



## **Agenda**

1. Call to Order
2. Pledge of Allegiance
3. Invocation
4. Adjustment and approval of April 6, 2021 meeting agenda

### **PUBLIC COMMENT PERIOD**

**Notes on the Public Comment Period** - Due to the current restrictions on mass gatherings, public comment will be received in writing and delivered to Council members prior to this meeting.

### **REQUESTS AND COMMUNICATIONS**

5. Transportation and Recreation & Parks Bond Projects Update

### **PUBLIC HEARINGS**

6. 1317 N. Main Street (Sportsmanship Way) Rezoning 20-REZ-03 – Legislative Public Hearing (continued) & Development Agreement
7. Economic Development Agreement and Limited Obligation Bond Financing related to FUJIFILM Diosynth Biotechnologies

### **CONSENT AGENDA**

8. Approve the minutes of the March 9, 2021 Workshop Meeting and the March 16, 2021 Business Meeting.
9. Engineering Design & Construction Standards Supplement #5

### **NEW BUSINESS**

10. Fiscal Year 2021-22 Strategic Plan
11. Motorola Contract for Body Worn/In Car Camera System
12. Vehicle and Equipment Replacement Request
13. Appointment of Voting Delegate to NC League of Municipalities Annual Meeting

### **OTHER BUSINESS**

### **MANAGER'S REPORT**

### **CLOSED SESSION -**

### **ADJOURNMENT**

In accordance with ADA regulations please contact the Town Clerk's office at least 48 hours before the meeting to request an auxiliary aid or service needed to participate in this meeting:

[linda.mckinney@hollyspringsnc.us](mailto:linda.mckinney@hollyspringsnc.us) 919-557-3900



# Holly Springs Town Council

## *Town Council Meeting Agenda Cover Sheet*

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### Agenda Item#: 5.

#### **Requests & Communications**

**Title:** Transportation and Recreation & Parks Bond Projects Update

**Strategic Priority Area:** Responsible & Balanced Growth  
Engaged, Healthy, & Active Community

**Staff Resource:** Tim Athy, Utilities and Infrastructure, LeeAnn Plumer, Parks & Recreation, Matt Beard, Parks & Recreation

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#### **Action(s):**

Receive information

#### **Explanation:**

- The purpose of this agenda item is to brief Town Council on the status of transportation and parks and recreation bond projects.
- The town is currently compiling and completing information necessary with the Local Government Commission (LGC) for the issuance of both Transportation and Parks & Recreation bond funds.

#### ***Transportation***

- Three projects are currently under design and one will soon be bid for construction.
  - Holly Springs Road Widening - Phase 2
    - Anticipated summer 2021 construction start
    - \$15.1 million funded by 2018 Transportation Bond
    - \$3.6 million funded by FY 2021 Locally Administered Project Program (LAPP) Grants
    - \$500k FY 2022 Locally Administered Project Program (LAPP) Grants - in-progress - application received not officially awarded and accepted yet
  - Main Street Right Turn Lane
    - Anticipated spring 2021 construction start
    - \$913,000 funded by 2018 Transportation Bond
    - \$780,000 FY 2022 LAPP Grant - in-progress - application received not officially awarded and accepted yet
  - NC 55 Right Turn Lane
    - Anticipated spring 2021 construction start
    - \$2.4 million funded by 2018 Transportation Bond
    - \$508,000 FY 2022 LAPP Grant - in-progress - application received not officially awarded and accepted yet
  - Avent Ferry Road Realignment
    - Anticipated fall 2022 construction start
    - \$3.96 million funded by 2018 Transportation Bond

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- \$1 million funded by FY 2021 & FY 2022 LAPP Grants
- Staff will provide an update on the current status of these four initial transportation bond projects.

### ***Parks and Recreation***

Two projects are expected to be funded with the remaining 2011 Parks & Recreation bonds.

- Arbor Creek/Middle Creek Greenway
  - Anticipated late fall 2021 construction start
  - \$3.7M project budget
  - Advertisement for construction bids for the Arbor Creek/Middle Greenway is currently underway in anticipation of sharing with the LGC in early May.
- Cass Hold Road Park and First Phase of Construction
  - \$3.8M purchase price reimbursed by 2011 Parks Bonds
  - \$500,000 toward first phase of construction (to be supplemented by Parks & Recreation reserves)
  - Staff is engaging with a qualified landscape and engineering firm to develop the new park master plan and phase one design documents. A contract for these services will be presented to Council at a future meeting.

### **Background:**

#### ***Transportation***

- In November 2018, Holly Springs voters authorized \$40 million of investment for transportation projects.
- Purpose for these projects is to mitigate traffic congestion, improve motorist and pedestrian safety, and improve mobility across town.

### ***Parks and Recreation***

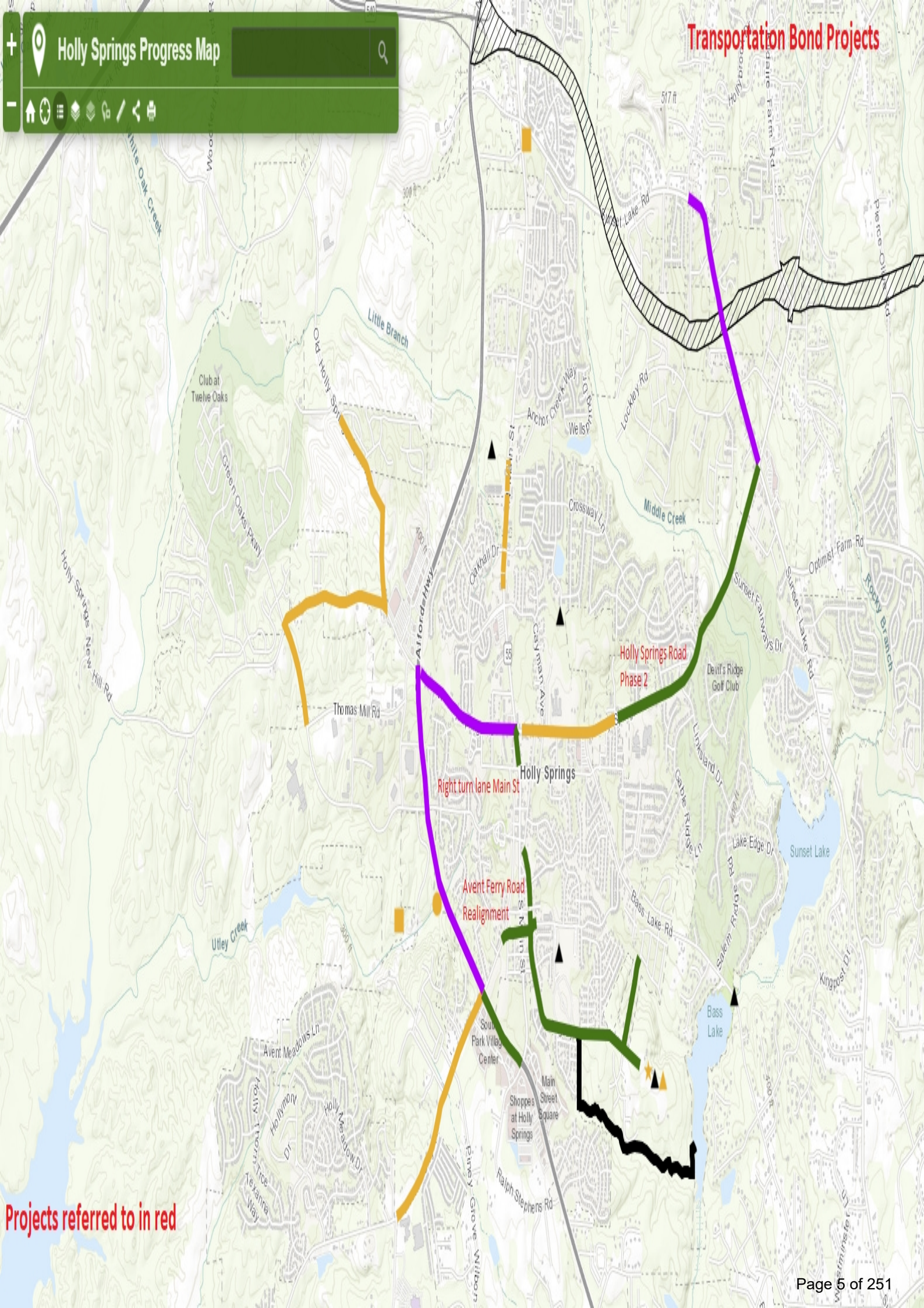
- In 2011, Holly Springs voters supported a \$20 million bond referendum for parks and recreation projects. \$12 million dollars were invested in various town park projects, leaving \$8 million remaining.
- In February 2019, Town Council reviewed the results of an informal community survey indicating that greenways and additional parks were a priority for Holly Springs residents. The desire for additional greenways was recently confirmed in the scientifically valid survey (summer 2020) from the updated Parks, Recreation and Greenways Master Plan effort.
- In June of 2019, Town Council gave staff direction to pursue additional greenway connections and acquire park land with the intent to utilize the remaining \$8 million parks and recreation bond funds to support these projects.
- In January of 2020, the Town Council authorized the purchase of approximately 56 acres of land on Cass Holt Rd for a future park.
- In February of 2020, the Town Council authorized the contract with SEPI for the Arbor Creek/Middle Creek greenway design and construction documents.

### **Funding Source(s):**

- 2018 Transportation Bonds
- 2011 Parks and Recreation Bonds

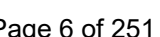
**Attachment(s):**

1. transportation bond projects map
2. Arbor Creek Middle Creek Greenway
3. Cass Holt Road Park Location



Transportation Bond Projects

Projects referred to in red



Cass Holt Road – Future Park Location  
Approximately 56 acres





# Holly Springs Town Council

## *Town Council Meeting Agenda Cover Sheet*

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### Agenda Item#: 6.

#### **Public Hearings**

**Title:** 1317 N. Main Street (Sportsmanship Way) Rezoning 20-REZ-03 – Legislative Public Hearing (continued) & Development Agreement

**Strategic Priority Area:** Economic Prosperity & Diversity  
Responsible & Balanced Growth

**Staff Resource:** Sean Ryan, Development Services, Rachel Jones, Development Services, John Schifano, Town Attorney, Elizabeth Goodson, Development Services

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#### **Action(s):**

- Continue Legislative Public Hearing from March 16, 2021 Town Council meeting
- Open Legislative Public Hearing for Development Agreement
- Adopt Rezoning Ordinance #RZ21-01 to adopt statement of compatibility and to approve rezoning
- Approve / Deny Development Agreement

#### **Explanation:**

- This public hearing has been continued from March 16, 2021 to allow completion of the development agreement.
- The applicant has had several neighborhood meetings to discuss the project:
  - 2/2/21 - Required neighborhood meeting (properties within 300 feet)
  - 3/11/21 - Meeting with Arbor Creek HOA
  - 3/15/21 - Meeting with Treills Pointe Management
  - 3/24/21 - Meeting with Easton Acres Residents
  - The applicant has reached out to the Bridgewater HOA. However, a response has not been received.
- The applicant's request is to rezone the property from LB: Local Business Limited to CB CU: Community Business Conditional Use and R-MF-15 CU: High-Density Multifamily Residential Conditional Use.
- This rezoning request involves two parcels totaling 20.01 acres.
- The project area is generally located north of Sportsmanship Way, between NC 55 and N. Main Street.
- The applicant has submitted a conditional use rezoning, which allows the property owner to offer specific conditions relating to the future development of the parcel.
- The Development Agreement terms were discussed in concept at the March 9, 2021 Town Council Workshop. This agreement includes terms related to:
  - Sewer Capacity
  - Transportation impact
  - Timing of Subdivision plat
  - Building height

- System Development Fee
- Parks & Recreation Fee

### **Planning Board Recommendation:**

The Planning Board discussed the following issues and concerns on February 23, 2021:

- Traffic on Sportsmanship way, including pedestrians who may be crossing the street.
- The bus stop on Sportsmanship Way and if a cut out and shelter would be possible to prevent traffic backups.
- Confirmation if My Computer Career has committed to move their offices to this location.
- Clarification if affordable housing will be required as a part of the rezoning.
- Clarification on the apartment breakdown per unit (1-bed, 2-bed, 3-bed) and level of affordability.
- The consistency with the character feature aspects of the mixed-use designation in the Land Use & Character Plan.
- Discussions about the conceptual diagram presented by the applicant and how it illustrates a possible future development plan and proposed conditions associated with this location.
- Discussions about renewable energy and recharging stations and if it will be included in this proposed project.

Planning Board Recommendation:

The Planning Board recommended approval (6-2-1)

Those voting against the motion were:

- Mr. Urquhart: Concerns about the residential aspect as it pertains to traffic impact.
- Mr. Crandall: Not enough granularity to make a good zoning decision.

*Additional Motion:* The Planning Board recommended the Town Council look at the 2018 Resolution by the Wake County Board of Commissioners, "Resolution Endorsing The Goals of Achieving Clean Energy by 2050," as it pertains to this property and to include any conditions in the sale of the property to help achieve this goal (the resolution is included in the attachments for reference).

The Planning Board recommended approval (8-0-1)

### **Background:**

- The public hearing was opened on March 16, 2021 and public comment was accepted. The hearing was continued to April 6, 2021 to allow completion of the development agreement.
- The Town Council adopted a Memorandum of Agreement (MOA) regarding the subject property on July 21, 2020 (Amended November 17, 2020). The MOA provides for a written agreement and understanding of the various roles that Wake County, the Town of Holly Springs and the Lead Applicants will have during the Due Diligence period. This agreement does not impact the Council's determination of action on any of the development petitions, including this rezoning, as they are presented for consideration

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during the process.

- The Property was identified by Wake County as part of its Evaluation and Disposition of County-owned Land for Affordable Housing Policy which evaluates publicly-owned land for disposition to include affordable housing development. In January 2020, Wake County issued its first ever, public land disposition RFP under the newly adopted Policy for development proposals for 1317 N. Main Street.
- In May 2020, Wake County selected the proposal by the development team of My Computer Career (MyCC) and DHIC as the Lead Applicants for the potential development of 1317 N. Main Street.
- The Town has sought opportunities for economic development projects for this parcel, and Wake County has had this parcel on "hold" while determining the appropriate use and disposition of the property.
- This parcel was part of the land that was originally designated as the "borrow pit" for the South Wake Landfill. Since the property was removed from the landfill plans, Wake County sold the south half to the Town for the North Main Athletic Park (Ting Park) and the north half has remained under the ownership of the County.
- The property was last zoned Office & Institutional on August 15, 2000, and modified to LB Local Business Limited, with the adoption of the current Unified Development Ordinance, on October 15, 2002.
- The Holly Springs Strategic Plan states support the Wake County Department of Housing Affordability and Community Revitalization's efforts to increase housing options on County-owned property north of Ting Park and pursue a residential/non-residential tax base ratio of 70%/30%.

**Funding Source(s):**

N/A

**Attachment(s):**

1. PlanningBoardStaffReport\_20REZ03\_1317NMainSportsmanshipWay
2. Attachments\_20REZ03\_1317NMainSportsmanshipWay
3. RZ21-01 SportsmanshipWay\_PB\_\_ORD\_02232021
4. WakeCounty\_CleanEnergy2050Resolution
5. IllustrativeSitePlan(ReferenceOnly)
6. Final Comparison Development agreement for Ting North\_TOWN COUNCIL VERSION



## Town of Holly Springs Staff Report to the Planning Board

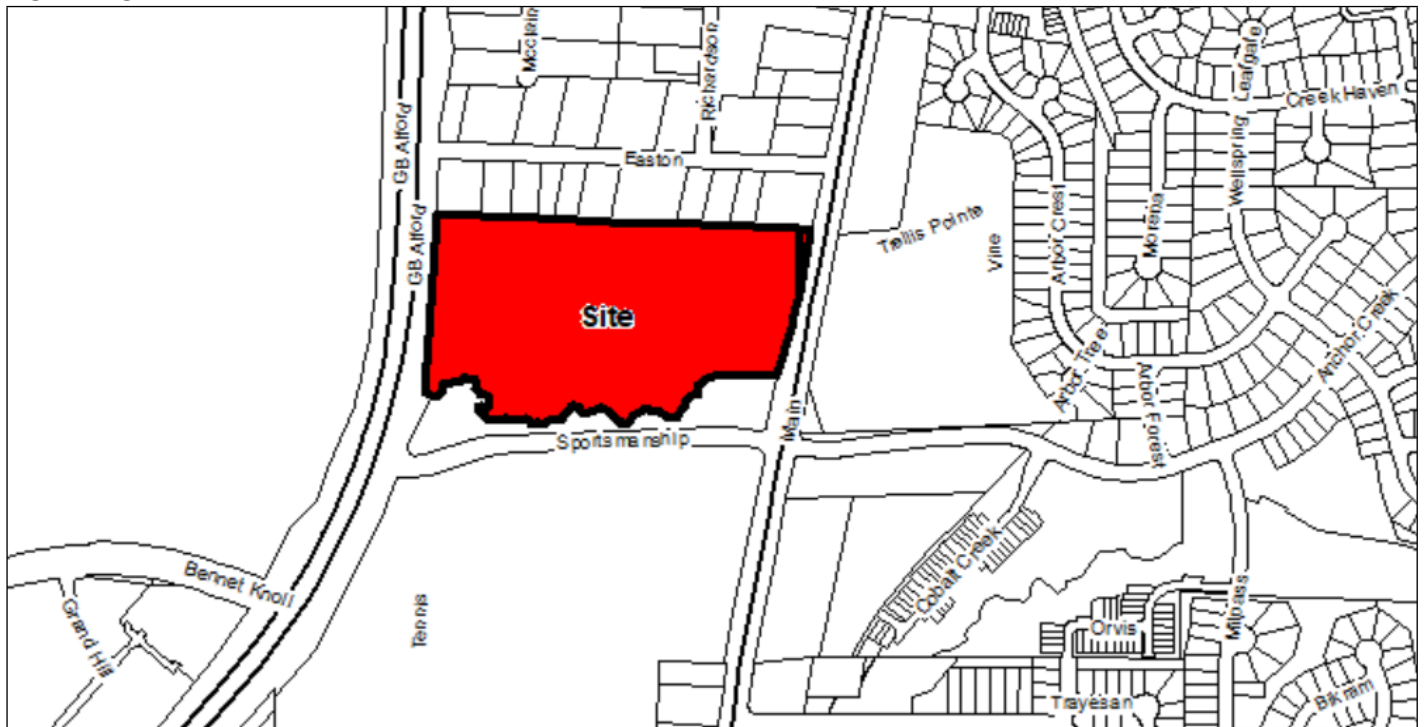
### REQUEST FOR ZONE MAP CHANGE 1317 N. Main Street (Sportsmanship Way) 20-REZ-03

**PETITIONER(S):**

Laura Holloman  
McAdams Company  
2905 Meridian Parkway  
Durham NC 27713

**DEVELOPER(S):****OWNER(S):**

Wake County  
Attorney's Office  
PO Box 550  
Raleigh NC 27602

**LOCATION:**

[ X ] Within Corporate Limits of Holly Springs    [ ] Within Holly Springs ETJ    [ ] Annexation Pending

**ANTICIPATED REVIEW SCHEDULE:**

Planning Board: February 23, 2021  
Public Hearing and Town Council Action: March 16, 2021

**STAFF CONTACTS:** Sean Ryan, Senior Planner  
Rachel Jones, Development Review Engineer  
Matthew Beard, Parks Planner

**ATTACHMENTS:**

Petition for Zone Map Change  
Conditional Use Statement  
Statement of Zoning Compatibility

| PARCEL INFORMATION |           |                            |                    |
|--------------------|-----------|----------------------------|--------------------|
| OWNER              | PARCEL #  | ZONING                     | AREA               |
| Wake County        | 649894163 | LB: Local Business Limited | 19.89 ac.          |
| Wake County        | 649991395 | LB: Local Business Limited | 0.12 ac.           |
| <b>TOTAL</b>       |           |                            | <b>20.01 ac. ±</b> |

| ADJACENT PROPERTY SITE DATA |                            |                                          |
|-----------------------------|----------------------------|------------------------------------------|
|                             | ZONING                     | EXISTING LAND USE                        |
| <b>Subject Property</b>     | LB: Local Business Limited | Undeveloped / Vacant                     |
| <b>North</b>                | R-10 Residential           | Single Family Residential                |
| <b>South</b>                | CB: Community Business     | Park (Ting Park)                         |
| <b>East</b>                 | PUD: Arbor Creek           | Multifamily Residential                  |
| <b>West</b>                 | BT: Business & Technology  | NC 55 right-of-way / South Wake Landfill |

### PROPERTY HISTORY

#### Rezoning History

Rezoning Number: 00-REZ-13

Original Zoning: LI and C-1

Proposed Zoning: O&I

Approved by Town Council on: August 15, 2000

Rezoning Number: 02-UDO-01

Original Zoning: O&I

Proposed Zoning: LB Limited

Approved by Town Council on: October 15, 2002

#### Subdivision History

Description: Minor Subdivision of County Land

Approved on: March 8, 2013

| ZONE MAP CHANGE REQUEST                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                            |                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | CURRENT                    | PROPOSED                                                                                                         |
| <b>Zoning District</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | LB: Local Business Limited | CB CU: Community Business Conditional Use<br><br>R-MF-15 CU High-Density Multifamily Residential Conditional Use |
| <b>Future Land-Use Designation</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Mixed-Use Center           | No Change                                                                                                        |
| <b>Overlay District</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | None                       | No Change                                                                                                        |
| <b>Conditional Use Permit Restrictions</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | N/A                        | See Below:                                                                                                       |
| <p>1) The following uses shall be prohibited uses within the CB zoning district: Automotive Sales &amp; Service: Automobile Parts Sales (new); Quick Oil Change Facility; Car Wash (automatic or self); Gasoline Service Station without repair; Motor Cycle/Scooter Sales; Automotive Sales &amp; Service: Automotive Repair – Minor; Gasoline Service Station with minor repair (not to exceed two (2) accessory indoor service bays); Kennels (with outdoor runs); Food Sales and Service: Restaurant</p> <p>– Drive Through, Stand Alone; Public Facilities: Neighborhood Recycling Collection Point; Communications/Utilities: Electricity Relay Station; Retail: Satellite Dish Sales and Service (outdoor display).</p> <p>2) The CB zoning district shall contain a Class A commercial office building with a minimum square footage of 70,000 Square Feet with a minimum building height of 2 stories.</p> |                            |                                                                                                                  |

- 3) The following uses shall be permitted uses within the R-MF-15 zoning district: Residential: Multifamily dwellings. The allowed residential uses must meet the requirements of Section 42 of the Internal Revenue Code or a substantially equivalent form of affordable rental housing. 100% of the dwelling units developed on the property must meet this requirement. Accordingly, rents shall be set at a price that on average is affordable to a household with an annual income that is no greater than 60% of the Area Median Income for the respectively-sized household in the Raleigh, NC MSA, as determined by the United States Department of Housing and Urban Development.
- 4) The CB and R-MF-15 parcels will have both vehicular and pedestrian connectivity so that the two zoning parcels that make up this request will be interconnected and function as a horizontal mixed use development. Each parcel shall record an easement in a form approvable by the Town allowing cross access.
- 5) The CB zoned parcel shall provide a primary entrance driveway/street from Sportsmanship Way. To create a walkable street scape along this primary driveway/street, a minimum and maximum building setback will be established by the project master plan. To establish the intent of commercial building placement, no more than one bay of off-street parking spaces shall be constructed between the building and primary driveway/street. This is more particularly illustrated below:



Note: The above illustration is conceptual in nature and meant to illustrate desired building placement only. Final design will be determined at the time of development plan(s) submittal(s).

- 6) Off-street parking within the CB zoning district shall utilize shared parking. This shared parking shall be memorialized within a shared parking agreement. The property owners involved in the joint use of off-street parking areas shall submit a legal agreement approved by the town attorney as to form and content guaranteeing that said required off-street parking shall be maintained so long as the use requiring off-street parking is in existence or unless the required off-street parking is provided elsewhere in accordance with the provisions of this Section. Such instrument, when approved as conforming to the provisions of this section, shall be recorded by the property owner with the Wake County Register of Deeds and a copy thereof filed with the Department of Development Services.
- 7) The development shall construct and install a pedestrian crosswalk featuring a rapid beacon signals across Sportsmanship Way, such location shall be determined at the time of master plan submittal.

- 8) Developed open space areas within the proposed developments shall feature at least one of the following: hardscape areas; outdoor seating areas; public art; playground and pergolas/gazebos.
- 9) A minimum of one of the following types of Green Stormwater Infrastructure shall be used in connection with any development on the subject property: permeable pavement parking spaces or pervious pavers in pedestrian areas; or rainwater harvesting (cisterns); or bio-swales. Reclaimed water for commercial irrigation purposes whenever feasible shall be utilized.
- 10) Emphasis shall be placed on placemaking within the development. To ensure this occurs, the following landscaping practices shall be utilized:
- The use of vertical landscaping or public art shall be utilized adjacent to a minimum of two (2) commercial outdoor seating or gathering areas;
  - To the greatest extent possible, street trees shall be installed in accordance with the Town of Holly Springs UDO requirements along the primary entrance driveway/street from Sportsmanship Way.
  - Within the CB zoning district, the use of planters shall be positioned as to energize and identify pedestrian entrances, such entrances shall be flanked by at least one planter. Planters shall have a minimum height 24" and a minimum width of 18".
- 11) The Town requires certain fees to be paid upon development of land and for the granting of a building permit. Said fees are listed in the Town's annual budget, and with this rezoning the Developer agrees he/she (i) is familiar with these fees, (ii) does not dispute the reasonableness of these fees as set forth in the Town's annual budget; and (iii) notwithstanding any reimbursements discussed at this time through an Infrastructure Reimbursement Agreement, hereby agrees to timely pay all normal and customary fees applicable to Developer in connection with Non-Residential and Residential Projects. Such fees are listed in the current year annual budget of fees at the time the fee is due under the ordinary course of development.  
***This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.***
- 12) The Town requires, pursuant to N.C.G.S. § 160A-372, the dedication and construction of streets and rights of way, as shown in the approved Comprehensive Transportation Plan and the approved Transportation Impact Analysis, to create conditions essential to public health, safety, and the general welfare. A rezoning may be delayed until such time as necessary transportation improvements (to include offsite improvements) may be made, unless the Town and the Developer can enter into agreements to accelerate the time for completion of these needed improvements. ***This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.***
- 13) The proposed development associated with this rezoning will be served by public sewer. The developer acknowledges that there are significant downstream gravity sewer and pump station improvements that are needed to accommodate the demand from this project. The developer has submitted a sewer and pump station evaluation report to meet the Town of Holly Springs standards. The developer is responsible to continue coordination with the Town to determine the cost sharing partnership that will facilitate the necessary sewer infrastructure improvements proportionate to the project's impact. ***This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.***
- 14) TRANSPORTATION IMPROVEMENTS: The developer shall contribute, design, construct or permit the following Public Infrastructure relating to Transportation:
- Pay fee-in-lieu or construct northbound right turn lane at N. Main Street / Old Smithfield Road / Sunset Lake Road as required by the NCDOT.
  - Contribute a fee-in-lieu for design and construction of future traffic signalization at the intersection of N. Main Street / Katha Drive / Arbor Creek Drive proportionate to project

impact.

***This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.***

## STAFF ANALYSIS

### Zone Map Change Request:

The request is to rezone the property in question from LB: Local Business Limited to CB CU: Community Business Conditional Use and R-MF-15 CU: High-Density Multifamily Residential Conditional Use.

### PROJECT OVERVIEW

This rezoning request involves two parcels totaling 20.01 acres. The project area is generally located north of Sportsmanship Way, between NC 55 and N. Main Street. Ting Park is located south of the project area. The applicant has submitted a conditional use rezoning, which allows the property owner to offer specific conditions relating to the future development of the parcel.

## PLANNING & ZONING

### Vision Holly Springs Comprehensive Plan

#### *Land Use & Character*

The Land Use & Character Plan designation is Mixed-Use Center. A Mixed-Use Center offers the opportunity to serve broader economic, entertainment, and housing needs in the community. Land uses and buildings on small blocks in the core may stand three or more stories tall and encourage active public spaces between the buildings. Residential units or office space are found above storefronts. Homes surrounding the core offer several choices to live and experience the center. Parking is satisfied using on-street parking, structured parking, and shared rear-lot parking strategies. The compact, walkable environment and mix of residential and non-residential uses in the center supports multiple modes of transportation, including the potential for transit-oriented development if-when a decision is made to invest in premium transit along the NC 55 corridor.

A large-scale, Mixed-Use Center may be surrounded by one or more residential neighborhoods that provide additional nearby home choices and encourage active living with a comprehensive and interconnected network of walkable streets.

Character Area Features for Mixed-Use Centers include:

- Open Spaces & Natural Resources
  - These areas include a variety of shared public open spaces throughout a walkable, activated environment, and may include formal and informal open spaces such as greens, squares, plazas, and community gardens. The linear nature can provide opportunities for greenway links to other parts of the Town.
  - Grading of topography and clearing of vegetation may be necessary in order to achieve the higher density and compact development desired in the center.
  - Low-impact landscape design techniques and sustainable stormwater practices should be incorporated.
  - Consider landscaping beds with reduced curb structures/cuts that allow for storage of stormwater and/or mini rain gardens.
  - Green roof elements and/or rooftop gardens are encouraged.
- Street & Block Patterns
  - Existing areas may have a conventional suburban development pattern, with surface parking lots between the street and buildings. Blocks may be indiscernible due to a lack of street connectivity to adjacent neighborhoods.

- Redevelopment and new development in these areas will utilize formal small block patterns and relocate parking to the interior of blocks.
- Parking between the street and the building should be limited.
- Paved surface lots have shared parking agreements.
- Formal and informal on-street parking is provided.
- Lot Size & Building Placement
  - In existing development, lot sizes may be variable and irregular. Redevelopment and new development should seek to regularize lot and building patterns.
  - Front setbacks are variable, but in new development should be as small as possible. Side and rear setbacks are variable.
- Building Types & Massing
  - Multi-dwelling housing in a Mixed-Use Center should be stacked over ground floor retail in the core of the development, or interspersed on small blocks within the larger development so that all multi-dwelling buildings are within short walking distance of a community green or block with non-residential uses.
  - Multi-dwelling housing in a Mixed-Use Center should not extend more than two consecutive blocks in any direction unless included in a vertical mixed-use building.
  - Buildings should be 3 to 5 stories along the corridor, but may be 2 to 3 stories in transitional areas.
- Transportation Network
  - Suburban corridor character with curbs and formal street tree planting.
  - Primarily auto-oriented, but should also be located along corridors served by transit.
  - Sidewalks and bike facilities provide links to adjacent neighborhoods.

## **Other Planning & Zoning Topics**

### **Affordable Housing**

The proposed R-MF-15 district conditions provide the opportunity for affordable housing. The Land Use & Character Plan supports the increase in housing diversity and affordability of housing in Holly Springs. As stated in the plan, “in addition to the need for more varied home and neighborhood choices in Holly Springs, there is also a need for more affordable housing. An adequate supply of affordable housing ensures that the people who make Holly Springs a great place to live (teachers, police officers, public works staff, retail and restaurant workers, and more) can live in the same community where they work.”

### **Town Council’s Strategic Plan**

The Town Council’s Strategic Plan includes initiatives related to this rezoning.

### **Responsible and Balanced Growth**

5. Leverage Town and regional partners to mitigate resident housing displacement from NCDOT and Town infrastructure projects.

Initiative 5.1: Support the Wake County Department of Housing Affordability and Community Revitalization’s efforts to increase housing options on County-owned property north of Ting Park.

## **Zone Map Change Analysis**

The proposed CB district will allow for a wide variety of office, retail, restaurant, and personal service uses, including high volume and intensity uses. Through the Special Exception Use process, which requires a separate public hearing for the particular use, additional uses such public facilities and recreation uses (by way of example miniature golf or skating rinks) may be permitted. Developments within the CB district are required to be developed in a coordinated manner to facilitate vehicular and pedestrian access from nearby residential districts.

The proposed R-MF-15 district will allow for multifamily residential dwellings which, by the applicant's offered conditions, are limited to residential uses that meet the requirements of Section 42 of the Internal Revenue Code or a substantially equivalent form of affordable rental housing. Developments within the R-MF-15 district are intended to be of higher density with on-site amenities.

The applicant has offered several zoning conditions to coincide with the Land-Use & Character Plan's vision for Mixed-Use Centers:

- Condition 1 limits the use of auto-oriented land uses
- Condition 2 provides a minimum amount of office space to be developed on the parcel
- Condition 2 requires a minimum building height
- Condition 3 limits uses to multifamily residential that meets the requirements of affordable rental units
- Condition 4 requires both vehicular and pedestrian connectivity between the two zoning districts
- Condition 5 establishes an urban streetscape with buildings located in close proximity to internal driveways
- Condition 6 requires shared parking areas
- Condition 7 promotes safer pedestrian connectivity to Ting Park and the GoTriangle bus stop on Sportsmanship Way
- Condition 8 provides for open space
- Condition 9 requires the use of "green infrastructure"
- Condition 10 provides for pedestrian oriented streetscape elements
- Conditions 11-4 provide for utility and infrastructure improvements

One area of note is that the proposal is not consistent with the character area features for *Building Types & Massing*, specifically related to the location and arrangement of multifamily residential uses. The Mixed-Use Center is intended for multi-dwelling housing to be stacked over ground floor retail in the core of the development, or interspersed on small blocks within the larger development so that all multi-dwelling buildings are within short walking distance of a community green or block with non-residential uses, not extending more than two consecutive blocks in any direction unless included in a vertical mixed-use building. However, the character area features are not intended to be used as strict evaluation criteria for the features of the Mixed-Use Center designation. Rather, they are intended to provide generalized descriptions of key components of development and can be adapted to implement the Town's desired development pattern. Other Town policies or Town Council priorities should be considered in determining which character area features are most important to implement the Mixed-Use Center designation.

The proposed CB and R-MF-15 districts, with the zoning conditions offered by the applicant, substantially demonstrate how future development of the property will support the implementation of the Mixed-Use Center designation as described in the Land Use & Character Plan.

## **PARKS & RECREATION**

### **Recreational Facilities and Open Space Dedication Requirements (UDO Section 7.06, F.):**

The Residential portion of the proposed development will need to comply with the UDO Section 7.06 F with regards to dedication of parkland or payment of fee-in-lieu. This is an ongoing conversation with the applicant and may be better defined with the proposed Developer's Agreement between the Town and Applicant/Developer.

### **Greenways (UDO Section 7.06, C.):**

A Greenway connection is proposed on the western edge of the property, which would link a current greenway stub on the Town's Ting Park property just north of Sportsmanship Way, north across the subject property to the existing underpass structure where a future Greenway connection under NC-55 would provide bike/pedestrian access to Holly Springs Towne Center and other areas west of NC-55. This connection is shown on both the current approved Greenway Map (Comprehensive Transportation Plan Figure 4.2b) as well as the proposed Greenway and Trails Map included in the Parks, Recreation and Greenways Master Plan update.

Figure 4.2b



Proposed Greenways and Trails Map



## ENGINEERING

### Utility Availability and Impacts due to change of Permitted Uses:

All utility related Town ordinances and standards are required to be met at the time of development.

### Water

This project is required to tie to and extend Town water facilities to serve any proposed buildings. A Hydraulic Fire Flow Analysis will be required at the time of Master Plan and Development Plan Submittal.

### Sewer

This project is required to tie to and extend Town sewer facilities to serve any proposed buildings. A Sewer Study and Pump Station analysis was completed as required with this Rezoning Petition. This development will discharge to the Twelve Oaks Pump Station. This item is expected to be addressed as part of a Developer Agreement between Applicant and Town and presented to Town Council for approval.

### Transportation

All transportation related Town ordinances and standards are required to be met at the time of development.

A Traffic Impact Analysis (TIA) was submitted as required with this Rezoning Petition. This development will be required to adhere to and construct all recommended improvements within the Approved TIA as required by the Town and the NCDOT. The TIA is required to be finalized prior to this rezoning moving forward to Town Council. A fee-in-lieu (FIL) for improvements at the intersection of Katha Dr./N. Main St./Arbor Creek Way proportionate to project impact is expected with this development. The specific (FIL) amount will be finalized between Developer and Town as part of the Developer Agreement discussions.

- It's important to note that the scenario identified as "Scenario 2" in the TIA is supported by the NCDOT and the Town. This design will restrict the proposed project access off of N. Main Street to a right-in-right-out with a left over, and allow the existing Trellis Point access on N. Main St. to remain full movement

In accordance with the Unified Development Ordinance (UDO) and Comprehensive Transportation Plan (CTP), road widening to meet ½ of the ultimate four-lane, median-divided thoroughfare cross-section will be required across the property frontage on N. Main Street at the time of development. Standard 20-ft of right-of-way dedication will be required along the property frontage on the NC 55/GB Alford Hwy side at the time of development.

- A fee-in-lieu of median construction along the project property frontage is expected with this development. Construction of a median at this time is not supported by the NCDOT as it would restrict access points of existing property owners and require u-turn bulbs that are not desired at this time. In the future when the ultimate cross section can be constructed as part of a larger funded transportation project and not one specific of a single development, the standard median divided cross section would be constructed.

Pedestrian and vehicular connectivity will be required between the various elements of this project in accordance with UDO and Engineering Design & Construction Standard requirements.

### **Environmental Issues**

With development , this project will be required to meet the Town of Holly Springs NPDES Ph. II Post Construction Stormwater Ordinance. This project is within the Cape Fear River Basin and will be subject to all requirements of that basin.

## **MEMORANDUM OF AGREEMENT**

The Town Council adopted a Memorandum of Agreement (MOA) regarding the subject property  
Date of Adoption: July 21, 2020

Date of Amendment: November 17, 2020

Summary: The MOA provides for a written agreement and understanding of the various roles that Wake County, the Town of Holly Springs and the Lead Applicants will have during the Due Diligence period. This agreement does not impact the Council's determination of action on any of the development petitions, including this rezoning, as they are presented for consideration during the process.

## **DEVELOPMENT AGREEMENT**

The Town Council will consider a Development Agreement on March 16, 2021

The items below are being considered as part of a Development Agreement that will be considered for approval by Town Council. Please note that these have not been finalized and could result in changes to the Rezoning Conditions prior to going before the Town Council.

- The timing of sewer and pump station infrastructure improvements needed to accommodate the demand from the development.
- Transportation improvements and fee-in-lieu payments proportionate to project impact.
- Stormwater alternative design
- Timing of subdivision
- Building Height

## TECHNICAL REVIEW COMMITTEE DISCUSSION

The Technical Review Committee discussed the initial concept for this project on July 7, 2020

Planning Board Representatives: Chris Deshazor

Town Council Representatives: Christine Kelly & Dan Berry

Summary of Discussion:

- The TRC preferred the applicant pursue two different zoning districts (CB and R-MF-15) rather than rezoning the entire parcel CB and suggested continued conversations with staff on the mixed-use option requirements.
- The TRC suggested it would be important to have interconnection through a project master plan to allow the two districts to operate as a single site.
- The TRC discussed that the TIA needed to be completed as soon as possible to understand the traffic impacts and that the project should consider transit stops.
- It was further discussed that the residential district needed to include affordable housing assurances.
- Other topics of conversation included concerns about additional buffers and maintaining existing vegetation; meeting with adjacent neighborhoods as part of the zoning application, and completion of a sewer study.

## PLANNING BOARD RECOMMENDATION

### PLAN CONSISTENCY STATEMENT:

The requested zone map change from LB: Local Business Limited to CB CU: Community Business Conditional Use and R-MF-15 CU: High-Density Multifamily Residential Conditional Use is consistent with the Vision Holly Springs Comprehensive Plan since the Land Use & Character Plan Future Land Use Map designates this property as Mixed-Use Center and the CB CU: Community Business Conditional Use and R-MF-15 CU: High-Density Multifamily Residential Conditional Use districts, with the conditions offered by the applicant, will serve the broader economic, entertainment, and housing needs of the community and will provide for a compact, walkable environment and mix of residential and non-residential uses.

### ZONE MAP CHANGE PETITION MOTION:

Motion that the Planning Board recommend the Town Council **approve / deny** Zone Map Change Petition #20-REZ-03 to change the zoning of 20.01 acres of Wake County PIN # 649894163 & 649991395 from LB: Local Business Limited to CB CU: Community Business Conditional Use and R-MF-15 CU: High-Density Multifamily Residential Conditional Use (as further described below), with the following conditions as submitted by McAdams Company:

- 1) The following uses shall be prohibited uses within the CB zoning district: Automotive Sales & Service: Automobile Parts Sales (new); Quick Oil Change Facility; Car Wash (automatic or self); Gasoline Service Station without repair; Motor Cycle/Scooter Sales; Automotive Sales & Service: Automotive Repair – Minor; Gasoline Service Station with minor repair (not to exceed two (2) accessory indoor service bays); Kennels (with outdoor runs); Food Sales and Service: Restaurant – Drive Through, Stand Alone; Public Facilities: Neighborhood Recycling Collection Point; Communications/Utilities: Electricity Relay Station; Retail: Satellite Dish Sales and Service (outdoor display).
- 2) The CB zoning district shall contain a Class A commercial office building with a minimum square footage of 70,000 Square Feet with a minimum building height of 2 stories.
- 3) The following uses shall be permitted uses within the R-MF-15 zoning district: Residential: Multifamily dwellings. The allowed residential uses must meet the requirements of Section 42 of the Internal Revenue Code or a substantially equivalent form of affordable rental housing. 100% of the dwelling units developed on the property must meet this requirement. Accordingly, rents shall be set at a price that on average is affordable to a household with an annual income that is no greater than

60% of the Area Median Income for the respectively-sized household in the Raleigh, NC MSA, as determined by the United States Department of Housing and Urban Development.

- 4) The CB and R-MF-15 parcels will have both vehicular and pedestrian connectivity so that the two zoning parcels that make up this request will be interconnected and function as a horizontal mixed use development. Each parcel shall record an easement in a form approvable by the Town allowing cross access.
- 5) The CB zoned parcel shall provide a primary entrance driveway/street from Sportsmanship Way. To create a walkable street scape along this primary driveway/street, a minimum and maximum building setback will be established by the project master plan. To establish the intent of commercial building placement, no more than one bay of off-street parking spaces shall be constructed between the building and primary driveway/street. This is more particularly illustrated below:



Note: The above illustration is conceptual in nature and meant to illustrate desired building placement only. Final design will be determined at the time of development plan(s) submittal(s).

- 6) Off-street parking within the CB zoning district shall utilize shared parking. This shared parking shall be memorialized within a shared parking agreement. The property owners involved in the joint use of off-street parking areas shall submit a legal agreement approved by the town attorney as to form and content guaranteeing that said required off-street parking shall be maintained so long as the use requiring off-street parking is in existence or unless the required off-street parking is provided elsewhere in accordance with the provisions of this Section. Such instrument, when approved as conforming to the provisions of this section, shall be recorded by the property owner with the Wake County Register of Deeds and a copy thereof filed with the Department of Development Services.
- 7) The development shall construct and install a pedestrian crosswalk featuring a rapid beacon signals across Sportsmanship Way, such location shall be determined at the time of master plan submittal.
- 8) Developed open space areas within the proposed developments shall feature at least one of the following: hardscape areas; outdoor seating areas; public art; playground and pergolas/gazebos.
- 9) A minimum of one of the following types of Green Stormwater Infrastructure shall be used in connection with any development on the subject property: permeable pavement parking spaces or pervious pavers in pedestrian areas; or rainwater harvesting (cisterns); or bio-swales. Reclaimed water for commercial irrigation purposes whenever feasible shall be utilized.
- 10) Emphasis shall be placed on placemaking within the development. To ensure this occurs, the following landscaping practices shall be utilized:

- a. The use of vertical landscaping or public art shall be utilized adjacent to a minimum of two (2) commercial outdoor seating or gathering areas;
  - b. To the greatest extent possible, street trees shall be installed in accordance with the Town of Holly Springs UDO requirements along the primary entrance driveway/street from Sportsmanship Way.
  - c. Within the CB zoning district, the use of planters shall be positioned as to energize and identify pedestrian entrances, such entrances shall be flanked by at least one planter. Planters shall have a minimum height 24" and a minimum width of 18".
- 11) The Town requires certain fees to be paid upon development of land and for the granting of a building permit. Said fees are listed in the Town's annual budget, and with this rezoning the Developer agrees he/she (i) is familiar with these fees, (ii) does not dispute the reasonableness of these fees as set forth in the Town's annual budget; and (iii) notwithstanding any reimbursements discussed at this time through an Infrastructure Reimbursement Agreement, hereby agrees to timely pay all normal and customary fees applicable to Developer in connection with Non-Residential and Residential Projects. Such fees are listed in the current year annual budget of fees at the time the fee is due under the ordinary course of development.  
***This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.***
- 12) The Town requires, pursuant to N.C.G.S. § 160A-372, the dedication and construction of streets and rights of way, as shown in the approved Comprehensive Transportation Plan and the approved Transportation Impact Analysis, to create conditions essential to public health, safety, and the general welfare. A rezoning may be delayed until such time as necessary transportation improvements (to include offsite improvements) may be made, unless the Town and the Developer can enter into agreements to accelerate the time for completion of these needed improvements. ***This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.***
- 13) The proposed development associated with this rezoning will be served by public sewer. The developer acknowledges that there are significant downstream gravity sewer and pump station improvements that are needed to accommodate the demand from this project. The developer has submitted a sewer and pump station evaluation report to meet the Town of Holly Springs standards. The developer is responsible to continue coordination with the Town to determine the cost sharing partnership that will facilitate the necessary sewer infrastructure improvements proportionate to the project's impact. ***This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.***
- 14) TRANSPORTATION IMPROVEMENTS: The developer shall contribute, design, construct or permit the following Public Infrastructure relating to Transportation:
- a. Pay fee-in-lieu or construct northbound right turn lane at N. Main Street / Old Smithfield Road / Sunset Lake Road as required by the NCDOT.
  - b. Contribute a fee-in-lieu for design and construction of future traffic signalization at the intersection of N. Main Street / Katha Drive / Arbor Creek Drive proportionate to project impact.

