properties, as opposed to work necessary to ensure proper operation of the WWPTF and plant equipment.
- 4.3. Clayton Responsibilities. In addition to the other responsibilities of Clayton set forth in this Agreement, Clayton shall at all times during the Term of this Agreement be obligated to:
- 4.3.1. obtain and maintain all Governmental Approvals required by law of the owner and/or permit holder of the WWPTF;
 - 4.3.2. maintain property insurance on the WWPTF in the amount of full replacement cost under an All-Risk Form, including coverage for Earthquake, Windstorm and Flood equal to the limit required, which shall be primary and non-contributory with regard to any insurance maintained by NNPILP and shall waive all rights of subrogation in favor of NNPILP, its officers, directors, employees, and affiliate, subsidiary and parent companies; in the event Clayton recovers under this policy, the proceeds shall be used to repair damage to the WWPTF (including reimbursement of any funds expended by Clayton related to obtaining in the recovery or making repairs in advance of receipt of the recovery).
 - 4.3.3. give to NNPILP all the information and assistance which it shall reasonably require, including but not limited to requests in relation to applications for Governmental Approvals relating to the operation and maintenance of the WWPTF and any inquiries made by entities issuing Governmental Approvals as to compliance with said Governmental Approvals; and
 - 4.3.4. accept Pretreated Wastewater at Pretreated Wastewater Delivery Points so long as the Pretreated Wastewater meets the Pretreated Wastewater Specifications.

5. Pre-Treatment of Wastewater.

5.1. Content of Pretreated Wastewater.

5.1.1. NNPIIP shall operate and maintain the WWPTF so as to produce Pretreated Wastewater at the Pretreated Wastewater Delivery Points which meets the Pretreated Wastewater Specifications set forth on Exhibit A.

5.1.2. To the extent that a person other than NNPIIP provides Wastewater which does not meet the Wastewater Specifications or which contains abnormal substances ("Nonconforming Wastewater"), then:

5.1.2.1. NNPIIP shall use commercially reasonable efforts to pre-treat such nonconforming Wastewater, but NNPIIP shall have no responsibility or liability to Clayton in the event NNPIIP does not meet the requirements of this Agreement with respect to the nonconforming Wastewater; and

5.1.2.2. Clayton shall continue to make all required payments to NNPIIP, and shall further pay those additional amounts, if any, mutually agreed to by and between NNPIIP and Clayton with respect to the pre-treatment of nonconforming Wastewater; provided, however, NNPIIP shall not be released from its responsibility if the failure of the Wastewater to meet the requirements of this Agreement is caused by the action or inaction of NNPIIP.

5.1.3. If upon delivery to the Pretreated Wastewater Delivery Points any component of the Pretreated Wastewater fails to meet the Pretreated Wastewater Specifications, then the Party that detects such failure shall promptly notify the other Party of such failure. NNPIIP shall forthwith immediately correct the source or cause of such failure.

5.2. The Performance Guarantee in this Section 5 shall be the exclusive warranty or guarantee under this Agreement with respect to Pretreated Wastewater, but shall not limit or impact any warranty or guarantee under any separate contract between Clayton and NNPIIP or its affiliates, even where such agreements are related to the WWPTF. NNPIIP DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. Service Charge and Payment.

6.1. Subject to Section 6.2 below, Clayton shall pay NNPIIP, in respect of each month after the Commencement Date, a monthly Service Charge. To the extent NNPIIP subcontracts out the Services, as is anticipated, the amount payable by NNPIIP to the subcontractor shall determine the Service Charge. Otherwise, the Service Charge shall be calculated by summing all costs incurred by NNPIIP to perform its obligations under Section 4, including but not limited to costs to cover the pre-treatment, handling, and disposal of Wastewater, all on-going costs of operating portions of the WWPTF, routine maintenance of those on-going portions.

6.1.1. Treatment, handling and disposal costs. These costs shall include all direct costs for chemicals, supplies and other materials utilized in pretreating Wastewater; the direct costs for handling or loading of any waste materials, including Sludge, which are not

discharged from the WWPTF into trucks or other conveyances, and the transportation of those waste materials and Sludge to a disposal location; and the direct costs of the disposal of those waste materials.

6.1.2.On-going operation costs. These costs shall include the actual labor costs for those workers actually involved in the operation of the WWPTF; all contract services, if any, for individuals or companies involved in the operation of the WWPTF; electric and gas utilities charges; WWPTF-specific insurance premiums (e.g. liability and worker's compensation), and any other costs other than pre-treatment, handling and disposal costs which are incurred in the on-going operation of the WWPTF.

6.1.3.Routine maintenance. All costs incurred to comply with the Maintenance Program, to the extent such services and costs are not covered by costs attributable to on-going operations. These costs shall include all labor charges, equipment, materials, and taxes attributable to such routine maintenance.

6.2. This Service Charge shall be offset by any amounts owed to Clayton by NNPIILP under the Wastewater Pretreatment Services Agreement.

7. **NNPIILP Subcontractors.** NNPIILP and Clayton both understand and agree that NNPIILP intends to subcontract out the Services. All subcontractors must be approved by Clayton, which approval may be granted by means of an "Approved Subcontractor List" that, from time to time, is mutually agreed to on a commercially reasonable basis. NNPIILP shall provide to Clayton a copy of each statement of work (SOW) with the subcontractor and, where a SOW is not required, the purchase order proposed to the subcontractor at least five (5) business days prior to NNPIILP's execution of such SOW and purchase order; if the SOW or purchase order is materially revised prior to execution (or thereafter a Change Order is initiated), NNPIILP shall provide to Clayton a copy of the revised SOW/purchase order or change order at least five (5) business days prior to NNPIILP's execution of such revised SOW/purchase order or change order. NNPIILP agrees, upon the written request by Clayton, to exercise its right to audit the subcontractors, and NNPIILP shall inform Clayton concerning the results of such audit. The subcontracts shall provide that they may be assigned to Clayton without the prior consent of the subcontractors.

8. **Representations and Warranties.** NNPIILP hereby represents and warrants that it has the expertise (or will contract with an entity having the authority and expertise) to operate the WWPTF.

9. **Liability and Responsibility for Insurance.**

9.1. Damages.

9.1.1.Consequential or Exemplary Damages. Clayton and NNPIILP hereby waive their rights to recover from each other any INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR OTHER DAMAGES OTHER THAN ACTUAL DIRECT DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES ARISE UNDER BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY, INCLUDING WITHOUT LIMITATION, loss of actual or anticipated profits or revenues, production related losses and expenses due to loss of use or shutdown, increased production expense of manufacture or operation, costs of or damages due to business interruption or

downtime, cost of capital or interest expense on shutdown of production equipment, overhead and other costs for unrealized sales, increased overhead expenses due to loss of production, loss of market share, claims by customers due to missed deliveries, and exemplary or punitive damages arising out of or relating to a breach of this Agreement.

9.1.2. Damages Under this Agreement. If NNPILP breaches its obligations with respect to its provision of the Services under this Agreement, and fails to cure such breach within 30 days of receiving written notice from Clayton thereof, and Clayton incurs direct damages as a result of that breach, then Clayton is entitled to recover from NNPILP any amounts that NNPILP is able to recover from the subcontractor that is operating the WWPTF. NNPILP shall vigorously pursue recovery of all incurred damages at its own cost and any recovery shall first be allocated to NNPILP's costs to recover damages and then to any damages of Clayton, and, at Clayton's option, assign to Clayton its claims against the subcontractor operating the WWPTF.

9.2. Indemnification.

9.2.1. NNPILP agrees to indemnify, hold harmless and defend Clayton and its agents, employees and contractors from and against any and all third party claims, demands, suits, and causes of action (collectively referred to hereafter as "Claims") including and without limitation to those Claims relating to injury or death of any persons whomsoever, and to pay all costs of judgments, losses, fines, penalties, damages (including environmental damages to, loss of, or contamination or pollution of any property or resource), and costs and expenses (including reasonable attorneys' fees, costs of litigation and/or investigation and other costs) resulting from any such Claim to the extent such Claim arises out of or results from, directly or indirectly (i) NNPILP's breach of this Agreement (ii) NNPILP's failure to adhere to any law, legal requirement, or regulation relating to this Agreement after the Commencement Date; or (iii) any negligence, gross negligence or willful misconduct by NNPILP and its officers, directors, employees and contractors in connection with the performance of this Agreement.

9.2.2. Clayton agrees to indemnify, hold harmless, and defend NNPILP, its affiliates, and their respective officers, directors, employees, contractors, successors and assigns from and against any and all Claims and to pay all costs of judgments, losses, fines, penalties, damages (including environmental damages to, loss of, or contamination or pollution of any property or resource), and costs and expenses (including reasonable attorneys' fees, costs of litigation and/or investigation and other costs) resulting from any such Claim to the extent such Claim arises out of or results from, directly or indirectly: (i) Clayton's breach of this Agreement, (ii) Clayton's failure to adhere to any law, legal requirement, or regulation relating to this Agreement after the Commencement Date; or (iii) any negligence, gross negligence or willful misconduct by Clayton and its agents, employees and contractors in connection with the performance of this Agreement.

9.2.3. Notwithstanding anything in this Agreement to the contrary, each Party is fully responsible, without limit, for gross negligence or willful misconduct of its managerial and senior supervisory personnel and is not entitled to a release, indemnity, or defense from the other Party for this conduct. "Gross Negligence" is defined by the law

governing this Agreement; however, if such law does not define the term "Gross negligence," it means any act or failure to act (whether sole, joint or concurrent) which seriously and substantially deviates from a diligent course of action or which is in reckless disregard of or indifference to the harmful consequences. "Willful Misconduct" is defined by the law governing this Agreement; however, if such law does not define the term "Willful misconduct," it means an intentional disregard of good and prudent standards of performance or of any of the terms of this Agreement.

9.3. Insurance.

9.3.1. Insurance Provided by NNPILP's Subcontractor: Any NNPILP subcontractor performing the Services shall maintain throughout the duration of this Agreement, the types and amounts of insurance outlined in this section. NNPILP shall provide Clayton with proof of adequate insurance by its subcontractor to cover damage, demand, claim, loss, or liability incurred by Clayton during the performance of the Services by the subcontractor which shall include, in any event:

9.3.1.1. Commercial General Liability coverage in the amount of \$2,000,000 (per occurrence) combined single limit of liability for bodily injury and property damage subject to \$5,000,000 general aggregate including the following coverage/terms: premises and operations, products/completed operations, personal injury, XCU, independent contractors protective, defense costs are outside the limits of liability, and occurrence based policy; and

9.3.1.2. Commercial Automobile Liability coverage in the amount of \$2,000,000 combined single limit of liability for bodily injury, death and property damage resulting from any one occurrence accident, including all owned, hired and non-owned vehicles; and

9.3.1.3. Worker's Compensation Insurance covering NNPILP's subcontractor's employees. Worker's Compensation Coverage complying with the laws of the State of North Carolina and Employer's Liability Insurance with limits of: \$1,000,000 bodily injury by accident/each accident; \$1,000,000 bodily injury by disease/each employee; \$1,000,000 bodily injury by disease/policy limit; and

9.3.1.4. Umbrella Liability coverage in the amount of \$5,000,000 per occurrence and in the aggregate with follow-form coverage applicable to underlying General, Auto liability and Employer Liability policies maintained by such subcontractor; and

9.3.1.5. Pollution Liability coverage in the amount of \$2,000,000 per claim and \$2,000,000 in the aggregate covering loss arising out of such subcontractor's acts, errors or omissions.

9.3.2. NNPILP's subcontractor's insurance shall be primary and non-contributory with regard to any insurance maintained by NNPILP or Clayton (other than property insurance). All insurance maintained under this section shall waive all rights of subrogation in favor of NNPILP and Clayton, and its officers, directors, employees, and affiliate, subsidiary and parent companies. NNPILP's subcontractor shall name NNPILP

and Clayton as an additional insured under Clayton General Liability; and Auto Liability; Umbrella Liability; and Pollution Liability policies with respect to any action arising out of the performance under this Agreement. Satisfactory proof, through either a Certificate of Insurance or other acceptable form, that the above insurance is in effect, must be provided prior to the Commencement Date. NNPILP agrees to notify Clayton with thirty (30) days' prior written notice of any reduction in limits or cancellation of the above insurance. All insurance shall be maintained at the sole cost and expense of the NNPILP or its subcontractor and placed with an insurance company rated A-, X or greater by A.M. Best.

9.3.3. Property Insurance Provided by Clayton.

9.3.3.1. Clayton will purchase and maintain, during the Term of this Agreement, property insurance upon the entire WWPTF.

9.3.3.2. Any loss insured by coverage purchased and maintained by Clayton will be adjusted with Clayton and made payable to Clayton for the insureds as their interests may appear.

9.3.3.3. Clayton and NNPILP hereby waive all rights against each other for loss or damage to the WWPTF to the extent covered by the property insurance maintained by Clayton as noted above.

10. Termination. This Agreement may be terminated by NNPILP in the event Clayton and a third party agree that the third party may send Wastewater to the WWPTF. In the event of termination under this provision, NNPILP shall assign to Clayton its contract with the subcontractor providing the Services.

11. Continuing Contract. It is understood and agreed to by the Parties that this Agreement is a continuing contract as defined by North Carolina General Statute § 160A-17, and as such creates a binding obligation on the part of Clayton to make future appropriations to meet Clayton's obligations under this Agreement.

12. Assignments. A Party shall not sell or assign any obligation under this Agreement without the prior express written consent of the other Party. Such consent will not be unreasonably withheld. Provided, however, that this Agreement may be assigned by NNPILP to any wholly owned subsidiary or affiliate of Novo Nordisk A/S, with notice to Clayton.

13. Construction. Words in this Agreement importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders as well. All references to Articles, Sections or Exhibits are references to Articles, Sections and Exhibits of this Agreement. The headings herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meanings, construction or effect.

14. Governing Law. The Parties intend that this Agreement shall be governed by the law of the State of North Carolina.

15. Notices. Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement. Any communication shall be

sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, and addressed as follows:

15.1. If to NNPIIP, to:

Novo Nordisk Pharmaceutical Industries, LP
3612 Powhatan Rd.
Clayton, NC 27527
Attn: DAPI-US Director of Site Support

With copies to:
mwkn@novonordisk.com
rcmy@novonordisk.com
EPearson@nexsenpruet.com

15.2. If to Clayton, to:

Town of Clayton
PO Box 879
Clayton, NC 27528
Attn: Town Manager

With copies to:
rcappola@townofclaytonnc.org
katherineross@parkerpoe.com

Any addressee may designate additional or different addresses for communications by notice given under this Section to the other Party.

- 16. Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a business day, such payment shall be made or act performed or right exercised on or before the next preceding business day.
- 17. Severability.** If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.
- 18. Entire Agreement; Amendments.** This Agreement, including its Exhibits, which are incorporated herein and made a part hereof, as well as any other documents that are incorporated by reference, constitutes the entire contract between the Parties, and this Agreement shall not be changed except in writing signed by all the Parties.
- 19. Binding Effect.** Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.
- 20. Time.** Time is of the essence in this Agreement and each and all of its provisions.
- 21. Liability of Officers and Agents.** No officer, agent or employee of Clayton or NNPIIP shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents,

or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

22. Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

[SEAL]

**NOVO NORDISK PHARMACEUTICAL
INDUSTRIES, LP**

By_____

[SEAL]

TOWN OF CLAYTON, NORTH CAROLINA

ATTEST:

By_____

Town Clerk

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

Name:
Finance Officer, Clayton, North Carolina,
North Carolina

Exhibits

Exhibit A – Pretreated Wastewater Specifications

Exhibit B – Map of WWPTF identifying location of “Pretreated Wastewater Delivery Points” and
“Wastewater Delivery Points”

EXHIBIT A
Pretreated Wastewater Specifications

The Pretreated Wastewater Specifications shall consist of all conditions, standards, and provisions contained in Applicable Law and as listed in Table 1, subject to regulatory changes and changes in the inter-local agreement between Clayton and Johnston County.

Table 1

Parameter	mg/l
BODs	250
COD	500
TSS	150
Fats, Oils and Greases	100
TDS*	2100
Total Nitrogen	20
Arsenic	0.003
Cadmium	0.003
Copper	0.061
Cyanide	0.015
Lead	0.049
Mercury	0.0003
Nickel	0.021
Silver	0.005
Chromium (total)	0.05
Zinc	0.175
Ammonia	20
Total Phosphorus	8

***Subject to change based on additional discussions**

Dewatering and Sludge Performance Standards

All sludge processing shall meet at a minimum Method 9095 Paint Filter Liquid Test as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication No. SW-846) and any North Carolina regulations applicable to landfill disposal of sludge.