***This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.***

#### Legal Description

***TRACT A – LB: Local Business Limited to CB CU: Community Business Conditional Use***

Beginning at an Existing Concrete Monument located at the Northwest Corner of "Tract 2" as shown in BM. 2013, PG.313 recorded among the Wake County Register of Deeds. Thence South 87°44'35" East a distance of 659.37 feet to a point; thence South 02°14'16" West a distance of 373.83 feet to a point; thence South 18°31'33" East a distance of 331.56 feet to a point along the centerline of creek; thence South 50°12'53" West a distance of 15.20 feet to a point; thence South 52°44'34" West a distance of 41.72 feet to a point; thence South 24°51'08" West a

distance of 11.95 feet to a point; thence South 60°23'33" West a distance of 24.69 feet to a point; thence North 40°39'32" West a distance of 14.36 feet to a point; thence North 34°58'59" East a distance of 13.67 feet to a point; thence North 83°25'27" West a distance of 18.50 feet to a point; thence North 48°24'32" West a distance of 58.84 feet to a point; thence North 71°17'44" West a distance of 17.51 feet to a point; thence South 61°27'00" West a distance of 23.23 feet to a point; thence South 40°15'20" West a distance of 11.99 feet to a point; thence North 69°22'16" West a distance of 14.53 feet to a point; thence South 50°20'24" West a distance of 21.81 feet to a point; thence North 64°29'08" West a distance of 10.07 feet to a point; thence North 31°02'13" West a distance of 10.67 feet to a point; thence North 01°55'12" East a distance of 14.92 feet to a point; thence North 82°09'49" West a distance of 30.17 feet to a point; thence South 33°31'57" West a distance of 21.05 feet to a point; thence South 41°50'56" West a distance of 28.77 feet to a point; thence South 34°33'30" West a distance of 17.50 feet to a point; thence North 85°47'03" West a distance of 24.11 feet to a point; thence South 79°49'18" West a distance of 25.38 feet to a point; thence South 44°00'11" West a distance of 15.88 feet to a point; thence North 82°28'05" West a distance of 21.38 feet to a point; thence North 54°57'20" West a distance of 5.87 feet to a point; thence South 79°59'16" West a distance of 11.39 feet to a point; thence South 78°24'16" West a distance of 17.23 feet to a point; thence North 32°17'36" West a distance of 15.67 feet to a point; thence North 00°15'28" East a distance of 9.29 feet to a point; thence North 47°50'03" West a distance of 5.59 feet to a point; thence South 31°01'48" West a distance of 8.18 feet to a point; thence South 78°10'20" West a distance of 36.29 feet to a point; thence North 75°58'19" West a distance of 13.54 feet to a point; thence North 64°05'13" West a distance of 23.59 feet to a point; thence South 57°43'31" West a distance of 28.73 feet to a point; thence South 88°43'13" West a distance of 28.05 feet to a point; thence North 61°24'41" West a distance of 10.17 feet to a point; thence North 40°15'09" West a distance of 14.21 feet to a point; thence North 22°42'15" West a distance of 13.48 feet to a point; thence North 47°42'21" West a distance of 23.45 feet to a point; thence North 67°20'50" West a distance of 9.68 feet to a point; thence North 04°07'23" West a distance of 12.04 feet to a point; thence North 79°07'41" East a distance of 5.47 feet to a point; thence South 79°41'11" East a distance of 10.74 feet to a point; thence South 50°58'56" East a distance of 12.86 feet to a point; thence North 74°11'31" East a distance of 18.18 feet to a point; thence North 11°54'30" West a distance of 15.35 feet to a point; thence North 04°08'11" West a distance of 7.06 feet to a point; thence North 25°24'17" East a distance of 7.49 feet to a point; thence North 24°56'46" West a distance of 4.81 feet to a point; thence North 65°35'44" West a distance of 12.91 feet to a point; thence North 77°16'57" West a distance of 9.93 feet to a point; thence North 76°31'14" West a distance of 7.59 feet to a point; thence North 21°31'59" West a distance of 13.85 feet to a point; thence North 64°36'50" West a distance of 18.07 feet to a point; thence North 01°19'28" East a distance of 15.24 feet to a point; thence North 25°03'49" East a distance of 13.65 feet to a point; thence North 26°10'46" West a distance of 5.04 feet to a point; thence North 44°55'33" West a distance of 8.69 feet to a point; thence South 47°46'02" West a distance of 9.13 feet to a point; thence South 80°30'23" West a distance of 9.55 feet to a point; thence North 56°19'14" West a distance of 20.11 feet to a point; thence North 59°44'19" West a distance of 2.87 feet to a point; thence South 79°00'05" West a distance of 6.72 feet to a point; thence South 17°59'28" West a distance of 13.42 feet to a point; thence South 60°34'39" West a distance of 8.87 feet to a point; thence North 89°20'50" West a distance of 20.49 feet to a point; thence North 70°01'15" West a distance of 5.27 feet to a point; thence South 62°34'35" West a distance of 20.90 feet to a point; thence North 89°40'12" West a distance of 19.09 feet to a point; thence South 04°03'27" East a distance of 22.91 feet to a point; thence South 49°11'05" West a distance of 27.15 feet to a point; thence South 86°35'42" West a distance of 14.39 feet to a point; thence North 74°24'52" West a distance of 14.74 feet to a point; thence North 48°11'01" West a distance of 21.73 feet to a point along NC Hwy 55 Bypass; thence North 03°39'34" East a distance of 645.21 feet to the Point of Beginning. Having an area of 483,825 square feet, 11.11 acres

TRACT B - LB: Local Business Limited to R-MF-15 CU: High Density Multifamily Residential Conditional Use Beginning at an Existing Concrete Monument located at the Northwest Corner of "Tract 2" as shown in BM. 2013, PG.313 recorded among the Wake County Register of Deeds. Thence South 11°13'38" West a distance of 232.68 feet to a point; thence South 11°16'12" West a distance of 88.65 feet to a point; thence South 11°07'29" West a distance of 48.02 feet to a point; thence South 17°58'03" West a distance of 176.23 feet to a point; thence South 11°05'28" West a distance of 6.07 feet to a point; thence North 88°36'57" West a distance of 189.00 feet to a point in the centerline of creek; thence South 71°55'55" West a distance of 4.56 feet to a point; thence North 87°14'27" West a distance of 24.92 feet to a point; thence South 68°26'52" West a distance of 29.33 feet to a point; thence South 60°40'32" West a distance of 32.78 feet to a point; thence South 46°30'42" West a distance of 21.40 feet to a point; thence South 01°51'53" West a distance of 23.35 feet to a point; thence South 65°29'53" West a distance of 29.39 feet to a point; thence South 46°11'58" West a distance of 13.45 feet to a point; thence South 20°42'00" West a distance of 31.56 feet to a point; thence South 31°24'27" West a distance of 16.96 feet to a point; thence South 41°30'39" West a distance of 33.53 feet to a point; thence South 78°26'14" West a distance of 17.44 feet to a point; thence North 63°00'38" West a distance of 30.70 feet to a point; thence North 58°26'59" West a distance of 18.73 feet to a point; thence North 80°49'51" West a distance of 25.03 feet to a point; thence North 64°44'49" West a distance of 22.24 feet to a point; thence South 71°28'36" West a distance of 20.34 feet to a point; thence South

50°12'53" West a distance of 0.17 feet to a point; thence North 18°31'33" West a distance of 331.56 feet to a point; thence North 02°14'16" East a distance of 373.83 feet to a point; thence South 87°44'35" East a distance of 665.69 feet to an Iron Pipe; thence South 87°44'35" East a distance of 46.66 feet to a the Point of Beginning. Having an area of 387,980 square feet, 8.91 acres

| Agenda Item Completeness Checklist |                           |    |          |                                |
|------------------------------------|---------------------------|----|----------|--------------------------------|
|                                    | Approved for Distribution |    |          |                                |
| Staff Member                       | Yes                       | No | Initials | Comments                       |
| Sean Ryan                          | X                         |    | SR       | Pending Final Conditions added |
| Rachel Jones                       |                           | X  |          |                                |
| Melissa Sigmund                    | X                         |    |          |                                |
| Elizabeth Goodson                  |                           | X  |          |                                |

# REZONING, COMPREHENSIVE PLAN/ UDO AMENDMENT PETITION



The current Filing Fees can be found on-line in the Town of Holly Springs Fee Schedule: <http://www.hollyspringsnc.us/planning>

## Petition Type (check one- each request must be on separate petitions)

- ☒ Zoning Map Change: ☐ General Use District **or** ☒ Conditional Use District/Permit  
☐ Comprehensive Plan Amendment (check all that apply)  
☐ Text Amendment ☐ Future Land Use Plan Map Amendment  
☐ Area/Corridor Plan Map Amendment / Name: \_\_\_\_\_  
☐ UDO Amendment (UDO Section: \_\_\_\_\_)

For DPZ Use only

Project # \_\_\_\_\_

Fees Paid: \$ \_\_\_\_\_

Date Received: \_\_\_\_\_

## Project Information

Project Name: Sportsmanship Way Development

Project Location: 1317 N. Main Street

Use street address. If none, use the closest intersection

☒ Within Corporate Limits ☐ Within Holly Springs ETJ ☐ Pending Annexation

PIN: 0649894163; 0649991395

Real Estate ID: 0414978; 0414980

Project Acreage: (Rounded to nearest tenth) 20.01 AC Partial Parcel: ☒ No ☐ Yes

Scoping Meeting Date: \_\_\_\_\_ Concept Meeting Date: 10/29/20

If the Concept Meeting Date is not within 8 weeks of the submittal date, another Concept Meeting is required prior to submittal.

## Petition Request

Current Zoning: LB:LIMITED Proposed Zoning: CB: 11.40 AC R-MF-15: 8.49 AC

Current Future Land Use Designation: Mixed Use Center

Proposed Future Land Use Designation: No Change

Area Plan Designation (if applicable): N/A

Waivers Requested: ☒ No ☐ Yes- Specify UDO Section Number(s): \_\_\_\_\_

If yes, complete and attach appropriate Waiver Petition(s) from Waiver Packet

## Petition Contact Information (complete each contact in its entirety- please print or type)

### Project Applicant/Contact

(check one) ☐ Owner ☐ Owner's Agent ☐ Design Professional ☐ Developer ☒ Other Project PlannerIs the applicant applying on behalf of the property owner(s)? ☐ Yes ☐ No If yes, please complete the Affidavit of Property Owner Consent form and attach. If applicant contact is not the Owner or representing the Owner(s), please complete Property Owner Notification Affidavit and attach.

Name Laura Holloman Company McAdams Company

Mailing Address 2905 Meridian Parkway

City Durham State NC Zip 27713

Telephone # (919) 610-7377 E-Mail holloman@mcadamsco.com

How would you like to receive staff review comments? ☒ E-Mail ☐ US MailHow would you like to receive Official Action Notices? ☒ E-Mail ☐ US Mail- Certified

### Property Owner(s) if different than Applicant/Contact-REQUIRED attach additional sheets if necessary

Name WAKE COUNTY Company WAKE COUNTY ATTORNEY'S OFFICE

Mailing Address PO BOX 550

City RALEIGH State NC Zip 27602

Telephone # ( ) E-Mail

How would you like to receive staff review comments? ☒ E-Mail ☐ US MailHow would you like to receive Official Action Notices? ☒ E-Mail ☐ US Mail- Certified

## Owner's Authorization (Required for Conditional Use Zoning or Conditional Use Permit)

Owner's Signature(s)

PIN/REID

Date

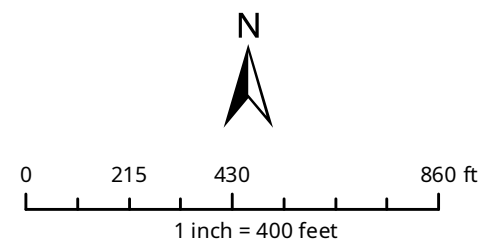
0649894163/0414978

11/6/20

*Mark Forestieri*  
 Mark Forestieri for Wake County



Vicinity Map



**Disclaimer**

iMaps makes every effort to produce and publish the most current and accurate information possible. However, the maps are produced for information purposes, and are **NOT** surveys. No warranties, expressed or implied, are provided for the data therein, its use, or its interpretation.

### **ZONING COMPATIBILITY STATEMENT**

The town has acted as a development catalyst for this rezoning request. With the construction and opening of Ting Park, which contains state-of-the-art recreational facilities which attract national tournaments and their families throughout the year, the highest and best use of the property north of Sportsmanship Way is clearly a conglomerate of uses that can benefit greatly from recreational uses located just outside their front door. This highest and best use notion then translates into a significant professional office presence that provides activity throughout the workday, the presence of neighborhood-scale business, which will provide goods and services to nearby employees and residents alike, as well as public arts facility that will provide community enrichment. This rezoning also will answer a call that is being screamed across Wake County. The call for affordable housing. The proposed rezoning of the R-MF-15 portion will feature affordable multifamily units and will answer that call that has gone on deaf ears for far too long.

These parcels are adjacent to existing residential neighborhoods – Easton Acres, Trellis Pointe, as well as Bridgewater all which feature a variety of residential types– however there is no nearby commercial and office uses and although the North Main corridor has long since been established it has failed to ignite with the exception of the redevelopment of a self-storage facility. This rezoning will kickstart this area for private non-residential development, which has long been the Town’s vision.

Currently, the existing zoning of parcels do not meet the Comprehensive Plan’s designation of Mixed Use Center. These parcels are zoned LB: Limited which was created as a band-aid fix from the elimination of the O&I zoning district that was eliminated when the UDO was created in 2002. As a result, only educational, office/professional and residential uses are permitted as in conformance with the LB zoning district. That does not allow for neighborhood scale commercial which will be featured as part of this rezoning request, just as the Mixed Use Center Comprehensive Plan designation specifies.

Nor does it allow for the emergence of a public arts facility for Holly Springs residents. In addition, residential is only allowed as upper-story which does not allow the desperate need for sizable affordable housing to be realized, which has been identified as both a county and Town critical goal and need.

By rezoning these parcels to Community Business and R-MF-15 conditional use the parcels can now be developed to be in conformance with the town’s vision as outlined in the Comprehensive Plan. Additionally, this project will continue to improve the adjacent major thoroughfare of North Main Street, by improving it in conjunction with the approved transportation and Traffic Impact Analysis recommendations, which is also assured in the zoning conditions.

The Sportsmanship Way Development Conditional Zoning represents a mindful rezoning request that has strived to answer a critical need of substantial employment, neighborhood commercial, as well as affordable housing opportunities, and will become a community development area that everyone will enjoy living, working and playing in.

# PLAN CONSISTENCY STATEMENT



Describe how the proposed Zone Map Change request is consistent or supported by the objectives and policies of *Vision Holly Springs: Town of Holly Springs Comprehensive Plan* and how it is inconsistent with the Plan.

You must respond to each section; please type or print legibly in blue or black ink

## Project Information:

Project Name: Sportsmanship Way Development

Proposed Zoning District: CB/R-MF-15

Proposed Land Use/Density: Commercial/Multifamily

Future Land Use Plan Map Designation: Mixed Use Center

Future Land Use Plan Designation Land Use/Density: No change

For DPZ Use only

Project # 20-REZ-03

Date Received:

## Plan Consistency Statement:

In accordance with NCGS §160A-383 prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a statement of zoning consistency or inconsistency. Please include as much detailed information about the proposed zoning change and developer offered conditions (if any) or unique conditions associated with this request that support the Town's comprehensive plan objectives and/or policies and why the proposed zoning change is reasonable and in the public interest. If the proposed zoning amendment is not in compliance with the comprehensive plan, the Town Council is required to determine why the proposed zoning change is reasonable and in the public interest if approved. Please provide detailed documentation to assist the Council in making their determination. *Attach Additional Sheets as needed*

| Petitioner's Response                                                                                 | Staff's Evaluation                                                  |
|-------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <b>Executive Summary</b><br>Please see pages immediately following for complete responses. Thank you. | <input type="checkbox"/> Agree<br><input type="checkbox"/> Disagree |
| <b>Section 1: Future Land Use &amp; Community Character</b>                                           | <input type="checkbox"/> Agree<br><input type="checkbox"/> Disagree |
| <b>Section 2: Transportation / Comprehensive Transportation Plan</b>                                  | <input type="checkbox"/> Agree<br><input type="checkbox"/> Disagree |

|                                                                                                             |                                                                     |
|-------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <b>Section 3: Parks, Recreation &amp; Open Space/Beyond the Green: A Parks &amp; Recreation Master Plan</b> | <input type="checkbox"/> Agree<br><input type="checkbox"/> Disagree |
| <b>Section 4: Community Facilities</b>                                                                      | <input type="checkbox"/> Agree<br><input type="checkbox"/> Disagree |
| <b>Section 5: Infrastructure and Utilities</b>                                                              | <input type="checkbox"/> Agree<br><input type="checkbox"/> Disagree |
| <b>Section 8: Natural Resources</b>                                                                         | <input type="checkbox"/> Agree<br><input type="checkbox"/> Disagree |

**Plan Consistency Response Prepared by:**

Preparer's Signature(s)

Date



11/6/20

## **Petitioner's Response**

### **Executive Summary**

Holly Springs has experienced rapid growth in recent years. Historically, this growth was predominately residential, however in the last three to five years, the town has seen commercial corridors established, especially along the Highway 55 bypass. This growth has led the town's long-term vision document, the Vision Holly Springs' Comprehensive Plan, to be tasked with finding an adequate balance which will allow the town to both maintain its small-town character whilst working to diversify the tax base. This proposed rezoning request, contributes to achieving this balance – by creating a diverse mixed use development that will feature small town characteristics, provide much needed affordable housing, vast employment opportunities that will serve the surrounding community.

The Executive Summary, found in the Comprehensive Plan, lays out specific objectives for the town as it guides new development. Many of these statements are applicable to our rezoning request and are very much consistent with this rezoning request. Specifically:

- 1) *"To strategically encourage business park, light industrial and commercial development in appropriate locations and balance overall tax base."*

Let us examine commercial development in appropriate locations – Business development belongs at strategic locations where the public realm can be defined and celebrated. This subject parcel, currently owned by Wake County, is such a location. Once a dirt borrow pit for the construction of the adjacent Highway 55 Bypass, its existence was in servitude only. However, that is not how its story needs to end. The Town was the catalyst for this area by developing a state-of-the-art recreation destination featuring premier stadium, and tennis and soccer all-season facilities which host a variety of national events throughout the year. However, in order to continue to balance the overall tax base, establishing substantial employment opportunities are vital. This rezoning request allows for Class A office space between 70,000-80,000 square feet as well as other retail and public facility opportunities, which will allow the town's non-residential tax base to continue to grow.

### **Section 1: Future Land Use & Community Character**

The Future Land Use and Community Character sections of the town's Comprehensive Plan seeks to define the characteristics of what Holly Springs should be striving for, this idea of maintaining a village atmosphere.

As part of the Future Land Use and Community Character section of the Comprehensive Plan, there is also a Future Land Use Map which places specific land use designations on specific parcels, guiding current property owners and developers on what the town's vision is.

The Comprehensive Plan designates the subject parcel as 'Mixed-Use Center'. The Plan states that:

*A Mixed-Use Center offers the opportunity to serve broader economic, entertainment, and housing needs in the community. Land uses and buildings on small blocks in the core may stand three or more stories tall and encourage active public spaces between the buildings. Residential units or office space are found above storefronts. Homes surrounding the core offer several choices to live and experience the*

*center. Parking is satisfied using on-street parking, structured parking, and shared rear-lot parking strategies. The compact, walkable environment and mix of residential and non-residential uses in the center supports multiple modes of transportation, including the potential for transit-oriented development if-when a decision is made to invest in premium transit along the NC 55 corridor*

Single-use development creates sprawl. Sprawl is often characterized by low-density, single-use zoning and increased reliance of vehicular transportation, all components the subject rezoning request works to mitigate. By contrast, our rezoning request, which includes both Community Business as well as R-MF-15, represents compact development. By providing various uses within close proximity, the subject development pattern helps lower community infrastructure costs by pulling land uses closer together. Additionally, compact development such as ours is a promising strategy for reducing greenhouse gas emissions in the transportation sector.

In a perfect planning setting, streets are drawn in smaller blocks with a tight street grid. However, this is not an Oglethorpe type scenario where grid networks can be created. The parcel is surrounded by GB Alford Highway (55 Bypass) to the west, Sportsmanship Way to the south, and N. Main Street to the east, and the existing neighborhood of Easton Acres to the north. In addition to the presence of existing street networks there are topographic features at play (remember the borrow pit history) as well as environmental features along Sportsmanship Way, which further hamper smaller blocks and tight street grids. However, the proposed rezoning request will not hamper inner-connectivity – which is an engineering requirement. The CB and R-MF-15 parcels will have inner connectivity and with the existing access onto GB Alford Highway as well as N. Main Street, residents and patrons will have multiple ways to access the subject property.

It has already been discussed that commercial and employment development has struggled in areas not located within the existing Holly Springs Business Park as well as the GB Alford Highway Corridor. Although this subject parcel does have frontage along Highway 55, it also will have frontage along N. Main Street which will provide a much needed boost for the N. Main Street District, which is designed to provide walkable neighborhood-scaled commercial along Main Street as well as high-density residential opportunities.

The town has done a wonderful job in recent years of pushing the potential traffic impacts associated with a potential project into the planning conversation as early as possible. Developers are now required to meet with engineering and NCDOT staff months before a rezoning request is even submitted as necessary to determine an appropriate TIA scope. This ensures the developer will have ample time to study each intersection that both the town and state will require as well as the associated recommended improvements. So how does this project work to achieve a land use balance? In addition to doing its part to continue to improve roads, it also will do its part to enhance town greenway connections.

In addition, the UDO also dictates that Section 7.09 B. 2. a. parking should be oriented behind or to the side of the building, and as explained previously, our project will meet this parking intent as specified by the designation description above to the greatest extent possible.

*“The compact, walkable environment and mix of residential and non-residential uses in the center supports multiple modes of transportation, including the potential for transit-oriented development -if-when a decision is made to invest in premium transit along the NC 55 corridor”*

The proposed development will allow a walkable environment to take place. To the greatest extent possible, this project will connect sidewalk systems by constructing public sidewalks along its property frontage, on North Main Street. The project will be required to construct road improvements along their property frontage along North Main Street, that include bike lanes along their project frontage, in turn, the project will also have bike racks conveniently positioned throughout the development to encourage bicycle traffic. The transit element is now being met with the recent edition of Go Triangle peak-hour stop at Ting Park – just right across the street!

Additionally, the developer has chosen to prohibit auto-oriented uses such as the following: Automobile Parts Sales (new); Quick Oil Change Facility; Car Wash (automatic or self); Gasoline Service Station without repair; Motor Cycle/Scooter Sale; Automotive Repair – Minor; Gasoline Service Station with minor repair (not to exceed two (2) accessory indoor service bays); as well as restaurant drive-through, stand-alone, which will further ensure emphasis will be on the pedestrian as well as convenient commercial uses that provide much needed employment and neighborhood supporting uses, rather than high turnover uses.

The rezoning request meets the Vision Comprehensive Plan. When developed, this project will offer a walkable, modern compact design concept that will be a welcomed part of Holly Springs.

## **Section 2: Transportation / Comprehensive Transportation Plan**

As the town grows, traffic becomes more and more critical. As a new development, it is only fair that this potential project contributes to mitigate its potential traffic impacts. This is done through working with both the town's engineering department as well as NCDOT. The developer must improve all adjacent roadways as per the approved Comprehensive Transportation Plan (CTP) and may also be responsible for any other nearby intersections that have been recommended by the Traffic Impact Analysis findings.

### Transportation

The Comprehensive Plan strives to strike a balance between land use and effective transportation throughout town and has several objectives that suggest how that can be achieved. The proposed rezoning request can meet several of these, specifically:

- 1) *"Promote a pedestrian -friendly environment by filling gaps and improving connectivity throughout the sidewalk system and to key destination or activity nodes."*

This project is critical to continue to kick start compact, smart growth development in the North Main Street corridor. With the development of these parcels in a cohesive manner, members of the community will be able to enjoy employment, recreational, residential and appropriately-scaled commercial uses within a walkable environment.

### Comprehensive Transportation Plan

The CTP outlines the same goals or objectives as the transportation section of the Comprehensive Plan. The plan also proposes a multimodal transportation network that fosters growth in a positive way to the surrounding environment. This is done through three distinct elements: roadway, bicycle and pedestrian, and transit. This project is meeting the roadway element by building the recommended roadway improvements of North Main Street, along the subject property frontage. These improvements will work to improve both the existing traffic as well as take into account our project traffic. The bicycle and

pedestrian elements will be met through providing bike lanes within North Main as well as constructing sidewalk and crosswalks along our project frontage. The transit element is now being addressed through the recently added park and ride stop located adjacent to the site in Ting Park. For many years, the town has planned for the possibility of bus service to be added and that day has finally arrived!

### **Section 3: Parks, Recreation & Open Space/Beyond the Green: A Parks & Recreation Master Plan**

The purpose of the Parks & Recreation Master plan is to acknowledge the importance of providing open space and active opportunities for all town residents. The master plan has several guiding principles, and our rezoning request meets the following:

- 1) *“To enable all residents to live within walking distance of a neighborhood commercial center and central civic space.”*

This project is in an area that contains perhaps the largest central civic space in town, Ting Park. Residents in the future multifamily component of the subject property as well as employees of professional office will be able to access Ting Park. Additionally, the commercial portion of the rezoning request will ultimately feature neighborhood commercial uses that will also allow patrons of the professional office as well as the multifamily portion. This will greatly improve the quality of life for the town.

- 2) *“To physically unite the Town by connecting existing trails, sidewalks, and open spaces.”*

This project will continue to establish a pedestrian streetscape complete with sidewalk along its frontage along N. Main Street. Additionally, there are also opportunities to connect to planned greenway connections which will ultimately allow folks to traverse from areas west of GB Alford Highway into the subject property as well as Ting Park.

### **Section 4: Community Facilities**

Community facilities addresses the need to be mindful of the increased demand for public services as the town grows and develops. Community facilities can include fire, police, EMS, as well as public school facilities. The Comprehensive Plan contains several community facilities objectives, specifically our project achieves the following:

- 1) *“Inform developers when proposing new subdivisions- of the need for residents’ access to community facilities and the importance to plan appropriately to enable this access.”*

Although as a non-residential development, there is less demand for community facilities when compared to a traditional subdivision because there are commercial uses and not residential ones, community facilities may be used in a limited capacity. Developers plan for community facilities such as police, fire and EMS when designing a development. Drive isles are required to be designed to accommodate the largest emergency response vehicle. The turning template is then submitted and reviewed by staff to ensure that the vehicle can safely maneuver through all access points and parking areas. Due to the infill location of this project, existing emergency response facilities are located within close proximity and no issues are perceived with regards to insufficient response time.

## **Section 5: Infrastructure and Utilities**

The Comprehensive Plan strives to ensure that infrastructure such as water, wastewater, stormwater, electric, telecommunications and so forth, with respect to new development can adequately handle new growth. Holly Springs has planned smartly for the rapid growth that it has been experiencing over the last several years. A water agreement is in place with Harnett county where the town is served by abundant water from the Cape Fear River. With regards to sewer, the town has invested in its own wastewater treatment plant. The Town-owned and operated WRF facility presently has a total treatment capacity of 6.0 MGD, and in 2018 treated approximately 2.8 MGD. The Town has a permit to expand the treatment up to 8.0 MGD. The existing 12 Oaks pump station will be serving this rezoning's future development uses. With that said, the associated sewer study analyzes whether or not there will need to be upgrades to the pump station as a result of potential build-out impacts. It shows there are no sewer capacity issues to serve our proposed rezoning request.

For many years the town has had established stormwater requirements. Our project will be required to meet all NPDES Phase II requirements which will be reviewed during the site plan process.

Given our subject project area's close proximity to existing development, there is already electricity in place along both North Main Street and Sportsmanship Way. Additionally, there are several telecommunication services also installed to allow for a healthy market of choices for future businesses.

## **Section 8: Natural Resources**

The town is tasked with the challenge of finding a balance between development and preserving the natural environment. Fortunately, the town has many tools it uses during the development process to ensure that there is some thought to that balance. First, the town must verify that each project, ours included, meet all state, federal and local requirements when it comes to protecting stream and wetland features. As part of the site plan process, an environmental scientist is retained by the developer to perform delineations of streams and wetlands on-site. These delineations are then confirmed by the appropriate state and federal agencies through an on-site visit. Once this visit is performed, the agency will then issue an official determination letter that is valid for a period of five years. This letter must be submitted to town staff to verify that all environmental features on-site have been accounted for and protected accordingly. Currently, we have retained an environmental scientist and are in the process of performing official on-site inspections with the appropriate state and federal agencies to properly account for some environmental features on-site.

In 2018, the town adopted a tree protection ordinance. As part of that ordinance, our project will be required to protect a minimum of ten percent of the total project area. As part of our site plan process, our team will put together a tree preservation plan that clearly delineates where the protected tree areas will be. Since our project is located on

lands previously farmed or used for residential uses, there are not large areas of forest remaining so some areas of re-forestation may be required as necessary to meet this requirement.

# AFFIDAVIT OF OWNER CONSENT



If the Owner(s) of the subject property is giving authorization for another person to apply for a Conditional Use District and/or Conditional Use Permit on their property, this affidavit must be completed and signed by all record owners of the subject property.

The persons listed below do hereby appear before a Notary Public and swear or affirm that they are the legal owners of the described property, and further give authorization to

Laura Holloman of The McAdams Company  
(Name of Representative) (Name of Company)

to submit a Petition for Zoning Map Change to a Conditional Use District and/or for a Conditional Use Permit for my (our) property from

LB:LIMITED to CB & R-MF-15  
(Current Zoning District) (Proposed Zoning District)

and to offer additional use and/or standard restrictions as a part of the request for a Conditional Use Permit.

For DPZ Use only

Project # \_\_\_\_\_

Date Received: \_\_\_\_\_

Signature of Owner(s):

Mark Forestieri  
Mark Forestieri for Wake County

Wake County PIN/REID:

0649894163/0414978

State of NORTH CAROLINA

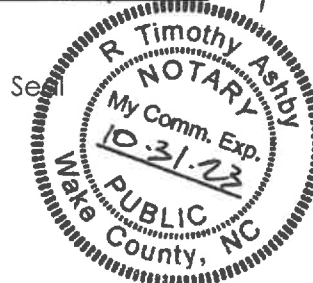
County of WAKE

Sworn to and subscribed before me the 4 day of NOVEMBER, 2020.

Notary Public in and for the State of North Carolina. My Commission expires: 10.31.23

[Signature]  
Notary Public

R. Timothy Ashby  
Printed



Wake County - Organization Owner

By Mark Forestieri

Mark Forestieri

Title: Director, Wake County Facilities Design & Construction

(Organization Acknowledgment)

STATE OF NORTH CAROLINA  
COUNTY OF Wake

I, a Notary Public for said County and State, certify that Mark Forestieri personally came before me this day and acknowledged that he is the Director of Wake County Facilities Design and Construction and that Wake County is a corporate and political subdivision of the State of North Carolina. Further, that by authority given to him by Wake County and as the act of said County, the foregoing instrument was duly signed by him as Director of Wake County Facilities Design & Construction.

Witness my hand and Notarial Seal this 4 day of NOVEMBER, \_\_\_\_\_.

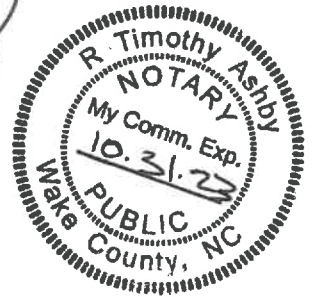
Signature

Printed

R. Timothy Ashby  
R. TIMOTHY ASHBY

My Commission expires: 10.31.23

This instrument was ~~prepared~~ by WAKE COUNTY F&C  
COMPLETED



# AFFIDAVIT OF OWNER NOTIFICATION



The following Affidavit of Owner Notification shall be provided at time of petition submittal if the Applicant is requesting a Zoning Map Change for property(s) he/she does not own at the time of the petition submission.

The following form or a separately prepared document in substantially the same form may be used for submitting the Notice of the requested Zoning Map Change and the public hearing in association with a request for a Zoning Map Change to the property owner(s). The form must be sent to the owner(s) via certified mail. This Affidavit is to be signed by the Applicant of the requested Zoning Map Change and have attached thereto the USPS green certified mail receipt and a copy of the form sent to the owner(s) to ensure that all record owners of the property have been notified by the Applicant(s).

For DPZ Use only

Project # \_\_\_\_\_

Date Received: \_\_\_\_\_

## AFFIDAVIT

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I hereby certify to the Town of Holly Springs that the owner of the property described by Wake County Real Estate ID 0414978 and PIN 0649894163 was served the notification attached to this Affidavit indicating the requested zoning map change petition and public hearing date and time. As evidence of the service of the notification, I hereby attach the return receipt from the certified mailing of this notice.

This the 6<sup>th</sup> day of November, 2020.

Applicant Signature *Laura Holloman*

Printed name of Applicant Laura Holloman

## NOTARY STATEMENT

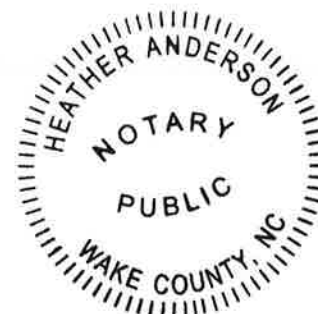
Sworn to and subscribed before me the 6<sup>th</sup> day of November, 2020.

Notary Public in and for the State of North Carolina. My Commission expires: 9/17/2024

Heather Anderson  
Notary Public

Heather Anderson  
Printed

Seal



**NOTIFICATION TO PROPERTY OWNER**

Dear Property Owner,

I am requesting the Holly Springs Town Council to rezone your property described by:

Wake County Real Estate ID# 0414978

and PIN 0649894163

located at 1317 N. Main Street

from LB:LIMITED (existing zoning district) to

CB & R-MF-15 (proposed zoning district).

The public hearing before the Holly Springs Town Council on the matter will be heard on 3/16/20 (date) at 7:00 PM.

Additional information can be obtained by contacting the Holly Springs Department of Planning & Zoning at (919) 557-3908.

Thank you,

Signature of Applicant:

Date:

  
\_\_\_\_\_

11/5/20

Name Laura Holloman Company The McAdams Company  
Mailing Address 2905 Meridian Parkway  
City Durham State NC Zip 27713  
Telephone # ( 919 ) 610-7377 Fax # ( ) E-Mail holloman@mcadamsco.com

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**OFFICIAL USE**

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| Extra Services & Fees (check box, add fees as appropriate)   |               |
| <input type="checkbox"/> Return Receipt (hardcopy)           | \$0.00        |
| <input type="checkbox"/> Return Receipt (electronic)         | \$0.00        |
| <input type="checkbox"/> Certified Mail Restricted Delivery  | \$0.00        |
| <input type="checkbox"/> Adult Signature Required            | \$0.00        |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$0.00        |
| Postage                                                      | \$0.55        |
| <b>Total Postage and Fees</b>                                | <b>\$4.10</b> |

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Raleigh NC 27602

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See Reverse for Instructions

7020 1290 0000 6625 1287

Prepared By: Laura Holloman, The McAdams Company  
2905 Meridian Parkway  
Durham, NC 27713

Returned To: Town of Holly Springs Department of Planning & Zoning  
P.O. Box 8  
Holly Springs, NC 27540

**Instrument Type: Other – Conditional Use Permit**



In accordance with the Town of Holly Springs Unified Development Ordinance, the Owner of the real estate located in the Town of Holly Springs, North Carolina, or its extra-territorial jurisdiction, which is described below, offers the following use and development standard restrictions for the following described parcel of real estate:

**LEGAL DESCRIPTION:**

Property Owner: WAKE COUNTY  
Property Descriptions: 1317 N. MAIN STREET  
PIN(s): 0649894163

## WRITTEN STATEMENT / TERMS OF CONDITIONAL USE PERMIT:

1. The following uses shall be prohibited uses within the CB zoning district: Automotive Sales & Service: Automobile Parts Sales (new); Quick Oil Change Facility; Car Wash (automatic or self); Gasoline Service Station without repair; Motor Cycle/Scooter Sales; Automotive Sales & Service: Automotive Repair – Minor; Gasoline Service Station with minor repair (not to exceed two (2) accessory indoor service bays); Kennels (with outdoor runs).
- 2.
- 3.
- 4.
- 5.

The terms and conditions contained in this instrument shall run with the land, be binding on the Owner of the above-described real estate, subsequent owners, heirs, devisees, grantees, lessees, and licensees of the above-described real estate and other persons acquiring an interest therein. The terms of this conditional use permit may be modified or terminated by a decision of the Town of Holly Springs Town Council made at a public hearing after proper notice has been given and in connection with a petition for zoning map change.

The terms and conditions contained in this instrument shall be effective upon the approval of the conditional use district on the subject real estate and the approval of this Conditional Use Permit by the Town Council pursuant to the Town of Holly Springs Unified Development Ordinance, and shall continue in effect until modified or terminated by the Town of Holly Springs Town Council.

The terms and conditions of this instrument may be enforced by the Town of Holly Springs Town Council.

This Conditional Use Permit shall be retained in the office of the Department of Planning & Zoning of the Town of Holly Springs, North Carolina and shall constitute additional restrictions on the use and development of the subject real estate.

IN WITNESS WHEREOF, Owner has executed this instrument this 4<sup>th</sup> day of November 2020,

## SPORTSMANSHIP WAY ZONING MAP CHANGE – PROPOSED ZONING CONDITIONS DATED 2/12/21

The terms and conditions contained in this instrument shall run with the land, be binding on the Owner of the above-described real estate, subsequent owners, heirs, devisees, grantees, lessees, and licensees of the above-described real estate and other persons acquiring an interest therein. The terms of this conditional use permit may be modified or terminated by a decision of the Town of Holly Springs Town Council made at a public hearing after proper notice has been given and in connection with a petition for zoning map change. The terms and conditions contained in this instrument shall be effective upon the approval of the conditional use district on the subject real estate and the approval of this Conditional Use Permit by the Town Council pursuant to the Town of Holly Springs Unified Development Ordinance, and shall continue in effect until modified or terminated by the Town of Holly Springs Town Council. The terms and conditions of this instrument may be enforced by the Town of Holly Springs Town Council. This Conditional Use Permit shall be retained in the office of the Department of Planning & Zoning of the Town of Holly Springs, North Carolina and shall constitute additional restrictions on the use and development of the subject real estate.

- 1) The following uses shall be prohibited uses within the CB zoning district: Automotive Sales & Service: Automobile Parts Sales (new); Quick Oil Change Facility; Car Wash (automatic or self); Gasoline Service Station without repair; Motor Cycle/Scooter Sales; Automotive Sales & Service: Automotive Repair – Minor; Gasoline Service Station with minor repair (not to exceed two (2) accessory indoor service bays); Kennels (with outdoor runs); Food Sales and Service: Restaurant – Drive Through, Stand Alone; Public Facilities: Neighborhood Recycling Collection Point; Communications/Utilities: Electricity Relay Station; Retail: Satellite Dish Sales and Service (outdoor display).
- 2) The CB zoning district shall contain a Class A commercial office building with a minimum square footage of 70,000 Square Feet with a minimum building height of 2 stories.
- 3) The following uses shall be permitted uses within the R-MF-15 zoning district: Residential: Multifamily dwellings. The allowed residential uses must meet the requirements of Section 42 of the Internal Revenue Code or a substantially equivalent form of affordable rental housing. 100% of the dwelling units developed on the property must meet this requirement. Accordingly, rents shall be set at a price that on average is affordable to a household with an annual income that is no greater than 60% of the Area Median Income for the respectively-sized household in the Raleigh, NC MSA, as determined by the United States Department of Housing and Urban Development.
- 4) The CB and R-MF-15 parcels will have both vehicular and pedestrian connectivity so that the two zoning parcels that make up this request will be interconnected and function as a horizontal mixed use development. Each parcel shall record an easement in a form approvable by the Town allowing cross access.

- 5) The CB zoned parcel shall provide a primary entrance driveway/street from Sportsmanship Way. To create a walkable street scape along this primary driveway/street, a minimum and maximum building setback will be established by the project master plan. To establish the intent of commercial building placement, no more than one bay of off-street parking spaces shall be constructed between the building and primary driveway/street. This is more particularly illustrated below:



Note: The above illustration is conceptual in nature and meant to illustrate desired building placement only. Final design will be determined at the time of development plan(s) submittal(s).

- 6) Off-street parking within the CB zoning district shall utilize shared parking. This shared parking shall be memorialized within a shared parking agreement. The property owners involved in the joint use of off-street parking areas shall submit a legal agreement approved by the town attorney as to form and content guaranteeing that said required off-street parking shall be maintained so long as the use requiring off-street parking is in existence or unless the required off-street parking is provided elsewhere in accordance with the provisions of this Section. Such instrument, when approved as conforming to the provisions of this section, shall be recorded by the property owner with the Wake County Register of Deeds and a copy thereof filed with the Department of Development Services.
- 7) The development shall construct and install a pedestrian crosswalk featuring a rapid beacon signals across Sportsmanship Way, such location shall be determined at the time of master plan submittal.

- 8) Developed open space areas within the proposed developments shall feature at least one of the following: hardscape areas; outdoor seating areas; public art; playground and pergolas/gazebos.
- 9) A minimum of one of the following types of Green Stormwater Infrastructure shall be used in connection with any development on the subject property: permeable pavement parking spaces or pervious pavers in pedestrian areas; or rainwater harvesting (cisterns); or bio-swales. Reclaimed water for commercial irrigation purposes whenever feasible shall be utilized.
- 10) Emphasis shall be placed on placemaking within the development. To ensure this occurs, the following landscaping practices shall be utilized:
- a. The use of vertical landscaping or public art shall be utilized adjacent to a minimum of two (2) commercial outdoor seating or gathering areas;
  - b. To the greatest extent possible, street trees shall be installed in accordance with the Town of Holly Springs UDO requirements along the primary entrance driveway/street from Sportsmanship Way.
  - c. Within the CB zoning district, the use of planters shall be positioned as to energize and identify pedestrian entrances, such entrances shall be flanked by at least one planter. Planters shall have a minimum height 24" and a minimum width of 18".
- 11) The Town requires certain fees to be paid upon development of land and for the granting of a building permit. Said fees are listed in the Town's annual budget, and with this rezoning the Developer agrees he/she (i) is familiar with these fees, (ii) does not dispute the reasonableness of these fees as set forth in the Town's annual budget; and (iii) notwithstanding any reimbursements discussed at this time through an Infrastructure Reimbursement Agreement, hereby agrees to timely pay all normal and customary fees applicable to Developer in connection with Non-Residential and Residential Projects. Such fees are listed in the current year annual budget of fees at the time the fee is due under the ordinary course of development. **This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.**
- 12) The Town requires, pursuant to N.C.G.S. § 160A-372, the dedication and construction of streets and rights of way, as shown in the approved Comprehensive Transportation Plan and the approved Transportation Impact Analysis, to create conditions essential to public health, safety, and the general welfare. A rezoning may be delayed until such time as necessary transportation improvements (to include offsite improvements) may be made, unless the Town and the Developer can enter into agreements to accelerate the time for completion of these needed improvements. **This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.**
- 13) The proposed development associated with this rezoning will be served by public sewer. The developer acknowledges that there are significant downstream gravity sewer and pump station improvements that are needed to accommodate the demand from this project. The developer has submitted a sewer and pump station evaluation report to meet the Town of Holly Springs standards. The developer is responsible to continue coordination with the Town to determine the cost sharing partnership that will facilitate the necessary sewer infrastructure improvements

proportionate to the project's impact. **This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.**

14) TRANSPORTATION IMPROVEMENTS: The developer shall contribute, design, construct or permit the following Public Infrastructure relating to Transportation:

- a) Pay fee-in-lieu or construct northbound right turn lane at N. Main Street / Old Smithfield Road / Sunset Lake Road as required by the NCDOT.
- b) Contribute a fee-in-lieu for design and construction of future traffic signalization at the intersection of N. Main Street / Katha Drive / Arbor Creek Drive proportionate to project impact.

**This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.**

## TRACT A

Beginning at an Existing Concrete Monument located at the Northwest Corner of "Tract 2" as shown in BM. 2013, PG.313 recorded among the Wake County Register of Deeds. Thence South 87°44'35" East a distance of 659.37 feet to a point; thence South 02°14'16" West a distance of 373.83 feet to a point; thence South 18°31'33" East a distance of 331.56 feet to a point along the centerline of creek; thence South 50°12'53" West a distance of 15.20 feet to a point; thence South 52°44'34" West a distance of 41.72 feet to a point; thence South 24°51'08" West a distance of 11.95 feet to a point; thence South 60°23'33" West a distance of 24.69 feet to a point; thence North 40°39'32" West a distance of 14.36 feet to a point; thence North 34°58'59" East a distance of 13.67 feet to a point; thence North 83°25'27" West a distance of 18.50 feet to a point; thence North 48°24'32" West a distance of 58.84 feet to a point; thence North 71°17'44" West a distance of 17.51 feet to a point; thence South 61°27'00" West a distance of 23.23 feet to a point; thence South 40°15'20" West a distance of 11.99 feet to a point; thence North 69°22'16" West a distance of 14.53 feet to a point; thence South 50°20'24" West a distance of 21.81 feet to a point; thence North 64°29'08" West a distance of 10.07 feet to a point; thence North 31°02'13" West a distance of 10.67 feet to a point; thence North 01°55'12" East a distance of 14.92 feet to a point; thence North 82°09'49" West a distance of 30.17 feet to a point; thence South 33°31'57" West a distance of 21.05 feet to a point; thence South 41°50'56" West a distance of 28.77 feet to a point; thence South 34°33'30" West a distance of 17.50 feet to a point; thence North 85°47'03" West a distance of 24.11 feet to a point; thence South 79°49'18" West a distance of 25.38 feet to a point; thence South 44°00'11" West a distance of 15.88 feet to a point; thence North 82°28'05" West a distance of 21.38 feet to a point; thence North 54°57'20" West a distance of 5.87 feet to a point; thence South 79°59'16" West a distance of 11.39 feet to a point; thence South 78°24'16" West a distance of 17.23 feet to a point; thence North 32°17'36" West a distance of 15.67 feet to a point; thence North 00°15'28" East a distance of 9.29 feet to a point; thence North 47°50'03" West a distance of 5.59 feet to a point; thence South 31°01'48" West a distance of 8.18 feet to a point; thence South 78°10'20" West a distance of 36.29 feet to a point; thence North 75°58'19" West a distance of 13.54 feet to a point; thence North 64°05'13" West a distance of 23.59 feet to a point; thence South 57°43'31" West a distance of 28.73 feet to a point; thence South 88°43'13" West a distance of 28.05 feet to a point; thence North 61°24'41" West a distance of 10.17 feet to a point; thence North 40°15'09" West a distance of 14.21 feet to a point; thence North 22°42'15" West a distance of 13.48 feet to a point; thence North 47°42'21" West a distance of 23.45 feet to a point; thence North 67°20'50" West a distance of 9.68 feet to a point; thence North 04°07'23" West a distance of 12.04 feet to a point; thence North 79°07'41" East a distance of 5.47 feet to a point; thence South 79°41'11" East a distance of 10.74 feet to a point; thence South 50°58'56" East a distance of 12.86 feet to a point; thence North 74°11'31" East a distance of 18.18 feet to a point; thence North 11°54'30" West a distance of 15.35 feet to a point; thence North 04°08'11" West a distance of 7.06 feet to a point; thence North 25°24'17" East a distance of 7.49 feet to a point; thence North 24°56'46" West a distance of 4.81 feet to a point; thence North 65°35'44" West a distance of 12.91 feet to a point; thence North 77°16'57" West a distance of 9.93 feet to a point; thence North 76°31'14" West a distance of 7.59 feet to a point; thence North 21°31'59" West a distance of 13.85 feet to a point; thence North 64°36'50" West a distance of 18.07 feet to a point; thence North 01°19'28" East a distance of 15.24 feet to a point; thence North 25°03'49" East a distance of 13.65 feet to a point; thence North 26°10'46" West a distance of 5.04 feet to a point; thence North 44°55'33" West a distance of 8.69 feet to a point; thence South 47°46'02" West a distance of 9.13 feet to a point; thence South 80°30'23" West a distance of 9.55 feet to a point; thence North 56°19'14" West

a distance of 20.11 feet to a point; thence North 59°44'19" West a distance of 2.87 feet to a point; thence South 79°00'05" West a distance of 6.72 feet to a point; thence South 17°59'28" West a distance of 13.42 feet to a point; thence South 60°34'39" West a distance of 8.87 feet to a point; thence North 89°20'50" West a distance of 20.49 feet to a point; thence North 70°01'15" West a distance of 5.27 feet to a point; thence South 62°34'35" West a distance of 20.90 feet to a point; thence North 89°40'12" West a distance of 19.09 feet to a point; thence South 04°03'27" East a distance of 22.91 feet to a point; thence South 49°11'05" West a distance of 27.15 feet to a point; thence South 86°35'42" West a distance of 14.39 feet to a point; thence North 74°24'52" West a distance of 14.74 feet to a point; thence North 48°11'01" West a distance of 21.73 feet to a point along NC Hwy 55 Bypass; thence North 03°39'34" East a distance of 645.21 feet to the Point of Beginning.

Having an area of 483,825 square feet, 11.11 acres

#### TRACT B

Beginning at an Existing Concrete Monument located at the Northwest Corner of "Tract 2" as shown in BM. 2013, PG.313 recorded among the Wake County Register of Deeds. Thence South 11°13'38" West a distance of 232.68 feet to a point; thence South 11°16'12" West a distance of 88.65 feet to a point; thence South 11°07'29" West a distance of 48.02 feet to a point; thence South 17°58'03" West a distance of 176.23 feet to a point; thence South 11°05'28" West a distance of 6.07 feet to a point; thence North 88°36'57" West a distance of 189.00 feet to a point in the centerline of creek; thence South 71°55'55" West a distance of 4.56 feet to a point; thence North 87°14'27" West a distance of 24.92 feet to a point; thence South 68°26'52" West a distance of 29.33 feet to a point; thence South 60°40'32" West a distance of 32.78 feet to a point; thence South 46°30'42" West a distance of 21.40 feet to a point; thence South 01°51'53" West a distance of 23.35 feet to a point; thence South 65°29'53" West a distance of 29.39 feet to a point; thence South 46°11'58" West a distance of 13.45 feet to a point; thence South 20°42'00" West a distance of 31.56 feet to a point; thence South 31°24'27" West a distance of 16.96 feet to a point; thence South 41°30'39" West a distance of 33.53 feet to a point; thence South 78°26'14" West a distance of 17.44 feet to a point; thence North 63°00'38" West a distance of 30.70 feet to a point; thence North 58°26'59" West a distance of 18.73 feet to a point; thence North 80°49'51" West a distance of 25.03 feet to a point; thence North 64°44'49" West a distance of 22.24 feet to a point; thence South 71°28'36" West a distance of 20.34 feet to a point; thence South 50°12'53" West a distance of 0.17 feet to a point; thence North 18°31'33" West a distance of 331.56 feet to a point; thence North 02°14'16" East a distance of 373.83 feet to a point; thence South 87°44'35" East a distance of 665.69 feet to an Iron Pipe; thence South 87°44'35" East a distance of 46.66 feet to the Point of Beginning.

Having an area of 387,980 square feet, 8.91 acres

# NEIGHBORHOOD MEETING REPORT



A minimum of fourteen (14) days prior to the scheduled Public Hearing on the Petition, the Petitioner shall submit a report about the Neighborhood Meeting(s) to the Department of Planning & Zoning.

Neighborhood Meeting Date: 2/2/21  
Time: 6PM  
Location: ZOOM

For DPZ Use only

Project # \_\_\_\_\_

Date Received: \_\_\_\_\_

## Notification of Owners:

1. The Petitioner or Petitioner's Agent shall prepare a Neighborhood Meeting Notification to be sent via first class mail to the owner(s) of the land specified on the Petition, owner of land abutting that parcel(s) of land, any homeowners association or property owners association that represents any parcels within that area as shown on the county tax listings and to the Town of Holly Springs Department of Planning & Zoning.
2. The Notice shall include the date, time, and location of the Neighborhood Meeting; the name of the Petitioner; the location of the proposed request (address, tax property identification number, or metes and bounds description); and an explanation of the nature of the request.
3. The Notice shall be deposited in the mail not less than ten (10) days nor more than 25 days before the date of the Neighborhood Meeting.

☐ Complete ☐ Incomplete

Date of Notification Mailing: 1/18/21

## Conduct of Meetings:

At the Neighborhood Meeting, the Petitioner shall explain the proposal and petition, answer any questions, respond to concerns neighbors have about the petition and proposed resolutions to these concerns. Town Staff will not attend the Neighborhood Meeting.

## Summary of Issues:

Please see meeting report that immediately follows this sheet.

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Attach Additional Sheets as needed

Changes made to the Petition by the Petitioner as a result of the meeting:

There have been no changes as a result of this meeting.

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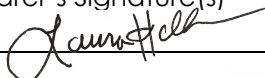
Attach Additional Sheets as needed

## Additional attachments required for the report:

- A listing of those persons and organizations that were sent notification about the Neighborhood Meeting.
- A copy of the signed attendance list that includes names and addresses of those in attendance.

## Neighborhood Meeting Report Prepared by:

Preparer's Signature(s)



Date

2/9/21

February 9, 2021

Town of Holly Springs  
Development Services

**RE: Sportsmanship Way  
February 2, 2021 Neighborhood Meeting Minutes**

A neighborhood meeting was virtually via Zoom Webinar on February 2, 2021 to discuss the proposed rezoning request associated with Sportsmanship Rezoning. Notices were sent to property owners and HOA's within 300' of the subject property. A list of recipients is attached, as well as a copy of the notification materials.

Laura Holloman, of McAdams, introduced the applicant and team. In attendance representing the rezoning application were: Frank Baird (Capital Associates), Natalie Britt (DHIC), Michael Lattner (Cline Design), Tucker Shade (Savills), and Jessie Hardesty, of McAdams. The meeting opened at 5:45pm and started at 6:00pm.

The development gave a presentation of the proposed request, including comprehensive plan designation, rezoning process, conceptual layout, zoning conditions, Traffic Impact Analysis, as well as an overview of Capital Associates, DHIC as well as My Computer Career. Following the presentation, the meeting was opened to questions from those in attendance.

Below is a synopsis of the questions and concerns that were raised at the meeting and the applicant's response.

**Question / Concern:** Will the meeting recording be public?

**Applicant Response:** Development team stated it would be available for those who wanted it.

**Question / Concern:** When will conceptual drawings be available?

**Applicant Response:** Team is working diligently to develop office building plans, currently determining exact space needs. Developing in next 30-60 days.

**Question / Concern:** Will MYCC have classrooms here?

**Applicant Response:** Team stated building will be occupied by full-time employees, this will not be a campus.

**Question / Concern:** Will the affordable housing run with the land?

**Applicant Response:** As part of a zoning condition, it does run with the land, if wanted to remove affordable housing component would have to go through a new rezoning process. Part of DHIC's agreement with Wake County as well as financing requires a 30 year deed restriction. DHIC

has never sold property, sometimes that re-finance at that time to make repairs, improvements, etc. Initial 30 years stay in place unless were to go into foreclosure.

**Question / Concern:** Do you say there would be a tunnel?

**Applicant Response:** Team explained in the presentation there was an existing pedestrian tunnel. That provides pedestrian connection without a dangerous grade level crossing at the NC 55 bypass. This would then connect to existing greenway connection to Ting Park and into and through our site.

**Question / Concern:** What about sidewalks on other side of North Main? Sidewalks leading down to Sportsmanship Way along North Main?

**Applicant Response:** Team explained as part of the roadway improvements to N. Main, the developer will be installing public sidewalk along the frontage, in addition to curb and gutter, also includes a bike lane.

**Question / Concern:** What are Holly Springs plans about installing sidewalk along Eastern Acres up to Katha Drive? Concerned about kids biking down to Ting Park.

**Applicant Response:** The improvement is to do it as development occurs. The developer also explained, the Town has been successful in undertaking sidewalk improvements, as they did South Main Street sidewalk extension a few years ago but it would something the Town would need to decide to do as a capital improvement project.

**Question / Concern:** Intersection improvements on Katha Drive – what does that entail?

**Applicant Response:** Developer will not be doing actual improvements, providing a fee in lieu proportionate to the project's impact, to contribute monies to future intersection improvements.

**Question / Concern:** Trellis Pointe has been mentioned about how they will be getting in/getting out – how will Easton Acres be affected?

**Applicant Response:** Traffic engineer explained that the town did have N. Main Street to be four-lane median divided, however, the subject development will not be responsible for any median construction adjacent to Easton Acres. However, when it did occur Katha Drive would be a median break for full movement and Easton Drive would not.

**Question / Concern:** Where is the gas easement?

**Applicant Response:** The development team went over the gas line easement, and all other utility easements present on the subject property.

**Question / Concern:** What percentage of the development will be clear cut?

**Applicant Response:** Development team went over the perimeter buffer requirements and explained the tree preservation requirements for the future development as well as the undisturbed stream buffer that would be required to remain in its natural state. Also discussed the clearing and grading would occur for both the residential and commercial at the same time, so it would be less of a nuisance long-term.

**Question / Concern:** On the zoning conditions, it states minimum height would be 2 stories, what will be the maximum height?

**Applicant Response:** Development team explained the 2 story minimum height speaks to the office building. Team explained looking at a 4 story building, no more than 5 stories, intent to hit between an 80k to 100k overall building sq ft. Residential is looking at 3-4 stories split buildings.

**Question / Concern:** Is all residential multifamily?

**Applicant Response:** Development team explained all residential proposed is apartments or multifamily.

**Question / Concern:** Will tunnel have water flowing in it?

**Applicant Response:** Development team explained there will be no water flowing in it.

**Question / Concern:** Is the tunnel lit?

**Applicant Response:** Development team stated to their knowledge, the tunnel was not lit.

**Question / Concern:** How much traffic (cars) are expected? Is there enough parking for all spaces? Concerned you are counting shared residential parking spaces.

**Applicant Response:** Team explained residential parking is not included in the shared parking calculations. Apartments are required to have 1.75 parking spaces per unit. Office, retail, performing arts all have minimum parking space requirements individually, but again, the intention is that office spaces will open up parking opportunities for performing arts and retail on nights and weekends.

**Question / Concern:** For clarity, are the zoning conditions applicable to both residential and commercial portions?

**Applicant Response:** Development team explained that the zoning conditions are expressly written to be tailored to meet both uses, expressly say so, conditions that are meant to only apply in residential and commercial development components contain specific language to confirm that intention. Uses interact well with one another.

**Question / Concern:** Will the students from Pinespring Prep be able to walk to the site?

- Applicant Response:** There are some existing sidewalk gaps along N. Main Street that we have previously discussed, so there are existing sidewalk gaps dependent on development occurring, so the Town or NCDOT would need to take that on to bridge those gaps.
- Question / Concern:** What is the size of the land, having trouble comprehending the total mass of development that will happen on this property, neighbor explained they were on Planning Board when Sunset Ridge was approved, and they thought (at the time) was a lot of density going on that acreage.
- Applicant Response:** Team explained it was approximately 20 acres. Building up instead of out (like Sunset Ridge) in this case.
- Question / Concern:** What does DHIC stand for?
- Applicant Response:** When DHIC was founded in the 1970's it was known as Downtown Housing Improvement Corporation, operated solely in downtown environments. However, as the company evolved and began expanding into suburban markets the company began using the DHIC acronym.
- Question / Concern:** How many attendees from the community are there?
- Applicant Response:** Team responded it looked like around 9 people. Development team asked those in attendance to reach out to their neighbors who could not attend and ask them for feedback and then feel free to email Laura Holloman any questions and she would follow-up accordingly.
- Question / Concern:** In order to do all this building, what land do you need?
- Applicant Response:** Team explained that the only property involved is the Wake County parcel, north of Sportsmanship Way. Again, explained the western portion will be commercial, the eastern portion will be residential.
- Question / Concern:** Did everyone get a letter in Easton Acres?
- Applicant Response:** Everyone within 300 feet of the subject property got a letter. Please tell your neighbors my (Laura Holloman) phone number and call me with any questions. Will be glad to mail any information if that is easier than email as well.
- Question / Concern:** Are you looking to buy any land toward Easton Street – neighbors on that same side?
- Applicant Response:** Team responded no, only looking to buy Wake County's land.
- Question / Concern:** What will be the least out pace?
- Applicant Response:** Team stated office is fully leased (MyCC). Last community DHIC developed, it took 6 months to lease up, would anticipate same situation as there is a very high demand.

**Question / Concern:** How many apartments?

**Applicant Response:** DHIC explained there will be 124 units, 1, 2, and 3 bedroom, walk-up style with breeze ways. There will also be a community building with public gathering spaces throughout the development.

**Question / Concern:** How soon will this project start?

**Applicant Response:** The developer stated that they were hoping to be under construction late summer/early fall 2021, with completion sometime in mid to late 2022.

**Question / Concern:** Will there be another meeting before the summer?

**Applicant Response:** Team explained next meeting would be the Planning Board, currently slated for February 23<sup>rd</sup>. Team thought the Planning Board was still meeting virtually and encouraged folks to check the Town's Development Services website for Planning Board agenda and could sign up there to speak. Town Council will follow that (in person) in March.

**Question / Concern:** What was the final projection for vehicles when project is fully operational?

**Applicant Response:** Traffic engineer explained the projected daily trips would be 2306. 1153 entering and 1153 exiting daily, over 24 hour period. Peak hour AM trips – 166 entering, 56 exiting. 129 entering, 233 exiting during PM peak. The project shows 2-3% impact to intersections, which engineer stated is minimal, certainly helps that Town put in access out to 55 to help disperse traffic.

At approximately 8:00 pm, there were no additional questions from attendees. Again, in conclusion, team stated they would share meeting recording or would mail information materials to property owners if needed and the meeting was concluded.

Sincerely,

**MCADAMS**



Laura Holloman, AICP

Sr. Planner, Planning + Design

***Attendees***

Alicia Arnold, Wake County  
Chris Whitenhill, Wake County Housing  
Mark Edmundson, Wake County Facilities & Construction  
Yolanda Winstead, DHIC  
Claudia Cofield  
Hamid Alvand Form A&A Buildings LLC  
Theodore Sullivan  
Robert Ford  
Jere Buch

***Panelists***

LAURA HOLLOMAN, MCADAMS COMPANY  
JESSIE HARDESTY, MCADAMS COMPANY  
FRANK BAIRD, CAPITAL ASSOCIATES  
NATALIE BRITT, DHIC  
MICHAEL LATTNER, CLINE DESIGN  
TUCKER SHADE, SAVILLS

**Neighborhood Meeting Attendees**

**Mail Address 1**

Unknown  
337 S. Salisbury St.  
336 S. Fayetteville Street, Ste. 1110  
113 S. Wilmington Street  
5636 Easton Street  
4237 LOUISBURG RD STE 110  
5608 Easton and 5601 Katha  
1549 N.Main Street  
701 Exposition Place, Suite 101

2905 MERIDIAN PARKWAY  
2905 MERIDIAN PARKWAY  
5400 Trinity Road, Suite 309  
113 S. Wilmington Street  
125 N. Harrington Street  
301 Fayetteville Street, 15th Floor

**Mail Address 2**

RALEIGH, NC 27601  
RALEIGH, NC 27601  
RALEIGH, nc 27601  
HOLLY SPRINGS, NC 27540  
RALEIGH NC 27604  
Holly Springs, NC 27540  
Holly Springs, NC 27540  
RALEIGH, NC 27615

DURHAM, NC 27713  
DURHAM, NC 27713  
RALEIGH, NC 27607  
RALEIGH, NC 27601  
RALEIGH, NC 27603  
RALEIGH, NC 27601

January 18, 2021

**NEIGHBORHOOD MEETING NOTICE**

Dear Property Owner:

As a representative of record for the property owner of record, we are sending this letter to invite you to a community engagement meeting regarding a rezoning in Holly Springs, North Carolina. If you are receiving this letter it is our understanding that you own property or belong to a neighborhood association within 300 feet of the subject property.

The site of the proposed rezoning is located at 1317 N. Main Street with the PINs 0649894163 and 0649991395. During the meeting, the applicant will present its plans to rezone this land from Local Business District (LB) to Community Business District (CB) and High-Density Multifamily Residential District (R-MF-15). The total site area is 20.01 acres and falls within the Mixed-Use Center Future Land Use Designation.

**Due to the current circumstances of COVID-19, we will be hosting a virtual neighborhood meeting via Zoom (see instruction sheet for details). The meeting will be held on February 2, 2021 from 6:00pm to 8:00pm Eastern Time.** We welcome any questions or comments on the proposed project prior to the meeting.

If you have questions or cannot attend the meeting but would like further information, please feel free to call me at 919. 610. 7377 or contact me by e-mail at [holloman@mcadamsco.com](mailto:holloman@mcadamsco.com).

Sincerely,  
**MCADAMS**



Laura Holloman, AICP  
Sr. Planner, Planning + Design Group

January 18, 2021

**RE: Virtual Neighborhood Meeting – Zoom Instructions**

Dear Property Owner,

Due to the current circumstances of COVID-19, we will be hosting a virtual neighborhood meeting via Zoom Webinar. The meeting will be held on February 2<sup>nd</sup> and begin at 6:00 PM Eastern Time.

- > To attend the meeting via computer, type in the following link in your internet browser:  
**<https://mcadamsco.zoom.us/j/98925789591?pwd=TTMxNEdYM2U2OE1hODFZNzJrWlJ5Zz09>**

Passcode: **928954**

- > To attend the meeting via phone, you may dial in by your location:

US: +1 301 715 8592 or  
+1 312 626 6799 or  
+1 646 876 9923 or  
+1 346 248 7799 or  
+1 408 638 0968 or  
+1 669 900 6833 or  
+1 253 215 8782 or  
888 788 0099 (Toll Free) or  
877 853 5247 (Toll Free)

Webinar ID: **989 2578 9591**

International numbers available: <https://mcadamsco.zoom.us/j/abiKsDyVPo>

Sincerely,

**McADAMS**

HINTON, BLANCHE W  
4929 JESSIE DR  
APEX NC 27539-9302

COFIELD, CLAUDIA L  
5636 EASTON ST  
HOLLY SPRINGS NC 27540-9007

HOLLY SPRINGS TOWN OF  
TOWN ATTORNEY  
PO BOX 8  
HOLLY SPRINGS NC 27540-0008

HOLLY SPRINGS TOWN OF  
TOWN ATTORNEY  
PO BOX 8  
HOLLY SPRINGS NC 27540-0008

GONZALEZ, RUBEN  
5637 EASTON ST  
HOLLY SPRINGS NC 27540-9008

COFIELD, CLAUDIA L  
5636 EASTON ST  
HOLLY SPRINGS NC 27540-9007

GONZALEZ, RUBEN  
5637 EASTON ST  
HOLLY SPRINGS NC 27540-9008

GONZALEZ, REUBEN RAMIREZ  
5637 EASTON ST  
HOLLY SPRINGS NC 27540-9008

HINTON, BLANCHE W  
4929 JESSIE DR  
APEX NC 27539-9302

MCCULLERS, VINCENT MCCULLERS, CECILIA  
5629 EASTON ST  
HOLLY SPRINGS NC 27540-9008

HINTON, BLANCHE W  
4929 JESSIE DR  
APEX NC 27539-9302

WAKE COUNTY  
WAKE COUNTY ATTORNEY'S OFFICE  
PO BOX 550  
RALEIGH NC 27602-0550

HOLLEMAN, GERALD W  
5625 EASTON ST  
HOLLY SPRINGS NC 27540-9008

VARGO, EDWARD T  
2201 HEDGE MAPLE DR  
RALEIGH NC 27603-5192

RICHARDSON, PAULINE  
5617 EASTON ST  
HOLLY SPRINGS NC 27540-9008

RICHARDSON, CYNTHIA MCDUFFIE  
5605 EASTON ST  
HOLLY SPRINGS NC 27540-9008

RICHARDSON, JIMMIE MOORE, TERESA TUCK  
5616 EASTON ST  
HOLLY SPRINGS NC 27540-9007

RICHARDSON, EMMA HEIRS  
C/O SANDRA MARIE RICHARDSON ADMINIS  
5609 EASTON ST  
HOLLY SPRINGS NC 27540-9008

RICHARDSON, EMMA HEIRS  
C/O SANDRA MARIE RICHARDSON ADMINIS  
5609 EASTON ST  
HOLLY SPRINGS NC 27540-9008

WAKE COUNTY  
WAKE COUNTY ATTORNEY'S OFFICE  
PO BOX 550  
RALEIGH NC 27602-0550

ROUSSEAU, WILLIAM A ROUSSEAU, CLAIRE M  
6236 LAKE TERRACE DR  
HOLLY SPRINGS NC 27540-7813

BRIDGEWATER HOLLY SPRINGS HOMEOWNERS  
ASSN INC  
201 SHANNON OAKS CIR STE 120  
CARY NC 27511-5570

SULLIVAN, THEODORE SHAVENDER SULLIVAN,  
STEPHANIE AANSTOOS  
1109 FOXGLOVE DR  
MORRISVILLE NC 27560-9755

WAKE COUNTY  
WAKE COUNTY ATTORNEY'S OFFICE  
PO BOX 550  
RALEIGH NC 27602-0550

FORD, ROBERT L FORD, DOROTHY M  
1549 N MAIN ST  
HOLLY SPRINGS NC 27540-8672

FORD, ROBERT LEE  
1549 N MAIN ST  
HOLLY SPRINGS NC 27540-8672

A & A BUILDING LLC  
4237 LOUISBURG RD STE 110  
RALEIGH NC 27604-4348

TRELLIS POINTE LLC  
701 EXPOSITION PL STE 101  
RALEIGH NC 27615-3356

WAKE COUNTY  
WAKE COUNTY ATTORNEY'S OFFICE  
PO BOX 550  
RALEIGH NC 27602-0550

SULLIVAN, LEONARD H JR  
5413 LAKE EDGE DR  
HOLLY SPRINGS NC 27540-9342

Town of Holly Springs Development Services  
Attn: Sean Ryan  
P.O. Box 8  
Holly Springs, NC 27540

ARBOR CREEK HOMEOWNERS ASSOCIATION  
C/OHRW/STONE/MGMT  
1183 W CHATHAM ST  
CARY NC 27513-5257

C/O HRW/STONE/MGMT  
1183 W CHATHAM ST  
CARY NC 27513-5257



## THE TOWN OF

# Holly Springs

**Ordinance No.: RZ21-01**

**Date Adopted:**

**Effective Date:**

**AN ORDINANCE TO AMEND SECTIONS OF THE CODE OF ORDINANCES  
TO MODIFY APPENDIX A: UNIFIED DEVELOPMENT ORDINANCE: OFFICIAL ZONING MAP  
AND ADOPT THE COMPATIBILITY STATEMENT REQUIRED BY  
NORTH CAROLINA GENERAL STATUTES 160A-383**

**WHEREAS**, the Town of Holly Springs Town Council adopted *Vision Holly Springs: Town of Holly Springs Comprehensive Plan* in November 2007 and updated the plan in 2019; and

**WHEREAS**, the Town of Holly Springs has received a request to modify the Official Zoning Map for 20.01 acres of Wake County PIN 649894163 & 649991395 from LB: Local Business Limited to CB CU: Community Business Conditional Use and R-MF-15 CU: High-Density Multifamily Residential Conditional Use; and

**WHEREAS**, the *Vision Holly Springs: Town of Holly Springs Comprehensive Plan* designates said parcels on the *Future Land Use Map* as Mixed-Use Center; and

**WHEREAS**, the requested Official Zoning Map Change proposes land uses that are consistent with the adopted *Vision Holly Springs: Town of Holly Springs Comprehensive Plan Future Land Use Map*, and

**WHEREAS**, the Holly Springs Planning Board reviewed this request at a Public Meeting on February 23, 2021 and recommended approval by a vote of 6-2-1; and

**WHEREAS**, an opportunity for public input into the suggested amendment has been offered in a public hearing before the Town Council; and

**WHEREAS**, after considering the recommendation of the Holly Springs Planning Board and the public input offered in a public hearing before the Town Council, the Town Council finds amending the Official Zoning Map from LB: Local Business Limited to CB CU: Community Business Conditional Use and R-MF-15 CU: High-Density Multifamily Residential Conditional Use is consistent with the Vision Holly Springs Comprehensive Plan since the Land Use & Character Plan Future Land Use Map designates this property as Mixed-Use Center and the CB CU: Community Business Conditional Use and R-MF-15 CU: High-Density Multifamily Residential Conditional Use districts, with the conditions offered by the applicant, will serve the broader economic, entertainment, and housing needs of the community and will provide for a compact, walkable environment and mix of residential and non-residential uses.; and

**WHEREAS**, the Town Council finds the proposed amendment to the Official Zoning Map is reasonable and in the public interest by providing opportunities to expand the nonresidential tax base, generate economic activity for the community, and provide for affordable housing; and

**THEREFORE, BE IT ORDAINED** by the Holly Springs Town Council of the Town of Holly Springs, North Carolina, that the Unified Development Ordinance of the Town is amended as follows:

**Part 1: Amend Unified Development Ordinance** Section 1.20, C. Official Zoning Map with the following rezoning request: #20-REZ-03 to change the zoning of PINs 649894163 & 649991395 from LB: Local Business Limited to CB CU: Community Business Conditional Use and R-MF-15 CU: High-Density Multifamily Residential Conditional Use, as further described below, the the following conditions:

- 1) The following uses shall be prohibited uses within the CB zoning district: Automotive Sales & Service: Automobile Parts Sales (new); Quick Oil Change Facility; Car Wash (automatic or self); Gasoline Service Station without repair; Motor Cycle/Scooter Sales; Automotive Sales & Service: Automotive Repair – Minor; Gasoline Service Station with minor repair (not to exceed two (2) accessory indoor service bays); Kennels (with outdoor runs); Food Sales and Service: Restaurant – Drive Through, Stand Alone; Public Facilities: Neighborhood Recycling Collection Point; Communications/Utilities: Electricity Relay Station; Retail: Satellite Dish Sales and Service (outdoor display).
- 2) The CB zoning district shall contain a Class A commercial office building with a minimum square footage of 70,000 Square Feet with a minimum building height of 2 stories.
- 3) The following uses shall be permitted uses within the R-MF-15 zoning district: Residential: Multifamily dwellings. The allowed residential uses must meet the requirements of Section 42 of the Internal Revenue Code or a substantially equivalent form of affordable rental housing. 100% of the dwelling units developed on the property must meet this requirement. Accordingly, rents shall be set at a price that on average is affordable to a household with an annual income that is no greater than 60% of the Area Median Income for the respectively-sized household in the Raleigh, NC MSA, as determined by the United States Department of Housing and Urban Development.
- 4) The CB and R-MF-15 parcels will have both vehicular and pedestrian connectivity so that the two zoning parcels that make up this request will be interconnected and function as a horizontal mixed use development. Each parcel shall record an easement in a form approvable by the Town allowing cross access.
- 5) The CB zoned parcel shall provide a primary entrance driveway/street from Sportsmanship Way. To create a walkable street scape along this primary driveway/street, a minimum and maximum building setback will be established by the project master plan. To establish the intent of commercial building placement, no more than one bay of off-street parking spaces shall be constructed between the building and primary driveway/street. This is more particularly illustrated below:



Note: The above illustration is conceptual in nature and meant to illustrate desired building placement only. Final design will be determined at the time of development plan(s) submittal(s).

- 6) Off-street parking within the CB zoning district shall utilize shared parking. This shared parking shall be memorialized within a shared parking agreement. The property owners involved in the joint use of off-street parking areas shall submit a legal agreement approved by the town attorney as to form and content guaranteeing that said required off-street parking shall be maintained so long as the use requiring off-street parking is in existence or unless the required off-street parking is provided elsewhere in accordance with the provisions of this Section. Such instrument, when approved as conforming to the provisions of this section, shall be recorded by the property owner with the Wake County Register of Deeds and a copy thereof filed with the Department of Development Services.
- 7) The development shall construct and install a pedestrian crosswalk featuring a rapid beacon signals across Sportsmanship Way, such location shall be determined at the time of master plan submittal.
- 8) Developed open space areas within the proposed developments shall feature at least one of the following: hardscape areas; outdoor seating areas; public art; playground and pergolas/gazebos.
- 9) A minimum of one of the following types of Green Stormwater Infrastructure shall be used in connection with any development on the subject property: permeable pavement parking spaces or pervious pavers in pedestrian areas; or rainwater harvesting (cisterns); or bio-swales. Reclaimed water for commercial irrigation purposes whenever feasible shall be utilized.
- 10) Emphasis shall be placed on placemaking within the development. To ensure this occurs, the following landscaping practices shall be utilized:
  - a. The use of vertical landscaping or public art shall be utilized adjacent to a minimum of two (2) commercial outdoor seating or gathering areas;
  - b. To the greatest extent possible, street trees shall be installed in accordance with the Town of Holly Springs UDO requirements along the primary entrance driveway/street from Sportsmanship Way.
  - c. Within the CB zoning district, the use of planters shall be positioned as to energize and identify pedestrian entrances, such entrances shall be flanked by at least one planter. Planters shall have a minimum height 24" and a minimum width of 18".
- 11) The Town requires certain fees to be paid upon development of land and for the granting of a building permit. Said fees are listed in the Town's annual budget, and with this rezoning the Developer agrees he/she (i) is familiar with these fees, (ii) does not dispute the reasonableness of these fees as set forth in the Town's annual budget; and (iii) notwithstanding any reimbursements discussed at this time through an Infrastructure Reimbursement Agreement, hereby agrees to timely pay all normal and customary fees applicable to Developer in connection with Non-Residential and Residential Projects. Such fees are listed in the current year annual budget of fees at the time the fee is due under the ordinary course of development.  
***This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.***
- 12) The Town requires, pursuant to N.C.G.S. § 160A-372, the dedication and construction of streets and rights of way, as shown in the approved Comprehensive Transportation Plan and the approved Transportation Impact Analysis, to create conditions essential to public health, safety, and the general welfare. A rezoning may be delayed until such time as necessary transportation improvements (to include offsite improvements) may be made, unless the Town and the

Developer can enter into agreements to accelerate the time for completion of these needed improvements. ***This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.***

- 13) The proposed development associated with this rezoning will be served by public sewer. The developer acknowledges that there are significant downstream gravity sewer and pump station improvements that are needed to accommodate the demand from this project. The developer has submitted a sewer and pump station evaluation report to meet the Town of Holly Springs standards. The developer is responsible to continue coordination with the Town to determine the cost sharing partnership that will facilitate the necessary sewer infrastructure improvements proportionate to the project's impact. ***This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.***
- 14) TRANSPORTATION IMPROVEMENTS: The developer shall contribute, design, construct or permit the following Public Infrastructure relating to Transportation:
- a. Pay fee-in-lieu or construct northbound right turn lane at N. Main Street / Old Smithfield Road / Sunset Lake Road as required by the NCDOT.
  - b. Contribute a fee-in-lieu for design and construction of future traffic signalization at the intersection of N. Main Street / Katha Drive / Arbor Creek Drive proportionate to project impact.
- This condition shall apply to this zoning district unless otherwise modified by a Developer Agreement.***

*TRACT A – LB: Local Business Limited to CB CU: Community Business Conditional Use*

Beginning at an Existing Concrete Monument located at the Northwest Corner of "Tract 2" as shown in BM. 2013, PG.313 recorded among the Wake County Register of Deeds. Thence South 87°44'35" East a distance of 659.37 feet to a point; thence South 02°14'16" West a distance of 373.83 feet to a point; thence South 18°31'33" East a distance of 331.56 feet to a point along the centerline of creek; thence South 50°12'53" West a distance of 15.20 feet to a point; thence South 52°44'34" West a distance of 41.72 feet to a point; thence South 24°51'08" West a distance of 11.95 feet to a point; thence South 60°23'33" West a distance of 24.69 feet to a point; thence North 40°39'32" West a distance of 14.36 feet to a point; thence North 34°58'59" East a distance of 13.67 feet to a point; thence North 83°25'27" West a distance of 18.50 feet to a point; thence North 48°24'32" West a distance of 58.84 feet to a point; thence North 71°17'44" West a distance of 17.51 feet to a point; thence South 61°27'00" West a distance of 23.23 feet to a point; thence South 40°15'20" West a distance of 11.99 feet to a point; thence North 69°22'16" West a distance of 14.53 feet to a point; thence South 50°20'24" West a distance of 21.81 feet to a point; thence North 64°29'08" West a distance of 10.07 feet to a point; thence North 31°02'13" West a distance of 10.67 feet to a point; thence North 01°55'12" East a distance of 14.92 feet to a point; thence North 82°09'49" West a distance of 30.17 feet to a point; thence South 33°31'57" West a distance of 21.05 feet to a point; thence South 41°50'56" West a distance of 28.77 feet to a point; thence South 34°33'30" West a distance of 17.50 feet to a point; thence North 85°47'03" West a distance of 24.11 feet to a point; thence South 79°49'18" West a distance of 25.38 feet to a point; thence South 44°00'11" West a distance of 15.88 feet to a point; thence North 82°28'05" West a distance of 21.38 feet to a point; thence North 54°57'20" West a distance of 5.87 feet to a point; thence South 79°59'16" West a distance of 11.39 feet to a point; thence South 78°24'16" West a distance of 17.23 feet to a point; thence North 32°17'36" West a distance of 15.67 feet to a point; thence North 00°15'28" East a distance of 9.29 feet to a point; thence North 47°50'03" West a distance of 5.59 feet to a point; thence South 31°01'48" West a distance of 8.18 feet to a point; thence South 78°10'20" West a distance of 36.29 feet to a point; thence North 75°58'19" West a distance of 13.54 feet to a point; thence North 64°05'13" West a distance of 23.59 feet to a point; thence South 57°43'31" West a distance of 28.73 feet to a point; thence South 88°43'13" West a distance of 28.05 feet to a point; thence North 61°24'41" West a distance of 10.17 feet to a point; thence North 40°15'09" West a distance of 14.21 feet to a point; thence North 22°42'15" West a distance of 13.48 feet to a point; thence North 47°42'21" West a distance of 23.45 feet to a point; thence

North 67°20'50" West a distance of 9.68 feet to a point; thence North 04°07'23" West a distance of 12.04 feet to a point; thence North 79°07'41" East a distance of 5.47 feet to a point; thence South 79°41'11" East a distance of 10.74 feet to a point; thence South 50°58'56" East a distance of 12.86 feet to a point; thence North 74°11'31" East a distance of 18.18 feet to a point; thence North 11°54'30" West a distance of 15.35 feet to a point; thence North 04°08'11" West a distance of 7.06 feet to a point; thence North 25°24'17" East a distance of 7.49 feet to a point; thence North 24°56'46" West a distance of 4.81 feet to a point; thence North 65°35'44" West a distance of 12.91 feet to a point; thence North 77°16'57" West a distance of 9.93 feet to a point; thence North 76°31'14" West a distance of 7.59 feet to a point; thence North 21°31'59" West a distance of 13.85 feet to a point; thence North 64°36'50" West a distance of 18.07 feet to a point; thence North 01°19'28" East a distance of 15.24 feet to a point; thence North 25°03'49" East a distance of 13.65 feet to a point; thence North 26°10'46" West a distance of 5.04 feet to a point; thence North 44°55'33" West a distance of 8.69 feet to a point; thence South 47°46'02" West a distance of 9.13 feet to a point; thence South 80°30'23" West a distance of 9.55 feet to a point; thence North 56°19'14" West a distance of 20.11 feet to a point; thence North 59°44'19" West a distance of 2.87 feet to a point; thence South 79°00'05" West a distance of 6.72 feet to a point; thence South 17°59'28" West a distance of 13.42 feet to a point; thence South 60°34'39" West a distance of 8.87 feet to a point; thence North 89°20'50" West a distance of 20.49 feet to a point; thence North 70°01'15" West a distance of 5.27 feet to a point; thence South 62°34'35" West a distance of 20.90 feet to a point; thence North 89°40'12" West a distance of 19.09 feet to a point; thence South 04°03'27" East a distance of 22.91 feet to a point; thence South 49°11'05" West a distance of 27.15 feet to a point; thence South 86°35'42" West a distance of 14.39 feet to a point; thence North 74°24'52" West a distance of 14.74 feet to a point; thence North 48°11'01" West a distance of 21.73 feet to a point along NC Hwy 55 Bypass; thence North 03°39'34" East a distance of 645.21 feet to the Point of Beginning. Having an area of 483,825 square feet, 11.11 acres

*TRACT B - LB: Local Business Limited to R-MF-15 CU: High Density Multifamily Residential Conditional Use*

Beginning at an Existing Concrete Monument located at the Northwest Corner of "Tract 2" as shown in BM. 2013, PG.313 recorded among the Wake County Register of Deeds. Thence South 11°13'38" West a distance of 232.68 feet to a point; thence South 11°16'12" West a distance of 88.65 feet to a point; thence South 11°07'29" West a distance of 48.02 feet to a point; thence South 17°58'03" West a distance of 176.23 feet to a point; thence South 11°05'28" West a distance of 6.07 feet to a point; thence North 88°36'57" West a distance of 189.00 feet to a point in the centerline of creek; thence South 71°55'55" West a distance of 4.56 feet to a point; thence North 87°14'27" West a distance of 24.92 feet to a point; thence South 68°26'52" West a distance of 29.33 feet to a point; thence South 60°40'32" West a distance of 32.78 feet to a point; thence South 46°30'42" West a distance of 21.40 feet to a point; thence South 01°51'53" West a distance of 23.35 feet to a point; thence South 65°29'53" West a distance of 29.39 feet to a point; thence South 46°11'58" West a distance of 13.45 feet to a point; thence South 20°42'00" West a distance of 31.56 feet to a point; thence South 31°24'27" West a distance of 16.96 feet to a point; thence South 41°30'39" West a distance of 33.53 feet to a point; thence South 78°26'14" West a distance of 17.44 feet to a point; thence North 63°00'38" West a distance of 30.70 feet to a point; thence North 58°26'59" West a distance of 18.73 feet to a point; thence North 80°49'51" West a distance of 25.03 feet to a point; thence North 64°44'49" West a distance of 22.24 feet to a point; thence South 71°28'36" West a distance of 20.34 feet to a point; thence South 50°12'53" West a distance of 0.17 feet to a point; thence North 18°31'33" West a distance of 331.56 feet to a point; thence North 02°14'16" East a distance of 373.83 feet to a point; thence South 87°44'35" East a distance of 665.69 feet to an Iron Pipe; thence South 87°44'35" East a distance of 46.66 feet to the Point of Beginning. Having an area of 387,980 square feet, 8.91 acres

Part 2:

**REPEAL OF CONFLICTING ORDINANCES**

All ordinances or parts of the Unified Development Ordinance of the Town of Holly Springs conflicting or inconsistent with the provisions of this rezoning ordinance are hereby repealed.