EXHIBIT B
Map of WWPTF identifying location of
“Pretreated Wastewater Delivery Points” and “Wastewater Delivery Points”

PPAB 8/24/19

WASTEWATER PRETREATMENT SERVICES AGREEMENT

BY AND BETWEEN

NOVO NORDISK PHARMACEUTICAL INDUSTRIES, LP

AND

THE TOWN OF CLAYTON, NORTH CAROLINA

ENTERED INTO THIS ____ DAY OF _____, 2019

PPAB 4968901v4

This **WASTEWATER PRETREATMENT SERVICES AGREEMENT** (the "Agreement") is entered into this ____ day of ____, 2019, by and between **NOVO NORDISK PHARMACEUTICAL INDUSTRIES, LP**, a Delaware limited partnership ("**NNPILP**") and **THE TOWN OF CLAYTON, NORTH CAROLINA**, a municipal corporation in the State of North Carolina ("**Clayton**"), each or both also referred to herein as either a "**Party**" or cumulatively, the "**Parties**."

RECITALS

WHEREAS, on September 25, 2017, NNPILP and CLAYTON entered into the Agreement Concerning a Regional Wastewater Pretreatment Facility, on January 29, 2018, NNPILP and Clayton entered into the First Amendment to the Agreement Concerning a Regional Wastewater Pretreatment Facility, and on September __, 2019 NNPILP and Clayton entered into the Second Amendment to the Agreement Concerning a Regional Wastewater Pretreatment Facility (together, the "Facility Agreement");

WHEREAS, Article V of the Facility Agreement provided that the Parties would enter into a services agreement pursuant to which Clayton will operate and maintain a regional wastewater pretreatment facility currently being constructed by NNPILP (the "WWPTF") for the use and benefit of NNPILP and other potential future users in the region;

WHEREAS, if NNPILP donates the WWPTF to Clayton, and Clayton accepts the WWPTF, NNPILP desires to discharge its influent into the WWPTF, and Clayton desires to accept, pre-treat, and dispose of the same;

WHEREAS, the Parties desire to enter into this Agreement to set forth the terms of Clayton's provision of wastewater pretreatment services and its operation and maintenance of the WWPTF.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. **Definitions.** In this Agreement (and in the recitals above) in addition to the terms defined elsewhere in the Agreement:
 - 1.1. "Agreement" means this Wastewater Pretreatment Services Agreement, together with all exhibits and attachments hereto, all as such may be modified, amended, supplemented, or restated in writing from time to time.
 - 1.2. "Base Services Charge" has the meaning given to it in Section 7.
 - 1.3. "Capacity Limits" means 440,000 gallons per day, with a peaking flow factor of 1.3 (572,000 gallons per day), with authorized peak instantaneous flow capped at 660 gallons per minute and peak hourly flow of 39,600 gallons per hour.
 - 1.4. "Clayton Overhead Charge" has the meaning given to it in Section 9.
 - 1.5. "Commencement Date" means the date on which ownership of the WWPTF is transferred from NNPILP to Clayton.

- 1.6. "Discharge Limits" means those constituent concentrations and loading rates outlined in the industrial user permit ("IUP") issued to NNPIILP by Clayton, unless otherwise agreed to by the Parties in writing.
- 1.7. "Planned Service Interruption" means any necessary interruption to normal services due to essential maintenance or operational changes of the WWPTF.
- 1.8. "Pretreated Wastewater" means the Wastewater pre-treated at the WWPTF.
- 1.9. "Reserve Charge" means the monthly charge payable by NNPIILP to establish a reasonable reserve, as contemplated in the Facility Agreement, initially established and periodically adjusted based on the analysis of an independent third-party consultant.
- 1.10. "Services" means the carrying out and doing of all things that are to be done by Clayton pursuant to this Agreement.
- 1.11. "Site Acquisition Charge" has the meaning given in Section 11.
- 1.12. "Sludge" means the residual waste generated in the pre-treatment of NNPIILP's Wastewater pursuant to this Agreement.
- 1.13. "WWPTF" means all equipment, machinery, infrastructure, buildings and facilities, materials, and other property that make up the WWPTF.
- 1.14. "Wastewater" means the wastewater delivered by NNPIILP to the WWPTF at the Wastewater Delivery Points.
- 1.15. "Wastewater Delivery Points" means the points of delivery for Wastewater as set out in Exhibit B.
2. **Pretreatment Services.** Commencing on the Commencement Date, Clayton shall accept, pretreat, handle, and dispose of all process NNPIILP's Wastewater to the extent such wastewater does not exceed the Capacity Limits or the Discharge Limits or such other limits agreed to by Clayton for a limited period of time, as set forth in Section 3 of this Agreement. Clayton shall be responsible for ensuring that any and all discharge from the WWPTF be in compliance with all legal, regulatory, permit, and contractual requirements associated with such discharge.
3. **Capacity Reservation.** During the term of this Agreement, NNPIILP is hereby authorized to discharge Wastewater from NNPIILP's manufacturing facilities located in Johnston County to the WWPTF. NNPIILP shall be permitted to discharge Wastewater in compliance with the Discharge Limits up to the Capacity Limits. In the event NNPIILP desires additional capacity beyond the Capacity Limits, it may request from Clayton the right to discharge wastewater to the WWPTF in excess of the Capacity Limits. The variance shall be requested at least ninety (90) days in advance. Clayton shall determine within thirty (30) days of NNPIILP's request whether the WWPTF has the capacity to accept additional discharge above the Capacity Limits and whether Clayton has the ability to sell NNPIILP additional final treatment capacity if the request exceeds NNPIILP's then currently purchased final treatment capacity. If NNPIILP makes such a request and the treatment train donated to Clayton by NNPIILP has additional capacity, Clayton shall accept such request, or so much capacity as NNPIILP agrees to purchase from Clayton's available final treatment capacity.

4. **Discharge Limits.** Wastewater discharged by NNPILP to the WWPTF shall be in compliance with its Industrial User permit ("IUP"). Except where agreed to in advance by Clayton, NNPILP shall be responsible for any damage directly resulting from its discharge of influent in excess of the Capacity Limits or Discharge Limits.
5. **Monitoring Requirements.** NNPILP shall collect samples in compliance with the monitoring requirements specified in the IUP. NNPILP's sampling results shall be made available to Clayton and to the operator of the WWPTF in accordance with the IUP. Clayton shall likewise make its sampling results available to NNPILP upon reasonable notice.
6. **WWPTF Utility Contracts.** NNPILP shall assign to Clayton, and Clayton shall assume all obligations associated with, all utility and other similar service contracts currently in the name of NNPILP that relate exclusively to the operation of the WWPTF. Costs incurred by Clayton pursuant to those assigned contracts shall be included in the Base Services Charge (defined below). As of the Commencement Date, this includes NNPILP's power and backup power contracts with Duke Progress Energy, and NNPILP's contract with a telephone and internet service provider.
7. **Base Services Charge.** NNPILP shall pay to Clayton on a monthly basis a fee to cover the pre-treatment, handling, and disposal of NNPILP's Wastewater, all on-going costs of operating portions of the WWPTF which serve NNPILP, and routine maintenance of those on-going portions (the "Base Services Charge"). To the extent Clayton contracts out the initial operation and maintenance of the WWPTF, as is anticipated, and so long as NNPILP is the only user of the WWPTF, the monthly Base Services Charge shall be determined by the amount payable by Clayton to the operations and maintenance contractor. Thereafter, it is anticipated NNPILP's Base Services Charge shall be calculated by summing the costs relating to the treatment of NNPILP's Wastewater as set forth in Sections 7.1, 7.2, and 7.3. However, all actual costs for the operations and maintenance of the WWPTF, solely attributable to NNPILP's use or apportioned among NNPILP and other users of the WWPTF, will be included in the Base Services Charge. The apportionment of operations and maintenance costs will be determined in Clayton's sole, reasonable discretion, at such time as there are multiple users of the WWPTF. Clayton will provide notice of the apportionment of costs to NNPILP thirty (30) days in advance of issuing the first monthly invoice which reflects the apportionment of costs among multiple users, and then any monthly invoice thereafter on which the apportionment of costs changes. If NNPILP disagrees with the apportionment of costs, NNPILP may request and Clayton shall engage a third-party consultant to perform a rate study, which third party consultant is mutually agreeable to NNPILP and Clayton. Both NNPILP and Clayton shall have on-going oversight of and input to that consultant's work.
 - 7.1. **Treatment, handling, and disposal costs.** These costs shall include all direct costs for chemicals, supplies, and other materials utilized in pre-treating Wastewater discharged by NNPILP; the direct costs for handling or loading of any waste materials, including Sludge, which are not discharged from the WWPTF, into trucks or other conveyances, and the transportation of those waste materials and Sludge to a disposal location; and the direct costs of the disposal of those waste materials.
 - 7.2. **On-going operation costs.** These costs shall include the actual labor costs for those workers actually involved in the operation of the WWPTF; all contract services, if any, for individuals or companies involved in the operation of the WWPTF; electric and gas utilities

charges; WWPTF-specific insurance premiums (including but not limited to general liability, automobile, property, and worker's compensation, but only to the extent such premiums relate specifically to the WWPTF), and any other costs other than pre-treatment, handling, and disposal costs which are incurred in the on-going operation of the WWPTF.

7.3. Routine maintenance. These costs include on-going maintenance of all equipment and systems in the WWPTF which services and costs are not covered by costs attributable to on-going operations. These costs shall include all labor charges, equipment, materials, and taxes attributable to such routine maintenance.

Excepting the initial determination of the Base Services Charge, which shall be determined by the amount payable by Clayton to its operations and maintenance contractor, Clayton shall engage a consultant to prepare and update the foregoing calculations of the components of the Base Services Charge at least every four years, or more frequently at the discretion of Clayton, but no more frequently than once a year. Clayton shall provide NNPIILP with at least three months' prior notice of any change to the Base Services Charge. Clayton will maintain, and provide NNPIILP access to, records in a manner that allows for an analysis of the above three cost areas.

8. Reserve Charge. NNPIILP shall be obligated to pay a monthly Reserve Charge. The reasonable level of the reserve fund (the "Reserve Funding Target") shall be determined by an independent third-party. The Reserve Charge shall be maintained by Clayton in a separate fund (the "Reserve Fund"). The Reserve Charge shall be equal to one-seventy second (1/72nd) of the Reserve Funding Target, and shall cease to be charged whenever the balance in the Reserve Fund reaches the Reserve Funding Target. The Reserve Fund shall be used to pay for corrective maintenance of the WWPTF and any extraordinary expenses related solely to the portions of the WWPTF used to treat NNPIILP's Wastewater, as deemed appropriate by Clayton. If during the period the Reserve Charge is assessed, the reserve fund is utilized for corrective maintenance such that its balance is reduced below an acceptable level, NNPIILP shall be obligated to continue payment of a monthly Reserve Charge equal to 1/72nd of the Reserve Funding Target until the Reserve Funding Target is reached. The apportionment of the Reserve Charge will be determined in Clayton's sole, reasonable discretion, at such time as there are multiple users of the WWPTF. Clayton will provide notice of the apportionment of the Reserve Charge to NNPIILP thirty (30) days in advance of issuing the first monthly invoice which reflects the apportionment of costs among multiple users, and then any monthly invoice thereafter on which the apportionment of costs changes. If NNPIILP disagrees with the apportionment of the Reserve Charge, NNPIILP may request and Clayton shall engage a third-party consultant to perform a rate study, which third party consultant is mutually agreeable to NNPIILP and Clayton. Both NNPIILP and Clayton shall have on-going oversight of and input to that consultant's work.
9. Clayton Overhead Charge. NNPIILP shall be obligated to pay a monthly charge equal to the actual costs of Clayton's back-office overhead associated with providing the Services to NNPIILP as estimated by the independent third-party ("Clayton Overhead Charge"). The apportionment of the Clayton Overhead Charge will be determined in Clayton's sole, reasonable discretion, at such time as there are multiple users of the WWPTF. Clayton will provide notice of the apportionment of the Clayton Overhead Charge to NNPIILP thirty (30) days in advance of issuing the first monthly invoice which reflects the apportionment of costs among multiple users, and then any monthly invoice thereafter on which the apportionment of costs changes. If NNPIILP disagrees with the apportionment of the Clayton Overhead Charge, NNPIILP may request and

Clayton shall engage a third-party consultant to perform a rate study, which third party consultant is mutually agreeable to NNPIILP and Clayton. Both NNPIILP and Clayton shall have on-going oversight of and input to that consultant's work.

10. Site Acquisition Charge. In addition to the Base Services Charge, Clayton Overhead Charge, and Reserve Charge, NNPIILP shall pay a monthly Site Acquisition Charge. The Site Acquisition Charge shall be equal to all documented costs related to acquisition of the Site (as defined in the Facility Agreement), including but not limited to the price of the property which Clayton exchanged for the Site, not to exceed one million dollars (\$1,000,000), amortized over twenty (20) years. In the event NNPIILP terminates this Agreement prior to twenty (20) years, NNPIILP shall pay to Clayton the remaining balance within ninety (90) days of termination. In the event an additional user(s) sends wastewater to the WWPTF, the Site Acquisition Charge will be equal to the site acquisition costs divided by the number of WWPTF users.

11. Payment Terms. Invoicing and payment options are subject to Clayton ordinances and policies, which may be amended from time to time.

12. Term of Agreement. This Agreement shall be effective as of the Commencement Date and shall continue until the twentieth (20th) anniversary of the Commencement Date, subject to the termination provisions and extensions provided for under this Section. Upon expiration of the first twenty (20) year term, this Agreement shall automatically renew for three (3) additional six (6) year terms unless terminated by either Party giving to the other Party at least three (3) years' written notice in advance of such renewal term. NNPIILP may terminate this agreement at any time upon one (1) years' written notice.

13. Future Expansions of the WWPTF. In the event NNPIILP needs additional capacity above the Capacity Limits, and above what the WWPTF is capable of processing, Clayton and NNPIILP agree that Clayton will use best efforts to construct the necessary improvements ("WWPTF Expansions"). In turn, NNPIILP agrees to pay its proportionate share of the principal and interest payments resulting from any capital costs attributable to the construction of the WWPTF Expansions. Nothing in this Agreement obligates Clayton to incur debt or allocated funds for a WWPTF Expansion. Rather, the Parties shall work in good faith to determine the best way to expand the WWPTF to meet NNPIILP's needs. The amounts necessary to repay any capital costs incurred by Clayton, attributable to a WWPTF Expansion, shall be added to the monthly Base Service Fee. The financial obligation of NNPIILP for the payment of funds attributable to a WWPTF Expansion is not contingent upon NNPIILP's continued operation of its facilities in Clayton and shall be due and payable in consideration of the WWPTF Expansion regardless of the continued operation of NNPIILP's facilities.

14. Title Insurance.

Upon accepting NNPIILP's donation of the WWPTF, Clayton shall purchase owner's title insurance in the same amount (i.e., \$30,000,000) as in the NNPIILP leasehold policy attached hereto as Exhibit A, and with the same exceptions (except any new utility easements that do not interfere with use of the WWPTF), same affirmative coverages, and with an "additional insured" endorsement naming NNPIILP as an additional insured. The premium associated with Clayton's tack-on title insurance policy shall be paid by NNPIILP by inclusion in the Base Services Charge.

In the event of a title claim which requires the WWPTF to be relocated, Clayton promises to place all proceeds from title insurance claim in joint escrow with NNPIILP for the Parties to

mutually select a replacement property with funds to be used to acquire the replacement property and to re-construct a new WWPTF ("Replacement Property").

In order to allow for the additional insured endorsement on the title insurance policy, Clayton agrees to grant NNPIILP a perpetual, appurtenant access easement to the property, for the benefit of NNPIILP and its successors and assigns, for the limited purpose of access for periodic inspections of the WWPTF to ensure Clayton's compliance with its obligations to pretreat discharge from NNPIILP's API manufacturing facility ("Access Easement").

The Access Easement shall apply to create a perpetual, appurtenant easement in the Replacement Property as well.

15. Representations and Warranties. Clayton hereby represents and warrants that it:

- 15.1. has the authority to accept, pre-treat, and dispose of NNPIILP's Wastewater within the Discharge Limits, including the disposal of the Pretreated Wastewater;
- 15.2. has the authority and expertise (or will contract with an entity having the authority and expertise) to operate the WWPTF; and
- 15.3. has the right, pursuant to a license with NCRR and Norfolk Southern, to transfer NNPIILP's Wastewater under the railroad lying between NNPIILP's manufacturing site located at 3611 Powhatan Rd. and the WWPTF, will maintain the wastewater line connecting the WWPTF with NNPIILP's facility located at 3612 Powhatan Rd., will take all steps necessary to keep its license with NCRR and Norfolk Southern in good standing (complying with all terms, including insurance), and will notify NNPIILP immediately if it receives notice from NCRR or Norfolk Southern about a default, termination, or any other material communication that might affect the ability of NNPIILP to have its Wastewater pre-treated at the WWPTF.