Part 3:

**SEVERABILITY**

If any section, part of a section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holdings shall not affect the remaining portion of this Ordinance and it shall be construed to have been the legislative intent to pass the Ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this Ordinance after the exclusion of such part or parts shall be deemed to be held valid as if such part or parts had not been included therein, or if this Ordinance or any of the provisions thereof shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holdings shall not affect the applicability thereof to any other person, property or circumstances.

Part 4:

**INCLUSION IN UDO**

It is the intention of the Town Council entered as hereby ordained, that the provisions of this Ordinance shall become and be made part of the Unified Development Ordinance of the Town of Holly Springs, North Carolina; that the Section(s) of this Ordinance may be renumbered or relettered to accomplish such intention, and that the word "Ordinance" may be changed to "Section, or "Article" or other word.

Part 5:

**EFFECTIVE DATE**

The provisions of this ordinance shall become effective April 6, 2021 in accordance with the laws of the State of North Carolina.

Adopted this, the 6<sup>th</sup> day of April, 2021.

**Town of Holly Springs by**

**ATTEST:**

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Dick Sears, Mayor

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Linda McKinney, Town Clerk





## **A RESOLUTION ENDORSING THE GOALS OF ACHIEVING CLEAN ENERGY BY 2050**

**WHEREAS**, The Wake County Board of Commissioners have a long standing, proactive position toward the conservation of energy and the protection of natural resources for the betterment of the citizens of Wake County; and

**WHEREAS**, climate change is expected to increasingly impact North Carolina's temperatures, precipitation and sea level with harmful consequences in coming years; and

**WHEREAS**, a just transition to 100% renewable energy can benefit low-income communities and communities of color that are disproportionately impacted by fossil fuel pollution;

**WHEREAS**, in September 1978 the Wake County Board of Commissioners established the first Energy Policy and Created the Citizens' Energy Advisory Commission; and

**WHEREAS**, in May of 1992 the Board of Commissioners adopted by resolution the first Energy Conservation and Management Policy that authorized the County Manager to establish design, construction and management standards, declared that all employees share in energy conservation and encourage future guideline revisions; and

**WHEREAS**, in June 2004 the second energy guideline titled "Guidelines for Design and Construction of Energy-Efficient County Government Facilities and Schools" was established in partnership with the Wake County Public School System; and

**WHEREAS**, in 2015 the Board of Commissioners established under the goal of Growth and Sustainability, and the objective of Promoting Sustainability efforts throughout the County, the initiative to 1) review supporting advisory groups and their missions, 2) assess Wake County's Energy status among its peer groups, and 3) update its 2004 Energy Design Guideline.

**WHEREAS**, the United States Conference of Mayors in 2017 passed a resolution supporting 100% clean renewable energy community-wide for cities by 2035;

**WHEREAS**, in June 2017 the Board of Commissioners endorsed the Paris Climate Agreement in order "... to continue its efforts towards sustainability and reduction of greenhouse gas emissions..."; and

**WHEREAS**, Wake County, WCPSS, and Wake Technical Community College staff have met and created common and distinct guidelines that meet the needs of their respective governing bodies and have resolved to meet and report energy information annually to the Energy Advisory Commission to learn and to leverage research and development; and

**WHEREAS**, in March 2018 the Energy Advisory Commission endorsed and recommended the 2018 Energy Design and Management Guideline update by consensus; and

**WHEREAS**, in April 2018 the Board of Commissioners subcommittee on Growth Land Use and Environment received and recommended to the full Board of Commissioners the 2018 Energy Design and Management Guideline update by consensus; and

**WHEREAS**, in May 2018 the Board of Commissioners adopted the 3rd update of the Energy Guideline named the "Energy Design and Management Guideline" and directed the County Manager to implement this guideline consistent with existing policy effective immediately; and

**WHEREAS**, the May 2018 Energy Design and Management Guideline requires that all new facilities shall be "**Solar Ready**" and renewable energy planning shall begin early in building design to accelerate solar technology installation when economic payback is favorable; and

**WHEREAS**, in July 2018 the Board of Commissioners adopted a budget authorizing two Solar Photovoltaic (PV) Pilot projects so that staff might establish the necessary design, construction and energy management skills; and

**WHEREAS**, 350 Triangle, an affiliate of 350.org, has identified a target of 80% clean energy by 2030 and 100% clean energy by 2050; and

**WHEREAS**, Clean Energy by 2050 is defined as transitioning 100% of energy consumed and stored by County operations from fossil fuel-based energy to renewable energy including Solar, Wind, Tidal & Wave, Hydroelectric, and Geothermal; and

**WHEREAS**, the Wake County Board of Commissioners believes that achieving Clean Energy by 2050 requires also having a goal of transitioning 80% of energy consumed by County operations from fossil fuel-based energy to such renewable sources by 2035; and

**WHEREAS**, in September 2018 the Board of Commissioners subcommittee on Growth Land Use and Environment deemed it would be in the interests of Wake County citizens for the Wake County Board of Commissioners to join in the effort to achieve Clean Energy by 2050 to reduce greenhouse gas emissions; and

**NOW THEREFORE, BE IT RESOLVED** that the Wake County Board of Commissioners endorses the goal of 100% Clean Energy by 2050 and joins its fellow state and local governments in advocating for the use of Clean Energy where such action results in reasonable and foreseeable economic payback and is subject to budget

availability; that the Wake County Government will commit itself in its own operations, policies, and guidelines to continuing its efforts towards clean energy, sustainability, reduction of greenhouse gas emissions, energy efficiency, and the reduction fossil fuel use; and that the County Commission does hereby authorize the County Manager to support efforts toward the Clean Energy by 2050 goal through fiscally responsible budget expenditures, and encourages all energy sectors of Wake County's economy to adopt similar goals in their own operations.

**ADOPTED** this 15th day of October 2018.

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Jessica N. Holmes, Chair  
Wake County Board of Commissioners

## 20-REZ-03: 1317 N Main Street

Illustrative site plan for potential development of the site (for reference only)



Illustrative site plan was prepared by applicant and shown as part of the public hearing presentation on March 16, 2021

Prepared by/Return To: John Schifano, ROD Box 105

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

DEVELOPMENT AGREEMENT REGARDING INFRASTRUCTURE CONSTRUCTION AND FEE REIMBURSEMENT  
(N.C. Gen Stat. § 160a-420.20 *et seq.*)

by and between

**THE TOWN OF HOLLY SPRINGS**

**and**

**CAPITAL ASSOCIATES MANAGEMENT LLC  
& DHIC, INC**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of APRIL 2021, by and between the **TOWN OF HOLLY SPRINGS**, a North Carolina Municipal corporation, hereafter referred to as the "Town" and **CAPITAL ASSOCIATES MANAGEMENT, LLC**, a North Carolina Limited Liability Company, and **DHIC**,

**Inc a North Carolina Corporation** and their successors and assigns, hereafter referred to collectively as the “Developers.” The Town and the Developers are collectively referred to herein as the “Parties.”

**WITNESSETH:**

**WHEREAS**, the Developers are the fee simple owner or contract purchasers of two tracts of land held in common for development, the total of which are approximately 19 acres in size with a current mailing address of 1317 N. Main Street, Holly Springs, NC which is more specifically detailed on Exhibit A, attached hereto and incorporated herein by reference (the “Property”), and the Developers, or their successors or assigns, will be requesting approval of a development plan for these tracts for a mixed use commercial development, in a manner consistent with the sketch plans prepared by the Developer attached hereto as Exhibit B and the terms of this agreement; and,

**WHEREAS**, the Property is currently located within the corporate limits of the Town and is currently served by the Town potable water and sewer service.

**WHEREAS**, the Developers desire careful integration between public and private capital facilities planning, financing and construction, and further desires sufficient assurances that development standards, ordinances, policies and procedures remain stable throughout the extended period of development; and,

**WHEREAS**, it is beneficial to both the Town and Developers to construct certain on-site and off-site infrastructure improvements relative to the Project to enable the safe and responsible treatment of wastewater by the Town and to provide potable drinking water to the ultimate users of the Property, as well as other infrastructure; and,

**WHEREAS**, the Town requires, pursuant to N.C.G.S. § 160A-372 and its Unified Development Ordinance (“UDO”), the dedication and construction of streets and rights of way and other infrastructure and for the distribution of population and traffic in such a manner that it will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare; which may be accomplished through private drives and cross access easements across the property and,

**WHEREAS**, the Town has enacted a subdivision control ordinance, pursuant to N.C.G.S. §160A-372 which provides for the orderly control of growth and development in the Town in general and on the Developer’s parcel; and,

**WHEREAS**, the Town is authorized pursuant to N.C.G.S § 160A-311 *et. seq.* to operate and does in fact operate a water and sewer treatment enterprise and requires, pursuant to N.C.G.S. § 160A-317, the connection to the system by owners of developed lands located within the Town, for a cost set forth in the Town’s annual budget or as amended herein; and,

**WHEREAS**, the Town is authorized to enter into this contract pursuant to N.C.G.S. §§ 160A-16, 160A-400.20 *et seq.* and may contract with the Developers to carry out the public purposes set forth herein pursuant to N.C.G.S. §160A-20. A public hearing on this Agreement was held on April 6, 2021 and after consideration of the facts brought forth during the hearing, together with the promises and inducements contained herein, Town Council of Holly Springs has determined that it is in the best interests of its citizens to enter into this Agreement; and,

**WHEREAS**, the Town requires certain fees to be paid upon development of land and for the granting of a building permit, said fees being listed in the Town’s annual budget and as listed as Exhibit D , and the Developer, in consideration of the foregoing benefits enjoyed by this Agreement hereby agrees that it (i) is familiar with these fees as currently listed on the Town’s website pursuant to its annual adopted budget ordinance, (ii) does not dispute the reasonableness of these fees as currently listed; and (iii) notwithstanding any reimbursements discussed below or any fees reduced or waived via an economic development agreement between the Town and the Developer, hereby agrees to timely pay all normal and customary fees to the extent applicable to the Developer in connection with its development of the Residential Project at such time as the applicable fee becomes due to the Town in the ordinary course of development unless otherwise provided for herein; and,

**WHEREAS**, the Town considers the Project favorable to the Town because of the retention of and expansion of local employment in the Town, the significant amount of non-residential (commercial, office, and retail) uses, and the addition of affordable housing to the community which is a condition placed upon the land by the previous owner, Wake County, and is consistent with the Town’s strategic planning initiative. Further, the Developers have agreed to incorporate several needed public infrastructure improvements (“Public Improvements,” as described below) in the vicinity of the Property which will serve the Development, other adjoining properties, and generally benefit the town as a whole; and,

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein the Town and the Developer agree as follows:

#### **ARTICLE I**

1. **Definitions:** The terms below shall have the following meanings as used herein:
  - a. Actual Costs: The amount of true costs actually incurred for construction of a certain project described herein upon final completion and approved by the Town, inclusive of the cost of acquiring easements or rights of way from those not party to this agreement, but exclusive of any administrative costs (i.e., profit and overhead) of the Developers, or any project construction contingency. Any such costs which herein after are agreed to be reimbursed or otherwise paid by the Town shall be audited by the Town under generally accepted accounting principles for governments for a period of three (3) years after the last act under this Agreement. The Developers' right of reimbursement for Actual Costs pursuant to the terms of this Agreement is contingent upon the Developer first receiving from the Town advance written consent to the expected cost of an applicable transaction before the cost is incurred, provided, that such consent shall not be unreasonably withheld or delayed by the Town.
  - b. Affordable Housing. 124 residential units built and professionally managed by the DHIC Developer where rents are set at a price that on average is affordable to a household with an annual income that is no greater than 60% of the Area Median Income for the respectively-sized household in the Raleigh, NC MSA, as determined annually by the United States Department of Housing and Urban Development.
  - c. Development: Generally defined as the planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. "Development," as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, "Development" refers to the planning for or the act of developing or to the result of development. Specifically, in this Agreement, the term "Development" refers to the construction by the Developers of all building activities associated with the Concept Plans.
  - d. Development Permit: A building permit, zoning permit, subdivision approval, special exception or conditional use permit, variance, or any other official action of the Town having the effect of permitting the development of property.
  - e. Land Development Regulations: Ordinances and regulations enacted by the Town for the regulation of any aspect of development and includes zoning, subdivision, or any other land

development ordinances, including but not limited the Town of Holly Springs Unified Development Ordinance (“UDO”).

- f. Laws: All ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by the Town affecting the development of property, and includes laws governing permitted uses of the property, density, design, and improvements.
- g. Master Plan: The plan described in Section 3.01 of the Town’s Development Procedures Manual.
- h. NCDOT: the North Carolina Department of Transportation.
- i. Offsite Infrastructure: The public sanitary sewer gravity line, all potable waterlines, and other Town-owned equipment or facilities not located on the Property.
- j. Person: An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, State agency, or any legal entity.
- k. Concept Plans: The plans described in Section 1.01 of the Town’s Development Procedures Manual; Concept Plan as used in this Agreement refers to the sketch plans for the Development previously submitted by Developers to the Town and attached hereto as Exhibit B.
- l. Public Infrastructure: The public sanitary sewer gravity line, all potable waterlines, and other Town-owned equipment or facilities, and road improvements or fees in lieu required by the Town or NCDOT, either located on the Property, in an easement, or not located on the property for the Public’s good.
- m. Public Benefit: The construction and dedication of the Public Infrastructure by the Developer, the retention and addition of local jobs, an increase in commercial and retail uses as well as Affordable Housing which furthers the Town’s strategic planning efforts, and in the case of the commercial portion of the Property, the additional financial revenue of the Town brought by the incremental ad valorem tax value of the Property.
- n. Property: All real property shown or described in Exhibit A, which is subject to land-use regulation of the Town and includes any improvements, fixtures, or structures customarily regarded as a part of real property.
- o. Project: The Developers’ plan to develop the Property in the manner described in Concept Plans, and as approved by the Town Council of Holly Springs through its normal development

process. Specifically this Project consists of Affordable Housing units together with a corporate headquarters for MyComputerCareer, Inc.

## **ARTICLE II**

### **DESCRIPTION OF DEVELOPMENT AGREEMENT**

1. SCOPE: The legal description of the Property subject to this agreement and the names of its legal and equitable property owners are contained in Exhibit A.

2. TERM: The duration of the agreement is for ten (10) years. The parties are not precluded from entering into subsequent development agreements that may extend the original duration period. Condition precedent to this Agreement are: (1) that the Town approves the petition for rezoning, and the Master Plan; (2) that Wake County transfers ownership of the property that is the subject of the Property to the respective grantees; and (3) that Developers acquire the Property within ninety (90) days of approval of the Master Plan or the Site Plan so long as Developers have received construction loan financing needed to acquire the property.

3. DEVELOPMENT PERMITTED USES: The development uses permitted on the Property are shown on the Concept Plans. The proposed uses are as follows, and are subject to the Zoning Conditions as listed in Exhibit C. In summary, the Property shall be zoned separately as follows: The western 10 acre (approximately) site shall be zoned CB and the eastern 10 acre tract shall be zoned RMF-15.

a. The Project generally and initially shall consist of the Development of two (2) tracts:

- (i) Tract 1 is an approximate 10 acre tract on the western half of the parcel currently owned by Wake County, and shall be comprised of one or more office buildings to serve as corporate headquarters for MyComputer Career, Inc. (which the parties understand shall be employing at least 525 full time equivalent jobs however this is not a condition of this Agreement), retail facilities, a parking lots, and a performing arts theatre.
- (ii) Tract 2 shall be comprised of 124 residential rental dwelling units in buildings of 3 to 3 1/2 stories, including a playground, community

building, and outside picnic areas, owned and actively managed by DHIC (or an affiliate of DHIC) as Affordable Housing units.

b. The Town hereby agrees that the land use described herein and shown on Exhibit B is in the best interest of the Town, is in keeping with the land use plans, and agrees, subject to statutory requirements, to rezone the Property in conformance with this Agreement.

c. The Developers voluntarily offers certain zoning conditions ("Zoning Conditions") as a part of this Agreement and any subsequent rezoning requests for the Property. These Zoning Conditions shall apply to the Property, and are listed in Exhibit C.

4. SEWER IMPROVEMENTS: The Town and Developers have evaluated whether the existing gravity and force-main lines, together with the existing Twelve Oaks Pump Station ("Existing Sewer Infrastructure") have the capacity to support the proposed developments on the Property or if improvements need to be made to the Existing Sewer Infrastructure. The parties have determined that the Existing Sewer Infrastructure is not adequate to support the Project. In consideration of the System Development Fees (as described in the Town's annual budget ordinance for water and sewer System Development Ordinance and otherwise shown on Exhibit D) required for this Project and the early payment of such fees by the Developers, the Town agrees to undertake the construction upgrades required to the Existing Sewer Infrastructure which the Town agrees to complete prior to September 1, 2022. Notwithstanding, in no event shall a delay associated with the completion of the construction upgrades to the Existing Sewer Infrastructure be cause for a delay in Developers' receipt of a Certificate of Occupancy.

a. Developers shall pay the sum of all System Development Fees ("SDF") for water and sewer at such time as the Developer(s) receives construction drawing approval subsequent to all fees being paid and a pre-construction meeting is held with the Town. The DHIC Developer shall be allowed a modified approach regarding the installation of metered water connections as follows: For residential units, the DHIC Developer shall be allowed a single metered connection for each building (as opposed to individual metered connection for each unit) and pay the SDF accordingly. For purpose of clarity the following table describes the difference:

| Residential (Normal) |       |      |      |       |       |
|----------------------|-------|------|------|-------|-------|
|                      | Units | type | Cost | Total | Notes |

|             |     |                       |               |               |                      |
|-------------|-----|-----------------------|---------------|---------------|----------------------|
| SDF - Water | 124 | 3/4" <3000 Sf         | \$ 3,741.00   | \$ 463,884.00 | per unit 3/4" charge |
| SDF - Sewer | 124 | 3/4" <3000 Sf         | \$ 4,054.00   | \$ 502,696.00 | per unit 3/4" charge |
| SDF - Water | 1   | 1 1/2" 3000-20,000 Sf | \$ 6,890.00   | \$ 6,890.00   | Club house           |
| SDF - Sewer | 1   | 1 1/2" 3000-20,000 Sf | \$ 7,467.00   | \$ 7,467.00   | Club house           |
| Total SDF   |     |                       | \$ 980,937.00 |               |                      |

| Residential (Modified approach for Affordable Housing) |                       |              |               |            |
|--------------------------------------------------------|-----------------------|--------------|---------------|------------|
| Units                                                  | type                  | Cost         | Total         | Notes      |
| 5                                                      | 3" >20,000 Sf         | \$ 12,010.00 | \$ 60,050.00  |            |
| 5                                                      | 3" >20,000 Sf         | \$ 13,015.00 | \$ 65,075.00  |            |
| 1                                                      | 1 1/2" 3000-20,000 Sf | \$ 6,890.00  | \$ 6,890.00   | Club house |
| 1                                                      | 1 1/2" 3000-20,000 Sf | \$ 7,467.00  | \$ 7,467.00   | Club house |
| Total SDF                                              |                       |              | \$ 139,482.00 |            |

Note: the above fees are the SDF fees for the 2021 budget year. These fees will be applicable to the Project if applied for and paid within 1 year of this agreement. The parties acknowledge that the fee is dependent on the type and number of meters used, construction drawing approval is required prior to application for water service, and that payment of the fees are required prior to final construction drawing approval.

5. TRANSPORTATION IMPROVEMENTS: The Developers shall design, permit and construct the following Public Infrastructure improvements relating to Transportation:

- a. Design and construct half of the recommended 86-foot, 4-lane median thoroughfare with bike lanes on N. Main Street from the northern property line of the Property to Sportsmanship Way.

- b. Design and construct a northbound left turn lane (approximately 100 feet in length) on N. Main Street at the access point on Main Street north of Sportsmanship way, opposite Trellis Pointe Drive.
- c. Developer will provide a Fee-in-Lieu ("FIL") payment in the amounts set forth below for its proportionate share of the following projects as required by the Town, and such payment shall be made upon the approval of civil construction drawings:
  - FIL of design and construction of northbound right turn lane on N. Main Street at Old Smithfield Road / Sunset Lake Road, in an amount to be determined prior to Master Plan approval, as calculated by an opinion of probably cost by a licensed professional engineer the selection of which is mutually agreeable by the parties
  - FIL of design and construction of future traffic signal on N. Main Street at Katha Drive / Arbor Creek Drive in the amount of \$12,995
  - FIL of half a 20-foot median from the terminus of the existing median on N. Main Street [Trellis Pointe Drive] to the Northern property line of the property, in the amount of \$10,325.
- d. The development shall construct and install a pedestrian crosswalk featuring a rapid beacon signals across Sportsmanship Way, such location shall be determined at the time of master plan submittal.

f. Construction of Approximately 510 linear feet of pedestrian sidewalk along the eastern border of the Property adjacent to and running parallel with Main Street. In the event the pedestrian sidewalk shall cross onto property owned by the Town the Town will provide the necessary easements to construct the pedestrian sidewalk on its property

g. Construction of Approximately 500 linear feet of a pedestrian greenway beginning at the end of the existing greenway path just to the north of Sportsmanship Way and continuing north along the western boundary of the Property ending at the underpass beneath North Carolina Highway 55. In the event the pedestrian greenway shall cross onto property owned by the Town the Town will provide the necessary easements to construct the pedestrian greenway on its property

g. Developers shall dedicate 20 feet width of right of way to the Town for a FIL of upgrades to NC 55 along the western-most edge of the Property.

g. Developer shall dedicate 10+/- feet width of right of way to the Town on N. Main Street from the northern property line of the property to Sportsmanship Way (included in subparagraph 5(a) above.

h. Developers shall be allowed to construct a roadway across the land currently owned by the Town adjacent Sportsmanship Way in order to provide vehicular and pedestrian access to the Commercial Property. Such roadway shall be a public street for the length of the existing Town property.

j. Each Developer shall record reciprocal cross-access easements for all internal drive access areas, in a form subject to approval by the Town.

6. BUILDING HEIGHT: Under the proposed CB zoning a maximum building height of fifty-five (55) feet is stated. The Office building is anticipated on being four (4) stories with an anticipated height of approximately seventy-five (75) feet. Developers are hereby approved by the Town to increase the building height to seventy-five (75) feet for the commercial portion of the Property, so long as any such building is at least 50 feet set back from the northern property line abutting Easton Acres residential properties. Additionally, in this northern boundary, the Developer shall provide a 30 foot wide undisturbed bufferyard and supplement the undisturbed bufferyard with additional evergreen tree plantings to achieve the minimum type C-150 plant unit value (as described in UDO § 7.01(k)). The owner shall maintain the bufferyard in perpetuity.

7. PARCEL SUBDIVISION: Developers shall be allowed to subdivide the Property and record one subdivision plat into the Tracts described herein prior to the completion of any offsite improvements. Developers shall complete all work described herein prior to the approval of any subsequent plats. Following completion of any offsite improvements along with payment of any FIL obligations further subdivision of the commercial parcel shall be permissible by the Town if requested by the Developer and consistent with the approved Master Plan

8. REZONING/MASTER PLAN: The Parties agree that the Property shall be rezoned through the approval of a petition for rezoning prior to the commencement of Town sewer service to the Property. The Developers have submitted a petition for rezoning. The Town shall schedule for approval the rezoning, Master Plan, and Site Plan petitions so that the Town Council hearings for these matters will occur within 120 days of the earlier of submittal by the Developers of the Master Plan or execution of this Agreement. The Property shall at all times be subject to the Zoning Conditions, as shown on Exhibit C and incorporated

by reference.

9. REQUIRED PERMITS: A description of all development permits approved or needed:

a. Developers shall secure all construction drawing approval, erosion and sedimentation control, grading approval, and building permits as necessary under the land development regulations in existence of the time of such permit application. Town shall aid Developers in securing all encroachment permits as required by the NCDOT, the North Carolina Department of Environmental Quality, or other state or federal agencies, as required for roads, sewer, and water. The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developers of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.

10. Parks and Recreation Land Dedication. The Town as part of its UDO requires land dedication for parks and recreation purposes, or a fee in lieu of such dedication at the discretion of the Town Council. The Town agrees to accept a fee in lieu of land dedication in an amount commensurate with the value of the land at the time of subdivision. The parties currently stipulate that this results in a fee in lieu amount as calculated of \$726,465, based on the most current appraisal obtained by the Town. At any time prior to such time as the DHIC Developer obtains its first certificate of occupancy, as such time the fee is due, the Developer may:

a. Submit a more recent appraisal, if obtained by the Developer and otherwise satisfactory to the Town, and recalculate the fee according to the new appraisal.

b. Provide any off-site parks and recreation amenity for dedication to the Town, in the sole discretion of the Town, such as a dedicated greenway on the western side of NC 55 By-pass, on property owned by Wake County.

11. TERMS REQUIRED FOR PUBLIC SAFETY: Description of any conditions, terms, restrictions, or other requirements determined to be necessary by the Town for the public health, safety, or welfare of its citizens.

a. All zoning conditions shall be satisfied.

12. HISTORIC STRUCTURES: None exist on the property.

a. None

13. DEVELOPMENT SCHEDULE

a. The Developer, in consideration of the covenants contained herein, shall be allowed the following expedited review considerations: (i) Developer shall be allowed a concurrent review of a master plan and a development plan; (ii) Developer shall be allowed a concurrent review of construction drawings (civil) and building permit review; (iii) Developer shall be allowed to submit the items in (ii) for review to the Town staff prior to Town Council approval of a development or master plan, so long as a favorable recommendation has been achieved from the Town's Planning Board.

**ARTICLE III**  
**DEVELOPER'S DUTIES**

1. For any offsite infrastructure constructed by the Developers, the Developers shall design, permit, and construct the infrastructure in the location approved by the Town and as shown on plans (to be submitted), according to engineering best practices, requirements of the Town, and requirements of the North Carolina Department of Environmental Quality (NCDEQ) and any other regulatory agency. For any land owned or controlled by the Developers, the Developers shall secure and dedicate to the Town all necessary easements for the construction and perpetual maintenance of the infrastructure referenced. For any land not owned by or controlled by the Developers, the Town shall convey such land owned by the Town to the Developers or secure all necessary easements on land owned by third parties for the construction and perpetual maintenance of the infrastructure referenced in a timely manner so as not to delay the completion of the Developers' Duties.

2. The Developers shall construct in a workmanlike manner the Onsite Public Infrastructure according to the design specifications and criteria of the Town which are existing at the time of this agreement, as well as full compliance with any NCDEQ requirements. Said infrastructure, together with any and all appurtenances, easements, and equipment associated with the project required for public dedication shall be dedicated to the Town in a manner consistent with the development plan and in a manner in accordance with the Town's standards.

3. The Developers shall construct the public infrastructure according to the plans and specifications submitted in a manner consistent with the standards of the Town which are in effect at the time of this Agreement.

4. The Developers (or their successors, and/or assigns) shall pay all development fees for the development at the time they would otherwise ordinarily be due (or as otherwise amended pursuant to 11(b) above) and in an amount that is determined by the fee schedule approved in the annual budget which is in effect at the time of this Agreement. Notwithstanding, in the event said fees are waived via an Economic Development Agreement this provision shall not be applicable.

**ARTICLE V**  
**GENERAL TERMS**

1. All of the Developers' obligations under this Agreement, including but not limited to the obligations under Articles II and III of this Agreement, are contingent upon the Town's approval of the Developers' petition for rezoning, approval of the Master Plan and approval of a Site Plan and Building Permits.

2. All reimbursements, if any, for this project shall be provided on the basis of final documented Actual Costs, as approved by the Director of Engineering, in accordance with this agreement. Any opinions of project cost included in this agreement are based upon preliminary designs and are approximate.

3. The Developers shall be responsible for the complete design and construction of each project, including all surveying, design, permitting, plat preparation and recordation, testing, engineering, bidding, construction, inspection, acceptance, easement maps and documents, construction management, construction administration, and all other necessary functions to ensure complete-in-place, fully functional projects built and operational in accordance with Town and State standards and approved plans for the project. The costs of all of these items shall be borne by the Developers and shall not be subject to reimbursement or participation by the Town, except as specifically described herein.

4. In the course of installing the sewer line or any other work on easements obtained by the Town and under the Town's ownership, the Developers shall operate under permission to encroach onto a Town easement and shall hold the Town harmless.

5. The Developers agrees to protect, defend, indemnify and hold the Town of Holly Springs and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind in character and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of actions of every kind and character in connection with or arising directly out of the entry onto and performance of work on the easements of the Town.

6. The Town agrees to protect, defend, indemnify and hold the Developers and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind in character and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of actions of every kind and character made by third parties in connection with or arising from the

injury to (including death of) persons or physical damage to property arising out of the performance of Town's obligations under this Agreement by the Town, its agents, employees and contractors (collectively, "Claims"), except to the extent any such Claims arise out of the negligence or willful misconduct of the Developer, or its agents, employees or contractors, or any third party. The Town further agrees to investigate, handle, provide defense for and respond to, any such Claims at its sole expense and agrees to bear all other costs and expenses related to such Claims, even if such Claims are groundless, false, or fraudulent but only to the extent the same are not expressly excluded as set forth herein.

7. All projects shall be subject to the Town's policies and procedures regarding Town acceptance and warranty on infrastructure.

8. It shall be the responsibility of the Developers to ensure that all regulatory approvals for each project are in place before beginning construction.

9. The Town Manager is authorized to make decisions in regard to approvals, including changes to this Agreement in order to complete the scope of work required, within his authority granted by the Town Council, except as otherwise stated herein or required by Town ordinance.

10. The Town shall secure all necessary easements for the infrastructure projects that are the subject of this Agreement.

## **ARTICLE VI**

### **OTHER**

1. All projects shall be subject to the Town's policies and procedures regarding Town acceptance and warranty on Offsite Infrastructure. This Agreement shall not modify the warranty and acceptance procedures established by the Town through the Engineering Standards in place at the time of this agreement. It shall be the responsibility of the Developers to ensure that all regulatory approvals for each project are in place before beginning construction.

2. All notices, reports, and other communications given pursuant to this Agreement shall be in writing and shall either be mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or delivered in person to the intended addressee. Notice sent by certified or registered mail shall be effective upon the date of delivery indicated on the return receipt. Notice given in any other manner shall be effective upon actual receipt by the addressee.

3. This development agreement does not provide for the application of subsequently enacted Laws, ordinances, development policies, practices, procedures or standards. The Laws, ordinances, development policies, practices, procedures and standards applicable to the development of the Project are those in force at the time of the execution of this Agreement, in the manner prescribed by Holly Springs Ordinance 14-164.

4. Notices under this agreement shall be to the following:

FOR THE TOWN:

Randy J. Harrington  
Town Manager  
PO Box 8  
Holly Springs, NC 27540  
Reference:

FOR THE DEVELOPERS:

Frank Baird  
Capital Associates Management or its Assigns.  
1501 Sunrise Ave, Suite 100  
Raleigh, NC 27608

**Natalie Britt**  
**DHIC, Inc**  
Vice President, Real Estate Development  
113 S Wilmington Street  
Raleigh, NC 27601

5. This Agreement shall be governed by and construed in accordance with the law of the State of North Carolina. The Parties consent to the jurisdiction of Superior Court Division of the General Court of Justice located in Wake County, North Carolina in the event a dispute arises between them regarding the terms of this Agreement.

6. If any paragraph or part of this Agreement is found void or unenforceable, the remainder of this Agreement shall continue in full force and effect.

7. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their heirs, successors and assigns.

8. This Agreement contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed in writing.

9. Exhibit List: The following exhibits are hereby incorporated by reference:

|            |                          |
|------------|--------------------------|
| EXHIBIT A: | Map of the Property      |
| EXHIBIT B: | Concept Plan             |
| EXHIBIT C: | Zoning Conditions        |
| EXHIBIT D: | Development Fee Schedule |

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

**TOWN OF HOLLY SPRINGS**

(Town Seal)

BY: \_\_\_\_\_

Randy J. Harrington, Town Manager

ATTEST:

\_\_\_\_\_  
Linda Mckinney, Town Clerk

Kathy White, Deputy Town Clerk

\_\_\_\_\_  
This document is sufficient as to form.

\_\_\_\_\_  
John P. Schifano, Town Attorney

\_\_\_\_\_  
This instrument has been pre-audited in the manner proscribed by the Local Government Finance Act.

\_\_\_\_\_  
Antwan Morrison

Finance Director

NORTH CAROLINA

WAKE COUNTY

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that she is the Town Clerk/Deputy Town Clerk of the Town of Holly Springs, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said Town, and that said writing was signed and sealed by her in behalf of said corporation by its authority duly given and the said person acknowledged this writing to be the act a deed of said corporation.

WITNESS my hand and official stamp (or seal), this the \_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_

**CAPITAL ASSOCIATES MANAGEMENT, LLC**

By: \_\_\_\_\_

(Seal)

Name: Frank P Baird

Title: CEO, Manager

I, a Notary Public, certify that \_\_\_\_\_, personally came before me this day and acknowledged that she is the \_\_\_\_\_, a North Carolina limited liability company, and that she, as such officer, being authorized to do so, executed the foregoing on behalf of the limited liability company.

WITNESS my hand and official stamp (or seal), this the \_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_

Notary Public

\_\_\_\_\_, Notary Public

Typed/Printed Name

[Official Seal]

My Commission expires: \_\_\_\_\_

\_\_\_\_\_

**DOWNTOWN HOUSING IMPROVEMENT CORPORATION aka  
DHIC, Inc**

(Seal)

By: \_\_\_\_\_

Name: Natalie Brit

Title: VP

I, a Notary Public, certify that \_\_\_\_\_, personally came before me this day and acknowledged that she is the \_\_\_\_\_, a \_\_\_\_\_ Corporation, and that she, as such officer, being authorized to do so, executed the foregoing on behalf of the limited liability company.

WITNESS my hand and official stamp (or seal), this the \_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_

Notary Public

\_\_\_\_\_, Notary Public

Typed/Printed Name

[Official Seal]

My Commission expires: \_\_\_\_\_

\_\_\_\_\_

EXHIBIT A

Map of Property

**Commented [A1]:** Need to also include PIN 0649991395 in all property maps.

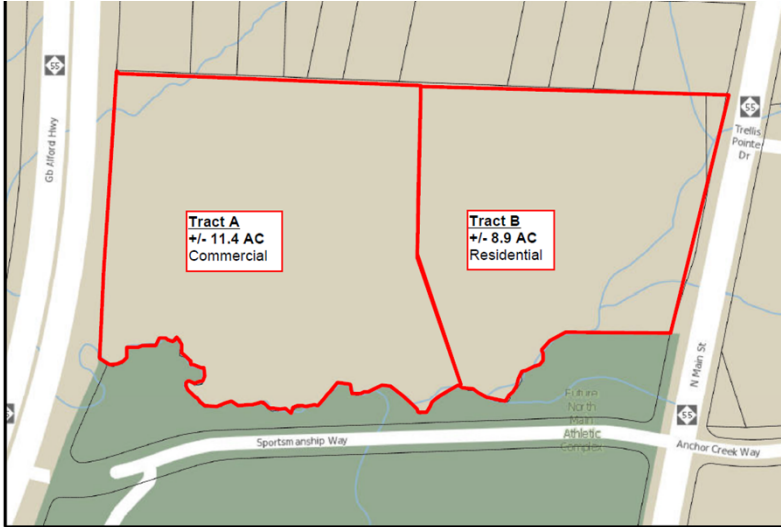


Exhibit B

Concept Plans



Exhibit C

### Zoning Conditions

- 1) The following uses shall be prohibited uses within the CB zoning district: Automotive Sales & Service: Automobile Parts Sales (new); Quick Oil Change Facility; Car Wash (automatic or self); Gasoline Service Station without repair; Motor Cycle/Scooter Sales; Automotive Sales & Service:

Automotive Repair – Minor; Gasoline Service Station with minor repair (not to exceed two (2) accessory indoor service bays); Kennels (with outdoor runs); Food Sales and Service: Restaurant Drive Through, Stand Alone; Public Facilities: Neighborhood Recycling Collection Point;

Communications/Utilities: Electricity Relay Station; Retail: Satellite Dish Sales and Service (outdoor display).

- 2) The CB zoning district shall contain a Class A commercial office building with a minimum square footage of 70,000 Square Feet with a minimum building height of 2 stories.

- 3) The following uses shall be permitted uses within the R-MF-15 zoning district:  
Residential:

Multifamily dwellings. The allowed residential uses must meet the requirements of Section 42 of the Internal Revenue Code or a substantially equivalent form of affordable rental housing. 100% of the dwelling units developed on the property must meet this requirement. Accordingly, rents shall be set at a price that on average is affordable to a household with an annual income that is no greater than 60% of the Area Median Income for the respectively-sized household in the Raleigh, NC MSA, as determined by the United States Department of Housing and Urban Development.

- 4) The CB and R-MF-15 parcels will have both vehicular and pedestrian connectivity so that the two zoning parcels that make up this request will be interconnected and function as a horizontal mixed use development. Each parcel shall record an easement in a form approvable by the Town allowing cross access.
- 5) The CB zoned parcel shall provide a primary entrance driveway/street from Sportsmanship Way. To create a walkable street scape along this primary driveway/street, a minimum and maximum building setback will be established by the project master plan. To establish the intent of commercial building placement, no more than one bay of off-street parking spaces shall be constructed between the building and primary driveway/street. This is more particularly illustrated below:



Note: The above illustration is conceptual in nature and meant to illustrate desired building placement only. Final design will be determined at the time of development plan(s) submittal(s).

- 6) Off-street parking within the CB zoning district shall utilize shared parking. This shared parking shall be memorialized within a shared parking agreement. The property owners involved in the joint use of off-street parking areas shall submit a legal agreement approved by the town attorney as to form and content guaranteeing that said required off-street parking shall be maintained so long as the use requiring off-street parking is in existence or unless the required off-street parking is provided elsewhere in accordance with the provisions of this Section. Such instrument, when approved as conforming to the provisions of this section, shall be recorded by the property owner with the Wake County Register of Deeds and a copy thereof filed with the Department of Development Services.
- 7) The development shall construct and install a pedestrian crosswalk featuring a rapid beacon signals across Sportsmanship Way, such location shall be determined at the time of master plan submittal.
- 8) Developed open space areas within the proposed developments shall feature at least one of the following: hardscape areas; outdoor seating areas; public art; playground and pergolas/gazebos.
- 9) A minimum of one of the following types of Green Stormwater Infrastructure shall be used in connection with any development on the subject property: permeable pavement parking spaces or pervious pavers in pedestrian areas; or rainwater harvesting (cisterns); or bio-swales. Reclaimed water for commercial irrigation purposes whenever feasible shall be utilized.
- 10) Emphasis shall be placed on placemaking within the development. To ensure this occurs, the following landscaping practices shall be utilized:
  - a. The use of vertical landscaping or public art shall be utilized adjacent to a minimum of two (2) commercial outdoor seating or gathering areas;
  - b. To the greatest extent possible, street trees shall be installed in accordance with the Town of Holly Springs UDO requirements along the primary entrance driveway/street from Sportsmanship Way.
  - c. Within the CB zoning district, the use of planters shall be positioned as to energize and identify pedestrian entrances, such entrances shall be flanked by at least one planter. Planters shall have a minimum height 24" and a minimum width of 18".

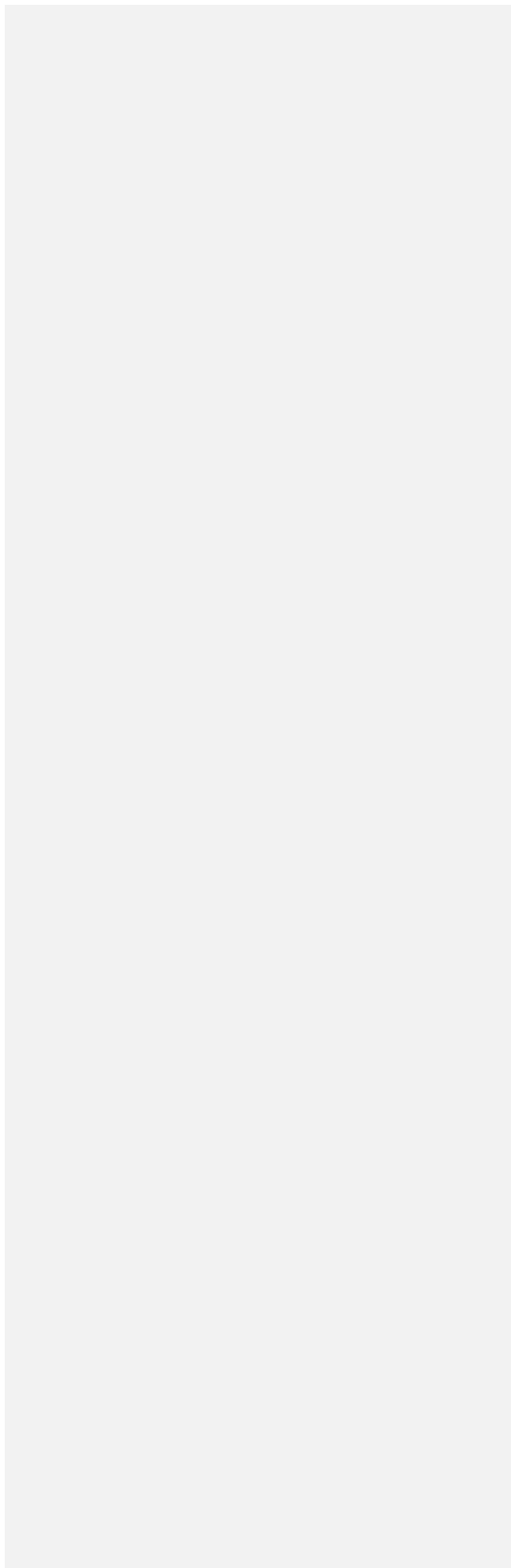


EXHIBIT D  
Development Fee Schedule



# Holly Springs Town Council

## *Town Council Meeting Agenda Cover Sheet*

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### Agenda Item#: 7.

#### **Public Hearings**

**Title:** Economic Development Agreement and Limited Obligation Bond Financing related to FUJIFILM Diosynth Biotechnologies

**Strategic Priority Area:** Economic Prosperity & Diversity  
Responsible & Balanced Growth

**Staff Resource:** Daniel Weeks, Asst. Town Manager, John Schifano, Town Attorney, Irena Krstanovic, Director, Economic Development

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#### **Action(s):**

1. Hold Public Hearing on Economic Development Agreement.
2. Hold Public Hearing on Limited Obligation Bond financing.
3. Approve/deny Economic Development Agreement (EDA) between Town and FUJIFILM Diosynth Biotechnologies (FDB).
4. Approve the Limited Obligation Bond financing to purchase land and convey to FUJIFILM Diosynth Biotechnologies and to cover additional, associated costs and improvements to the Town's collateralized asset required for the financing.
5. Approve Resolution 21-11 authorizing Town Manager and Finance Officer to apply to the Local Government Commission for Limited Obligation Bond financing.
6. Authorize the Town Manager to execute Land Purchase Options with Helix Ventures and Chandler Property Group.
7. Authorize the Town Manager to execute any other necessary and required transactions consistent with prior Council approvals and terms of the Economic Development Agreement.

#### **Explanation:**

- FUJIFILM Diosynth Biotechnologies (FDB) announced on March 18, 2021 its selection of Holly Springs, North Carolina as the location for its new large-scale cell culture production site in the United States.
- An anticipated \$2 billion investment will establish the largest end-to-end cell culture biopharmaceutical facility in North America and will create 725 highly-skilled jobs (Phase I).
- This agenda item is for Town Council to consider an Economic Development Agreement (EDA) between the Town of Holly Springs and FUJIFILM Diosynth Biotechnologies (FDB), which formally establishes the obligations of each party.
- Key benefits of the FDB project to the community include:
  - Expansion of high quality job opportunities within the Town of Holly Springs
  - Elevation of Holly Springs as a leading global destination for life sciences and biotech manufacturing
  - Broadening of commercial property tax base

- Estimated \$1.6 billion of economic impact during construction and \$422 million in ongoing economic impact once operational

- **Key Terms of EDA**

- Town will purchase 150 acre parcel for \$21 million in Oakview Innovation Business Park and convey to FDB (Note: *Town will seek debt financing and use incremental, new property tax revenues from FDB to satisfy the debt obligation*)
- Town will upgrade Holly Springs Business Park sewer pump station to handle FDB and other basin flow (*Golden LEAF Foundation to reimburse Town for expense*)
- Town will waive legally permissible development fees
- Town will provide a Business Investment Grant (70% for 8 consecutive years) on any assessed valuation from \$1.5 billion to \$1.835 billion, as part of Phase I
- Town will provide FDB with the Industrial Water and Sewer Rate
- Town will allow FDB to use a landlocked five acre parcel for Phase 1 construction staging purposes, and possible conveyance to FDB in a future Phase 2 for specific use purposes
- Town will donate right-of-way for a southern access road to the FDB property and work alongside NCDOT to ensure the road's successful construction
- FDB guarantees to pay the Town a minimum of \$46.4 million in property tax payments within 10 years (*and/or through make up payments if FDB assessed valuation fall short of projections*)
- FDB will create 725 jobs with minimum average salary of \$99,800

### **Summary of Estimated Partner Incentives:**

- **State Level: \$81,871,750**

- NC Community College System - Customized training program (\$1,805,000)
- NC Department of Commerce - Job Development Investment Grant (\$22,641,750)
- NC Department of Commerce - OneNC Fund (\$2,000,000)
- NC Department of Transportation - Road improvements (\$10,000,000)
- NC Biotechnology Center - Economic development award (\$200,000)
- NC Department of Revenue - Sales tax exemption on machinery and equipment purchases (\$45,225,000)

- **County Level: \$60,555,000**

- Business Investment Grant
- Upward Mobility Bonus

- **Other Partners:** Golden LEAF Foundation, NC State University, Wake Technical Community College, and Duke Energy

- The Town is required to obtain approval from the Local Government Commission (LGC) in order to proceed with Limited Obligation Bond (LOB) financing for the purchase of the 150 acres of land in what is known as the Oakview Innovation Business Park, owned by Helix Ventures, for conveyance to FDB.

- The land purchase is \$21 million.
- A LOB is an approved form of municipal financing in North Carolina whereby the debt is sold to investors and the debt is secured (or collateralized) using the acquired asset or another asset of the municipality.
- Before entering into contract under 160A-20 involving real property, a public hearing is required and shall be published 10 days before the date fixed for the hearing. Public hearing notice was published on March 26, 2021.
- The Finance Department is working with DEC Associates to prepare and submit the necessary information for applying to the LGC.
- Resolution 21-11 gives Council's approval to proceed, and appoints an authorized representative required prior to filing an application for approval of debt with the LGC.
- The LGC will consider the Town's request on May 4, 2021.
- NCGS 120-157.1 to 157.4 requires that certain capital projects to be financed exceeding \$1,000,000 be reported to the Joint Legislative Committee on Local Government and to the Fiscal Research Division of NC General Assembly.

### **Background:**

#### **FUJIFILM Diosynth Biotechnologies Background**

- As a contract development and manufacturing organization, FDB's focus is to combine technical leadership in cell culture, microbial fermentation and gene therapies with world class cGMP manufacturing facilities to advance tomorrow's medicines.
- FDB has over thirty years of experience in the development and manufacturing of recombinant proteins, vaccines, monoclonal antibodies, among other large molecules, viral products and medical countermeasures expressed in a wide array of microbial, mammalian, and host/virus systems.
- Currently, FDB provides process development and manufacturing of biologics at four locations:
  - College Station, Texas, USA
  - Hillerød, Denmark
  - Research Triangle Park, North Carolina, USA
  - Teesside, UK
  - **COMING SOON: Holly Springs, North Carolina, USA**

### **Funding Source(s):**

- Limited Obligation Bond financing for land purchase (upon approval of Local Government Commission) - incremental increase in FDB property tax revenues will be used for the debt payments
- Utility Fund - Fund Balance will be used to front the pump station upgrade (then reimbursement from Golden LEAF Foundation)

### **Attachment(s):**

1. signed 45-day letter TOHS LOBs March 23 (submission to Joint Legislative Committee)
2. 21-11 Supporting an Application to the LGC for financing - Industrial property acquisition and Town Hall Renovations
3. FDBU - Holly Springs EDA\_TOWN COUNCIL VERSION
4. Exhibit B -Site Option Agreement

March 23, 2021

Joint Legislative Committee on Local Government  
Co-Chairs Sen. McInnis and Rep. Warren  
Legislative Building  
16 West Jones St.  
Raleigh, NC 27601

Fiscal Research Division  
Attention: Director  
North Carolina General Assembly  
300 North Salisbury St., Suite 610  
Raleigh, NC 27603

**Notice to the Joint Legislative Committee on Local Government  
Concerning Proposed Financing by the Town of Holly Springs**

To the Committee:

As counsel to the Town of Holly Springs, North Carolina, and as required under N.C. Gen. Stat. Section 120-157.2, I am providing this notice of a proposed local government capital project that requires approval of the North Carolina Local Government Commission and requires debt to be issued in an amount exceeding \$1,000,000. Here is information about the proposed financing –

|                                      |                                                                                                |
|--------------------------------------|------------------------------------------------------------------------------------------------|
| <b>Project description</b>           | Acquire industrial property and renovate Town Hall                                             |
| <b>LGC meeting for consideration</b> | May 4, 2021                                                                                    |
| <b>Amount to be financed</b>         | Estimated as up to approximately \$25,000,000                                                  |
| <b>Type of financing</b>             | Installment financing under Section 160A-20, including the use of limited obligation bonds     |
| <b>Other sources of financing</b>    | The Town expects that the amount borrowed will pay substantially all the costs of the project. |

# Sanford Holshouser LLP

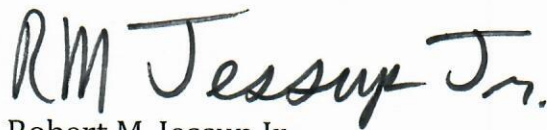
March 23, 2021

page 2

|                                     |                                                              |
|-------------------------------------|--------------------------------------------------------------|
| <b>Estimated financing term</b>     | The Town expects a financing term of approximately 20 years. |
| <b>Expected source of repayment</b> | General fund revenues                                        |

Please let me know if you have additional questions or comments for me about this proposed financing.

Very truly yours,



Robert M. Jessup Jr.

cc: Sharon G. Edmundson, Secretary of the Local Government Commission  
c/o Joe Futima  
Town of Holly Springs officials  
DEC Advisors representatives  
Karen Jenkins, legislative staff ([Karen.Jenkins@ncleg.gov](mailto:Karen.Jenkins@ncleg.gov))  
(each by electronic mail)  
Also to [reports@ncleg.net](mailto:reports@ncleg.net)



THE TOWN OF

# Holly Springs

**Resolution No. 21-11**

**Date Adopted:** April 6, 2021

**Effective Date:** April 6, 2021

**Resolution supporting an application to the Local Government Commission for its approval of a Town financing agreement – 2021 Industrial Property Acquisition and Town Hall Renovations**

**WHEREAS --**

The Town Council (the "Council") of the Town of Holly Springs (the "Town") has previously determined to carry out a project to pay for the acquisition of the site for the FUJIFILM Diosynth Biotechnologies campus and renovations to Town Hall.

The Council has also made a preliminary determination to finance this project through an installment financing, as authorized under Section 160A-20 of the North Carolina General Statutes. In an installment financing, the Town's repayment obligation is secured by a mortgage-type interest in all or part of the property being financed, but not by any pledge of the Town's taxing power or any specific revenue stream. In this case, the Town expects to place that mortgage on Town Hall.

North Carolina law requires that the Town's financing be approved by the North Carolina Local Government Commission (the "LGC"), a division of the North Carolina State Treasurer's office. Under the LGC's guidelines, this governing body must make certain findings of fact to support the Town's application for the LGC's approval of the Town's financing arrangements.

**1. THEREFORE, BE IT RESOLVED by the Town Council of the Town of Holly Springs, as follows:**

(a) The Town makes a preliminary determination to finance approximately \$22,000,000 to pay capital costs of the proposed industrial property acquisition and Town Hall renovations.

(b) The Council will determine the final amount to be financed by a later resolution. The final amount financed may be slightly lower or slightly higher than \$22,000,000. Some of the financing proceeds may represent reimbursement to the Town for prior expenditures on project costs, and some proceeds may be used to pay financing expenses or to provide any appropriate reserves.

**2. The Council makes the following findings of fact in support of the Town's application to the LGC:**

(a) The proposed project is necessary and appropriate for the Town under all the circumstances.

(b) The proposed installment financing is preferable to a bond issue for the same purposes. This financing is for a discrete facility and is therefore particularly suitable for installment financing.

The Town has no meaningful ability to issue non-voted general obligation bonds for this project. This project will produce no revenues that could be used to support a revenue bond financing. The Town expects that in the current interest rate environment for municipal securities there would be no material difference in the overall financing costs between general obligation bonds and installment financings for this project.

(c) The estimated sums to fall due under the proposed financing contract are adequate and not excessive for the proposed purpose. The Town will closely review proposed financing rates against market rates with guidance from the LGC and the Town's financial adviser. All amounts financed will reflect either approved contracts, previous actual expenditures, or professional estimates.

(d) As confirmed by the Town's Finance Officer, (i) the Town's debt management procedures and policies are sound and in compliance with law, and (ii) the Town is not in default under any of its debt service obligations.

(e) Given the Town's need for the project, the Council believes that the effect on the Town's budget and the tax rate impact will be reasonable under all the circumstances. The Council will work to minimize the tax rate impact of the borrowing in a manner consistent with moving forward with the project and addressing the full range of Town needs.

(f) The Town Attorney is of the opinion that the proposed project is authorized by law and is a purpose for which public funds of the Town may be expended pursuant to the Constitution and laws of North Carolina.

**3. Additionally, the Council resolves as follows:**

(a) The Town intends that the adoption of this resolution will be a declaration of the Town's official intent to reimburse project expenditures from financing proceeds. The Town intends that funds that have been advanced for project costs, or which may be so advanced, from the Town's general fund, or any other Town fund, may be reimbursed from the financing proceeds.

(b) The Council directs the Town Manager and the Finance Officer to take all appropriate steps toward the completion of the financing, including completing an application to the LGC for its approval of the proposed financing,

(c) This resolution takes effect immediately.

\*\*\*\*\*

I certify as follows: that the foregoing resolution was properly adopted at a meeting of the Town Council of the Town of Holly Springs, North Carolina; that this meeting was properly called and held on April 6, 2021; that a quorum was present and acting throughout this meeting; and that this resolution has not been modified or amended, and remains in full effect as of today.

Dated this \_\_\_\_ day of April, 2021.

[SEAL]

---

Linda McKinney  
Town Clerk  
Holly Springs, North Carolina

*TOWN COUNCIL VERSION*

STATE OF NORTH CAROLINA

COUNTY OF WAKE

ECONOMIC DEVELOPMENT AGREEMENT

BY AND BETWEEN

FUJIFILM DIOSYNTH BIOTECHNOLOGIES U.S.A., INC.,

FUJIFILM HOLDINGS AMERICA CORPORATION,

AND

THE TOWN OF HOLLY SPRINGS, NC

DATED as of April 6, 2021

## ECONOMIC DEVELOPMENT AGREEMENT

This Agreement (this “Agreement”) is entered into, effective as of the \_\_\_\_ day of \_\_\_\_\_ (“Effective Date”), by and between FUJIFILM Diosynth Biotechnologies U.S.A., Inc. (the “Company”), FUJIFILM Holdings America Corporation (the “Guarantor”), and the Town of Holly Springs, a North Carolina municipality (the “Town”). Together the Town and Company are referred to as the “Parties.” Capitalized terms used herein have the meanings ascribed to them below.

### RECITALS

WHEREAS, the Town is vitally interested in the economic welfare of its citizens and the creation and maintenance of sustainable jobs for its citizens in strategically important industries and therefore wishes to provide the necessary conditions to stimulate investment in the local economy and promote business, resulting in an increase in the Town’s ad valorem tax base, the creation of a substantial number of jobs at competitive wages, and to encourage economic growth and development opportunities which the Town has determined will be made possible pursuant to the Project; and

WHEREAS, the Company desires to construct a large-scale monoclonal antibody drug substance and drug product manufacturing facility (the “Facility”), including support areas for approximately 725 permanent employees (the “New Employees”); and,

WHEREAS, in order to implement the foregoing, the Company has proposed to make a capital investment at the Site from sources available to the Company, including the Company’s resources and all grant and other source financing, to construct and operate a high tech facility in one or more buildings for life sciences manufacturing and other ancillary and related uses. Such facility and any other buildings that are owned and operated by the Company and used in connection with the Company’s business that are located on the Site are referred to herein collectively as the “Facility.” The Facility, along with the land constituting the Site and the jobs referred to herein, are referred to herein as the “Project.” The Company expects that the Project will include real property, buildings, fixtures, machinery and equipment having an initial aggregate Increased Tax Value of at least one and a half billion dollars (\$1,500,000,000), and commits to create at least seven hundred twenty five (725) full time equivalent Qualified Jobs as a result of the Project at an average wage exceeding or equal to that of the median average wage for Wake County as described herein; and

WHEREAS, the Town acknowledges that the Project will bring direct and indirect benefits to the Town, including job creation, increase in the ad valorem tax base, and economic diversification and stimulus, and has offered economic development incentives (the “Local Incentives”) to induce the Company to locate the Project at the Site, and such Local Incentives do in fact induce the Company to locate the Project at the Site; and

WHEREAS, the Company fully intends to establish, through the Project, an important presence in the Town by employing a large number of local employees and

making substantial investments in the Project and in the training and development of such employees; and

WHEREAS, the Town hereby acknowledges that the terms of this Agreement, including specifically the Local Incentives and other assistance described in this Agreement, constitute a dispositive inducement to the Company to locate the Project at the Site; the Company hereby acknowledges that its decision to locate the Project at the Site following a competitive selection process conducted by the Company among multiple states is based on the Town's offer of Local Incentives and other assistance described in this Agreement and related agreements and documents; and

WHEREAS, the Town is authorized pursuant to N.C.G.S. §158-7.1 to acquire and assemble land for industrial development purposes, make appropriations and expenditures for the acquisition and improvement of land, and convey interests in real property by private negotiation, and to provide additional financial and other incentives; any action in this regard would follow a public hearing by the Town Council a subsequent decision by that Council as to such matters before it; and the Council will assure that the Town receives full consideration for the Site in the way of prospective tax and other revenues from the Site improvements, increase of jobs, and other economic stimuli of the local economy as a result of the Project; and,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Company intending to be legally bound do hereby agree as follows:

#### ARTICLE I

##### LOCAL ECONOMIC DEVELOPMENT INCENTIVES RELATED TO LOCATION OF FACILITY; LAND, DEVELOPMENT AND INFRASTRUCTURE

###### **A. Land Conveyance**

1) The Town hereby represents and warrants to the Company that the Town has, and shall continue to have until July 1, 2021, the sole and exclusive right to purchase those certain tracts of land described in the attached Option to Purchase dated February 21, 2021 (the "Site Option Agreement") as shown on Exhibit B. The Site shall consist of approximately 150 acres as described in the Site Option Agreement, exclusive of the area identified therein as the Retained Parcel, (the "Site"). The Company represents that, but for the conveyance of the Site to the Company by the Town, as of the Effective Date the Company would not locate its Facility on this or any other site in North Carolina.

2) Subject to the procedures hereinafter set forth, the Town shall exercise its option and thereafter purchase the Site for Twenty One Million Dollars (\$21,000,000), ( the "Purchase Price") pursuant to the terms set forth in the Site Option Agreement. Title to the Site shall be conveyed to the Company subject only to those title exceptions set forth at Exhibit C

(“Permitted Exceptions”). Notwithstanding the foregoing, and in connection with the purchase and sale, and conveyance, of the Site, the Town shall use commercially reasonable efforts to comply with the reasonable requests of the Company and its title company, and to cause the current Site owner to do the same, in order to cause good, marketable and insurable title to be vested in the Company. The procedures for the land purchase shall be as follows.

- i. The Town shall use good faith, best efforts to obtain, on or before May 4, 2021, approval by the Local Government Commission (“LGC”) of the Town’s proposed financing of the purchase of the Site, utilizing limited obligation bonds/private placement bonds. The Town represents that it has sufficient debt capacity, fund revenues, and other credit worthiness sufficient to support the repayment obligations for financing of the Purchase Price. However statutory mandates require approval of the LGC prior to the Town incurring any such obligation. Within 15 business days following receipt of LGC approval (as may be extended with the Company’s prior consent, not to be unreasonably withheld), and with prior written approval from the Company, the Town shall exercise its option under the Site Option Agreement by issuing to the Owner the Notice of Exercise (as defined in the Site Option Agreement) and otherwise complying with the terms of the Sales Contract (as defined in the Site Option Agreement), and thereafter the Town shall, in coordination with the Company, close on the purchase of the Site as soon as reasonably possible.
- ii. In the event that the Town does not receive LGC approval on or before May 4, 2021, time being of the essence, the Town shall immediately use all best efforts to obtain alternate commercially-reasonable private market financing (with a term of not less than 15 years) such that the Site may be purchased by the Town pursuant to the Site Option Agreement. Upon the Town obtaining such alternative financing (or LGC approval in the interim), the Town shall, within 15 business days thereafter, and with prior written approval from the Company, exercise its option under the Site Option Agreement by issuing to the Owner the Notice of Exercise (as defined in the Site Option Agreement) and otherwise complying with the terms of the Sales Contract (as defined in the Site Option Agreement) (provided however, in no event, shall the Notice of Exercise be issued later than June 28, 2021, time being of the essence), and thereafter the Town shall, in coordination with the Company, close on the purchase of the Site as soon as reasonably possible.
- iii. In the event the Town is unable to secure financing as contemplated by i. or ii. above by June 15, 2021 (as may be extended with the Company’s prior consent, not to be unreasonably withheld), time being of the essence, the Town shall,

at no cost to the Company, assign the Site Option Agreement to the Company pursuant to a form of assignment agreement reasonably acceptable to the Company.

1. In the event of such assignment and subsequent purchase of the Site by the Company, the Town shall be obligated to provide the Additional Business Investment Grant pursuant to Subsection F of this Article.
2. In the event the Company chooses not to purchase the Site after an assignment of the Site Option Agreement, this Agreement shall terminate, and the Parties shall have no further obligations to each other except to the extent expressly stated herein to survive such termination.

Throughout the term of this Agreement, the Town shall keep the Company reasonably informed as to the status of LGC approval, other financing mechanisms, and material communications with respect to the Site Option Agreement, discussed in this Section.

3) Upon the Town's purchase of the Site, the Company agrees to deliver to the Town fair consideration for the Site, by way of revenues, taxes, fees and other economic benefits to the Town generated by the Company as described in Art. II.A and B, which consideration equals or exceeds the fair market value of the Site. Conveyance of the Site from the Town to the Company shall be consummated pursuant to the terms set forth below.

4) Provided that the Town has purchased the Site directly in accordance with the foregoing, then within no more than five (5) business days following written request by the Company, for and in consideration of this Agreement and the sum of One Hundred Dollars (\$100.00), the adequacy and sufficiency of which is hereby acknowledged, the Town shall convey the Site to the Company by Special Warranty Deed (in form and substance consistent with Exhibit E), duly authorized, executed and acknowledged by the Town, subject only to (i) the Permitted Exceptions contained in Exhibit C; (ii) such general utility, sewer, access and drainage easements that are necessary to serve the Facility, but in each case subject to the Company's prior approval, not to be unreasonably withheld; and (iii) the covenants contained in this Agreement, specifically those in Section Article I.A.5. Notwithstanding the foregoing, the Parties agree and acknowledge that the Town shall cause the previously-planned North-South connector road and/or any rights of the Town to construct the same, to be released as a title encumbrance to the Site. At the Company's request, the Town shall cause the existing right of way (current pump station right of way) identified as an Exception in Exhibit C to be released.

5) In the event of a conveyance under Article I.A.2.(i) or (ii) above (but not (iii)), the Company shall, within twelve (12) months of the conveyance of the Site to the Company, submit site-specific high-level development or master plans for approval by the Town for the construction of the Facility and shall, within thirty-six (36) months of the Effective Date of this Agreement (subject to reasonable extension by the Parties in the event that the Town's approval process is unreasonably or unforeseeably delayed), and

subsequent to the issuance of approvals by the Town on said plans, commence construction of the Facility. For purposes of the preceding sentence, "commence construction of the Facility" means the date upon which the Company begins a continuous program of on-site construction or on-site modifications, including site clearance, grading, construction of vertical building elements, and all civil engineering work necessary for the construction of the Facility such that it is operational and employing New Employees within sixty (60) months from commencing construction. Upon the submission of plans for approval by the Town, and upon commencing construction of the Facility, the Town shall provide to the Company a written certification documenting the same in the form of Exhibit H. In order to satisfy the statutory requirement of N.C.G.S. §158-7.1(d2)(2), if the Company fails to commence construction of the Facility according to the terms of this Section, the Company shall convey the Site back to the Town by a special warranty deed, in the same form as the Town conveyed to the Company, in fee simple marketable title, free and clear of all liens other than those liens expressly agreed to by the Company (at the time that the Town conveyed the Site to the Company), and interim Town-approved utility easements. Upon reconveyance to the Town, the Town may, but is not required to, begin a sales process pursuant to N.C.G.S. §160A-269 to sell the entire Site which process must commence within six months of the reconveyance (unless mutually agreed by the Parties). Should the Town sell the Site (in its entirety) for less than \$21,000,000, the Company shall pay the Town the difference between \$21,000,000 and the sales price and shall have no further liability to the Town. If the Town elects not to begin the sales process described above within the specified time frames, or fails to close on the sale of the Site within six months from the completion of the upset bid process, the Company shall not have any further liability toward the Town.

In the event the Site is re-conveyed to the Town under this Paragraph, this Agreement shall terminate, and the Parties shall have no further obligations to each other except to the extent set forth in this Paragraph or expressly stated herein to survive such termination.

6) In consideration for the revenues, taxes, fees and other economic benefits to the Town that are anticipated, based on the Company's commitments set forth in Article II, to be generated by the Project in the ten (10) year period following the date of the conveyance of the Site, as allowed by N.C.G.S. §158-7.1(d2), the Town shall be entitled to no further consideration from the Company with respect to (a) the conveyance of the Site by the Town to the Company and/or (b) any and all easements, rights of entry or other entitlements appurtenant or relating to the Site and/or the Company's use of the Site; provided, however, that the foregoing shall not limit the Company's obligations with respect to customary provision of utilities and payment of ad valorem taxes.

7) Pursuant to the Section 6 of the Site Option Agreement, the Town hereby designates the Company as a "designee" within the meaning of Section 6 and grants all rights set forth therein.

8) Prior to the conveyance of the Site to the Company, the Town shall ensure that the Company has full access to the Site for all purposes described in the Site Option Agreement from and after the Effective Date of this Agreement.

**B. Infrastructure and Roadway Improvements**

1) The Town agrees to coordinate, at no cost to the Company, the following infrastructure and roadway improvements work (including engineering, design work, utility infrastructure, construction management, environmental remediation, demolition, excavation and construction) adjacent to the Site to the specifications provided prior to the commencement thereof by the Company to the Town (collectively, the “Infrastructure and Road Work”):

- Construction of two access roads to the Site as shown on Exhibit D on or before March 31, 2022. In any event, prior to completion of such construction, Town shall ensure Company has access to Site through the existing gravel road in the Retained Portion of the Site.
- Construction of a new sanitary sewer outfall to serve the Site and Facility, as shown on Exhibit E, on or before March 31, 2022.
- Utility connections, including electric, natural gas and fire protection line loop and hydrants, in each case in fully operable condition and with connection points at the property line on or before March 31, 2022 (natural gas and electricity) and March 31, 2023 (fire protection line loops and hydrants), respectively; provided, that the Town shall bear no responsibility for the provision of electric service and natural gas, but shall fully cooperate with the Company and any provider of such service with respect to the provision thereof.
- Town shall upgrade the Holly Springs Business Park Pump station in a manner and capacity suitable to accommodate the Company’s need for the Project on or before September 1, 2023.
- Town shall provide all necessary rights of way for whatever route is chosen by the Town in its sole discretion, and coordinate with NC Department of Transportation (“DOT”) for the construction of a southern access road in a location reasonably consistent with that shown and labeled as such on Exhibit D. In the event that DOT does not construct a southern access road in a timely fashion consistent with the Company’s construction needs, the Town agrees to enter into a license agreement with the Company to allow the Company ingress and egress across the Town’s property and shall obtain from other landowners additional rights of way or licenses as necessary for Company’s southern access to the Site in a location reasonably consistent with that shown and labeled as such on Exhibit D.

- Town shall provide curb-cut access to the Site from New Hill-Holly Springs to the northwest.
- The Town shall provide and reserve sufficient capacity for water, sewer and discharge, as set forth below (and the Town agrees to handle Company's discharge components as described below without the need for additional pretreatment based on 365 day-a-year operations):

Water:

Phase 1 (current scope of Project): 420,000 gallons per day ("GPD")

Phase 2 (if required): An amount of water commensurate with the scope of such future expansion, which the parties anticipate at this point to be 840,000 total GPD (which includes the GPD requirements for Phase 1).

Future Phases (if required): up to 2,000,000 total GPD (which includes the GPD requirements for prior phases)

Sewer:

Phase 1 (current scope of Project): 400,000 GPD

Phase 2 (if required): An amount of sewer capacity commensurate with the scope of such future expansion, which the parties anticipate at this point to be 760,000 total GPD (which includes the GPD requirements for Phase 1).

Notice: In the event Company anticipates a need for water or sewer capacity above the "Phase 1" amounts noted above, Company shall provide the Town with 12 months prior notice.

Discharge components:

| Component      | UOM     | Phase 1 | Phase 2 (if required) |
|----------------|---------|---------|-----------------------|
| <b>Total-N</b> | lb/year | 59.400  | 118.800               |
| <b>Total-P</b> | lb/year | 12.100  | 24.200                |
| <b>COD</b>     | lb/year | 682.000 | 1.364.000             |
| <b>BOD</b>     | lb/year | 308.000 | 616.000               |

However, the Town's obligation to reserve the foregoing capacities beyond Phase 1 shall terminate if Company fails to (a) provide notice of its intent to use such capacities by the date that is six (6) years after the Effective Date of this Agreement, or (b) use such capacity on a reasonably consistent basis by the date that is ten (10) years after the Effective Date of this Agreement. In such event, the reserved capacities being released shall be limited to the extent of such reserved

capacity for which notice was not provided and which is not being used.

In the event of a Town Force Majeure Event, the deadlines set forth in this paragraph shall be extended for the period of time during which the Town Force Majeure Event existed. For purposes of this Paragraph, "Town Force Majeure Event" shall mean any cause preventing or hindering the performance of this Agreement arising from or attributable to acts, events or circumstances beyond the reasonable control of the Town including epidemic of disease, act of God, shortage of materials, war (declared or undeclared), labor disputes, accidents, acts of terrorism, fire, breakdown of machinery, epidemic or pandemic, and riot or civil commotion. For the avoidance of doubt, mere non-performance of a third-party does not constitute a Town Force Majeure Event.

2) The Parties acknowledge that the timely completion of the Infrastructure and Road Work is critical to the successful operation of the Facility and to the safety of its citizens. For that reason, the Town shall work with, and shall facilitate the cooperation of, all applicable governmental authorities, including the State of North Carolina, the North Carolina Department of Transportation and the County of Wake, North Carolina, in the performance, at no cost to the Company, of the Infrastructure and Road Work, and to ensure that such Infrastructure and Road Work is completed in a timely manner. The Company shall timely inform the Town of its construction schedule, and any modifications thereof, to ensure proper coordination and service delivery.

### C. Waiver of Fees & Expedited Permitting Process

1) The Town represents that attached hereto as Exhibit F is a true and complete list of all of the licenses, permits, and approvals required for the acquisition of the Site and for the Project to be lawfully located, constructed and operated at the Site, together with a true and complete list of the fees or costs charged by the Town and required to be paid in respect of such licenses, permits and approvals, including all development, building construction and tap fees. The Town represents and warrants to the Company that there are no other license, permit and approval fees or costs charged by the Town that the Company will be required to pay in connection with the acquisition of the Site and the location, construction and operation of the Project. The Town hereby waives (and agrees to waive in the future) all such fees or costs, a good faith estimate of which for the Project is set forth on Exhibit F; provided, however, that such waiver shall not include those fees shown as "Mandatory" on Exhibit F.

**Commented [A1]:** Need a copy of Exhibit F. Town working on this.

The Town agrees, to the greatest extent possible under applicable law, (a) to facilitate and expedite, all Town-administered permits, plan approvals, zoning approvals, inspections and other required approvals, certificates and/or licensing necessary or appropriate in connection with the Site, the construction of the Facility, or the Project in a manner prescribed by a customized review schedule and, (b) where appropriate and lawful, to waive any Town regulation related to any such permits, zoning approvals, inspections or other required approvals or licensing and, (c) that Company may apply for more than one type of local permit, approval certificate, or plan at a time, and applications for such

permits, approvals, certificates, plans shall be reviewed concurrently by the Town to the extent possible and, (d) to exercise reasonable diligence in cooperating with the Company to facilitate the issuance of any State of North Carolina and/or federal permits and approvals which may be required for construction of the Facility and, (e) to provide, at the Town's expense, a full-time building inspector ("Resident Code Inspector") holding the appropriate licenses required for the construction of the Facility, for the period of time necessary for permitting approval by that Resident Code Inspector provided, however, that full discretion is retained by Town staff, the Resident Code Inspector, and the Town Council to act independently upon such approvals and licensing taking into account relevant information and considerations as allowed by statute, code, and the Town's ordinances. The Resident Code Inspector shall be available to the Company on its Site during normal business hours from 8 AM to 5 PM.

**E. Other Incentives**

1) Business Investment Grant ("BIG"): The Town shall provide to the Company a Business Investment Grant based on Incremental Taxes for taxable real property valuation exceeding \$1.5 Billion in Increased Tax Value, up to \$1.835 Billion for a period of 8 years commencing in 2026, or such earlier year as the Company may designate if the Company exceeds \$1.5 Billion in Increased Tax Value prior to 2026. The Company asserts that but for this BIG, the Company would not locate its Facility in Holly Springs or within North Carolina. The BIG payment is equal to 70% of Incremental Taxes paid within the current fiscal year based on the Increased Tax Value generated by real and business personal property that exceeds \$1.5 Billion, but not greater than \$1.835 Billion. By Way of Example:

Example 1: if the Increased Tax Value is \$1.6 Billion as of Jan 1, 2025, and taxes are paid on the Increased Tax Value in FY 2026 (July 1, 2025 - June 30, 2026), the grant is equal to 70% of taxes on \$100 Million valuation, or \$295,120, and shall be paid to the Company in the fiscal year of the tax payment, in this case FY 2026. (\$100 M x current tax millage of .004216 x .70) [Note: the tax millage used in this and other examples is the rate at time of execution of this Agreement. Actual calculations will be made using then-current tax millage rates.]

Example 2: if the Increased Tax Value is any amount above \$1.835 Billion, such as \$2 Billion, and taxes are paid on the Increased Tax Value, the grant is equal to 70% of taxes on \$335 Million (i.e., the difference between the floor of \$1.5 B and max of \$1.835 B) valuation, or \$988,652, and shall be paid to the Company in the fiscal year of the tax payment. (\$335 Million x .004216 x .70).

Notwithstanding the use of the current tax millage in the examples above, the actual grant amount will be determined using the then-current millage.

"Increased Tax Value" is that amount of ad valorem tax value, as calculated by the Wake County tax assessor as of January 1 of the year in which the Town will pay a

BIG to the Company, less the tax value of the Site on January 1, 2021. For purposes of this Agreement, the tax value of the Site on January 1, 2021 is \$8,903,550.

“Incremental Taxes” is the amount of taxes actually received by the Town as a result of the Increased Tax Value.

“Fiscal Year” shall mean the Town’s Fiscal Year, July 1 to June 30.

BIG payments will be made on or before May 1 of the relevant Fiscal Year in which the taxes are paid, assuming the Company is current on tax payments.

2) Other Tax and Fiscal Incentives. The Town will cooperate with and provide reasonable assistance to the Company in procuring all incentives and benefits legally available to it for economic development, job creation or otherwise, including (without limitation) the One North Carolina Fund, Golden Leaf and the Job Development Investment Grant.

3) Golden Leaf Grant award. The Parties acknowledge the assistance of North Carolina’s Golden Leaf Foundation, Inc. that provided invaluable assistance in the construction of certain components of the Infrastructure and Road Work, specifically the upgrade to the Holly Springs Business Park Pump station. The Company hereby acknowledges that but for this grant award, the Company would not locate its Facility in North Carolina.

4) No Targeted Taxes. If any taxes or government charges of any kind are directly or indirectly levied by the Town against the Company or any of its property, including the Site, that are not generally applicable to all Town-resident business enterprises (the “Targeted Taxes”), or if any such Targeted Taxes shall be imposed or enabled by the Town with regard to the Company or its property, the Company shall be entitled to a reimbursement from the Town (in the form of cash, set off against any other payment due from the Company to the Town or such other means as may be available to effect such reimbursement) for the amount of any Targeted Taxes that are paid to or otherwise accrue to the benefit of the Town. For purposes of this paragraph, any Shortfall Payment shall not be considered to be Targeted Taxes.

5) Industrial Utility Rate: Company shall qualify for the Town’s industrial utility rate, which is the lowest cost tier of sewer and water of utility provisions. This rate shall be in effect for each month that the Company’s actual usage exceeds 50,000 gallons per month.

#### **F. Additional Business Investment Grant**

In the event the Company purchases the Site pursuant to Section A.2.iii of this Article, the Town shall provide to the Company an Additional Business Investment Grant (“ABIG”) based on Incremental Taxes for taxable real property valuation in Increased Tax Value up to \$1.5 Billion commencing in 2022 (*i.e.*, any Increased Tax Value above

\$1.5 is subject to BIG payments pursuant to Section E.1. of this Article). The ABIG payment is equal to 90% of Incremental Taxes paid within the current Fiscal Year based on the Increased Tax Value generated by real and business personal property up to \$1.5 Billion. By Way of Example:

Example 1: if the Increased Tax Value is \$1.1 Billion as of January 1, 2025, and taxes are paid on the Increased Tax Value in Fiscal Year 2026 (July 1, 2025 - June 30, 2026), the grant is equal to 90% of taxes on \$1.1 Billion or \$4,173,840 paid to the Company in the Fiscal Year of the tax payment, in this case Fiscal Year 2026. ( $\$1.1 \text{ B} \times \text{current tax millage of } .004216 \times .90$ )

Example 2: if the Increased Tax Value is any amount above \$1.5 Billion, such as \$2 Billion, and taxes are paid on the Increased Tax Value, the grant is equal to 90% of taxes on \$1.5 Billion or \$5,691,600 paid to the Company in the Fiscal Year of the tax payment. ( $\$1.5 \text{ Billion} \times .004216 \times .90$ ).

Notwithstanding the use of the current tax millage in the examples above, the actual grant amount will be determined using the then-current millage.

“Increased Tax Value” is that amount of ad valorem tax value, as calculated by the Wake County tax assessor as of January 1 of the year in which the Town will pay a BIG to the Company, less the tax value of the Site on January 1, 2021.

“Incremental Taxes” is the amount of taxes actually received by the Town as a result of the Increased Tax Value.

“Fiscal Year” shall mean the Town’s Fiscal Year, July 1 to June 30.

ABIG payments will end when cumulative ABIG payments total \$27,903,574. In the year in which cumulative ABIG payments would exceed \$27,903,574, the ABIG payment that year will be the amount that, when added to previous ABIG payments, totals \$27,903,574. Notwithstanding the foregoing, the Town’s obligation to make ABIG payments shall terminate at the end of the Town’s Fiscal Year 2034.

ABIG payments will be made on or before May 1 of the relevant Fiscal Year in which the taxes are paid, assuming the Company is current on tax and any tax shortfall payments.

#### **G. Adjacent Properties**

The Town agrees to convey a leasehold interest to the Company through December 31, 2026 at nominal rent with respect to the property more fully set forth in Exhibit G.

At the Company’s request, and at no cost to the Company, the Town shall assign (pursuant to a form of assignment agreement reasonably acceptable to the Company) all of its rights and interest in and under that certain Real Estate Purchase Contract

Assignment Agreement (the “Assignment Agreement”) between the Town and Chandler Property Group, LLC (“Chandler”) with respect to an approximate 12.43 acre tract described as “TR 6 OL Scott Est Div” as described in Deed Book 4804, Page 499, Wake County Registry (the “Donnell Tract”) and an underlying Agreement for Purchase and Sale of Land dated between Chandler and Mario L. Donnell, an unmarried individual, (“Donnell”) dated October 28, 2020 (the “Underling PSA”). The Town represents and warrants to the Company that, to the best of its knowledge, the Assignment Agreement and Underlying PSA previously provided to the Company are true and complete copies thereof and, to the Town’s knowledge, no breach exists with respect to the same as of the Effective Date. Prior to any assignment of the Assignment Agreement to the Company, the Town shall not breach any terms of the Assignment Agreement and shall otherwise keep the Company reasonably apprised of any substantive communications with Chandler and/or Donnell with respect thereto or to the Underlying PSA.

In the event of such assignment, (i) upon closing of the acquisition of the Donnell Tract, the Company shall grant to the Town a sewer easement in substantially the area previously disclosed by the Town to the Company and otherwise on terms reasonably acceptable to the Parties, and (ii) the Town shall use commercially reasonable efforts to comply with the reasonable requests of the Company and its title company, and to cause Chandler and Donnell, as applicable, to do the same, in order to cause good, marketable and insurable title to the Donnell Tract to be vested in the Company. Nothing herein shall be deemed to commit the Company to request an assignment of the Assignment Agreement or to acquire the Donnell Tract.

#### **H. Available Remedies**

For purposes of this Agreement, a “Town Default” shall mean the Town’s failure to timely perform or otherwise adhere to its obligations under this Agreement, subject to a 7-day written notice and cure period to be afforded to the Town. Upon the occurrence of a Town Default, the Company: (i) without thereby waiving such Town Default, shall have the right to take all reasonable and necessary acts to perform any such obligation on behalf of the Town, at the Town’s expense, (“Self Help”), and (ii) shall have all rights and remedies available in law or equity including, without limitation, the right to specifically enforce the terms of this Agreement at the Town’s expense. All reasonable costs and expenses (including attorneys’ fees) incurred by the Company in exercising Self Help or otherwise enforcing the terms of this Agreement (collectively, “Enforcement Costs”) shall be payable by the Town to the Company, on demand, and shall accrue interest from the time of such demand until payment at the applicable statutory rate. Furthermore, to the extent permitted by law, the Company shall have the right (but not the obligation) to offset any Enforcement Costs against any amounts otherwise due to the Town under this Agreement or otherwise. No right or remedy herein conferred upon or reserved to the Company is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy given hereunder, or now or hereafter existing. No waiver by the Company of any provision of this Agreement shall be deemed to have been made unless expressly so made in writing by the Company expressly waiving such provision.

### **ARTICLE II**

#### **COMPANY REQUIREMENTS**

Incentive payments are payable by the Town prior to the Company’s full performance of its obligations hereunder; provided, however, that such awards are expressly conditioned upon the Company achieving the following performance targets as of the dates set forth below.

##### **A. Minimum Taxes Commitment**

If the Town exercises the mechanism set forth in Article I, Sections A.2 (i) or (ii) (but not if the Town exercises the mechanism set forth in Article, 1, Section A.2 (iii)), the Parties agree that the total cost of the Town’s upfront incentives, investments, and other

committed expenditures that induced the Company to locate the Facility in the Town and North Carolina totals \$46,401,194. In recognition of the Town's investment, the Company agrees to invest in taxable real property improvements, machinery and equipment located on the Site that generates Incremental Taxes based on at least \$1.5 Billion in Increased Tax Value. Recognizing that Increased Tax Values will be achieved between commencement of construction and operation of the Facility, the Company commits to making investments that produce Incremental Taxes based on minimum Increased Tax Values as follows:

January 1, 2024 - \$225,000,000

January 1, 2025 - \$1,050,000,000

January 1, 2026 and thereafter - \$1,500,000,000

On or before October 1 of each year starting in year 2024 the Company shall transmit to the Town all real and personal property tax liability statements from the Wake County tax assessor relative to the Site. In the event that the Company fails to make and maintain investments sufficient to produce Incremental Taxes based on the Increased Tax Values set forth above, the Company shall make a Tax Shortfall Payment by February 1 of the calendar year that begins immediately following the dates set forth above. The Tax Shortfall Payment shall be an amount determined by subtracting (x) the ad valorem taxes actually assessed from (y) the ad valorem taxes that would have been assessed had the Increased Tax Value been achieved.

"Increased Tax Value" is that amount of ad valorem tax value, as calculated by the Wake County tax assessor, less the tax value of the Site on January 1, 2021.

"Incremental Taxes" is the amount of taxes actually received by the Town as a result of the Increased Tax Value.

"Fiscal Year" shall mean the Town's Fiscal Year, July 1 to June 30.

The Company's obligation to make Tax Shortfall Payments will end when cumulative Incremental Taxes and Tax Shortfall Payments total \$46,401,194. In the year in which a Tax Shortfall Payment would make the cumulative Incremental Taxes and Tax Shortfall Payments exceed \$46,401,194, the Tax Shortfall Payment that year will be the amount that, when added to previous Incremental Taxes and Tax Shortfall Payments total \$46,401,194. Notwithstanding the foregoing, in the event the Company elects to exercise the option pursuant to Article I, Section A.2(iii).1, the Tax Shortfall Payments will end when cumulative Incremental Taxes and Tax Shortfall Payments total \$17,608,000. In the event the Company elects to exercise the option pursuant to Article I, Section A.2(iii).1., in the year in which a Tax Shortfall Payment would make the cumulative Incremental Taxes and Tax Shortfall Payments exceed \$17,608,000, the Tax Shortfall Payment that year will be the amount that, when added to previous Incremental Taxes and Tax Shortfall Payments total \$17,608,000.

However, notwithstanding anything to the contrary in this Agreement, if the Company exercises the mechanism set forth in Article I, Section A.2(iii).2 or reconveys the Site to the Town pursuant to A.5, the Company shall have no liability to Town for any Tax Shortfall Payments or other liability described in this Section.

B. Job Commitment

Company will be deemed to satisfy its job commitment under this Agreement in any year in which the Company satisfies the minimum jobs requirements set forth in the table below. Should the Company fail to meet its minimum job commitments in any year in which it seeks a payment of the BIG under this Agreement, the Town’s payment for the BIG for that year shall be reduced in an amount that is pro-rata to the Company’s job shortfall relative to its minimum obligations to the meet the job commitment for that year. For purposes of calculating the number of jobs to meet this requirement, the overall number of jobs reported for purposes of the pro rata calculation must have a targeted overall aggregate average wage of at least \$99,848.

For each year in which a BIG payment is requested, the “Job Commitment” shall be as follows for the relevant year:

| Calendar Year          | Total Anticipated New<br>Jobs for Project | Minimum To Meet Job<br>Commitment under this<br>Agreement |
|------------------------|-------------------------------------------|-----------------------------------------------------------|
| 2024                   | 60                                        | 54                                                        |
| 2025                   | 300                                       | 270                                                       |
| 2026                   | 475                                       | 428                                                       |
| 2027                   | 650                                       | 585                                                       |
| 2028 and<br>thereafter | 725                                       | 653                                                       |

For example, if the Company has only 385 jobs in calendar year 2026, then any BIG payment to the Company based on its performance in calendar year 2026 shall be reduced in accordance with the value that is the pro rata of 385/428, or .8995. Thus, the Company would receive a BIG payment for the relevant period that is only 89.95% of the amount of the BIG payment it is otherwise eligible for.

The foregoing shall constitute the Town’s sole and exclusive remedy for a violation of the Job Commitment. Notwithstanding anything to the contrary in this Agreement, a failure to meet the Job Commitment shall not in any way impact the Company’s ability to receive a payment under the ABIG.