16. Transfer of Ownership. Ownership and responsibility for NNPIILP's Wastewater shall transfer from NNPIILP to Clayton upon its discharge into Clayton's sanitary collection system; however, responsibility for damage caused by NNPIILP's Wastewater shall remain with NNPIILP for all Wastewater discharged into Clayton's sanitary collection system that exceeds the Discharge Limits or Capacity Limits to the extent the damage was caused by NNPIILP's Wastewater exceeding the Discharge Limits or Capacity Limits (except where previously agreed to by Clayton).

17. Indemnification. NNPIILP agrees to indemnify, hold harmless, and defend Clayton and its agents, employees, and contractors from and against any and all third-party claims, demands, suits, and causes of action (collectively referred to hereafter as "Claims") including and without limitation to those Claims relating to injury or death of any persons whomsoever, and to pay all costs of judgments, losses, fines, penalties, damages (including environmental damages to, loss of, or contamination or pollution of any property or resource), and costs and expenses (including reasonable attorneys' fees, costs of litigation and/or investigation, and other costs) resulting from any such Claim to the extent such Claim arises out of or results from, directly or indirectly: (i) NNPIILP's breach of this Agreement; (ii) NNPIILP's failure to adhere to any law, legal requirement, or regulation relating to this Agreement after the Commencement Date; or (iii) any negligence, Gross Negligence, or Willful Misconduct by NNPIILP and its officers, directors, employees, and contractors in connection with the performance of this Agreement.

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Clayton agrees to indemnify, hold harmless, and defend NNPILP, its affiliates, and their respective officers, directors, employees, contractors, successors, and assigns from and against any and all Claims and to pay all costs of judgments, losses, fines, penalties, damages (including environmental damages to, loss of, or contamination or pollution of any property or resource), and costs and expenses (including reasonable attorneys' fees, costs of litigation and/or investigation, and other costs) resulting from any such Claim to the extent such Claim arises out of or results from, directly or indirectly: (i) Clayton's breach of this Agreement; (ii) Clayton's failure to adhere to any law, legal requirement, or regulation relating to this Agreement after the Commencement Date; or (iii) any negligence, Gross negligence, or Willful Misconduct by Clayton and its agents, employees, and contractors in connection with the performance of this Agreement.

Notwithstanding anything in this Agreement to the contrary, each Party is fully responsible, without limit, for Gross Negligence or Willful Misconduct of its managerial and senior supervisory personnel and is not entitled to a release, indemnity, or defense from the other Party for this conduct. "Gross Negligence" is defined by the law governing this Agreement; however, if such law does not define the term "Gross negligence," it means any act or failure to act (whether sole, joint, or concurrent) which seriously and substantially deviates from a diligent course of action or which is in reckless disregard of or indifference to the harmful consequences. "Willful Misconduct" is defined by the law governing this Agreement; however, if such law does not define the term "Willful misconduct," it means an intentional disregard of good and prudent standards of performance or of any of the terms of this Agreement.

18. Non-Interruption of Service. Excepting Planned Services Interruptions, for which Clayton must provide NNPILP with at least 60 days' notice, or where interruption or curtailment was caused by a force majeure event or NNPILP's discharge of Wastewater exceeding the Discharge Limits or Capacity Limits, in the event the Services are interrupted or curtailed for any reason, including, e.g., the connection of a new user to the WWPTF, Clayton shall arrange for an alternative arrangement for uninterrupted pre-treatment of NNPILP's Wastewater that would otherwise have been processed by the WWPTF. Clayton shall be responsible for all such costs, in excess of the costs of processing NNPILP's Wastewater through the WWPTF. Nothing in this section shall prevent Clayton from recovering these costs from a future user of the WWPTF for which the new connection is being provided.

19. Insurance. Clayton shall maintain throughout the duration of this Agreement, the types and amounts of insurance outlined in this Section. Clayton shall provide NNPILP with proof of adequate insurance to cover any damage, demand, claim, loss, or liability incurred by Company during the performance of the Services which shall include the following, unless in excess of the requirements of Clayton's insurance provider except for the requirement for Pollution Liability Coverage:

- 19.1. Commercial General Liability coverage in the amount of \$2,000,000 (per occurrence) combined single limit of liability for bodily injury and property damage subject to \$2,000,000 general aggregate including the following coverage/terms: premises and operations, products/completed operations, personal injury, XCU, independent contractors protective, defense costs are outside the limits of liability, and occurrence based policy; and

- 19.2. Commercial Automobile Liability coverage in the amount of \$1,000,000 combined single limit of liability for bodily injury, death and property damage resulting from any one occurrence accident, including all owned, hired, and non-owned vehicles; and
- 19.3. Worker's Compensation Insurance covering Clayton's employees. Worker's Compensation Coverage complying with the laws of the State of North Carolina and Employer's Liability Insurance with limits of: \$1,000,000 bodily injury by accident/each accident; \$1,000,000 bodily injury by disease/each employee; \$1,000,000 bodily injury by disease/policy limit; and
- 19.4. Umbrella Liability coverage in the amount of \$5,000,000 per occurrence and in the aggregate with follow-form coverage applicable to underlying General, Auto liability, and Employer Liability policies maintained by Clayton; and
- 19.5. Pollution Liability coverage in the amount of \$5,000,000 per claim and \$5,000,000 in the aggregate covering loss arising out of Clayton's acts, errors, or omissions, if requested by NNPI in writing after receipt of confirmation of cost of the same from Clayton's insurance provider;; and
- 19.6. Property insurance coverage in the amount of full replacement cost, as determined by Clayton's insurance provider, under an All-Risk Form and include coverage for Earthquake, Windstorm, and Flood equal to the limit required. In the event Clayton recovers under this policy, the proceeds shall be used to repair damage to the WWPTF (including reimbursement of any funds expended by Clayton related to obtaining the recovery or making repairs in advance of receipt of the recovery).

Clayton's liability insurance shall be primary and non-contributory with regard to any insurance maintained by NNPI, unless NNPI is operating and maintaining the WWPTF under contract with Clayton, either directly or through a subcontractor, and then NNPI's insurance from its subcontractor shall be primary. All insurance maintained by Clayton under this section shall waive all rights of subrogation in favor of NNPI, its officers, directors, employees, and affiliate, subsidiary, and parent companies. Clayton shall require and cause any sub-contractors utilized in connection with this Agreement to comply with the terms and requirements of this section. Clayton shall name Novo Nordisk Pharmaceutical Industries, LP as an additional insured under Clayton's General Liability; Auto Liability; Umbrella Liability; Pollution Liability and Property policies with respect to any action arising out of Clayton's performance under this Agreement with NNPI. Satisfactory proof, through either a Certificate of Insurance or other acceptable form, that the above insurance is in effect, must be provided prior to commencement of services and continue annually during the term of this Agreement. Clayton agrees to notify NNPI with thirty (30) days' prior written notice of any reduction in limits or cancellation of the above insurance. All insurance shall be maintained at the sole cost and expense of Clayton and placed with an insurance company rated A-, X or greater by A.M. Best; however, all cost for insurance maintained by Clayton shall be included in the Base Service Charge.

20. **Continuing Contract.** It is understood and agreed to by the Parties that this Agreement is a continuing contract as defined by North Carolina General Statute § 160A-17, and as such creates a binding obligation on the part of Clayton to make future appropriations to meet Clayton's obligations under this Agreement.

21. **Assignments.** A Party shall not sell or assign any obligation under this Agreement without the prior express written consent of the other Party. Such consent will not be unreasonably withheld. Provided, however, that this Agreement may be assigned by NNPILP to any wholly owned subsidiary or affiliate of Novo Nordisk A/S, with notice to Clayton.

22. **Construction.** Words in this Agreement importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders as well. All references to Articles, Sections, or Exhibits are references to Articles, Sections, and Exhibits of this Agreement. The headings herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meanings, construction, or effect.

23. **Governing Law.** The Parties intend that this Agreement shall be governed by the law of the State of North Carolina.

24. **Notices.** Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement. Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, and addressed as follows:

(a) If to NNPILP, to:
Novo Nordisk Pharmaceutical Industries, LP
3612 Powhatan Rd.
Clayton, NC 27527
Attn: DAPI-US Director of Site Support

With copies to:
mwkn@novonordisk.com
rcmy@novonordisk.com
epearson@nexsenpruet.com

(b) If to Clayton, to:
Town of Clayton
PO Box 879
Clayton, NC 27528
Attn: Town Manager

With copies to:
rcappola@townofclaytonnc.org
katherineross@parkerpoe.com

Any addressee may designate additional or different addresses for communications by notice given under this Section to the other Party.