For any year in which the Company requests a BIG payment, the Company shall provide to the Town a certification by March 1 as to the number of jobs, aggregate average wage, positions held, and that they are employed as of the end of the prior calendar year.

The Company shall designate and the Town shall treat such information as confidential to the fullest extent provided by law.

C. Tax Commitment

The Company shall not, during the period in which it is eligible to receive BIG payments, be in arrears in the payment of its annual property taxes, utility fees or other obligations to the Town, including but not limited to any owed Tax Shortfall Payments owed under the Agreement (the “Tax Commitment”). In the event that the Company fails the Tax Commitment, the Town’s sole and exclusive remedy under this Agreement would be to withhold payments under the BIG until company cures its breach of the Tax Commitment, at which time all previously withheld payments will be made by the Town.

D. Operation Commitment

Except in the case of (1) a Force Majeure, or (2) nonperformance by the Town of its agreements and covenants under this Agreement or any related agreements or documents, the Company shall continue life sciences manufacturing or ancillary or related operations at the Facility from the date on which the Facility is qualified for such operations by appropriate governmental authorities until the conclusion of the period in which it is eligible to receive BIG payments. For purposes of this Agreement, “Force Majeure” shall mean any cause preventing or hindering the performance of this Agreement arising from or attributable to acts, events or circumstances beyond the reasonable control of the Company including epidemic of disease, act of God, shortage of materials, war (declared or undeclared), labor disputes, accidents, acts of terrorism, fire, breakdown of machinery, epidemic or pandemic, government requisition or impoundment or other acts of any governmental agency (including such authority acting in a contractual or regulatory capacity), and riot or civil commotion. Notwithstanding anything to the contrary in this Agreement, a temporary shutdown of operations for less than 6 months for any reason shall not be considered a breach of the Operation Commitment. The Town’s sole and exclusive remedy for the Company’s violation of the Operation Commitment shall be a loss of grant payments for the BIG in any given year that company has not met the Operation Commitment.

ARTICLE III

(intentionally omitted)

ARTICLE IV

REMEDIES AND DISPUTE RESOLUTION

A. Concerning Remedies

Unless otherwise set forth in this Agreement or any related agreement, the remedies provided for in this Agreement and in any related agreement are exclusive and cumulative. The exercise of a particular remedy does not preclude the exercise of any or

all other available remedies herein except as provided herein. No delay in the exercise of a remedy shall constitute a waiver of that remedy. Nothing in this Agreement is intended to relieve a party from its common law duty to mitigate damages. Except for any and all claims, demands or other actions by a party seeking declaratory, injunctive, specific performance or other equitable relief in respect of the performance, breach, or interpretation of any provision of this Agreement (“Litigable Matters”), all claims for damages or other remedies under this Agreement shall be resolved by Arbitration. Litigable Matters shall be subject to the exclusive jurisdiction of the Superior Court for the Tenth Judicial District of North Carolina or the United States District Court for the Eastern District of North Carolina, or of both as applicable in the circumstance. The parties irrevocably submit to such exclusive jurisdiction.

B. Disputes

The parties shall attempt in good faith to resolve any dispute, controversy or claim arising out of this Agreement between them by negotiations those persons of the Town and Company who have authority to act and who will promptly meet for negotiations to attempt to settle the dispute. If the matter has not been resolved within ten (10) days from the referral of the dispute to such authorized persons, any party may refer the matter to Mediation (as provided below).

C. Mediation

If the Town and the Company are unable to reach agreement with respect to any matter requiring their agreement under this Agreement, any party may submit the matter to mediation under the Mediation Procedures of the American Arbitration Association (“Mediation”). Once commenced, no such Mediation shall be permitted to proceed for more than fifteen (15) days. Each party shall bear its own costs and expenses related to any Mediation; provided that the costs and expenses of the mediator and any administrative expenses of the Mediation shall be borne equally by the Town and the Company. Failure of the Town and the Company to reach agreement pursuant to any Mediation procedure shall be deemed to be a dispute arising under this Agreement.

D. Arbitration

Except for Litigable Matters, all disputes and claims for damages between the Town and the Company arising out of this Agreement shall be resolved not by litigation but rather by binding arbitration (“Arbitration”) in the State of North Carolina before a panel of three (3) independent arbitrators under the auspices and pursuant to the rules of the American Arbitration Association. Any such dispute regarding real estate development or construction matters shall be governed by the Construction Industry Arbitration Rules then in effect, and any dispute regarding other matters shall be governed by the Commercial Arbitration Rules then in effect. The Arbitration hearing will be scheduled so that it is concluded within six (6) months from the date of the filing of the Arbitration and the panel shall render its decision within one (1) month after the closing of the hearing. Arbitrators will be chosen under the usual procedures and from the usual panels of the American Arbitration Association except that none of the

arbitrators shall have performed, directly or indirectly, a material amount of work for the Town or the Company within the 5-year period immediately preceding the date of their selection or intend or desire to perform work for the Town or the Company within one (1) year following the date of such arbitrator's selection. Issues determined by Arbitration pursuant to this provision shall be given preclusive or collateral estoppel effect. Each party shall bear its own costs and expenses relating to the Arbitration except that the Arbitration panel shall have the authority to award attorney's fees, and provided that the costs and fees of the panel of arbitrators and the fees to the American Arbitration Association shall be borne equally by the Town and the Company.

#### ARTICLE V

#### OTHER PROVISIONS

##### A. Notices

All communications and notice expressly provided for herein shall be sent, by registered first class mail, postage prepaid, by a nationally recognized overnight courier for delivery on the following business day or by facsimile (with such facsimile to be confirmed promptly in writing sent by mail or overnight courier as aforesaid) as follows unless the relevant party provides replacement contact information after the date hereof:

If to the Town:       Town of Holly Springs  
                              P.O. Box 8  
                              Holly Springs, NC 27540-0008  
                              Attn: Randy J. Harrington, Town Manager  
                              Phone: (919) 557-3924  
                              Facsimile: (919) 567-2569

with a copy (which shall not constitute notice) to:

Town of Holly Springs  
P.O. Box 8  
Holly Springs, NC 27540-0008  
Attn: John P. Schifano, Town Attorney  
Phone: (919) 557-2917  
Facsimile: (919) 567-2569

If to the Company:   FUJIFILM Diosynth Biotechnologies U.S.A., Inc.  
                              101 J. Morris Commons Lane  
                              Morrisville, North Carolina 27560  
                              Attn: Chief Operating Officer

with a copy to:

FUJIFILM Holdings America Corporation  
200 Summit Lake Drive

Valhalla, NY 10595-1356  
Fax: 914-789-8514  
E-mail: legaldepartment@fujifilm.com  
Attention: Legal Department

**B. Adverse Change**

The parties acknowledge that the Project is mutually beneficial to both parties to a degree that supports the substantial investment in the Project by each party as outlined herein. The Project and the Local Incentives are based on current laws, policies, regulations and commitments. If during the term of the Project, the benefits to the parties as contemplated herein are materially adversely affected as a result of executive or legislative action, or administrative or judicial decision or interpretation of laws, policies or regulations, the parties agree to negotiate in good faith in an effort, if practicable, to amend, to the fullest extent permitted by law, the Project and the Local Incentives so that each party receives at least the same benefits that were contemplated herein prior to any such action, decision or interpretation.

**C. Change in Law**

In the event any law, policy or regulation applicable to the Company adversely affects or impacts the effective operation of the Project, the Town shall promptly take all necessary action to amend such law, policy or regulation to facilitate effective operation of the Project, so long as such amendment is not materially adverse to the interests of the Town or its citizens.

**D. Entire Agreement; Amendment; Construction**

This Agreement, together with the Schedules and Exhibits attached hereto and all other agreements referred to herein or relating to the subject matter hereof, contains the entire agreement between the parties as to the subject matter referenced herein, and supersedes all prior agreements, understandings or undertakings (whether oral, written, electronic or otherwise) between the parties with respect to the subject matter hereof. No amendment may be made to this Agreement except with the prior written consent of all parties hereto. The section titles and headings herein are for convenience of reference only and do not define, modify or limit any of the terms and provisions hereof. Article, Section and Exhibit references herein are to Articles, Sections and Exhibits of this Agreement unless otherwise noted. The use of words "include" or "including" in this Agreement shall be by way of example rather than by limitation. The use of the words "or," "either" or "any" shall not be exclusive.

**E. Representations and Warranties of the Parties**

Each of the parties, and each person executing this Agreement on behalf thereof, represent and warrant, as applicable, that (1) such party or person has the full power and authority to enter into this Agreement and the agreements or instruments referred to herein, to execute them on behalf of the party indicated on the signature page thereof, and

to perform the obligations hereunder and thereunder, (2) such party is acting on its own behalf and on behalf of its successors and assigns, (3) this Agreement and the other agreements referenced herein are the valid and binding obligations of such party, enforceable against it in accordance with their terms, (4) entering into this Agreement and the other agreements referenced herein does not conflict with any other agreements entered into by either party, and (5) the execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary corporate or governmental action on its part. The Town represents and warrants to the Company that: (a) (i) the Town has the currently exercisable, exclusive, enforceable and freely assignable right to purchase the Site (including all portions thereof) and (ii) upon exercise of such right, the Town shall hold good, marketable and insurable and indefeasible fee simple title in and to the Site, (b) this Agreement and the incentives contemplated hereunder have been pre-audited to ensure compliance with the budgetary accounting requirements (if any) that apply thereto, and (c) all sums necessary for the Town to fund the payments that the Town is obligated to make hereunder have been fully appropriated and allocated in the Town's 2020-2021 fiscal year (other than for the Infrastructure and Road Work), and are available for the purposes designated hereunder, and the Town shall use its best efforts to ensure that all necessary sums for the completion of such Infrastructure and Road Work shall be fully appropriated and allocated, and made available to the Company at the earliest opportunity.

**F. Release and Indemnification**

1) The Company agrees to indemnify and hold harmless the Town, and its respective members, officers, directors, employees, agents and attorneys (hereinafter collectively referred to as "Town Indemnified Parties"), from any claims of third parties to the extent arising out of or any wrongful or negligent act or omission of the Company in connection with the performance of this Agreement. Without limiting the generality of the foregoing, the Company hereby releases the Town Indemnified Parties from, and agrees that such Town Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Town Indemnified Parties against, any and all liability or loss, cost or expense, including reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with or on or about the Facility, or resulting from any defect in the fixtures, machinery, equipment, or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (other than financing incurred by or provided in connection with another government body (e.g., Wake County, North Carolina or the State of North Carolina)) to the extent arising out of the negligent acts or omissions of the Company or any of its agents, contractors, servants, employees, licensees, lessees, or assignees. The Company acknowledges and agrees that each Town Indemnified Party is an express, third party beneficiary of the Company's obligations under this paragraph. The obligation of the Company to indemnify the Town Indemnified Parties pursuant to this Section V (F)(1) shall terminate upon the termination of this Agreement.

2) To the extent permitted by law, the Town agrees to indemnify and hold harmless the Company, and its respective shareholders, officers, directors, employees, agents and attorneys (hereinafter collectively referred to as “Company Indemnified Parties”), from any claims of third parties to the extent arising out of or any wrongful or negligent act or omission of, or breach of this Agreement by, the Town in connection with the performance of this Agreement. Without limiting the generality of the foregoing, the Town hereby releases the Company Indemnified Parties from, and agrees that such Company Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Town Indemnified Parties against, any and all liability or loss, cost or expense, including reasonable attorneys’ fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person to the extent arising out of the negligent acts or omissions of, or breach of this Agreement by, the Town or any of its agents, contractors, servants, employees, licensees, lessees, or assignees. The Town acknowledges and agrees that each Company Indemnified Party is an express, third party beneficiary of the Town’s obligations under this paragraph. The obligation of the Town to indemnify the Company Indemnified Parties pursuant to this Section V(F)(2) shall terminate upon the termination of this Agreement.

**G. Benefits of Agreement**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns, and future Town Councils and staff.

**H. Governing Law; Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to any construction arising from the application of conflicts or choice of law principles, and without regard to any construction arising by virtue of the negotiation or the persons who drafted this Agreement. Subject to Article IV, the parties consent to exclusive jurisdiction of the Superior Court for the Tenth Judicial District of North Carolina or the United States District Court for the Eastern District of North Carolina, or of both as applicable in the circumstances, for any Litigable Matters arising with respect to this Agreement.

**I. Severability; Incentives**

If any court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, then (1) such holding shall not invalidate or render unenforceable any other provision of this Agreement, unless such provision is contingent on the invalidated provision; and (2) the remaining terms hereof shall, in such event, constitute the parties' entire agreement. In the event any such provision is held to be invalid, illegal or unenforceable, the Parties hereto shall make their best efforts to agree on a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable. In the event that the validity, legality or enforceability of any Local Incentive and other assistance described or referred to herein as being offered or made available to the Company is challenged in any manner, the Town shall (a) vigorously defend such Local Incentive and other assistance from such challenge, (b) seek legislative remedies to retain or restore such Local Incentive and other assistance, and (c) pursue the offering of other Local Incentives and other assistance or benefits to the Company (including to the extent other discretionary funds or benefit programs are or may become available to the Town) in order that the Company may realize the economic and non-economic benefits of the Local Incentives and other assistance offered herein or made available hereby.

**J. Assignment**

Except as otherwise provided for in this Section, no party shall have the right to assign this Agreement or any portion hereof, or any of its respective rights or obligations hereunder, without the prior written consent of the other party. Notwithstanding the foregoing, the Company shall be permitted to assign this Agreement or any portion hereof, or any of its rights or obligations hereunder, to any subsidiary of Guarantor, in which case the existing guarantee under this Agreements survives.

**K. Certificate of Authority**

The Company or any assignee shall ensure a Certificate of Authority is filed with the North Carolina Office of the Secretary of State to transact business in the State of North Carolina as required by North Carolina law promptly after the execution of this Agreement.

**L. Audit Right**

The Town reserves the right to require that the Company provide to it a certified audit (at the Town's expense), or to perform (upon reasonable notice to the Company and during normal business hours) an audit through the use of the Town's staff, in order to confirm the Company's compliance with the Job Commitment contemplated in this Agreement and any reimbursement of costs associated with Self-Help. Any such audit will be limited in scope to the least amount of information necessary to confirm such compliance. To the fullest extent allowed by law, all of the Company's records provided to the Town shall (1) not be considered or deemed a public record, (2) be kept

confidential (and the Town agrees to cause its employees, agents, auditors and other representatives, including any internal or external auditors, to keep such evidence confidential), (3) be “trade secrets” under N.C.G.S. §132-1.2 and will be marked as trade secrets, (4) to the fullest extent allowed by law be held as confidential information under N.C.G.S. §132-1.2 and other law. All such records shall remain the property of the Company to be returned after the Town’s review, and may be used by the Town only for audit purposes.

**M. Annual Report**

If at any time either the Company’s, or the Company’s publicly traded parent’s audited annual report is not publicly available online for review, the Company shall provide a copy thereof to the Town as soon as it becomes available to the Company, but in no event later than six (6) months following the Company’s fiscal year end.

**N. Agreement to Cooperate**

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the applicable Parties hereby agree to cooperate in defending such action; provided, however, each of the Parties shall retain the right to pursue its own independent legal defense.

**O. Good Faith and Fair Dealing**

Each party assumes a duty of good faith and fair dealing in the performance of its obligations and the enforcement of its rights under this Agreement. Unless specifically otherwise provided: (1) whenever a consent or approval is required from a party under this Agreement, the consent or approval shall not be unreasonably withheld, conditioned or delayed; and (2) whenever a party is required to make a determination under this Agreement, the determination shall be made reasonably, in good faith and without unreasonable delay.

**P. Specific Performance**

Each of the Town and the Company acknowledge and agree that the other party may be irreparably damaged if any of the agreements or covenants related to the conveyance of any of the real property that is subject hereof are not performed in accordance with their terms, and that any default under or failure to perform or comply with any such agreement or covenant by such party may not be adequately compensated in all cases by monetary damages alone. Accordingly, each of the Town and the Company may be entitled to specific performance of any such agreements or covenants and to temporary, preliminary and permanent injunctive relief to prevent any breach of any of such agreements or covenants, without posting any bond or other undertaking. The Parties agree that any obligations regarding job creation or investment are not subject to a requirement of specific performance as other penalties for default in those areas are detailed elsewhere in this agreement.

**Q. Termination**

This Agreement may be terminated:

- 1) by mutual written agreement by the Company and the Town;
- 2) by the Company, for any reason, until the Site is conveyed from Owner to the Town (so long as the Town has provided Company at least five business days' prior written notice of such Conveyance);
- 3) The parties agree and acknowledge that the Town's conveyance of the Site to the Company ("Transaction") could potentially be subject to the jurisdiction of the Committee on Foreign Investment in the US ("CFIUS"). In the event that CFIUS notifies either party in writing that CFIUS intends to send a report to the President recommending that the President act to suspend or prohibit the Transaction, the Company may elect to cease the CFIUS review process and terminate this Agreement, in which case the parties shall have no further obligations to each other except to the extent expressly stated herein to survive such termination. In the event such CFIUS notice is received after the Site is already conveyed from the Town to the Company and the Company elects to terminate this Agreement, the Company shall convey the Site back to the Town subject to the process and remedies outlined in Article I.A.5.

**R. Future Grants**

If at any time the Company anticipates a substantial expansion of its operations in the Town beyond the scope currently planned for the Project, and has met or exceeded the Commitments described above, the Town will review such any expansion plans with the intent to provide additional economic development incentives to the Company but shall not have an obligation to provide any particular incentives to the Company in respect of such expansion.

**S. Counterparts**

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed original counterpart of this Agreement.

**T. Guaranty**

Guarantor joins herein to unconditionally guarantee the payment and performance as and when due of all obligations and liability of the Company or its assignee under this

Agreement. Any waiver or modification of this Agreement by the Parties shall binding on the Guarantor. Any Notice given to the Company in the manner set forth in this Agreement in Article V.A, shall be deemed Notice to the Guarantor.

[Remainder of Page Intentionally Blank]

EXHIBIT LIST

[Signature Page Follows]

*TOWN COUNCIL VERSION*

IN WITNESS WHEREOF, the parties hereto have caused this Economic Development Agreement to be executed as of the date and year first above written.

ATTEST: TOWN OF HOLLY SPRINGS, NORTH CAROLINA

\_\_\_\_\_  
Name: Linda McKinney  
Title: Town Clerk

By: \_\_\_\_\_  
Name: Randy J. Harrington  
Title: Town Manager

FUJIFILM Diosynth Biotechnologies U.S.A., Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FUJIFILM Holdings America Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Certified as to Legal Sufficiency:

ATTEST:

\_\_\_\_\_  
Name: John P. Schifano  
Title: Town Attorney

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

\_\_\_\_\_  
Antwan Morrison  
Finance Director, Town of Holly  
Springs

EXHIBIT A  
(intentionally omitted)

*TOWN COUNCIL VERSION*

EXHIBIT B  
SITE OPTION AGREEMENT

[See attached PDF document]

EXHIBIT C  
“PERMITTED EXCEPTIONS”

E-4

EXHIBIT D  
(MAP OF ACCESS POINTS TO SITE)

E-5

EXHIBIT E

FORM OF SPECIAL WARRANTY DEED FOR TOWN'S CONVEYANCE OF SITE TO  
COMPANY

## EXHIBIT F

Construction Trailer permit

Utility Inspection Fees

Fee in lieu of Assessment

Capacity Replacement Fees: (Mandatory Fees) The fees shown on page 2 of this exhibit are from the 2021 FY and shall apply to Phase 1 of the Project. The parties acknowledge that the fee is dependent on the type and number of meters used, construction drawing approval is required prior to application for water service, and that payment of the fees are required prior to final construction drawing approval.

### Other Inspection Fees

Street Fee

Tap Fees

Irrigation Meters

Miscellaneous Fees:

Water Meter Fee

Water Meter Deposit

Water Meter Service Charge

Building Permit Processing, Review, and Inspection Fees

Sed/Erosion Control Plan Review

Environmental Development Permit (NPDES stormwater review and special studies)

Stormwater control device escrow deposit

Construction Drawing Review

Water Permit Process Fee

Sewer Permit Process Fee

Bonding if needed

Preliminary Plan Review

Sign Permit

\* Note that this summary of anticipated development fees developed by the Town of Holly Springs based on an understanding of scope of the project as contemplated in the Economic Development Agreement

| Retail/Restaurant/Industrial |                          |                          |                          |
|------------------------------|--------------------------|--------------------------|--------------------------|
| < 5,000 sq. ft.              | 5001-9999 sq. ft.        | 10,000-20,000 sq. ft.    | >20,000 sq. ft.          |
| S \$3,032<br>W \$3,285       | S \$4,449<br>W \$4,822   | S \$5,513<br>W \$5,974   | S \$6,300<br>W \$6,827   |
| S \$3,347<br>W \$3,626       | S \$4,921<br>W \$5,334   | S \$6,104<br>W \$6,614   | S \$7,127<br>W \$7,723   |
| S \$3,662<br>W \$3,968       | S \$5,394<br>W \$5,832   | S \$6,694<br>W \$7,254   | S \$7,836<br>W \$8,491   |
| S \$3,977<br>W \$4,309       | S \$5,866<br>W \$6,358   | S \$7,285<br>W \$7,894   | S \$8,466<br>W \$9,174   |
| S \$4,607<br>W \$4,991       | S \$6,811<br>W \$7,382   | S \$8,466<br>W \$9,174   | S \$10,041<br>W \$10,881 |
| S \$5,237<br>W \$5,674       | S \$7,756<br>W \$8,406   | S \$9,648<br>W \$10,455  | S \$11,222<br>W \$12,161 |
| S \$5,867<br>W \$6,357       | S \$8,701<br>W \$9,431   | S \$10,829<br>W \$11,735 | S \$12,797<br>W \$13,867 |
| S \$11,222<br>W \$12,159     | S \$16,733<br>W \$18,136 | S \$20,871<br>W \$22,616 | S \$24,609<br>W \$26,668 |
| S \$14,372<br>W \$15,572     | S \$21,458<br>W \$23,257 | S \$23,824<br>W \$25,816 | S \$31,697<br>W \$34,348 |

EXHIBIT G

BEING ALL OF THAT TRACT 6 AS SHOWN ON BOOK OF MAPS 2006, PAGE 1460,  
WAKE COUNTY REGISTRY.

EXHIBIT H  
(MEMORANDUM OF SATISFACTION)

E-10

STATE OF NORTH CAROLINA           )  
                                                      )  
COUNTY OF WAKE                     )

**OPTION TO PURCHASE**

This Option to Purchase Real Property (“Option”) is granted this 21<sup>st</sup> day of February, 2021 (the “Effective Date”), by and between Helix Ventures, LLC “Owner” or “Grantor”, its successors, heirs, officers, directors, managers, and/or assigns, and the Town of Holly Springs, a North Carolina Municipal Corporation, hereinafter, “Grantee” or “Town.”

**WHEREAS**, the Grantor is the fee simple owner of land described as follows, hereinafter referred to as "Parcels:"

**TRACT 1:**

Property Address: 0 Holly Springs New Hill Road  
Wake Tax ID: 0437898  
PIN: 0639721436  
Legal Description  
Or Deed Reference: An approximate 140 acre tract described as “New Tract A”  
as described in Deed Book 18040, Page 1512, Wake  
County Registry.

## TRACT 2:

Property Address: 11900 Holly Springs New Hill Road  
Wake Tax ID: 0013207  
PIN: 0639633688  
Legal Description  
Or Deed Reference: BEING all of that approximate 12.6 acre tract  
Described in Deed Book 17498, Page 2164,  
Wake County Registry.

**WHEREAS,** The Town and Owner are working jointly to develop an industrial park pursuant to a Development Agreement under the authorization of N.C.G.S. §§158-7.1 and 160A-400.20, to provide for a significant capital investment and job creation to stimulate the local economy of the Town, and the parties have worked cooperatively for several years to this end; and

**WHEREAS**, it is necessary for the parties to enter into this Option in order to induce a certain client of the Town's economic development department ("Company") to locate a large manufacturing facility on the Parcels.

**NOW THEREFORE**, in consideration of the sum of \$10,000.00 (the “Option Money”), the Grantor does hereby agree to bind the Grantor, its successors and/or assigns in title to the Parcels, and hereby does grant to the Town an exclusive right and option to purchase the

portion of the Parcels shaded in blue on Exhibit A attached hereto and labeled as “LAND TO BE CONVEYED TO THE CLIENT BY THE TOWN OF HOLLY SPRINGS ~ 150 ACRES” (for the avoidance of doubt being all of Tracts A and B, less only a portion of Tract A identified on Exhibit A as the retained portion (the “Retained Portion”), together with all improvements thereon and all rights and appurtenances pertaining thereto, including, without limitation, all right, title and interest, if any, of Grantor in and to the right-of-way of any road abutting such property (collectively, the “Property”), under the following terms and conditions:

1. Option Money: The Town shall pay Grantor the Option Money promptly upon full execution of this Option.

2. Purchase Price: If the Town exercises the Option, the purchase price for the Property shall be Twenty One Million Dollars (\$21,000,000) (“Purchase Price”).

3. Option Period: This Option shall exist and continue from the date of the last signature subscribed until July 1, 2021 (“Option End Date”) or until the exercise of the option by the Town, whichever occurs first (the “Option Period”).

4. Exercise: At any time during the Option Period, Town may exercise this Option by giving written notice thereof (the “Notice of Exercise”) signed by the town manager and attested to by its clerk, which exercise is effective upon delivery to the Grantor as provided in Section 13 below. Simultaneously with execution of this Option, Grantor and Grantee have signed the Contract for the Purchase and Sale of Real Property attached hereto as Exhibit B (“Sales Contract”), which shall become effective and enforceable between the parties only upon Town’s delivery of the Notice of Exercise to Grantor.

5. Recombination: As soon as reasonably possible, Grantor will cause the completion and recordation of a subdivision or recombination plat, in form and substance acceptable to Grantee, resulting in the Property being a legally separate parcel of land (the “Plat”).

6. Right of Entry: Grantee, together with its agents, representatives and designees, (“Grantee Parties”) shall have the right, during the Option Period, to access the Property for the purposes listed below, and Grantor agrees to cooperate with the Grantee Parties, in good faith and without material expense to Grantor, to facilitate such site activities including, without limitation, in applying for and/or obtaining any governmental or quasi-governmental permits necessary therefor. Grantee and Grantee Parties may access the Property for such purposes by crossing over Grantor’s property in the general area labeled “Temporary Construction Easement” on Exhibit A.

- a. Inspection and property-related due diligence including, without limitation, environmental and geotechnical studies, land, stormwater and topographical surveys;
- b. Site clearing and site preparation work consistent with a large-scale commercial development project; and

- c. Such other purposes approved by Grantor, such approval not to be unreasonably withheld, conditioned or delayed.

7. Disposition of Option Money: If Grantee exercises the Option and closing occurs, the Option Money shall be applied to the Purchase Price at the closing. If Grantee fails to exercise the Option by the Option End Date, the Option Money shall be retained by Grantor. Without limiting any other rights or remedies set forth in this Option, at law or in equity, in the event that Grantor breaches this Option, including, without limitation, by failing to timely convey the Property to Grantee as required by this Option and the Sales Contract, Grantee shall have the express right to seek specific performance of this Option at Grantor's expense.

8. No Offer: This Option does not constitute an offer to purchase.

9. Memorandum: Simultaneously with execution of this Option, Grantor and Grantee shall execute a Memorandum of Option in substantially the form attached hereto as Exhibit C, which Grantee may record at its expense with the Wake County Register of Deeds.

10. Assignment: Grantee shall have the right to assign this Option to a third party, without Grantor's consent, so long as the third party is a state-level targeted economic development client of the Town's economic development department, or a parent company of such. Grantee shall use commercially reasonable efforts to promptly notify Grantor upon any such assignment.

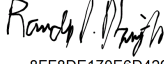
11. Notices: Any notice that may or is required to be given hereunder shall be deemed delivered when actually received or otherwise made to the address for notice set forth below or when delivery is refused. Notices shall be in writing (from the noticing party or its attorney) and may be given (i) by personal delivery, (ii) by commercial overnight courier such as FedEx or UPS, or (iii) by electronic mail transmission in .pdf, provided that an original copy is sent no later than the following day by commercial overnight courier such as FedEx or UPS (unless the recipient thereof, or its counsel, acknowledges receipt of the electronic mailing and waives the requirement for commercial overnight courier as to such transmission), in all cases addressed to the applicable party at the addresses set forth after their respective names below, or at such different addresses as to any party as it shall have theretofore given notice hereunder. For purposes of clarity, those identified as receiving copies need only be provided copies via electronic transmission in .pdf format to satisfy the requirements contained in this Section.

12. Execution in Counterparts. This Option may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Option delivered by facsimile, e-mail or other means of electronic transmission (e.g., DocuSign) shall be deemed to have the same legal effect as delivery of an original signed copy of this Option.

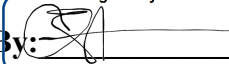
*[Signature Page Follows]*

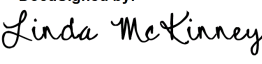
IN WITNESS OF, THIS THE 21<sup>st</sup> DAY OF February, 2021.

**FOR THE GRANTEE/TOWN  
TOWN OF HOLLY SPRINGS, NORTH  
CAROLINA**

DocuSigned by:  
  
By: 8FF8DE170E6D429...  
Randy J. Harrington  
Town Manager

**FOR THE GRANTOR:  
HELIX VENTURES, LLC**

DocuSigned by:  
  
By: CFAE8249FE9547E...  
Cara Hylton  
Printed Name: \_\_\_\_\_  
Title: Authorized Representative

**ATTEST:**  
DocuSigned by:  
  
By: 19AEC5DA5A02484  
Linda McKinney  
Clerk  
[Town Seal]

This instrument has been preaudited  
in the manner required by The Local Government  
Budget and Fiscal Control Act.  
DocuSigned by:  
  
F9F30B8ED80D44D...  
Antwan Morrison  
Finance Officer

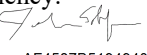
This instrument is approved as to  
form and legal sufficiency.  
DocuSigned by:  
  
AF4587B51949401...  
John P. Schifano  
Town Attorney

EXHIBIT A

Property

The Property consists of the portion of the Parcels shaded in blue below and labeled as “LAND TO BE CONVEYED TO THE CLIENT BY THE TOWN OF HOLLY SPRINGS ~ 150 ACRES,” together with all improvements thereon and all rights and appurtenances pertaining thereto, including, without limitation, all right, title and interest, if any, of Seller in and to the right-of-way of any road abutting such property.

The Property shall be conveyed together with an easement for ingress, egress, and regress, including heavy construction traffic, and for utility purposes, upon, under and across an area [50] feet in width in approximately the area labeled “Temporary Construction Easement” below.

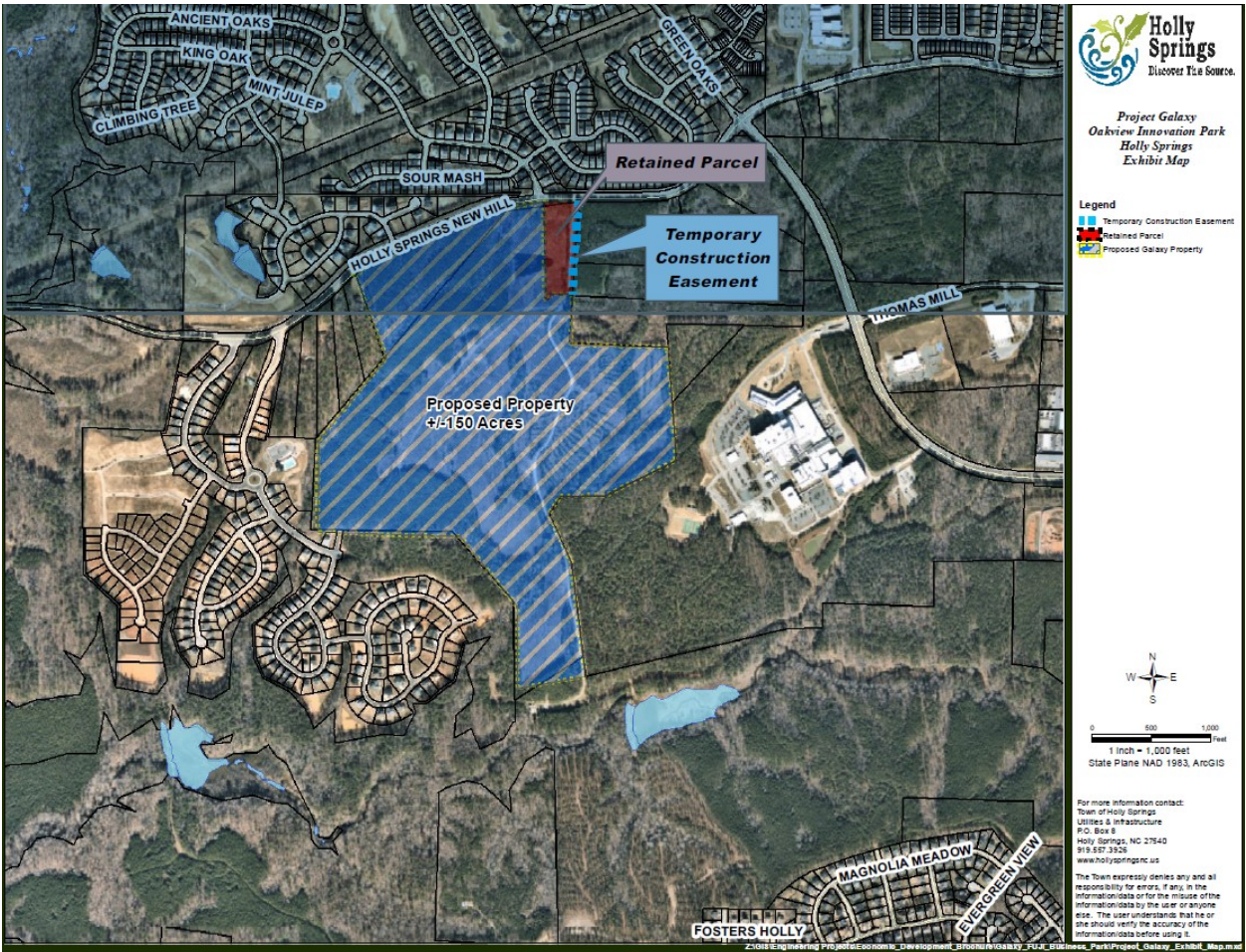


EXHIBIT B

Sales Contract

**[To be inserted.]**

EXHIBIT C

STATE OF NORTH CAROLINA

COUNTY OF WAKE

MEMORANDUM OF OPTION

In consideration of Ten Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, **HELIX VENTURES, LLC** (“Grantor”) does hereby give and grant to **TOWN OF HOLLY SPRINGS**, a North Carolina municipal corporation (“Grantee”), the right and option to purchase the property described on Schedule A attached hereto and by this reference incorporated herein.

The provisions set forth in a written Option to Purchase (the “Option Agreement”) between the parties dated the \_\_\_\_ day of Febraury, 2021, are hereby incorporated in this Memorandum.

This Option shall expire on the date determined pursuant to the Option Agreement, which is not later than December 31, 2021, and the closing of the purchase and sale shall occur no later than February 28, 2022.

**(Signatures are on the following page.)**

WITNESS our hands and seals as of the \_\_\_\_ day of February, 2021.

**GRANTEE:**

TOWN OF HOLLY SPRINGS (SEAL)  
a North Carolina municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Town Manager

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_  
personally appeared before me this day, acknowledging to me that he signed the foregoing  
document.

Date: \_\_\_\_\_, 2021

\_\_\_\_\_  
Notary Printed Name: \_\_\_\_\_

(Official Seal)

My Commission Expires: \_\_\_\_\_

WITNESS our hands and seals as of the \_\_\_\_ day of February, 2021.

**GRANTOR:**

HELIX VENTURES, LLC (SEAL)  
a North Carolina limited liability company

By: \_\_\_\_\_

Name:

Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_  
personally appeared before me this day, acknowledging to me that he signed the foregoing  
document.

Date: \_\_\_\_\_, 2021

\_\_\_\_\_

Notary Printed Name: \_\_\_\_\_

(Official Seal)

My Commission Expires: \_\_\_\_\_

**SCHEDULE A  
TO  
MEMORANDUM OF OPTION  
FROM HELIX VENTURES, LLC  
TO  
TOWN OF HOLLY SPRINGS**



# Holly Springs Town Council

## *Town Council Meeting Agenda Cover Sheet*

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### **Agenda Item#: 8.**

#### **Consent Agenda**

**Title:** Approve the minutes of the March 9, 2021 Workshop Meeting and the March 16, 2021 Business Meeting.

**Strategic Priority Area:** Organizational Excellence

**Staff Resource:** Linda McKinney, Town Clerk

---

#### **Action(s):**

Approve the minutes of the Council's workshop meeting held March 9, 2021 and business meeting held March 16, 2021.

#### **Explanation:**

- Minutes in draft form are attached for the Council's review.
- If there are any corrections, please call the Town Clerk at 919-557-3900 in advance of Tuesday night's meeting so that corrected versions of the draft minutes can be circulated for review before adoption of the Consent Agenda.

#### **Background:**

#### **Funding Source(s):**

N/A

#### **Attachment(s):**

1. 3.9.21 workshop minutes - draft
2. 3.16.21 minutes - draft



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## **MINUTES**

The Holly Springs Town Council met in a workshop session on Tuesday, March 9, 2021 at the Holly Springs Law Enforcement Center and via video conferencing. Mayor Pro Tem Berry presided, calling the meeting to order at 6:00 p.m. A quorum was established as five Councilmembers were present as the meeting opened.

**Council Members Present in the room:** Mayor Pro Tem Dan Berry, Councilmen Peter Villadsen, Aaron Wolff, and Shaun McGrath and Councilwoman Christine Kelly

**Council Members Absent:** Mayor Sears.

**Staff Members Present in the room:** Randy Harrington, Town Manager; Linda McKinney, Town Clerk (recording the minutes); Daniel Weeks, Assistant Town Manager; Scott Chase, Assistant Town Manager; Antwan Morrison, Finance Director; Jeff Wilson, IT Director; John Schifano, Town Attorney; Emmily Tiampati, Development Services; Elizabeth Goodson, Development Services; Corey Petersohn, Finance; Cassie Hack, Director of Communications and Marketing.

### **2. Workshop Overview**

Mr. Harrington gave an overview of the items on the agenda. He recommended that the order of the agenda be modified to facilitate a closed session item. He recommended that item 6, Development Agreement for 1317 N. Main Street, be moved to the end of the agenda. Consensus was to move item 6 to the end of the agenda.

### **3. Comprehensive Transportation Plan (CTP) Update**

Randy Harrington introduced Allison Fluitt, of Kimley-Horn who was present to give an update on the Comprehensive Transportation Plan. Ms. Fluitt said she would give an overview of Phase 1 Engagement, articulate the vision and goals, and discuss the development of recommendations. Along the way there would be interactive opportunities for Council to weigh in on questions.

Ms. Fluitt described the make-up of the steering committee, and shared the names of those serving on this committee. She said that they connected with about 1,000 stakeholders, survey respondents, and public workshop attendees combined. She described the public workshops that were held and the online survey that targeted visions, goal setting, needs and deficiencies. She said they identified areas that were historically underrepresented in the responses, and so the committee is working on targeted outreach to gather information from those communities with a Pop-Up event postcard survey. These results will be displayed separately from the earlier outreach, so as not to compare apples to oranges.

Ms. Fluitt showed how the responses around challenges or concerns with the transportation system, priorities and goals for the CTP to address, and visions for the future. From these they crafted a vision statement of: "The Holly Springs Comprehensive Transportation Plan will provide a safe, efficient, connected, and accessible multimodal transportation network that takes a holistic approach to meet the needs of the Town's residents, businesses, and visitors both now and into the future." She asked if this vision accurately reflected the needs, wants, and desires of the Town. Council indicated that they agreed with this statement.

Ms. Fluitt identified and expanded upon nine goals for the CTP: connected, accessible, multimodal, safe, efficient, adaptive, supporting economic development, integrated, and realistic. She said they were important because all future recommendations need to refer back to these goals, and the project prioritization will ultimately refer back to these goals. She then asked for Council to rank these goals using an online polling platform. They ranked them:

1. connectivity
2. safety
3. efficiency
4. realistic
5. multimodal
6. economic development
7. integrated planning
8. adaptive
9. accessibility

Ms. Fluitt discussed multimodal assessment, and how recommendations would be developed. She said they were starting with the existing conditions report. It will be completed shortly and uploaded to the website. It will be tweaked once Census data becomes available. Then they would inventory and reconcile existing plans such as the previous CTP, Vision Holly Springs, Connect 2045, the CAMPO plan, and others, reconcile those with public input received, and identify additional needs. She spoke about their safety analysis which would be outcome based but also include the perception of safety. Five locations will be identified using the collected data, will be analyzed and then recommendations for both near-term fixes and long-term solutions proposed. Council was asked what other outcomes they would like to see. Councilman McGrath said he would like to see perception translated into reality on the data side so that they can know whether the outcome of a project has actually increased safety.

Ms. Fluitt offered some considerations around transit services, including the Wake County Transit Plan, local and regional destinations, public input and stakeholder feedback. She said outcomes include thinking about points of interest, understanding places of transit propensity, and then putting together recommendations for service areas, mode types, and apps and technology. She outlined the differences in Coverage vs. Productivity of a transit service, and asked Council which they would like to prioritize in the CTP. The responses tended toward higher productivity.

Ms. Fluitt discussed the consideration of intelligent transportation systems and transportation demand management. Things to be considered include volume and crash data, connected and autonomous vehicles, smart/connected infrastructure, emergency service communications, public input, and stakeholder feedback. She said that this would become a recommendation toolkit. Using data, the recommendation toolkit would include near-term, mid-term, and long-term solutions. She asked Council what elements of intelligent transportation systems/transportation demand management should be included in the tool kit for Holly Springs. Councilwoman Kelly said that the Town was not prepared to handle busses in certain areas. They need a pull-out to get out of traffic when they are waiting. And the route might need to go to Wake Tech or other schools. MPT Berry said the Town has been innovative in using fiber to connect traffic signals to the internet. If all the signals were connected we would be able to make corrections more quickly and have real time response to traffic situations. Emergency equipment in other towns has preemptive equipment to change traffic signals as they approach the signal. He would like to know how that increases safety. Councilman McGrath would like to know if there is a way to have electronic signs that give timing for routes, or announce crashes, and give drivers warnings and alternate routes.

Finally, Ms. Fluitt outlined next steps, including publishing a newsletter in March, modifying Traffic Impact Analyses/Traffic Analysis Reports Policy and performing a safety

evaluation in April, and the complete streets network, transit services, and ITS/TDM analysis; and facilitating the third Steering Committee meeting in May.

#### **4. Fiscal Year 2021-22 Strategic Plan Check-in**

Randy Harrington, Town Manager, said staff had developed some suggested edits to the Strategic Plan based on Council's input at the retreat. He reminded Council that "Healthy and Active" is not being addressed until after the Parks and Recreation Master Plan revision is complete. He said Corey Petersohn would present these suggestions to Council. Mr. Petersohn gave a high level look at which initiatives had been completed, some new initiatives that are being considered, and some edits to existing initiatives, all of which were discussed at the retreat.

Discussion centered around the Organizational Excellence goal 3, Expand Community Engagement. There was discussion over whether "website" needed to be specified in addition to generic "media" terminology, how to make sure that social media and the website were interconnected, whether the new initiative to simplify the website covered this, or if Initiative 2.1, "Invest in technology such as 311 systems and the Town's website to improve internal efficiencies and external customer experience," under goal 2, Leveraging technology, covered the desired work on the website. Technology to improve the live streaming was also discussed.

There was discussion around goals that support sustainability with responsible growth. Council wanted to know if reaching for the Silver SolSmart was a goal for this year or next, and whether this would require a financial investment. Scott Chase, Assistant Town Manager, said that the investment would be in staff time, but that there were many opportunities that would not take much work in order to achieve because we are close in many areas.

Mr. Harrington said that he heard concurrence from Council with the adjustments made to meet the conversation from the retreat, with the exception of more staff work being needed on the Organizational Excellence goals around communications and the website.