25. **Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a business day, such payment shall be made or act performed or right exercised on or before the next preceding business day.

26. **Severability.** If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

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27. **Entire Agreement; Amendments.** This Agreement, including all Exhibits, which are incorporated herein and made a part hereof, as well as any other documents that are incorporated by reference, constitutes the entire contract between the Parties, and this Agreement shall not be changed except in writing signed by all the Parties.

28. **Binding Effect.** Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

29. **Time.** Time is of the essence in this Agreement and each and all of its provisions.

30. **Liability of Officers and Agents.** No officer, agent, or employee of Clayton or NNPIIP shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.

31. **Notice and Right to Cure.**

31.1. Monetary defaults.

In the event either party is in default under any provision of this Agreement for a monetary default, the non-defaulting party shall give ten (10) days written notice of such default pursuant to the provisions of Section 24.

If the default is NNPIIP's failure to pay service charges when due, before any service is interrupted Clayton agrees to provide a second ten (10) day written notice advising that it intends to suspend service if payment is not made within the second ten (10) day period. Reasonable attorney fees, court costs and expenses incurred by Clayton to enforce payment of service charges under this Agreement shall be promptly reimbursed by NNPIIP to Clayton.

31.2. Non-monetary defaults.

In the event either party is in default under any provision of this Agreement (other than monetary defaults addressed in Section 31.1 above), the non-defaulting party shall give ten (10) days written notice of such default pursuant to the provisions of Section 24. If the defaulting party has not cured the default, or commenced curing and is diligently pursuing such cure, within thirty (30) days after receipt of written notice of default, the non-defaulting party may cure such default at the expense of the defaulting party.

If the default is of a nature which involves Clayton's failure to operate the WWPTF, in lieu of self-help, NNPIIP shall bring an action for specific performance to demand Clayton's performance under this Agreement.

32. **Counterparts.** This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

[SEAL]

**NOVO NORDISK PHARMACEUTICAL
INDUSTRIES, LP**

By _____

[SEAL]

TOWN OF CLAYTON, NORTH CAROLINA

ATTEST:

By _____

Town Clerk

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

Name:
Finance Officer, Clayton, North Carolina,
North Carolina

Exhibits

A –Chicago Title Leasehold Policy
B –Map of WWPTF identifying location of “Wastewater Delivery Points”

PPAB 4968901v4

EXHIBIT A
Chicago Title Leasehold Policy

(To be inserted)

PPAB 4968901v4

EXHIBIT B
Map of WWPTF identifying location of “Wastewater Delivery Points”

(To be inserted)

PPAB 4968901v4

Resolution

Acceptance and Naming of Regional Wastewater Pretreatment Facility

WHEREAS, Novo Nordisk Pharmaceutical Industries, LP (Novo Nordisk) and the Town of Clayton (Clayton) entered into an agreement in September, 2017 which set forth the terms of their cooperative efforts on a facility that would be constructed by Novo Nordisk and dedicated to Clayton as public infrastructure for use as a regional wastewater pretreatment facility; and

WHEREAS, the September, 2017 agreement was the result of months of work by representatives of Clayton, Novo Nordisk, and various community partners, including obtaining a \$4,000,000 grant from the Golden LEAF Foundation and a \$6,000,000 grant from the North Carolina Department of Commerce consisting of funds appropriated by the North Carolina Legislature; and

WHEREAS, Clayton and Novo Nordisk have diligently worked to design and construct an innovative WWPTF that will enhance Clayton's economic development and recruitment efforts focused on the pharmaceutical industry sector; and

WHEREAS, Novo Nordisk has completed construction of the WWPTF and has offered to donate the WWPTF to Clayton pursuant to the September 2017 Agreement; and

WHEREAS, the vision for a regional pretreatment facility began under the direction of former long time Clayton Town Manager, Steve Biggs; and

WHEREAS, it is the desire of the Town of Clayton to honor Steve Biggs and his dedication to this project.

NOW THEREFORE BE IT RESOLVED the Clayton Town Council proudly and officially accepts the facility from Novo Nordisk and officially names the facility the ***R. Steven Biggs Regional Wastewater Pretreatment Facility***.

Duly adopted this the 7th day of October, 2019 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

October 7 2019

Agenda Location

New Business

Item Title

Clayton Downtown Redevelopment Incentive Grant (CDRIG) – 114 W. Main Street

Presenter

David DeYoung, Economic Development Director

Summary/Description

The purpose of the CDRIG is to encourage and/or promote infill growth with new commercial development including mixed use) in Clayton's designated Downtown Overlay District. The grant provides an incentive to property owners to improve the economic viability and appearance of Downtown Clayton while stimulating long-term investment in its buildings.

The Town's participation in the CDRIG occurs only after the property owner pays their annual ad valorem tax assessment. The CDRIG is used to reimburse the Company for the difference between the pre-construction tax value and post-construction tax value as determined by the Johnston County Tax Administrator. The CDRIG is disbursed as follows: Year 1 – 100%; Year 2 – 100%; Year 3 – 75%; Year 4 – 50%; Year 5 – 25%.

Based on the above, the property owner of 114 West Main Street will be reimbursed monies in the amount of \$4,087.32 in the first two years, \$3,065.49 in the third year, \$2,043.66 in the fourth year and \$1,021.83 in the fifth year, for a total CDRIG of \$14,305.62.

Requested Action

Approval/Denial

Funding Source (If Applicable):

Revenue Account: 100-40-00-40 00.

Cost: N/A Yes ☒ No ☐

Additional Documents to be Included in Agenda Packet**Meeting Timeline**

Click or tap here to enter text.



Town Council Agenda Cover Sheet

Meeting Date

October 7 2019

Agenda Location

New Business

Item Title

Clayton Downtown Redevelopment Incentive Grant (CDRIG) – 114 W. Main Street

Presenter

David DeYoung, Economic Development Director

Summary/Description

The purpose of the CDRIG is to encourage and/or promote infill growth with new commercial development including mixed use) in Clayton's designated Downtown Overlay District. The grant provides an incentive to property owners to improve the economic viability and appearance of Downtown Clayton while stimulating long-term investment in its buildings.

The Town's participation in the CDRIG occurs only after the property owner pays their annual ad valorem tax assessment. The CDRIG is used to reimburse the Company for the difference between the pre-construction tax value and post-construction tax value as determined by the Johnston County Tax Administrator. The CDRIG is disbursed as follows: Year 1 – 100%; Year 2 – 100%; Year 3 – 75%; Year 4 – 50%; Year 5 – 25%.

Based on the above, the property owner of 114 West Main Street will be reimbursed monies in the amount of \$2,582.71 in the first two years, \$1,937.03 in the third year, \$1,291.36 in the fourth year and \$645.68 in the fifth year, for a total CDRIG of \$9,039.49.

Requested Action

Approval/Denial

Funding Source (If Applicable):

Revenue Account: 100-40-00-40 00.

Cost: N/A Yes ☒ No ☐

Additional Documents to be Included in Agenda Packet**Meeting Timeline**

Click or tap here to enter text.

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

CLAYTON DOWNTOWN REDEVELOPMENT INCENTIVE GRANT AGREEMENT ("Agreement")

THIS AGREEMENT is made and entered into this the _____ day of _____, 2019 by and between the TOWN OF CLAYTON (the "Town") and Star Company, LLC (the "Company") (each a "Party" and, together, "Parties") for the redevelopment at 114 West Main Street (the "Project") which is located within the Downtown District of Clayton, North Carolina. The Company has made improvements to the building in the amount of a 1.1 million dollar investment and the creation of approximately 50-75 jobs.

The project was completed in 2018, resulting in an increased tax value of \$1,218,170. The Town will provide the company with a Clayton Downtown Redevelopment Incentive Grant ("CDRIG") equal to the attached schedule (Exhibit A) of the new taxes resulting from the improvements.

Redevelopment Statement. By signing this Agreement, the Company acknowledges the Project would not have been considered for redevelopment in the downtown district if not for the CDRIG.

Timing and Amount. The Town's participation in the CDRIG occurs only after the Company pays their annual ad valorem tax assessment. The CDRIG will be used to reimburse the Company for the difference between the pre-construction tax value and post-construction tax value as determined by the Johnston County Tax Administrator. The CDRIG will be disbursed as follows: Year 1 – 100%; Year 2 – 100%; Year 3 – 75%; Year 4 – 50%; Year 5 – 25%.

Notice and Disbursement. The Company shall notify the Town after the Company pays their annual ad valorem tax assessment. Within thirty (30) days of receipt of the notice from the Company, the Town shall disburse the annual grant as shown in the attached schedule. All notices and other communications under this Agreement must be in writing and are deemed duly delivered when (a) delivered if delivered personally or by nationally recognized overnight courier service (costs prepaid), (b) sent by electronic email with confirmation of transmission by the transmitting equipment (or, the first Business Day following such transmission if the date of transmission is not a Business Day) or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested; in each case to the following addresses or emails and marked to the attention of the individual designated below (or to such other address, email or individual as a Party may designate by notice to the other Party):

If to the Town:

Robert McKie
with a copy to Dave DeYoung
111 East Second Street
Clayton, NC 27520
Email: rmckie@townofclaytonnc.org; with copied: DDeYoung@townofclaytonnc.org

If to the Company:

Star Company, LLC
c/o Reid Smith
114 West Main Street
Clayton, NC 27520
Email: reid@one27homes.com

Binding Effect; Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder will be assigned, in whole or in part, by operation of Law or otherwise, by either of the Parties without the prior written consent of the other Party; provided, however, Company may (a) assign this Agreement and any or all of its rights and obligations hereunder to any purchaser of all or substantially all of its assets and (b) collaterally assign any or all of its rights and obligations hereunder to any provider of debt financing to it. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns. Any purported assignment not permitted under this section will be null and void.

No Third Party Beneficiaries. Nothing in this Agreement is intended to confer any rights or remedies, whether express or implied, on any Persons other than the Parties and their successors and permitted assigns.

Amendment of Agreement. This Agreement shall not be modified or amended except by written document signed by both Parties.

Termination. This Agreement shall terminate upon the earlier of: (i) the date on which the Town has paid the Year 5 grant payment as reflected on Exhibit A; or (ii) the sale of the property at 114 West Main Street.

IN WITNESS WHEREOF, the parties hereby acknowledge that the terms and conditions of the CDRIG are fully understood and acceptable and execute this agreement as of the date first written above.

TOWN OF CLAYTON

ATTEST:

Jody L. McLeod
Mayor

Kimberly A. Moffett
Town Clerk

STAR COMPANY, LLC

ATTEST:

EXHIBIT A
CLAYTON DOWNTOWN REDEVELOPMENT INCENTIVE GRANT
114 WEST MAIN STREET

Property	Pre-Redevelopment Tax Value	Town Tax Rate/\$100	County Tax Rate/\$100	Town Tax	County Tax	Total Tax
114 W Main Street	\$513,460.00	\$0.58	\$0.76	\$2,978.07	\$3,902.30	\$6,880.37

Property	Current Tax Value	Town Tax Rate/\$100	County Tax Rate/\$100	Town Tax	County Tax	Total Tax
114 W Main Street	\$1,218,170.00	\$0.58	\$0.76	\$7,065.39	\$9,258.09	\$16,323.48

Tax Difference
\$9,443.11

Year	Percentage	Incentive \$	Town Incentive	County Incentive*
1	100% of Difference	\$9,443.11	\$4,087.32	\$5,355.79
2	100% of Difference	\$9,443.11	\$4,087.32	\$5,355.79
3	75% of Difference	\$7,082.33	\$3,065.49	\$4,016.84
4	50% of Difference	\$4,721.56	\$2,043.66	\$2,677.90
5	25% of Difference	\$2,360.78	\$1,021.83	\$1,338.95
6	0% of Difference	\$0.00	\$0.00	\$0.00
TOTAL GRANT REFUND \$		\$33,050.89	\$14,305.62	\$18,745.27

*Johnston County will separately approve the County's incentive via resolution

**TOWN OF CLAYTON
RESOLUTION REGARDING APPLICATION FOR
CLAYTON DOWNTOWN REDEVELOPMENT INCENTIVE GRANT**

WHEREAS, the Town of Clayton Town Council has previously indicated its desire to assist in downtown redevelopment efforts within Downtown Clayton; and,

WHEREAS, the Town of Clayton has adopted a Clayton Downtown Development Incentive Grant ("CDRIG") program to encourage and promote infill growth with new commercial development and the major rehabilitation of older buildings within the Town's downtown commercial district; and,

WHEREAS, Star Company, LLC has submitted an application for a CDRIG for its improvements to the building located downtown at 114 West Main Street; and

WHEREAS, the tax value of the property at 114 West Main Street was \$513,460.00 before construction and is estimated to have increased to \$1,218,170.00 after construction; and,

WHEREAS, the Town of Clayton Town Council wishes to pursue a formal agreement for the CDRIG to benefit Star Company, LLC for their project at 114 West Main Street and will reimburse monies in the amount of \$4,087.32 in the first two years, \$3,065.49 in the third year, \$2,043.66 in the fourth year and \$1,021.83 in the fifth year, for a total CDRIG of \$14,305.62.

NOW, THEREFORE BE IT RESOLVED, by the Town of Clayton Town Council that the Town of Clayton is authorized to enter in to a formal agreement for approval of a CDRIG to benefit Star Company, LLC.

Duly adopted this the 7th day of October, 2019 in Clayton, North Carolina, while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

CLAYTON DOWNTOWN REDEVELOPMENT INCENTIVE GRANT AGREEMENT ("Agreement")

THIS AGREEMENT is made and entered into this the _____ day of _____, 2019 by and between the TOWN OF CLAYTON (the "Town") and Lipscomb, LLC (the "Company") (each a "Party" and, together, "Parties") for the redevelopment at 800 East Main Street (the "Project") which is located within the Downtown District of Clayton, North Carolina. The Company has made improvements to the building in the amount of an approximate \$354,000 investment.

The proposed project was completed in 2018, resulting in an increased tax value of \$530,360. The Town will provide the company with a Clayton Downtown Redevelopment Incentive Grant ("CDRIG") equal to the attached schedule (Exhibit A) of the new taxes resulting from the improvements.

Redevelopment Statement. By signing this Agreement, the Company acknowledges the Project would not have been considered for redevelopment in the downtown district if not for the CDRIG.

Timing and Amount. The Town's participation in the CDRIG occurs only after the Company pays their annual ad valorem tax assessment. The CDRIG will be used to reimburse the Company for the difference between the pre-construction tax value and post-construction tax value as determined by the Johnston County Tax Administrator. The CDRIG will be disbursed as follows: Year 1 – 100%; Year 2 – 100%; Year 3 – 75%; Year 4 – 50%; Year 5 – 25%.

Notice and Disbursement. The Company shall notify the Town after the Company pays their annual ad valorem tax assessment. Within thirty (30) days of receipt of the notice from the Company, the Town shall disburse the annual grant as shown in the attached schedule. All notices and other communications under this Agreement must be in writing and are deemed duly delivered when (a) delivered if delivered personally or by nationally recognized overnight courier service (costs prepaid), (b) sent by electronic email with confirmation of transmission by the transmitting equipment (or, the first Business Day following such transmission if the date of transmission is not a Business Day) or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested; in each case to the following addresses or emails and marked to the attention of the individual designated below (or to such other address, email or individual as a Party may designate by notice to the other Party):

If to the Town:

Robert McKie
with a copy to Dave DeYoung
111 East Second Street
Clayton, NC 27520
Email: rmckie@townofclaytonnc.org; with copied: DDeYoung@townofclaytonnc.org

If to the Company:

Lipscomb, LLC
c/o James Lipscomb
328 East Main Street
Clayton, NC 27520
Email: james@myhtr.com

Binding Effect; Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder will be assigned, in whole or in part, by operation of Law or otherwise, by either of the Parties without the prior written consent of the other Party; provided, however, Company may (a) assign this Agreement and any or all of its rights and obligations hereunder to any purchaser of all or substantially all of its assets and (b) collaterally assign any or all of its rights and obligations hereunder to any provider of debt financing to it. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns. Any purported assignment not permitted under this section will be null and void.

No Third Party Beneficiaries. Nothing in this Agreement is intended to confer any rights or remedies, whether express or implied, on any Persons other than the Parties and their successors and permitted assigns.

Amendment of Agreement. This Agreement shall not be modified or amended except by written document signed by both Parties.

Termination. This Agreement shall terminate upon the earlier of: (i) the date on which the Town has paid the Year 5 grant payment as reflected on Exhibit A; or (ii) the sale of the property at 800 East Main Street.

IN WITNESS WHEREOF, the parties hereby acknowledge that the terms and conditions of the CDRIG are fully understood and acceptable and execute this agreement as of the date first written above.