#### **5. Electronic Meetings Policy**

Linda McKinney, Town Clerk, said that Council adopted the revised Mayor and Council Procedures Manual on December 17, 2019. On April 7, 2020 Council adopted the Electronic Meetings Policy to address the situation the state was in due to the COVID-19 pandemic. On May 4, 2020, the NC General Assembly passed Session Law 2020-3 to address the need for municipalities to hold remote meetings during the pandemic. The was codified as 160A-19.24

Key differences exist between the Procedures Manual, the Town's policy, and the general statute. The Manual is the most restrictive, not counting a member participating remotely for purposes of quorum, and not allowing them to vote. The Policy passed in April allowed members participating remotely to be counted toward a quorum and to vote. However, the policy did not allow for quasi-judicial matters to be heard remotely. The statute enacted by the General Assembly counted members towards a quorum, authorized them to vote, and set up conditions under which quasi-judicial matters could be heard in a remote meeting. Other key differences include the definition of an electronic meeting, which the State defined as even one elected official attending remotely, and the Town policy defined as a quorum participating remotely; and the need for ratification of decisions taken remotely at the next meeting where a quorum was physically present. This was put into the Town policy because there was not clear direction from the legislature at that time.

She said that other considerations Council might have when contemplating revisions are that attendance at meetings is not addressed in the Mayor & Council Procedures Manual. The Electronic Meeting Policy and state statute state that remote attendance for quasi-judicial hearings only be allowed when there is a state of emergency declared. They do not specify any other requirement for attending electronically. Another consideration is legislation proposed by the NC State Bar Association which would alter the provision in 160A-19.24 that requires allowing 24 hours after a remote quasi-judicial hearing for public input to be received in writing.

The Bar Association would like this changed to 24 hours *before* the public hearing. Council may wish to wait to revise their policy until after this legislation passes or fails to pass to avoid the need for another revision.

Ms. McKinney said that possible revisions include revising the Mayor and Council Procedure Manual to change the language around participating remotely to refer to the Electronic Meetings policy. That policy could be revised to align with the General Statute's definition of an electronic meeting, remove the need to ratify decisions taken at a remote meeting, and to align with the General Statutes in allowing quasi-judicial matters to be heard under the conditions spelled out in the statute.

Council discussed whether the statute was specific to the COVID pandemic. Ms. McKinney said the plain language of the statute applies to any state of emergency, hurricanes, pandemics, floods, etc. John Schifano, Town Attorney, concurred. There was discussion about in what situations Council would allow remote participation, how they wanted to use technology and what limits to put on it. There was further discussion about Mayoral declarations of emergency, and whether they triggered the state law on quasi-judicial hearings. Mr. Schifano said at this point only state or federally declared emergencies or disasters triggered 160A-19.24, but the Bar Association is pursuing whether Mayoral declarations should be added. There was discussion around time limits on declarations and Mr. Schifano told Council that they had the power to revoke a state of emergency by motion at any time. He did not recommend putting an artificial time limit on declarations because no one knows what the next emergency will be. He said that this statute only applies to quasi-judicial proceedings, that Council has the authority to hold remote meetings on other matters without a declaration of emergency. Mr. Harrington reminded Council that the current Emergency Ordinance allows the Mayor to declare a state of emergency "in consultation with the Manager, Fire Chief, and Police Chief."

Consensus was for staff to bring a revised Mayor and Town Council Procedures Manual and Electronic Meeting Policy that reflect the state statutes back to Council for approval, and to reserve any further changes pending future discussions.

## **7. Council Landfill Committee**

Randy Harrington, Town Manager, said to help frame the discussion, he put together a document around two potential models for moving forward. One would conclude the work of the landfill committee and formalize the work undertaken by Councilwoman Kelly in the subcommittee. The second model would be to conclude the work of both the committee and the subcommittee, maybe completing the work around the metrics. But the focus would be around this new group of the Managers, solid waste manager, and county leadership. Having gone through the previous work, we can engage better in staff-to-staff level work. These are thoughts for a starting point for your discussion.

There was discussion around how long-term the work of the committee and subcommittee needed to be, how to encourage Wake County and GFL to take responsibility for this work, and how much progress has been made to this point. Council also discussed the timing of getting information to Wake County relative to the budget process, the role of the Council's Legislative Committee, and the desire for Council to present a united front on this issue.

Council's consensus was to follow the second scenario, with amendments, to wit:

Conclude work of both the Landfill Committee and sub-committee

- a. Focus governing body efforts on new Wake BOCC/Town Council leadership working group and related policy efforts
- b. Have current sub-committee complete identification of the top 5-10 metrics most important to measure from our community perspective within 75 days, and then conclude the sub-committee's work; present their findings to Council at the April workshop, if ready; at BOCC/Town Council leadership group meeting request

that Wake County update their metrics to include town recommended metrics; allow Wake County and Town's Solid Waste Manager to track and report on metrics.

- c. Use Town's new Solid Waste Manager as primary engagement point with Wake County landfill staff; Solid Waste Manager's engagement at the staff level based on direction from Town Council to the Town Manager.
- d. Consider selection of two Council representatives to serve on the BOCC/Town Council leadership working group.

## **8. Legal Updates**

John Schifano, Town Attorney, said that the proposed Charter amendment is to correct a potential inconsistency between the Tree Ordinance and the Charter Authority from 2004 to allow for the enactment of a Tree Ordinance. This amendment would expand the authority of the Town to regulate the cutting and clearing of existing trees. One suggested change that was not discussed by the Legislative Action Committee was to reduce the lot size that can be regulated to ½ acre or less, instead of two acres. The remaining changes to remove the perimeter buffer language and the limitation to undeveloped property were discussed in the Legislative Action Committee. The line stating a survey of individual trees would not be required was removed, because one could not know what to save if one doesn't know what trees are there. There is also the addition of a subsection that provides for an enforcement other than delaying development for three years.

There was discussion around the differences between the current provision in the Charter and the Tree Ordinance, the process by which this proposed amendment was reached, and whether or not it changes law. Mr. Schifano said that changing the Charter does not change the Tree Ordinance, and that if the ordinance were ever changed, then it would require all the public input that any other ordinance requires. Mr. Harrington said that the proposed amendment had been sent to Representative Paré and Senator Batch because of the General Assembly's deadlines, but that bills are amended all the time and if Council desires, an amendment could be sent. There was discussion about whether this changes anything in regards to stream buffers, and Mr. Schifano said that it does not. Consensus was to leave the proposal as-is, but in future anything from a committee should come back to Council.

Mr. Schifano gave an update on the Green Oaks Crossing appeal of the Board of Adjustment decision that their multifamily was not allowed as planned. They appealed to Wake County Superior Court and the Town won on a procedural ground, lack of jurisdiction. The Town did not win on the merits, so that is still being litigated. He said his strategy will be to defend the decision of the Board of Adjustment and the Planning Director, against their complaint that Holly Springs doesn't like development. He said there were 5 or 6 more litigation matters to update Council on at a later time.

## **9. Open Discussion:**

MPT Berry asked if Council would move their Open discussion to this point and then take a break. There were no topics for discussion, so Council took a ten-minute break, and resumed with item 6.

## **6. Development Agreement Discussion for 1317 N. Main Street**

Elizabeth Goodson, Development Services, said the purpose of this item was to discuss proposed terms of a development agreement for 1317 N. Main Street, and to receive feedback for the finalization of the agreement that will be on the agenda for the April 6<sup>th</sup> Council meeting for a decision. She said they would start in open session, and then at the end transition to closed session. She showed where the property is located in town and the proposed zoning of

CB: Community Business on the Hwy 55 side, and R-MF-15: Residential on the Main Street side of the property, and gave a quick look at a preliminary layout for the property.

Ms. Goodson outlined several proposals for the Development Agreement. She said the downstream Twelve Oaks Pump Station is nearing capacity. Upgrades are planned for a future year in the CIP, but this will need to be moved sooner. The proposal is for developer to pay Capacity Replacement Fees/System Development Fees at construction drawing approval rather than building permit, to move the pump station project forward. Onsite and offsite improvements identified through a Traffic Impact Analysis include road widening along the frontage, Main St. frontage median, offsite right turn lane at N. Main St. and Sunset Lake/Smithfield Rd., and a future signal at Katha Dr. The proposed term is for the developer to construct frontage and other TIA required improvements, and contribute to two improvements with a fee-in-lieu payment for the N. Main St. median and the Katha Drive signal.

She said that typically plats are not done until infrastructure is in place. But the need to create lots for affordable housing prior to infrastructure construction was identified, and the proposal is to allow initial subdivision plat at a time more appropriate to the development needs. It would be a plat to distinguish the two sections, further plats would occur at a later date. Finally, the UDO provides for a maximum building height of 55 feet, and the proposed term would allow a maximum building height of 90 feet to build the commercial building. Councilwoman Kelly asked if putting this in the agreement would automatically approve this building height. Ms. Goodson said they would still have to go through site plan approval, but having it in the Agreement would allow the larger height. Mr. Harrington, Town Manager, said the topography of the land might make the building look shorter than the 5 stories the developer is asking for. Mr. Schifano, Town Attorney, said if this height allowance is put in the Agreement, it gives them the right to do that. The developer is interested in having a 5-story building. Council does not have to give them that right. Councilman Wolff asked if increased height could be tied to increased buffers. Staff said that the distance from the property line to the building could be built into the Agreement and that distance from the property line can be tied to the height variance. Ms. Goodson said that if Council desired, the Developer can be told that the neighbors need to be spoken to before the height can be approved. There was discussion about the need for landscape buffers both for privacy of neighbors and landfill odor mitigation

Ms. Goodson said that this was the end of her open session presentation.

**10. Closed Session:** The Council entered into closed session, pursuant to N.C.G.S. 143-318.11(a)(4) and (5) to discuss negotiating terms for land acquisition, and some economic development incentives.

**Motion by:** Wolff  
**Second by:** Kelly  
**Vote:** Unanimous

*General Account of Closed Session:*

John Schifano, Town Attorney, gave Council an update on possible terms for land acquisition. Irena Krstanovic, Director of Economic Development, gave Council an update on a possible economic development project.

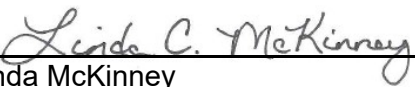
*-End of General Account*

Motion to return to open session was made by Councilman Wolff seconded by Councilman McGrath and passed with a unanimous vote.

**11. Adjournment:**

Motion to adjourn was made by Councilman Wolff seconded by Councilwoman Kelly, and passed with a unanimous vote. The March 9, 2021 workshop meeting of the Holly Springs Town Council was adjourned at 10:54 pm.

Respectfully Submitted on Tuesday, March 16, 2021.

  
\_\_\_\_\_  
Linda McKinney  
Town Clerk



## **MINUTES**

The Holly Springs Town Council met in regular session on Tuesday, March 16, 2021 in person and via video conferencing. Mayor Sears presided, calling the meeting to order at 7 p.m. A quorum was established as the Mayor and five Council members were present in the Chamber as the meeting opened.

**Council Members Present:** Mayor Sears, Mayor Pro Tem Dan Berry, Councilmen Peter Villadsen, Shaun McGrath and Aaron Wolff, and Councilwoman Christine Kelly.

**Council Members absent:** none.

**Staff Members Present in Chambers:** Randy Harrington, *Town Manager*; Daniel Weeks, *Assistant Town Manager*; Scott Chase, *Assistant Town Manager*; John Schifano, *Town Attorney*; Linda McKinney, *Town Clerk* (recording the minutes); Mark Andrews, *Communication and Marketing*; Jeff Wilson, *Director, IT*; Mathew Mutter, *IT*; Kathy White, *Town Deputy Clerk*; LeeAnn Plumer, *Director, Parks and Recreation*; Matt Beard, *Parks and Recreation*; Sean Ryan, *Development Services*; Elizabeth Goodson, *Development Services*; Melissa Sigmund, *Development Services*; Cheryl Caines, *Development Services*; Rachel Jones, *Development Services*; Antwan Morrison, *Finance Director*.

**2. and 3.** The Pledge of Allegiance was recited followed by an invocation by Pastor Jack Garrell of Oasis Church.

**4. Agenda Adjustment:** The March 16, 2021 meeting agenda was adopted with changes, if any, as listed: none.

**Motion:** Berry

**Second:** Wolff

**Vote:** Unanimous

**Public Comment:** Public Comment was requested in writing prior to the meeting. The following number of comments was received and provided to the Council prior to the meeting:

- 1 comment signed by 29 residents of Woodcreek requesting a change in the greenway routing on Parks Recreation and Greenways Master Plan;
- 79 comments in favor of rezoning 1317 N. Main;
- 7 comments opposed to rezoning 1317 N. Main
- 1 comment in favor of affordable housing but requesting answers to questions about the specifics of the development at 1317 N. Main;
- 2 comments opposed to removal of trees at 1317 N. Main;
- 2 comments opposed to the affordable housing part of 1317 N. Main;
- 1 comment in favor of affordable housing at 1317 N. Main but requesting Council take action on the landfill odor and tree cutting;
- 2 comments in favor of the rezoning at Norris Crossing;
- 3 comments opposed to the rezoning at Norris Crossing;
- 4 comments opposed to removing the pond at Norris Crossing;
- 1 comment unhappy with the privacy fence behind Lowe's.

## **Recognitions**

### **5. Oath of Office – Board of Adjustment**

Town Clerk, Linda McKinney, gave the oath of office to Board of Adjustment ETJ member Jeff Jones.

### **6. Arbor Day Proclamation**

Cheryl Caines, Development Services, explained the importance of Arbor Day, and presented the Proclamation that March 19, 2021 be observed as Arbor Day in Holly Springs. She said that the Town will observe Arbor Day on March 20<sup>th</sup>, with a tree planting at Ting Park and by celebrating the opening of the Tree Trail at Bass Lake Park.

### **7. Women's History Month Proclamation**

Councilwoman Christine Kelly thanked the Mayor for the proclamation, and read the proclamation that March be observed as Women's History Month in Holly Springs.

## **Public Hearings**

### **8. Holly Springs Business Park Tract E**

Cheryl Caines, Development Services, said the purpose of this agenda item is for Council to consider the request for a Special Exception Use, Development Plan and Waivers for Holly Springs Business Park, Tract E. The applicant is requesting this because a laboratory is a Special Exception Use in the Holly Springs Business Park. She said that the site is designated Business and Industrial on the Land Use and Character Plan, and is currently zoned Planned Unit Development (PUD). The applicant is planning to build five buildings, two 2-story buildings for lab use, and three 1-story flex-space buildings. They are requesting three Waivers to reduce loading space dimensions for the two lab buildings, for alternate compliance for the architectural standards to provide primary features on the north façade of Building 5 instead of the east façade, and to allow an additional 9 parking spaces above the maximum required spaces.

Rachel Jones, Development Services, said that the Traffic Assessment Report (TAR) studied four intersections. New site access would be two right-in, right-out access points at the east and west edges of the property, and a full access point in the center. The Traffic Impact Analysis (TIA) level was not met, so a TAR was conducted. There will be a left turn lane into the site at site drive 2, directly across from Seqirus. She said the site would connect to potable water and sewer at existing lines, and a reclaimed water main would be extended to the property line for potential future use. All hydraulic water models have been completed for potable as well as reclaimed water.

Rick Madoni, Planning Board, said the board recommended approval with a vote of 8-0-1.

Mayor Sears opened the public hearing.

Josh Dunbar, 120 Cliffcreek Dr., Holly Springs, introduced the applicant's team. He then said they planned to bring five buildings featuring 90,000 square feet of commercial and laboratory space to the Holly Springs Business Park. He showed a drone's-eye view of the property and gave an overview of a potential construction schedule, with groundbreaking in May of 2021, and the first building completed in January 2022. He showed elevations of the two types of buildings and said that the owner investment would be \$17,000,000. He said about 240 jobs would be created, with combined salaries of \$15,900,000 and an annual estimated tax revenue of \$160,000, \$67,000 of which would go to Holly Springs. He said the project did not require a TIA, but a TAR was completed and the project will not negatively impact any studied intersection. The developer will provide a left turn lane on Green Oaks Parkway, at the Seqirus entrance. He said he has tenants already committed including Skie Properties, JLS Homes, and Meg's Smile, and has had significant interest expressed by an existing life sciences company and an existing laboratory company. He

thanked the Economic Development team for assisting them in bringing tenants to their attention. He said that the area will be called AMS Exchange 55.

MPT Berry asked what the extra parking spaces would do for the impervious area. Mr. Dunbar said that the decision was based on layout of the space and lab use. The UDO did not define the parking rate for a lab use and they want to accommodate any tenant who would come in. Councilman McGrath asked if delivery trucks were addressed in the TIA for making turns onto 55, and having to make the U-turns. Mr. Dunbar said it was addressed, and that their hope was that the full access drive would encourage truck traffic onto 55 and off of Green Oaks.

Councilwoman Kelly said that Council has been talking about this project for a long time. She wanted the public to know that was why Council was not asking a lot of questions. This is a difficult location to develop, and it will bring jobs to Holly Springs.

There being no further testimony, Mayor Sears closed the public hearing.

**Action 1:** Motion to adopt Resolution 21-08 to make and accept the Findings of Fact for consideration of and to approve SEU and Waivers.

**Motion by:** Wolff

**Second by:** Kelly

**Vote:** unanimous

**Action 2:** Motion to approve Holly Springs Business Park Tract E Development Plan with the conditions stated in the agenda packet.

**Motion by:** Berry

**Second by:** McGrath

**Vote:** unanimous

## **9. Voluntary Annexation A20-09, Regency Holly Springs**

Melissa Sigmund, Development Services, said that the petitioner is requesting annexation prior to development. The property, owned by ESC Ventures, LLC is about 119 acres and is located on the south side of Holly Springs New Hill Road next to Trinity Creek.

Mayor Sears opened the public hearing.

There being no input, Mayor Sears closed the public hearing.

**Action:** Motion to adopt Annexation Ordinance A20-09, annexing 119+/- acres owned by ESC Ventures LLC.

**Motion by:** Villadsen

**Second by:** Wolff

**Vote:** unanimous

## **10. Regency Holly Springs Development Options Subdivision 20-DO-01**

Cheryl Caines, Development Services, said that the purpose of this agenda item was to consider a Development Options Plan for Regency Holly Springs Subdivision on the land that was just annexed. She said the land is currently designated Mixed Residential Neighborhood on the Land Use and Character Plan and was rezoned in early 2020 to R-10 Residential, Conditional Use. She said the Development Options provide flexibility on Development Standards for things like lot size and lot width, for a mix of active and passive open space, and for design features for homes.

Rachel Jones, Development Services, said that a Traffic Impact Analysis (TIA) was completed. It studied 5 intersections in the area on GB Alford, Old Holly Springs Apex Rd., and Holly Springs New Hill Rd. Site access would be off of Holly Springs New Hill Road. There will be a fee-in-lieu toward a future traffic signal at Green Oaks Parkway and Holly Springs New Hill Road, and toward the realignment of the intersection at Old Holly Springs Apex Road and Holly Springs New Hill Road. They will be widening the road and constructing a sidewalk across the Holly Springs New Hill Rd. frontage and a vehicular and pedestrian connection to Trinity Creek. There will be an

approximate 300-foot gap between this sidewalk and that of Trinity Creek, due to the land between them being owned by Duke Energy.

Ms. Jones showed the location of the water lines, both potable and reclaimed, and where sewer lines, and pump station would be. The site would connect to existing water mains, and a proposed pump station. All engineering studies have been completed and finalized for the project.

Rick Madoni, Planning Board, said that they recommended approval with a vote of 8-0-1. They made a suggestion to have a crosswalk to Addison Pond.

Mayor Sears opened the public hearing.

Tom Spaulding, for The Spaulding Group, 1611 Jones Franklin Rd., Raleigh said this project would have two sizes of single-family homes, age restricted to 55 or older. He said there would be sidewalks on both sides, amenities would include benches, walking trails, a community clubhouse, gazebo and fire pit, and 37 acres of open space, which is 25 more acres than are required. In additions, there would be 2,800 linear feet of greenway trails. They are committing to age restricted housing and keeping the traffic down. He said there would be pocket parks within the development.

He said the developer would pay a fee-in-lieu of \$87,500 for a future traffic signal at Green Oaks Pkwy. and New Hill Rd. and \$157,500 for the realignment of Old Apex-Holly Springs Rd. at New Hill Rd.

MPT Berry asked about the sidewalk gap along Holly Springs New Hill Rd. Mr. Spaulding said that he would commit to putting in that sidewalk. There was discussion about what was needed to get the right of way easement for the Duke land. Town Attorney, John Schifano, said a Developer Agreement which would hold the Town harmless on obtaining the right of way was probably the best approach. This agreement would come back before Council. Mr. Spaulding said that worked for them as long as they can continue to move forward.

There being no further input, Mayor Sears closed the public hearing.

**Action 1:** Motion to adopt Resolution 21-09 to make and accept the Findings of Fact for consideration of and approve the Waiver.

**Motion by:** Kelly

**Second by:** McGrath

**Vote:** unanimous

**Action 2:** Motion to approve Development Options Plan 20-DO-01 for Regency Holly Springs with the conditions stated in the agenda packet, and an additional condition for the Town Attorney to negotiate a Developer Agreement for the inclusion of a 300-foot sidewalk to connect this development with Trinity Creek.

**Motion by:** Berry

**Second by:** McGrath

**Vote:** unanimous

## **11. Parks, Recreation, and Greenways Master Plan 21-CPA-01**

Matt Beard, Parks and Recreation, said staff had been working on this plan for over a year and he was happy to be here presenting it to Council tonight. The purpose is to conduct a public hearing on land use changes for the updated comprehensive greenways map and the park land search area map, and to consider adoption of the updated Parks, Recreation and Greenways Master Plan.

Mayor Sears opened the public hearing.

Chris Cook, 2414 Reunion Meadow Lane, said he was here as a member of the Parks and Recreation Advisory Committee and a resident, to show his support for the adoption of this Plan. He said there was robust public engagement, to ensure fair and equal representation. The guiding

principles of the plan align with the Town's strategic goals. He urged Council to adopt the plan tonight.

Matt Beard, Parks and Recreation, said that this plan was presented to Council last month at their workshop and only minor changes have been made since then. He introduced the consultant Ms. Cotter, who was present via Zoom, and Shweta Nanekar who was in the Chamber. Ms. Cotter outlined the public engagement that went in to making this plan. She then outlined findings based on the guiding principles of Balanced Growth, Equity and Access, Health, Connectivity, Financial Sustainability, Environmental Awareness, and Excellence.

Ms. Cotter outlined some key recommendations including acquiring additional parkland, developing park land currently owned by the Town and constructing additional indoor recreation space by 2030; increasing the percentage of residents within a ten-minute walk of a park by locating new parkland judiciously; planning, designing, and programming to improve health outcomes related to physical fitness, mental health, social cohesion, and healthy eating; offering a connected recreation system, regionally, locally, and nationally; establishing a financially sustainable department; committing to protection of natural resources; and seeking excellence in all they do, including seeking CAPRA accreditation .

Ms. Cotter also offered some recommendations for existing facilities including renovating aging amenities, internal park signage, expanding and reconfiguring indoor facilities; greenway trailheads and connections; and a dedicated space for the Farmers Market.

Councilwoman Kelly said this plan is high level, but Council has been hearing from some neighborhoods about the greenway plans. She asked staff to comment on that. Mr. Beard said the lines on this plan are purposely not focused. They do not represent the exact route, because feasibility studies have not been conducted. They look for the ability to tailor these routes to the development situation on a site, and look for opportunities for connections. This is a guiding document, rather than a specific plan. Councilwoman Kelly asked if they were already speaking to these neighborhoods. Mr. Beard said that they have been talking to these groups to walk through their specific concerns with the routing of the Arbor Creek/Middle Creek greenway. Councilman McGrath asked if there was a resource online so that residents can know when and where they can get engaged at the appropriate time. Mr. Beard said the Parks and Recreation Projects page is a good place to start. Staff will work to do a better job at putting dates on there for a resource.

MPT Berry asked if the Middle Creek project would come back to Council for design review, to discuss routing and address these concerns. Mr. Beard said it was currently at 90% with the idea of going to the bond market in the next couple of months. While that means the Town is funding the project, there is certainly time for minor revisions. MPT Berry made the formal request to bring it to Council sooner rather than later. There was consensus among Council members to revisit this connection. Randy Harrington, Town Manager, said that on April 6<sup>th</sup> the Parks and Recreation bond and transportation bond was due to come before Council. He suggested that may be the best time to address this. Councilman Villadsen said he wanted it to be clear to residents, that adopting this plan does not preclude those kinds of changes going forward. To reiterate Mr. Cook's statement, this is a great plan that much work went into, but it does not preclude making any changes.

Rick Madoni, Planning Board, said they recommended approval with a vote of 8-0-1.

There being no further input, Mayor Sears closed the public hearing.

**Action:** Motion to approve Resolution 21-10, Comprehensive Plan Amendment 21-CPA-01 to replace the existing Section 3: Beyond the Green Plan with Section 3: Parks, Recreation and Greenway Master Plan, subject to final edits to layout and design of the document.

**Motion by:** Villadsen

**Second by:** Kelly

**Vote:** unanimous

## **12. 1317 N. Main Street (Sportsmanship Way) Rezoning 20-REZ-03**

Sean Ryan, Development Services, said this is a request for rezoning. The action is to open the public hearing, receive public comment, and continue the hearing to the April 6<sup>th</sup> meeting. The parcel is located along Sportsmanship Way between Hwy 55 and Main St. It is currently zoned LB Local Business Limited, and designated Mixed-Use Center on the Future Land Use Map. The request is to change the zoning to CB CU: Community Business Conditional Use for the portion along Hwy 55, and R-MF-15 CU: High-Density Multifamily Residential Conditional Use for the Main Street side of the property. This is a conditional use rezoning and the applicant has offered a list of conditions that go with this project.

Rachel Jones, Development Services, said that a Traffic Impact Analysis (TIA) was done which studied five intersections, and was reviewed by the Town and NCDOT. The developer would construct a northbound right turn lane at Sunset Lake Road, required by NCDOT, and will widen Main Street to ½ the ultimate cross section with a fee-in-lieu of constructing a median. There would be an additional 20-foot right-of-way dedication on Hwy 55, and an expected fee-in-lieu of a future traffic signal at Katha Drive. The site will allow left turns into the site, but not out of the site from Main Street. The existing Trellis Pointe will remain as is with full access for those residents.

She said the site has connections to public water and sewer, and a downstream sewer and pump station evaluation was completed with the rezoning request.

Rick Madoni, Planning Board, said the Planning Board recommended approval with a vote of 6-2-1 and passed an additional resolution endorsing the goals of achieving clean energy by 2050 and requesting that Council look at Wake County's resolution and how it would be presented at this site, with a vote of 8-0-1. They discussed concerns around traffic, and a possible bus stop. They wanted to clarify that MyComputerCareer was committed to moving to this site, and what other configurations would be possible with this rezoning.

Mayor Sears opened the public hearing.

Laura Holloman of McAdams, spoke for the petitioner. She introduced the team present in the Chamber. Ms. Holloman said that they are requesting rezoning of the part of the parcel closest to 55 as CB: Community Business, and the section closest to Main Street for R-MF-15 Residential. She said the residential portion was set up to meet the tremendous need for affordable housing in Wake County.

Michael Lattner, Cline Design Associates 125 N. Harrington St., Raleigh, landscape architect showed a preliminary site plan outlining where offices, retail, and a Performing Arts Center would be on the commercial side of the site, and where apartments would be located. He indicated the buffers, sidewalks, and greenway connections, as well as sewer, natural gas easements and setbacks. He said that there would be many buffers included in the development because of these. He said the buildings would be turned inward for a more pedestrian friendly environment. He said there is a 30-foot street scape buffer along N. Main, which has an additional 50-foot stream buffer, so the buffer will be about 80-feet total. An existing greenway stops just short of the property and they will continue that and connect to the tunnel under the highway, and connect to the east to the interior.

Tucker Shade with Savills spoke on behalf of MyComputerCareer. He said they were founded in 2008 and moved shortly after to Holly Springs. He spoke about the growth of MyComputerCareer and how they need a larger space, and wanted to remain in Holly Springs.

Frank Baird, with Capital Associates spoke as the office developer. He said that a 4-story 80,000 square foot office building would serve as the headquarters for MyComputerCareer. As well, there is a proposed 15,000 square foot single story office or retail building, and a proposed 1,000 seat Performing Arts Theater for the use of the community and the surrounding region.

Natalie Britt, VP Real Estate Development, DHIC, showed how the 4-story building would be on a low area of the lot with a 50-foot undisturbed buffer between it and Highway 55, and a 30-foot buffer planted between the building and the existing adjacent residential lot. She said there would be 124 apartments comprised of 1, 2, and 3-bedroom units in 3 to 3.5 story buildings with surface parking. There would be a playground, community building, outdoor covered picnic area with a grill

and other amenities. She said that DHIC was a nonprofit organization founded in 1974 to expand homeownership opportunities, provide high-quality affordable rental housing, and enhance the economic well-being of residents. As a local organization, they care about the appearance of their projects and have won awards for them. She showed examples of DHIC multi-family communities in other municipalities nearby. She said DHIC's rental communities serve individuals and families who earn 60% of the area median income (AMI) or less. This will be in perpetuity. Typical people who live in their projects include people who work in food service and prep, childcare, retail sales, health care and construction. In family properties, their average income is \$43,000 per year. Senior citizens are not excluded and many live in their properties.

Rynal Stephenson of Ramey Kemp said a Traffic Impact Analysis (TIA) was conducted and resulted in the following actions planned by the developer: right-of-way (ROW) dedication along N. Main Street frontage, construction of half of the Comprehensive Transportation Plan's recommended 4-lane cross-section, and a fee-in-lieu of median construction. There would be ROW dedication along Hwy 55, and they would coordinate with NCDOT on improvements and/or funding for the N. Main St. and Old Smithfield Rd./Sunset Lake Rd. intersection. They would pay a fee-in-lieu towards the future improvements at Katha Drive, and would restrict site access to left-in/right-out. He said that Ms. Jones did a good job of giving the details so he wouldn't read every detail. But he wanted to point out that there is access from Main St. and Sportsmanship Way which helps to disperse the traffic and keep the residential and commercial traffic separate.

Laura Holloman spoke towards the proposed zoning conditions for the project. 1. Encouraging a walkable environment by committing to a crosswalk with beacon signal along the key intersection. They will use off street parking utilizing shared parking between MyComputerCareer and the performing arts center. Placemaking will be emphasized. They want to create areas where people can hang out. They commit to their open space areas having at least one of the following: hardscape areas, outdoor seating areas, public art, playgrounds, or pergola/gazebos. They will define the entrance way with street trees to the greatest extent possible and will have planters positioned to identify pedestrian entrances. They are encouraging green infrastructure with a minimum of one the following: permeable pavement parking spaces or pervious pavers in pedestrian areas; rainwater harvesting; bioswales; and reclaimed water for commercial irrigation purposes whenever feasible. They have agreed to prohibit vehicular oriented business uses, kennels with outdoor runs, drive-through restaurants, neighborhood recycling collection point; electricity relay station etc. The final thing emphasized was building placement so that the emphasis is on buildings and not the parking lot. No more than one row of parking will be placed between the building and the primary street or driveway. She said they have held neighborhood meetings and conducted other community engagement. They have met with Arbor Creek and Trellis Pointe residents. They have had follow up conversations with Easton Acres and Bridgewater residents and will continue to work with them to gather input and be as transparent as possible.

Frances Perkins, 109 Fountain Springs in the Arbor Creek subdivision, said she is an affiliate of OneWake. One of the missions this year for OneWake is affordable housing throughout Wake County. They are looking at Holly Springs, Apex, Fuquay-Varina, Knightdale, and Wake Forest, and going throughout the county to let elected officials know that affordable housing is needed in Wake County. Gentrification has moved many individuals away from Holly Springs. She asked that representatives and those doing this work, keep the passion. She said this is an opportunity for Holly Springs to take the lead and to do something that is truly needed. This is how we lookout for our people. In 2019 in order to be comfortable in Holly Springs you needed to make \$103,000 per year. This impacts a lot of people. She said that there are concerns, and asked decision makers to listen to what people say. She asked what is going to be done about the landfill odor, because that is not what Holly Springs represents. But she said that this is a great opportunity for us as a Town, to be the first. She is for the rezoning, and believes in Holly Springs. But would like citizen's concerns to be evaluated, researched and resolved.

Amy Onuska, representing MyComputerCareer, 342 Raleigh Street. She recognized the MyComputerCareer team that was in the Chamber, each of whom is a resident of Holly Springs. She said this was a small representation of those who live and work in Holly Springs. She said that MyComputerCareer is a computer training school, helping people get IT certification and hands-on

skills. They offer them career services to get jobs, and life-time support to help them build their careers in IT. She said they are focused on individual students and have exceptional graduation rates. She said they started in 2008 with one campus in Raleigh. They looked around as they were looking to expand and realized they mostly lived in Holly Springs and decided to move their headquarters here. They have continued to grow and expand even during the pandemic. They recently opened their first campus on a military base where they help people who are transitioning out of the service. In short, they love it in Holly Springs. They are proud of the work they do, and appreciate deeply this opportunity, and Council's consideration of this project.

Claudia Cofield, 5636 Easton St., in Easton Acres, a community near the proposed site. She said that while this team had reached out to her community, other builders and projects have not reached out to the African-American community. As a lifetime resident of Holly Springs, she wants to make sure that the African-American community is not neglected in this project. She went on to say that some of her neighbors are not receiving the information about projects, and notices of public hearings and get left out of the process. She mentioned specifically that the Parks and Recreation Master Plan did not mention the African American community being affected by the plan. Her community was contacted regarding the Comprehensive Transportation Plan, but she said that they often seem invisible. She raised the concern that some residents are not receiving information from the Town, and are not notified when there are openings on Boards.

David Blair said he lives at 421 Gooseberry, across the street from the proposed site. He said the proposal is a "good read" but he has multiple concerns. He regards Sportsmanship Way as a feeder to the parking lot of Ting Park. He doesn't see it as a road. He was there during the building of Ting Park. Unless this project has direct access to Hwy 55 the load it is going to put on Main and Sportsmanship is going to be immense. He said that there are times when Ting Park's parking is full. Where will cars go if the theater has something going on at the same time as the park? He also mentioned the malodor of the landfill and how the pine trees are acting as a deodorizing agent, and removing them will increase the odor. He is concerned that these residents will feel even more downtrodden because of the smell and is concerned about the optics of putting affordable housing in this location.

Paul Manana 5053 Sunset Fairways Dr. spoke in support of the project. His family has lived in Holly Springs for 25 years and raised their children here. This is his home. He is involved in commercial real estate as a professional and has experience with this project team. He said the Town could not be in better hands. He hopes the idea of MyComputerCareer seeking to have its headquarters in our town is not lost on the Council. But he is particularly proud of the affordable housing component. Ham Womble told him his biggest concern was that Holly Springs would get too expensive for people to live here. We need more housing options for people of limited incomes. He is former board member of DHIC and Holly Springs is fortunate to have them as a partner. They are highly skilled and dedicated to this cause. They develop for their own portfolio, not to sell. DHIC stays involved in the communities for the long run. They make good neighbors because they care as much about maintaining projects as they do opening new projects. This will make sure families and seniors have a safe, affordable place to call home in Holly Springs. He asked for approval.

Cecilia McCullers, 5629 Easton Street asked if the questions she had emailed to Council could be answered. Councilwoman Kelly said that they would follow up and Ms. Holloman would meet with those with concerns to answer their questions, since this item is being continued to the April 6<sup>th</sup> meeting.

Councilman Wolff asked the Alicia Arnold, Wake County Housing Department, to explain why this piece of land is proposed for this purpose. If this land isn't developed, is there any other land Wake County owns in Holly Springs that would be appropriate for affordable housing. Ms. Arnold said that this was one of 10 properties in the county, and the only one in Holly Springs, that was feasible and met the conditions set by the Board of Commissioners for affordable housing.

**Action:** Motion to continue public hearing to the April 6, 2021 Council meeting.

**Motion by:** Wolff

**Second by:** Kelly

**Vote:** unanimous

### **13. Norris Crossing Rezoning 20-REZ-04**

Melissa Sigmund, Development Services, said that this was a request for rezoning from R-30 to R-8 CU. She said the land is off Avent Ferry Road, between the Mills at Avent Ferry and Stonemont subdivisions. The surrounding properties are zoned R-10 residential. The existing zoning is R-30 and it is designated as Residential Neighborhood on the Future Land Use Map. A key condition is that it is a single-family home neighborhood, and there are a range of housing sizes available.

She said that the applicant has proposed a variety of conditions: to agree to standard fees, use the Development Options; limit uses to single-family and accessory dwelling units (ADU), but no Townhomes; limit density to 3.25 units per acre with a maximum of 208 homes. They are requesting lot width variations, and will accept architectural standards including limiting vinyl, having decorative garage doors, and allowing ADUs in exchange. They will pay a fee-in-lieu towards a traffic signal at Holly Meadow Drive.

Rachel Jones, Development Services, said that a TIA was conducted which studied four intersections. The developer would be required to widen the road to one-half the ultimate cross section along the frontage of the property. They will pay a fee-in-lieu towards the traffic signal, as Ms. Sigmund mentioned. There is a connection to public water and sewer, and a downstream sewer and pump station evaluation was completed with the rezoning request.

Rick Madoni, Planning Board, said that Planning Board recommended approval 6-2-1. The two denials were based on traffic concerns and timing to alleviate the impact. He said they had questions about accessory dwellings, and the timing of the project, as well as road improvements in the area.

Mayor Sears opened the public hearing.

Jeff Rhodes of Peak Engineering and Design spoke for the applicant. He introduced Kurt Burger, the applicant, and Nate Bouquin, traffic engineer with Ramey Kemp. He said Steven Macon was in the Chamber. He said the property is made up of five separate parcels, most of which were in the Macon family for generations.

Mr. Rhodes said this is a natural development with connections with The Mills and Stonemont that are either in existence or proposed. He said they were restricting the development to single-family homes. He reiterated the restricted number of units, and they have committed to staying under 200 units, which is well below R-8. He reiterated the zoning conditions mentioned by Ms. Sigmund and said that lot widths would range from 65' (minimum of 15% total lot count) 55-65' (30% minimum of total lot count) and 45-55' (10% of lot count.) He said the smaller lots would be in the center of the subdivision, and the larger lot sizes next to Mills and Stonemont, to match those neighborhoods. He said that the HOA covenants shall not restrict the construction of any accessory dwelling unit, and garage doors must be decorative. They agreed to a 50-foot buffer across the frontage which will match Stonemont. They are providing a side path along Avent Ferry to match Stonemont. They looked into historic preservation, but there are no historic houses on the property. He spoke about the schools that would serve this neighborhood, and said that with Buckhorn Duncan Road, people could travel through the subdivisions and out without ever driving on Avent Ferry Road.

Nate Bouquin, Ramey Kemp and Associates, said that the Traffic Impact Analysis (TIA) was reviewed and the developer has agreed to construct turn lanes at the site driveway, and pay a fee-in-lieu for the future signal at Holly Meadow Dr. This is over and above the requirements, since they were not directly impacting that intersection. This project will be the first section of Avent Ferry to have development on both sides of the road, providing the full ultimate roadway section. He also spoke of the timeline for future Avent Ferry road widening and signal projects. He showed different directions that drivers from this development could take to get to US 1 without using 55 and what the peak hours commute time would be for taking New Hill-Holleman Rd.

He said there would be multiple points of egress to the south, north and east with direct connections to routes serving less populated areas of the region for emergency response.

Mr. Rhodes said they were asking for R-8 zoning because it would allow them to request the alternate lot size, but they will be developing to the R-10 standard.

Councilman Wolff asked where Mr. Macon's access would be to his unannexed land. Mr. Rhodes said that it was up to Mr. Macon, but there were several opportunities for him to access, including keeping his current gravel driveway and connecting to Devon Fields Drive.

Council discussed concerns with creating a "donut hole" of unannexed land in the middle of Town when they are actively trying to reduce these to reduce service interruptions and confusion. They discussed the problem of adding more traffic to Avent Ferry Road when NCDOT has said that Phase 2 of the widening, which only goes to Cass Holt Road, will be delayed until 2029. Further, the developer's statement about traffic going through the other subdivisions instead of out to Avent Ferry Road did not alleviate their concerns, because subdivision streets are not meant to be through streets. Questions were raised about whether existing residents at The Mills or Stonemont had voiced opinions about having traffic through their neighborhoods, and the developer said that people spoke about buffers between their property and the new development, with no comments on traffic.

There were concerns that one of the parcels, the one owned by 2 MM LLC, would not develop at the same time as the rest. Council said that there was no support expressed to them for this plan except from those who would benefit financially from it, and that there was a lot of concern expressed by other residents. Council discussed concerns with the transparency of the project, as no site plan was shared with the public, and when it was shared with Council they were asked not to share it publicly. Mr. Rhodes said he did not want people to get wrapped up in the sketch instead of considering the zoning. Asked about the pond, Mr. Rhodes said that the pond would be drained.

There being no further input, Mayor Sears closed the public hearing.

There were more questions about the unannexed "donut hole" area, and traffic problems on Avent Ferry Road. Mr. Rhodes asked if they could change their request from R-8 to R-10 tonight, or request a delay to work with staff to see what their options would be under R-10. There was discussion about whether a month was long enough to solve the infrastructure and other problems. Mr. Rhodes said he would like more time to discuss this with the property owners and staff to try to figure out whether they could address Council's concerns. He would like time to evaluate other options. Council raised the concerns about traffic and infrastructure, conserving the pond, not creating a donut hole, and the R-8 as opposed to R-10 designation.

Mayor Sears asked Council whether they wanted to table this, or deny it.

**Action:** Motion to table Norris Crossing Rezoning.

**Motion by:** Villadsen

**Second by:** Wolff

**Vote:** Yea: Kelly, Wolff, McGrath, Villadsen

Nay: Berry

## Consent Agenda

The Council passed a motion to approve all items on the Consent Agenda. The motion carried following a motion by Councilman Berry, a second by Councilman McGrath and a unanimous vote. The following actions were affected:

14. Minutes – The Council approved minutes of the Council business meeting held March 2, 2021.

15. Monthly Budget Amendment Report - The Council approved a budget amendment to increase Development Services review fees budget by \$10,000, and received the monthly Budget Amendment Report.

*Copies of the budget amendment and the budget amendment report are attached to these minutes.*

16. Specimen Tree Removal Valencia (Steeplechase) Subdivision – The Council accepted the report of the arborist regarding the 35" DBH specimen tree located in Valencia (Steeplechase) subdivision, approved the removal of the specimen tree, and authorized the replanting of trees in accordance with the proposed tree replacement plan.

17. Twelve Oaks Pump Station Upgrade Phase 2 Design – The Council approved a contract with Diehl & Phillips for the design of upgrades needed at the Twelve Oaks Pump Station.

18. Regency Subdivision Preliminary Pump Station Site Plan – The Council approved a preliminary Pump Station Site Plan as submitted with the Regency Subdivision development.

19. Municipal Concurrence for Speed Limit on Honeycutt Road – The Council adopted Ordinance 21-13 setting speed limits on Honeycutt Road between Cass Holt Road and Piney Grove Wilbon Road.

## **OTHER BUSINESS**

Mayor Sears said there had been 2,331 cases of COVID-19 in our zip code, and 5 deaths. There have been 80,984 cases in Wake County, and 572 deaths.

Councilwoman Kelly said that she and Councilman McGrath participated with Randy Harrington and other staff with Wake County Manager, Commissioners and senior staff around the landfill. They are now hearing us, and we are having monthly meetings. If we look at the numbers Arbor Creek has the most complaints, followed by 12 Oaks, but it doesn't stop there. It is hurting our community. We finally have momentum with Wake County and meeting monthly is quite the commitment. We have attention and open dialog and she thinks we will be able to make some progress.

Councilman Wolff said he received his COVID vaccine through the PNC site. His side effects were mild and gone within 24 hours, and he recommends that everyone gets into the system and gets their shot when they can. Second, the one good thing out of the last discussion was that he and MPT Berry had discussions with the Wake County School Board. Ms. Mahaffey shared the statement of impact that gets shared with developers, and it is nice to ask the developer for that, so it would be helpful to get that included into our packets moving forward on new development, if Council believes it would be useful.

Councilman McGrath agrees that is useful, but worries that people will think Council has an influence on Wake County Public Schools and he doesn't want to cloud that understanding. MPT Berry said there is a component that we already incorporate for the development team to fill out how many houses are expected. From this the Wake County Public Schools can then provide information on whether they will have enough capacity. It's something other municipalities are doing. We can see – not that we have influence, just to have the information.