TOWN OF CLAYTON

ATTEST:

Jody L. McLeod
Mayor

Kimberly A. Moffett
Town Clerk

LIPSCOMB, LLC

ATTEST:

EXHIBIT A
CLAYTON DOWNTOWN REDEVELOPMENT INCENTIVE GRANT
800 EAST MAIN STREET

Property	Pre-Redevelopment Tax Value	Town Tax Rate/\$100	County Tax Rate/\$100	Town Tax	County Tax	Total Tax
800 E Main Street	\$85,066.00	\$0.58	\$0.76	\$493.38	\$646.50	\$1,139.88

Property	Current Tax Value	Town Tax Rate/\$100	County Tax Rate/\$100	Town Tax	County Tax	Total Tax
800 E Main Street	\$530,360.00	\$0.58	\$0.76	\$3,076.09	\$4,030.74	\$7,106.83

Tax Difference
\$5,966.95

Year	Percentage	Incentive \$	Town Incentive	County Incentive*
1	100% of Difference	\$5,966.95	\$2,582.71	\$3,384.24
2	100% of Difference	\$5,966.95	\$2,582.71	\$3,384.24
3	75% of Difference	\$4,475.21	\$1,937.03	\$2,538.18
4	50% of Difference	\$2,983.48	\$1,291.36	\$1,692.12
5	25% of Difference	\$1,491.74	\$645.68	\$846.06
6	0% of Difference	\$0.00	\$0.00	\$0.00
TOTAL GRANT REFUND \$		\$20,884.33	\$9,039.49	\$11,844.84

*Johnston County will separately approve the County's incentive via resolution

**TOWN OF CLAYTON
RESOLUTION REGARDING APPLICATION FOR
CLAYTON DOWNTOWN REDEVELOPMENT INCENTIVE GRANT**

WHEREAS, the Town of Clayton Town Council has previously indicated its desire to assist in downtown redevelopment efforts within Downtown Clayton; and,

WHEREAS, the Town of Clayton has adopted a Clayton Downtown Development Incentive Grant ("CDRIG") program to encourage and promote infill growth with new commercial development and the major rehabilitation of older buildings within the Town's downtown commercial district; and,

WHEREAS, Lipscomb, LLC has submitted an application for a CDRIG for its improvements to the building located downtown at 800 East Main Street; and

WHEREAS, the tax value of the property at 800 East Main Street was \$85,066.00 before construction and is estimated to have increased to \$530,360.00 after construction; and,

WHEREAS, the Town of Clayton Town Council wishes to pursue a formal agreement for the CDRIG to benefit Lipscomb, LLC for their project at 800 East Main Street and will reimburse monies in the amount of \$2,582.71 in the first two years, \$1,937.03 in the third year, \$1,291.36 in the fourth year and \$645.68 in the fifth year, for a total CDRIG of \$9,039.49.

NOW, THEREFORE BE IT RESOLVED, by the Town of Clayton Town Council that the Town of Clayton is authorized to enter in to a formal agreement for approval of a CDRIG to benefit Lipscomb, LLC.

Duly adopted this the 7th day of October, 2019 in Clayton, North Carolina, while in regular session.

Jody L. McLeod
Mayor

ATTEST

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

October 7 2019

Agenda Location

New Business

Item Title

Town of Clayton 2020 Holiday Schedule

Presenter

Kimberly Moffett, Town Clerk

Summary/Description

It is the policy of the Town of Clayton to follow the holiday schedule provided by the State of North Carolina for its employees. Attached is Resolution that indicates the holiday and observance dates for the proposed holidays in 2020.

Requested Action

Approval

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Resolution #2019-44

Meeting Timeline

N/A

TOWN OF CLAYTON

2020 HOLIDAY SCHEDULE

WHEREAS, it is the policy of the Town of Clayton to follow the holiday schedule provided by the State of North Carolina for its employees; and

WHEREAS, the below 2020 Holiday Schedule was retrieved from the State of North Carolina website: Listed below are the holidays that will be observed by State employees during 2020.

2020 Holiday Schedule		
Holiday	Observance Date	Day of Week
New Year's Day	January 1, 2020	Wednesday
Martin Luther King Jr.'s Birthday	January 20, 2020	Monday
Good Friday	April 10, 2020	Friday
Memorial Day	May 25, 2020	Monday
Independence Day	July 3, 2020	Friday
Labor Day	September 7, 2020	Monday
Veteran's Day	November 11, 2020	Wednesday
Thanksgiving	November 26 & 27, 2020	Thursday & Friday
Christmas	December 24, 25 & 28, 2020	Thursday, Friday & Monday

NOW, THEREFORE, BE IT RESOLVED that the Town Council of Clayton hereby adopts the 2020 Holiday Scheduled as presented.

Duly adopted this 7th day of October, 2019 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

October 7 2019

Agenda Location

New Business

Item Title

Clayton Town Council 2020 Meeting Schedule

Presenter

Kimberly Moffett, Town Clerk

Summary/Description

The Clayton Town Council meetings are held the first and third Monday of the month at 6:00 p.m. in the Council Chambers at Town Hall, unless otherwise noted. All meetings of the council are open the public, except as provided by N.C.G.S 143-318.11. A schedule of meetings for the year 2020 is submitted for approval.

Requested Action

Approval

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Resolution #2019-44

Meeting Timeline

N/A

**TOWN OF CLAYTON
2020 TOWN COUNCIL MEETING SCHEDULE**

WHEREAS, the Clayton Town Council exists to conduct the business of the citizens; and

WHEREAS, the Clayton Town Council meetings are held the first and third Monday of the month at 6:00 p.m. in the Council Chambers at Town Hall, unless otherwise noted; and

WHEREAS, each meeting of the Clayton Town Council is open to the public, except as provided by NC G.S. 143-318.11; and

WHEREAS, the Clayton Town Council may amend the yearly meeting schedule in accordance with NC G.S. 143-318.12:

TOWN OF CLAYTON 2020 CALENDAR TOWN COUNCIL MEETINGS		
MONTH	MEETING #1	MEETING #2
January	January 6, 2020	January 21, 2020 (Tuesday)
February	February 3, 2020	February 17, 2020
March	March 2, 2020	March 16, 2020
April	April 6, 2020	April 20, 2020
May	May 4, 2020	May 18, 2020
June	June 1, 2020	June 15, 2020
July	July 20, 2020* There is only one meeting held during the month of July, 2020.	
August	August 3, 2020	August 17, 2020
September	September 8, 2020 (Tuesday)	September 21, 2020
October	October 5, 2020	October 19, 2020
November	November 2, 2020	November 16, 2020
December	December 7, 2020	December 21, 2020

NOW THEREFORE, BE IT RESOLVED that the Town Council of Clayton hereby adopts the 2020 Clayton Town Council Schedule as presented.

Duly adopted this 7th day of October, 2019 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

October 7 2019

Agenda Location

New Business

Item Title

2018 Staffing for Adequate Fire and Emergency Response (SAFER) Grant

Presenter

Lee Barbee, Fire Chief

Summary/Description

The Clayton Fire Department received notification for the 2018 Staffing for Adequate Fire and Emergency Response (SAFER) Grant has been approved for award. We have been awarded the full SAFER grant in the amount of \$1,572,981.00 which would fund 15 firefighters over three year period. This grant would fund all 15 positions at 75% the first and second years and 35% in the third year. The Town would take over funding the positions in full in the fourth year. The Town has until October 18, 2019 to accept or decline the award.

Requested Action

Approval/Denial

Funding Source (If Applicable):

This grant is administered by the Federal Emergency Management US Fire Administration. The Town share would be 25% the first and second year and 65% in the third year.

Cost: N/A Yes ☒ No ☐

Additional Documents to be Included in Agenda Packet

SAFER Grant Award Letter

Meeting Timeline

Deadline for acceptance is Oct. 18th so a Town Council decision is being sought at this meeting.

Award Letter

U.S. Department of Homeland Security
Washington, D.C. 20472

Halbert Barbee
CLAYTON, TOWN OF
P.O. BOX 879
CLAYTON, NC 27528
EMW-2018-FH-00091



Dear Halbert Barbee,

Congratulations on behalf of the Department of Homeland Security. Your application submitted for the Fiscal Year (FY) 2018 Staffing for Adequate Fire and Emergency Response (SAFER) Grant funding opportunity has been approved in the amount of \$1,572,981.00 in Federal funding.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the FEMA Grants Outcomes (FEMA GO) system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Summary Award Memo - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- 2018 SAFER Notice of Funding Opportunity (NOFO) - incorporated by reference

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Sincerely,

Bridget Bean
Acting Assistant Administrator
Grant Programs Directorate