Councilman McGrath said we have gotten a lot of engagement with this agenda, and he is happy to continue to receive that feedback from residents. It helps Council to make accountable decisions when we get that feedback.

Councilman Villadsen said he echoed Councilman Wolff's encouragement to get vaccinated. He got his first vaccine, he had no side effects, and he encourages everyone who is eligible to go get vaccinated.

## **MANAGER'S REPORT**

Randy Harrington, Town Manager, said he had 4 items.

1. He was excited to announce that the Government Finance Officers Association has awarded Holly Springs our second consecutive Budget Presentation Award. He recognized Corey Petersohn

and Antwan Morrison. The percentage of local governments that receive it is in the single digits. He outlined the criteria that were judged, and congratulated the Finance Department.

2. The Push In celebration at Fire Station One this evening for the new engine was a great event. He thanked Chief Smith. There is another engine on the way, and hopefully we can have another celebration for that one.

3. Arbor Day – There are two events coming up. At 9:30 am at Ting there will be a tree planting. At 11:00 a trail walk around Bass Lake.

4. Referring back to the discussion around the Arbor Creek/Middle Creek Greenway, he said he was reminded that the bids for the greenway project are going out the end of March, prior to the April 6<sup>th</sup> meeting. When we go to Local Government Commission (LGC) we are required to have bids in hand to show that we are going to spend money on what we say we will. There are possible options. When you had your workshop in September there was an acknowledgement that there was a need for future connections and that we should continue to look for other options. Secondly, we haven't gone back to the consultant for fine tuning that might make some difference in responding to the feedback. There might be three potential options to move forward.

1. Asses the bids and if we get good pricing look to add connection particularly on the Sunset North side;

2. Asses the bids and if no capacity, look to Parks & Recreation reserves to see if funds could be reallocated or identified;

3. Continue to move forward and explore the opportunity to do change orders during the project where a connection could be added. The timeline is what he wanted Council to be aware of, but if it is Council's will they can still move forward and continue to consider other options.

After discussion of the pros and cons, consensus was to proceed with the current plans with the LGC and the bid timeline, but to explore the connection options further and see if there could be a change order, and bring it back to Council.

**CLOSED SESSION:** The Council entered into closed session, pursuant to N.C.G.S. 143-318.11(a)(4) to discuss an economic development matter, and pursuant to N.C.G.S. 143-318.11(a)(3) to discuss a potential litigation matter.

**Motion by:** Berry

**Second by:** Wolff

**Vote:** Unanimous

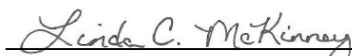
Mayor Sears asked to be excused due to the late hour and an early commitment the next day, and the closed session continued with MPT Berry presiding.

Motion to leave closed session was made by Councilman Wolff, seconded by Councilman Villadsen and passed with a unanimous vote.

There was a brief discussion about the potential need to add more staff due to several large projects coming to Town. Mr. Harrington agreed that more staff would probably be needed.

**Adjournment:** Councilman Wolff made a motion to adjourn at 11:15 pm. It was seconded by Councilman McGrath and passed with a unanimous vote.

Respectfully Submitted on Tuesday, April 6, 2021.



Linda C. McKinney, Town Clerk

Addenda pages as referenced in these minutes follow and are a part of the official record.



# Holly Springs Town Council

## *Town Council Meeting Agenda Cover Sheet*

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### Agenda Item#: 9.

#### **Consent Agenda**

**Title:** Engineering Design & Construction Standards Supplement #5

**Strategic Priority Area:** Responsible & Balanced Growth  
Safe & Friendly

**Staff Resource:** Kendra Parrish, Utilities and Infrastructure

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#### **Action(s):**

Approve Supplement #5 updates to the Engineering Design and Construction Standards.

#### **Explanation:**

- The Engineering Design and Construction Standards (EDCS) is updated to reflect re-organization departmental terminology updates/changes.
- Sections revised primarily include updates to Fire Department access regulations, sewer and pump station, reclaimed water, and street and sidewalk requirements.
- In addition, updates to road cross sections, signage, utility, and various other details are included.
- Most recently, a section was added for the approved Traffic Calming Policy.

#### **Background:**

The Engineering Design and Construction Standards are periodically updated to reflect current construction materials and best practices.

#### **Funding Source(s):**

N/A

#### **Attachment(s):**

1. EDCS Supp 5 Summary of Changes

## Engineering Construction and Design Standards

### Supplement # 5 Log - April 2021

| Section       | Sub-Section | Name                                                                             | Description                                                                                                                                                                                                                                                                                                    |
|---------------|-------------|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| All Sections  | N/A         | Entire Document                                                                  | Replaced "Department of Engineering" and "Director of Engineering" terminology throughout entire document to reflect re-organization updates/changes                                                                                                                                                           |
| 2, 6, 7, & 11 | N/A         | Throughout each section                                                          | NCDENR no longer exists; replaced terminology with NCDEQ                                                                                                                                                                                                                                                       |
| 6 & 7         | N/A         | Throughout each section                                                          | Replaced "Public Utilities Department" with "Utilities and Infrastructure Services"                                                                                                                                                                                                                            |
| 2.08          | B.          | Permits, State and Federal Permits                                               | <ul style="list-style-type: none"> <li>- Clarified where to find fee schedules and applications for sewer permits "Fee schedules and application forms may be obtained from the Town of Holly Springs website."</li> <li>- Clarified water permit fees: "The permit fee is based on linear footage"</li> </ul> |
| 2.12          | N/A         | Retaining Walls                                                                  | Retaining wall updates                                                                                                                                                                                                                                                                                         |
| 3.02          | N/A         | Design                                                                           | <ul style="list-style-type: none"> <li>- Changed Capital Improvement Projects to Community Investment Plan Project</li> <li>- Clarified developer's role and when a TIA or TAR may be required</li> </ul>                                                                                                      |
|               | A.          | Design, Street Classifications for Town Specifications, Alleys                   | <ul style="list-style-type: none"> <li>- Updated "Town Village and Neighborhood Village Districts" to "Downtown Village District"</li> <li>- Clarified alley pavement design requirements</li> </ul>                                                                                                           |
|               | P.          | Design, Signal Poles                                                             | Added sub-section P "Signal Poles"                                                                                                                                                                                                                                                                             |
|               | F.          | Design, Driveways/Access, Residential                                            | <ul style="list-style-type: none"> <li>- Updated to state that a UDO permit is required to widen a driveway and for triple-width parking areas</li> <li>- Referenced Section 6.08 for Fire Dept Access/turn around requirements</li> </ul>                                                                     |
|               | I.          | Design, Sidewalks                                                                | Clarified sidewalk minimum distance requirements                                                                                                                                                                                                                                                               |
|               | J.          | Design, Pavement Design                                                          | Clarified pavement design minimum requirements for developers (Requirement #3)                                                                                                                                                                                                                                 |
|               | N.          | Design, Roadway Network                                                          | <ul style="list-style-type: none"> <li>- Clarified what development plans should have when providing as least one public vehicular access to each abutting property</li> <li>- Added "public" to any use of the term "access"</li> </ul>                                                                       |
| 3.03          | A.          | Sight Distance, Intersection Sight Distance                                      | Sight Distance Tables mislabeled. Changed from tables 3.1 to 3.2 and 3.3                                                                                                                                                                                                                                       |
| 3.05          | A.          | Construction and Inspection, Streets                                             | <ul style="list-style-type: none"> <li>- Clarified subgrade</li> <li>- Updated measurements of lifts</li> <li>- Referenced details HS302, and HS305D through HS305J</li> </ul>                                                                                                                                 |
| 3.06          | N/A         | Fire Lanes                                                                       | Corrected surface of fire lane requirements (3 inches of S9.5C)                                                                                                                                                                                                                                                |
| 3.07          | N/A         | Traffic Control, Traffic Signals and Street Name Signs                           | <ul style="list-style-type: none"> <li>- Referenced details HS360 or HS361 in regards to traffic control, street name signs and posts</li> <li>- Added information in regards to traffic signals</li> </ul>                                                                                                    |
| 3.09          | N/A         | Pedestrian Crossings                                                             | Clarified pedestrian traffic crossings                                                                                                                                                                                                                                                                         |
| 3.10          | N/A         | Street Trees                                                                     | Referenced Holly Springs Town Code Chapter/Section                                                                                                                                                                                                                                                             |
| 3.11          | N/A         | Thoroughfare/Median Plantings                                                    | Updated name of sod brand that can be used                                                                                                                                                                                                                                                                     |
| 3.13          | N/A         | Small Wireless Telecommunication Facilities (Located within Public Right-of Way) | New section                                                                                                                                                                                                                                                                                                    |
| 3.14          | N/A         | Bus Stop and Bus Shelter                                                         | New section                                                                                                                                                                                                                                                                                                    |
| 6.08          | A.          | Fire Department Access, Fire Access and Fire Lanes                               | <ul style="list-style-type: none"> <li>- Added reference to TOHS detail HS367</li> <li>- Clarified paver alternatives to concrete, asphalt or gravel</li> </ul>                                                                                                                                                |

|      |                   |                                                          |                                                                                                                                                                                                                                                                                                                       |
|------|-------------------|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | D.                | Fire Department Access, Fire Lanes                       | Updated pavement requirements for fire lanes                                                                                                                                                                                                                                                                          |
| 7.00 | Sub-Index<br>7.07 | A. General                                               | Renamed section.                                                                                                                                                                                                                                                                                                      |
|      |                   | C. Landscaping and Appearance                            | Moved from Section O.                                                                                                                                                                                                                                                                                                 |
|      |                   | D. Water Service                                         | Moved from Section M.                                                                                                                                                                                                                                                                                                 |
|      |                   | E. Piping and Valves                                     | Moved from Section D.                                                                                                                                                                                                                                                                                                 |
|      |                   | F. Solids Grinder/Screening                              | Added section.                                                                                                                                                                                                                                                                                                        |
|      |                   | G. Odor Control                                          | Moved from Section C.                                                                                                                                                                                                                                                                                                 |
|      |                   | H. Hoisting Equipment                                    | Added section.                                                                                                                                                                                                                                                                                                        |
|      |                   | I. Wet Well and other Precast Structures                 | Moved from Section E. Renamed.                                                                                                                                                                                                                                                                                        |
|      |                   | J. Submersible Pump Systems                              | Moved from Section N. Renamed.                                                                                                                                                                                                                                                                                        |
|      |                   | K. Electrical                                            | Moved from Section F.                                                                                                                                                                                                                                                                                                 |
|      |                   | L. Pump Motor Control Panel                              | Moved from Section K. Renamed.                                                                                                                                                                                                                                                                                        |
|      |                   | M. Flow Meter                                            | Added section.                                                                                                                                                                                                                                                                                                        |
|      |                   | N. Force Main                                            | Moved from Section L.                                                                                                                                                                                                                                                                                                 |
|      |                   | O. Air Relief and Air-Vacuum Valves                      | Added section.                                                                                                                                                                                                                                                                                                        |
|      |                   | P. Standby Power Generator and Automatic Transfer Switch | Combined Sections H. and I. Renamed.                                                                                                                                                                                                                                                                                  |
|      |                   | Q. SCADA                                                 | Moved from Section J.                                                                                                                                                                                                                                                                                                 |
|      |                   | R. Testing and Inspection                                | Moved from Section Q.                                                                                                                                                                                                                                                                                                 |
|      |                   | S. Equipment Manufacturer's List                         | Added section.                                                                                                                                                                                                                                                                                                        |
| 7.01 | A.                | Gravity Sewer Mains, Design                              | Specified flow rates for Residential Single-Family and Multi-Family                                                                                                                                                                                                                                                   |
|      | A.                | Gravity Sewer Mains, Installation                        | Clarified how manholes should be lined "shall be 401 protectant lined"                                                                                                                                                                                                                                                |
|      | B., #4            | Gravity Sewer Mains, Materials, Ductile Iron Pipe        | Clarified how ductile sewer lines "shall be 401 protectant lined"                                                                                                                                                                                                                                                     |
| 7.02 | A.                | Materials - PVC Pipe                                     | -Removed bold and underline under PVC pipe<br>-Removed last row of table for 150 psi working pressure DIP                                                                                                                                                                                                             |
|      | B.                | Installation                                             | -Added language on detector tape Installed $\leq 2'$ below ground.<br>-Added language specifying 3" tape marked "Sewage Force Main"                                                                                                                                                                                   |
|      | A.                | General                                                  | -Added criteria for pump stations<br>-Moved language regarding factors to subsection titled "Pump Station Requirements" or other relevant (sub)sections<br>-Added "Engineering" subsection<br>-Moved "Warranties" to "Engineering" subsection<br>-Added pump station requirement that buildings have ventilation fans |
|      | B.                | Site Work                                                | -Rearranged order or information<br>-Added verbage that the Town would own and operate pump stations<br>-Changed verbage to indicate that site location (instead of site plan) shall require TC approval<br>-Added area code to emergency number                                                                      |
|      | C.                | Landscaping and Appearance                               | -Increased buffer requirement along access easement from 10' to 25'<br>-Removed wording specifying C-225 opaque buffer                                                                                                                                                                                                |
|      | D.                | Water Service                                            | -Increased minimum water service size from 1" to 2"<br>-Increased minimum flow rate from 5 to 50 gpm<br>-Added language requiring yard hydrant, eye wash, and shower                                                                                                                                                  |

|       |     |                                                                                                           |                                                                                                                                                                                                                                |
|-------|-----|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7.07  | E.  | Piping and Valves                                                                                         | -Changed ductile iron minimum class from 50 to 53<br>-Added verbage on piping and valves<br>-Included verbage under former "Submersible Pump Stations" section                                                                 |
|       | F.  | Solids Grinder                                                                                            | -Added verbage on solids grinders<br>-Included verbage on screens under former "Wet Well" section                                                                                                                              |
|       | G.  | Odor Control                                                                                              | -Changed language to require odor control at pump stations<br>-Added H2S concentration limits<br>-Added language for 30-day chemical storage minimum<br>- Removed Two Wallace & Tierman Model 44 information                   |
|       | H.  | Hoisting Equipment                                                                                        | Moved language from former section "Submersible Pump Stations"                                                                                                                                                                 |
|       | I.  | Wet Well and Other Precase Structures                                                                     | -Added language to include epoxy coating on wetwells and pump station manholes<br>-Added language regarding drainage of vaults, submersible pumps, and power outlet placement<br>-Added language regarding flexible connectors |
|       | J.  | Submersible Pump Systems                                                                                  | -Added and updated language<br>-Increased minimum chain length from 3 to 6'                                                                                                                                                    |
|       | K.  | Electrical                                                                                                | Added and updated language                                                                                                                                                                                                     |
|       | L.  | Pump Station Control Panel (PSCP)                                                                         | Added and updated langage                                                                                                                                                                                                      |
|       | M.  | Flow Meter                                                                                                | Added section                                                                                                                                                                                                                  |
|       | N.  | Force Main                                                                                                | Added language on PVC force main and DIP force main requirements                                                                                                                                                               |
|       | O.  | Air Release and Air-Vacuum Valves                                                                         | Added section                                                                                                                                                                                                                  |
|       | P.  | Standby Power Generator and Automatic Transfer Switch                                                     | Added and updated langage                                                                                                                                                                                                      |
|       | Q.  | SCADA                                                                                                     | Added language requiring SCADA systems at pump stations                                                                                                                                                                        |
|       | R.  | Testing and Inspection                                                                                    | -Increased force main testing pressure from 150 to 200 psi<br>-Added rows in "Pipe Size Allowable Leakage" table for 16 and 20" pipes                                                                                          |
|       | S.  | Equipment Manufacturer's List                                                                             | Added section and table with peferred manufacturers for pump station components                                                                                                                                                |
| 7.08  | N/A | Individual Septic Tank Systems, Pump Station Final Field Inspection and Operational Test, Site, Forcemain | - Added two additional check boxes under Site<br>- Added one additional check box under Forcemain; Clarified "Force main including air release valve" check box                                                                |
| 11.01 | A.  | Reclaimed Water Distribution Pipe, Design, Identification of Reclaimed Piping                             | Removed subsection ii.                                                                                                                                                                                                         |
|       | N/A | Reclaimed Water Distribution Pipe                                                                         | - Referenced Holly Springs Town Code of Ordinances by Chapter 16 Article IV to explain town requirements for reclaimed service area<br>- Clarified that the Reclaimed Water Service Area Map is on the Town's website          |
| 11.02 | B.  | Valves and Appurtenances, Appurtenances, Blow offs                                                        | - Updated measurement minimums for end of cul-de-sacs, and transmission and distribution mains<br>- Clarified installation of blow offs at the end of cul-de-sacs<br>- Removed subsection d. regarding valve boxes             |
| 11.03 | B.  | Reclaimed Water Service Taps, Materials                                                                   | Created tables to display Taps and Tapping Saddles sub-section information                                                                                                                                                     |
| 11.04 | A.  | Reclaimed Water Irrigation Systems, General                                                               | Clarified soil evaluation in regards to reclaim irrigation permit                                                                                                                                                              |
|       | B.  | Reclaimed Water Irrigation Systems, Designs                                                               | Added information regarding rain sensor installation                                                                                                                                                                           |
| 11.05 | E.  | Reclaimed Water Irrigation Systems, Rain Sensors                                                          | Added sub-section E to include additional information regarding rain sensors                                                                                                                                                   |
| 12.00 | N/A | Traffic Calming Policy                                                                                    | New section                                                                                                                                                                                                                    |

| Revised DETAILS |                                                                                                    |
|-----------------|----------------------------------------------------------------------------------------------------|
| HS004           | Stone Column Detail                                                                                |
| HS005           | Project Identification Sign                                                                        |
| HS009           | Metal Bench 52"                                                                                    |
| HS010           | Metal Trash and Recycling Cans                                                                     |
| HS011           | Metal Bench 6ft                                                                                    |
| HS012           | Decorative Fence Detail                                                                            |
| HS302           | Standard Residential Street Cross Sections                                                         |
| HS305D          | 2 Lane Residential Collector 29' BTB on 53' R/W                                                    |
| HS305E          | 2 Lane Residential Collector Single Side Onstreet Parking 37' BTB on 61' R/W                       |
| HS305F          | 2 Lane Residential Collector 35' BTB on 59' R/W With Shared Bike                                   |
| HS305G          | 2 Lane Residential Collector 39' BTB on 63' R/W                                                    |
| HS305H          | 2 Lane Residential Collector Single Side Onstreet Parking and Shared Bike Lanes 43' BTB on 67' R/W |
| HS305J          | 2 Lane Residential Collector One Side Onstreet Parking with Bike Lanes 47' BTB on 71' R/W          |
| HS339           | 10 Ft Raised Boardwalk/Greenway Trail                                                              |
| HS340           | 10' Asphalt Greenway Trail                                                                         |
| HS341           | Collapsible and Fixed Bollard Post Detail                                                          |
| HS343           | Delete-Pavement Undulation (24' Speed Hump)                                                        |
| HS351           | Delete-Commuter Park-N-Ride Bus Stop                                                               |
| HS367           | Dead End Road                                                                                      |
| HS368           | Typical Small Cell Installations                                                                   |
| HS369           | Sign Post Foundation                                                                               |
| HS370           | Village District Pedestrian Light Fixture                                                          |
| HS372           | 8' Brick Paver Band Sidewalk                                                                       |
| HS373           | Secondary Gateway Sign Post Foundation                                                             |
| HS374           | Holly Springs Welcome Sign                                                                         |
| HS375           | Public Parking Sign                                                                                |
| HS376           | Public Parking Arrow Sign                                                                          |
| HS377           | Church Parking Sign                                                                                |
| HS378           | Reserved Parking Sign                                                                              |
| HS379           | Asphalt Sidepath                                                                                   |
| HS380           | Concrete Sidepath                                                                                  |
| HS382           | Standard Trail Stop Sign                                                                           |
| HS409           | Standard Skimmer Filter Basin (Plain View)                                                         |
| HS615           | Standard 3/4" Water Service                                                                        |
| HS634           | Standard Water Meter Lid                                                                           |
| HS1110          | Reclaimed Water Usage Sign                                                                         |



# Holly Springs Town Council

## *Town Council Meeting Agenda Cover Sheet*

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### **Agenda Item#: 10.**

#### **New Business**

**Title:** Fiscal Year 2021-22 Strategic Plan

**Strategic Priority Area:** Organizational Excellence

**Staff Resource:** Corey Petersohn, Finance, Randy Harrington, Town Manager

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#### **Action(s):**

Adopt the FY2021-22 Strategic Plan.

#### **Explanation:**

- Following discussion, guidance, and feedback at the 2021 Mayor and Town Council Retreat and March 9th Workshop, staff presents the proposed FY2021-22 Strategic Plan for formal adoption.
- The Strategic Plan lays out the vision and top priorities for moving our community forward.
- The plan is divided in five strategic priority areas:
  - Economic Prosperity & Diversity
  - Engaged, Healthy & Active Community
  - Organizational Excellence
  - Responsible and Balanced Growth
  - Safe and Friendly
- This year's update includes a number of completed initiatives coming off the plan, proposed edits to current goals and initiatives, and proposed new initiatives. Highlights of the new proposed strategic plan include:
  - New economic development initiatives related to the Downtown Village District and connecting strategic partners for development in the life sciences, laboratory, and industrial flex space areas.
  - Expanding community engagement through messaging, branding, and website content.
  - Increased focus on sustainability and resiliency within the responsible and balanced growth strategic priority area.
  - New initiatives focused on public safety to maintain our status as one of the safest communities in the state and nation.

#### **Background:**

The strategic plan is a living document that is updated and adopted annually by Town Council in advance of the recommended budget for the upcoming fiscal year.

#### **Funding Source(s):**

N/A

**Attachment(s):**

1. FY2021-22 Strategic Plan - Marked Up
2. FY2021-22 Strategic Plan - Clean



# Town of Holly Springs

## **DRAFT** Fiscal Year 2021-22 Strategic Plan

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### Vision Statement

Holly Springs offer an unmatched quality of life that reflects the joys of small town living in a safe, family-friendly community that residents and businesses are proud to call home.

### Strategic Priority Areas



**Economic Prosperity & Diversity** – Holly Springs provides a climate where a wide variety of businesses thrive with economic opportunity for all.



**Engaged, Healthy & Active Community** – Holly Springs promotes fulfilling and rewarding lifestyles with abundant, healthy living options.



**Organizational Excellence** – Holly Springs is a leader in responsible government with a high-performing organization that meets the public service needs of its residents.



**Responsible and Balanced Growth** – Holly Springs will continue to plan for future infrastructure and support a quality, balanced mix of land uses, while preserving its small town charm, characteristics, and history.



**Safe and Friendly** – Holly Springs is one of the safest communities in North Carolina with a welcoming spirit and inviting atmosphere.



## Economic Prosperity & Diversity

### 1. Enhance, attract, and engage diverse economic development opportunities.

**Initiative 1.1:** Concentrate business recruitment efforts in the target industries of Wake County Economic Development, specifically Life Sciences, Advanced Manufacturing, IT & Technology, and Clean Tech & Smart Grid.

**Initiative 1.2:** Pursue site-readiness programs and infrastructure investments to boost the attractiveness of the Town's strategic sites.

**Initiative 1.3:** Host a collaboration event for local entrepreneurs in conjunction with WRAL Techwire to build business partnerships and showcase opportunities in Holly Springs.

### 2. Create a vibrant downtown center.

**Completed** -- **Initiative 2.1:** Update Downtown Development Incentives Policy and associated development tools to attract mixed use housing, office, employment, shopping and entertainment opportunities.

**Initiative 2.2:** Facilitate multi-modal accessibility to the downtown center, with an emphasis on walkability, pedestrian and bicycle safety.

**Initiative 2.3:** Be a development resource to small businesses, start-ups and artisans that provide unique experiences and products.

**NEW Initiative:** Explore interest and models for a Downtown Village District Business Consortium that provides an opportunity for the downtown business community to connect, collaborate, and liaise with the Town.

### 3. Seek partnerships to drive economic development.

**Initiative 3.1:** Proactively engage with the Holly Springs Chamber of Commerce, Wake County Economic Development, and other strategic business partners to promote the advantages and opportunities of doing business in Holly Springs.

**Initiative 3.2:** Attract business partners that support amateur sports, hospitality and leisure tourism activities.

**NEW Initiative:** Connect strategic partners in the development community that facilitate life science, laboratory, and industrial flex space to support growing demand.



## Engaged, Healthy & Active Community

### 1. Improve, expand, and seek partnerships for recreational and cultural opportunities.

**Initiative 1.1:** Expand community events and programs at Ting Park, and other Town amenities, by strengthening relationships with local and regional sports, recreational, and cultural organizations.

### 2. Plan, design, build, and maintain a comprehensive system of sustainable facilities, greenways, and park spaces to high standards, providing attractive places that people use and enjoy.

**Initiative 2.1:** Expand parks, greenways and open space through the implementation of the remaining 2011 Parks and Recreation Bond.

**Initiative 2.2:** Increase equitable access to park facilities, amenities, greenways and open space and ensure new development serves the needs of the Town's diverse and growing population.

**Completed Initiative 2.3:** Update the Parks and Recreation Master Plan to address dynamic parks, facilities, open space and greenways town-wide with the integration of natural resource management and integrated sustainability practices.

### 3. Develop community events and programs that ensure wide appeal of activities for residents.

**Initiative 3.1:** Enhance inclusivity of educational/recreational program opportunities for populations such as seniors, teens, as well as people of all abilities and economic means.



## Organizational Excellence

### 1. As an employer of choice, we will retain and recruit a highly skilled workforce.

**Initiative 1.1:** Invest in employee professional growth and development through continuous training, certifications, education, and professional accreditation.

**Initiative 1.2:** Provide competitive pay and benefits that retains and recruits top talent.

**Initiative 1.3:** Expand employee diversity and inclusion.

### 2. Leverage technology and innovative business approaches to enhance customer service and improve business efficiencies.

**Initiative 2.1:** Invest in technology such as 311 system and the Town's website to improve internal efficiencies and external customer experience.

**Initiative 2.2:** Create and apply data-driven decision-making tools, including performance management and benchmarking, to enhance strategic and daily service delivery management.

**Initiative 2.3:** Develop streamlined customer engagement processes for simple building or renovation permit requests and specialized customer service approaches to assist non-building industry experts in navigating permitting processes.

**Initiative 2.4:** Inventory and market the Town's "Smart City" initiatives, and pursue additional Smart City initiatives that leverage data and technology to improve operational efficiencies and information sharing with residents.

### 3. Expand community engagement.

**Completed** -- **Initiative 3.1:** Expand and simplify digital access to town information.

**Completed** -- **Initiative 3.2:** Expand presence in the community, both in-person and virtually, to ensure residents have accessibility to their local government.

**MOVED FROM SAFE AND FRIENDLY** - **Initiative 3.1:** ~~Coordinate and~~ Expand reach and integration of public safety messages in and other town messages communications across various communication platforms such as print materials, social media, website, and other public engagement meetings formats to ensure all audiences are reached.

**NEW Initiative:** Elevate the Town's branding consistency and professionalism.

**NEW Initiative:** Simplify Town website content and information accessibility.



### **4. Ensure financial stewardship.**

**Initiative 4.1:** Update and apply financial best management practices such as internal controls, budgetary enhancements, and asset management.

**Initiative 4.2:** Enhance financial metrics and policies to achieve credit rating upgrades that in turn lead to the lowest borrowing costs for taxpayers.

**Initiative 4.3:** Develop new Town-wide risk management program and reduce the Town's risk exposure and actual risk liability experiences.



## Responsible and Balanced Growth

### 1. Plan, maintain, and invest in **sustainable and resilient infrastructure.**

**Completed** -- **Initiative 1.1:** Develop a 5-year Community Investment Plan that connects infrastructure needs and capital maintenance with available revenue sources.

**Completed** -- **Initiative 1.2:** Determine the future location of a new Public Works Complex and invest in associated architectural design services.

**Initiative 1.3:** Design and construct 2018 Transportation Bond projects.

**New Initiative:** Develop guidelines for the application of sustainable and resilient practices for new town facilities and capital infrastructure.

### 2. Support land use planning and policies that provide for sustainable and economic growth while balancing small town characteristics.

**Initiative 2.1:** Pursue a residential/non-residential tax base ratio of 70%/30%.

**Initiative 2.2:** Update and align UDO regulations to the new Future Land Use and Community Character Plan.

**New Initiative:** Achieve SolSmart silver community designation.



## Town of Holly Springs FY 2020-21 Strategic Plan

### **3. ~~Promote sustainability initiatives to protect natural resources and preserve community historical and environmental assets.~~**

**Establish sustainability and resiliency practices that balance the protection and preservation of historical and environmental assets with fiscal and operational efficiency.**

**Initiative 3.1:** ~~Create a sustainability action plan for town operations and facilities.~~  
Complete action plan and protocols for implementation of sustainability and resiliency practices in fleet management, solid waste, and facility maintenance energy efficiency.

**Initiative 3.2:** Pursue local and state tools, resources, legislation and policies that enhance historical preservation efforts.

**Initiative 3.3:** Invest in reclaimed water utilization efforts to enhance conservation of natural resources.

**Initiative 3.4:** Develop a water, sewer and reclaimed asset management plan to ensure system integrity and identify needed maintenance and investments to handle future growth.

**New Initiative:** Engage staff and community partners to increase awareness and understanding of sustainability opportunities and practices.

### **4. Partner with neighbors to promote smart regional infrastructure investments.**

**Initiative 4.1:** Support an efficient and connected local and regional multi-modal transportation system through engagement on projects including the I-540 Southeast Extension and Wake Transit Plan.

**Initiative 4.2:** Secure funding partnerships with County, State and Federal agencies to leverage local funds for transportation and parks and recreation infrastructure investments.

**Completed** -- ~~**Initiative 4.3:** Invest in a comprehensive watershed management plan to include stormwater programmatic needs and capital investment.~~

**Initiative 4.4:** Engage with Wake County, and other organizations as necessary, to promote best practices of waste management at the South Wake Landfill.



## **5. Leverage Town and regional partners to mitigate resident housing displacement from NCDOT and Town infrastructure projects.**

**Initiative 5.1:** Support the Wake County Department of Housing Affordability and Community Revitalization's efforts to increase housing options on County-owned property north of Ting Park.

**Initiative 5.2:** Pursue partnerships with non-profit and private organizations to create affordable options.

**Initiative 5.3:** Identify and evaluate opportunities for flexibility and streamlining of permitting and development requirements to increase developer interest.

**Initiative 5.4:** Conduct a Housing Study (with a complimentary Citizens Affordable Housing Committee) to analyze the Town's housing composition, strengths, challenges, gaps, and potential courses of action.



## Safe & Friendly

### 1. Maintain the Town's high level of public safety.

**Initiative 1.1:** Promote a community-policing philosophy with an emphasis on building "organic" partnerships and unique approaches to meet community needs; and ensure law enforcement personnel are visible and able to interact with residents, visitors and business owners on a regular basis. ~~programs where residents, businesses, and the Holly Springs Police Department can engage and collaborate.~~

**Initiative 1.2:** Invest in planning and development of Fire Station #3 to enhance the level of fire and medical response and emergency readiness.

**NEW Initiative:** Invest in data-driven, geo-based and analytical policing strategies to develop a more technologically advanced approach to crime prevention and investigations.

**NEW Initiative:** Increase capability for law enforcement officers to provide basic, immediate medical support of EMS and Fire personnel, when first on scene.

**NEW Initiative:** Develop multi-disciplinary approaches and partnerships to address social, physical and mental health issues with the goal of interrupting recurring cycles and making appropriate referrals to organizations with subject matter expertise.

**NEW Initiative:** Begin planning for future fire department facilities using historical response trends, modeling, and long-range community growth projections.

### 2. Plan for adequate public infrastructure that promotes a safe community.

**Initiative 2.1:** Deploy pedestrian safety devices and traffic control measures to enhance pedestrian and bicycle safety.

**Initiative 2.2:** Design a network for an innovative and intelligent transportation system with NCDOT.

**Initiative 2.3:** Update the Utley Creek Water Reclamation Facility 8 MGD Master Plan for sewer capacity needs.



## Town of Holly Springs FY 2020-21 Strategic Plan

### **~~3. Enhance capability to communicate public safety messages to the public.~~**

**MOVED TO ORGANIZATIONAL EXCELLENCE** - **Initiative 3.1:** Coordinate and expand public safety messages in town communications, such as print materials, social media, and public meetings formats to ensure all audiences are reached.

### **4. Cultivate a creative and friendly atmosphere that is welcoming to all cultures and the diversity of our residents and visitors.**

**Initiative 4.1:** Enhance citizen engagement and outreach events for police and fire.

**Initiative 4.2:** Identify innovative and receptive approaches to engage communities that are traditionally underserved.

**Completed** -- **Initiative 4.3:** ~~Create communications and marketing materials and an online platform welcoming new residents to our community and introducing them to local services, information, events and activities.~~



# Town of Holly Springs

## Fiscal Year 2021-22 Strategic Plan

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## Town of Holly Springs FY 2020-21 Strategic Plan

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## Town of Holly Springs FY 2020-21 Strategic Plan

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# Holly Springs Town Council

## *Town Council Meeting Agenda Cover Sheet*

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### **Agenda Item#: 11.**

#### **New Business**

**Title:** Motorola Contract for Body Worn/In Car Camera System

**Strategic Priority Area:** Safe & Friendly

**Staff Resource:** Paul Liquorie, Police Chief

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#### **Action(s):**

Approve contract with Motorola for Body Worn/In Car Camera System for the Holly Springs Police Department.

#### **Explanation:**

- Body Worn/In Car Camera Systems are video recording devices that capture and record officer-citizen interactions and other police related functions.
- The implementation of this system will improve community relations, strengthen public trust, increase police accountability, and improve officer training and evaluation.
- The police department did extensive research into the multitude of options providing body-worn and in-car camera systems.
- An internal committee examined professional journals, online literature, and acquired input from neighboring agencies that already had systems in place.
- After this initial analysis, the department tested and evaluated three (3) systems from the following vendors: Axon, Digital Ally, and Watch Guard (a Motorola subsidiary).
- Each company had significant, proven experience in the area of police body-worn and in-car camera systems and were used by other local departments. Each model was field tested by multiple officers.
- The end-to-end systems were evaluated on quality, durability, functionality, technical features, and pricing.
- After field testing was concluded, Watch Guard was selected as the system that best met the police department's current and future needs. Watch Guard's one piece, rugged design; user friendliness; inter-compatibility with current and emerging technologies; static recording storage capacity; and pricing made this system stand above its competitors.
- As a result, the Town's procurement office contracted with Watch Guard based on equipment secured using NC State Contract Number 680D.
- The video-as-a-service portion of this contract has no state procurement requirements.
- The final negotiated cost will be \$836,801 over the next five years.

#### **Background:**

- At the June 4, 2020 Council Workshop, staff made a presentation on the potential incorporation of body-worn cameras (BWC) in the police department.
- At that time, Council voted to begin preparation for the roll-out of BWCs and directed

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staff to continue testing and evaluating preferred BWC systems.

- At the January 12, 2021 workshop, the Police Chief made a presentation to Council on the progress in drafting policies and evaluating vendors for BWC and in-dash camera systems.

**Funding Source(s):**

- First year costs will be covered with funds from the FY 2021 COVID contingency hold released at the mid-year budget review with the remaining to be budgeted in FY 2022.
  - \$ 60,000 in FY 2021
  - \$111,360 in FY 2022
  - \$167,360 in FY 2023
  - \$167,360 in FY 2024
  - \$167,360 in FY 2025
  - \$167,360 in FY 2026

**Attachment(s):**

1. SSAddendum Template (WGV) (28Jan2021) (002)
2. MCA Template (WGV) (28Jan2021)
3. Holly Springs, NC TELP
4. Holly Sprg 60 bundles 16 addtl v300 76 batt fully refresh of 76 v300 and batt wty vUA ELC
5. EPSLA Template (WGV) (28Jan2021) (002)

## Subscription Software Addendum

This Subscription Software Addendum (this “**SSA**”) is entered into between WatchGuard Video, Inc., with offices at 415 E. Exchange Parkway, Allen, TX 75002 (“**WatchGuard**”) and the entity set forth in the signature block below or in the MCA (“**Customer**”), and will be subject to, and governed by, the terms of the Master Customer Agreement entered into between the Parties, effective as of [REDACTED] (the “**MCA**”). Capitalized terms used in this SSA, but not defined herein, will have the meanings set forth in the MCA.

**1. Addendum.** This SSA governs Customer’s purchase of Subscription Software (and, if set forth in an Ordering Document, related Services) from WatchGuard, and will form part of the Parties’ Agreement. Additional Subscription Software-specific Addenda or other terms and conditions may apply to certain Subscription Software, where such terms are provided or presented to Customer.

### **2. Delivery of Subscription Software.**

**2.1. Delivery.** During the applicable Subscription Term (as defined below), WatchGuard will provide to Customer the Subscription Software set forth in an Ordering Document, in accordance with the terms of the Agreement. WatchGuard will provide Customer advance notice (which may be provided electronically) of any planned downtime. Delivery will occur upon Customer’s receipt of credentials required for access to the Subscription Software or upon WatchGuard otherwise providing access to the Subscription Software. If agreed upon in an Ordering Document, WatchGuard will also provide Services related to such Subscription Software.

**2.2. Modifications.** In addition to other rights to modify the Products and Services set forth in the MCA, WatchGuard may modify the Subscription Software, any associated recurring Services and any related systems so long as their functionality (as described in the applicable Ordering Document) is not materially degraded. Documentation for the Subscription Software may be updated to reflect such modifications. For clarity, new features or enhancements that are added to any Subscription Software may be subject to additional Fees.

**2.3. User Credentials.** If applicable, WatchGuard will provide Customer with administrative user credentials for the Subscription Software, and Customer will ensure such administrative user credentials are accessed and used only by Customer’s employees with training on their proper use. Customer will protect, and will cause its Authorized Users to protect, the confidentiality and security of all user credentials, including any administrative user credentials, and maintain user credential validity, including by updating passwords. Customer will be liable for any use of the Subscription Software through such user credential (including through any administrative user credentials), including any changes made to the Subscription Software or issues or user impact arising therefrom. To the extent WatchGuard provides Services to Customer in order to help resolve issues resulting from changes made to the Subscription Software through user credentials, including through any administrative user credentials, or issues otherwise created by Authorized Users, such Services will be billed to Customer on a time and materials basis, and Customer will pay all invoices in accordance with the payment terms of the MCA.

**2.4. Beta Services.** If WatchGuard makes any beta version of a software application (“**Beta Service**”) available to Customer, Customer may choose to use such Beta Service at its own discretion, provided, however, that Customer will use the Beta Service solely for purposes of

Customer's evaluation of such Beta Service, and for no other purpose. Customer acknowledges and agrees that all Beta Services are offered "as-is" and without any representations or warranties or other commitments or protections from WatchGuard. WatchGuard will determine the duration of the evaluation period for any Beta Service, in its sole discretion, and WatchGuard may discontinue any Beta Service at any time. Customer acknowledges that Beta Services, by their nature, have not been fully tested and may contain defects or deficiencies.

### **3. Subscription Software License and Restrictions.**

**3.1. Subscription Software License.** Subject to Customer's and its Authorized Users' compliance with the Agreement, including payment terms, WatchGuard hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicenseable, and non-exclusive license to use the Subscription Software identified in an Ordering Document, and the associated Documentation, solely for Customer's internal business purposes. The foregoing license grant will be limited to use in the territory and to the number of licenses set forth in an Ordering Document (if applicable), and will continue for the applicable Subscription Term. Customer may access, and use the Subscription Software only in Customer's owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Subscription Software remotely from any location. No custom development work will be performed under this Addendum.

**3.2. End User Licenses.** Notwithstanding any provision to the contrary in the Agreement, certain Subscription Software is governed by a separate license, EULA, or other agreement, including terms governing third-party software, such as open source software, included in the Subscription Software. Customer will comply, and ensure its Authorized Users comply, with such additional license agreements.

**3.3. Customer Restrictions.** Customers and Authorized Users will comply with the applicable Documentation and the copyright laws of the United States and all other relevant jurisdictions (including the copyright laws where Customer uses the Subscription Software) in connection with their use of the Subscription Software. Customer will not, and will not allow others including the Authorized Users, to make the Subscription Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; reverse engineer, disassemble, or reprogram software used to provide the Subscription Software or any portion thereof to a human-readable form; modify, create derivative works of, or merge the Subscription Software or software used to provide the Subscription Software with other software; copy, reproduce, distribute, lend, or lease the Subscription Software or Documentation for or to any third party; take any action that would cause the Subscription Software, software used to provide the Subscription Software, or Documentation to be placed in the public domain; use the Subscription Software to compete with WatchGuard; remove, alter, or obscure, any copyright or other notice; share user credentials (including among Authorized Users); use the Subscription Software to store or transmit malicious code; or attempt to gain unauthorized access to the Subscription Software or its related systems or networks.

### **4. Term.**

**4.1. Subscription Terms.** The duration of Customer's subscription to the first Subscription Software and any associated recurring Services ordered under this SSA (or the first Subscription Software or recurring Service, if multiple are ordered at once) will commence upon delivery of such Subscription Software (and recurring Services, if applicable) and will continue for a twelve (12) month period or such longer period identified in an Ordering Document (the

**“Initial Subscription Period”**). Following the Initial Subscription Period, Customer’s subscription to the Subscription Software and any recurring Services will automatically renew for additional twelve (12) month periods (each, a **“Renewal Subscription Year”**), unless either Party notifies the other Party of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. (The Initial Subscription Period and each Renewal Subscription Year will each be referred to herein as a **“Subscription Term”**.) WatchGuard may increase Fees prior to any Renewal Subscription Year. In such case, WatchGuard will notify Customer of such proposed increase no later than thirty (30) days prior to commencement of such Renewal Subscription Year. Unless otherwise specified in the applicable Ordering Document, if Customer orders any additional Subscription Software or recurring Services under this SSA during an in-process Subscription Term, the subscription for each new Subscription Software or recurring Service will (a) commence upon delivery of such Subscription Software or recurring Service, and continue until the conclusion of Customer’s then-current Subscription Term (a **“Partial Subscription Year”**), and (b) automatically renew for Renewal Subscription Years thereafter, unless either Party notifies the other Party of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. Thus, unless otherwise specified in the applicable Ordering Document, the Subscription Terms for all Subscription Software and recurring Services hereunder will be synchronized.

**4.2. Term.** The term of this SSA (the **“SSA Term”**) will commence upon either (a) the Effective Date of the MCA, if this SSA is attached to the MCA as of such Effective Date, or (b) the SSA Date set forth on the signature page below, if this SSA is executed after the MCA Effective Date, and will continue until the expiration or termination of all Subscription Terms under this SSA, unless this SSA or the Agreement is earlier terminated in accordance with the terms of the Agreement.

**4.3. Termination.** Notwithstanding the termination provisions of the MCA, WatchGuard may terminate this SSA (or any Addendum or Ordering Documents hereunder), or suspend delivery of Subscription Software or Services, immediately upon notice to Customer if (a) Customer breaches **Section 3 – Subscription Software License and Restrictions** of this SSA, or any other provision related to Subscription Software license scope or restrictions set forth in an Addendum or Ordering Document, or (b) it determines that Customer’s use of the Subscription Software poses, or may pose, a security or other risk or adverse impact to any Subscription WatchGuard, WatchGuard’s Software, systems, or any third party (including other WatchGuard customers). Customer acknowledges that WatchGuard made a considerable investment of resources in the development, marketing, and distribution of the Subscription Software and Documentation, and that Customer’s breach of the Agreement will result in irreparable harm to WatchGuard for which monetary damages would be inadequate. If Customer breaches this Agreement, in addition to termination, WatchGuard will be entitled to all available remedies at law or in equity (including immediate injunctive relief).

**4.4. Wind Down of Subscription Software.** In addition to the termination rights in the MCA, WatchGuard may terminate any Ordering Document and Subscription Term, in whole or in part, in the event WatchGuard plans to cease offering the applicable Subscription Software or Service to customers.

## **5. Payment.**

**5.1. Payment.** Unless otherwise provided in an Ordering Document (and notwithstanding the provisions of the MCA), Customer will prepay an annual subscription Fee set forth in an

Ordering Document for each Subscription Software and associated recurring Service, before the commencement of each Subscription Term. For any Partial Subscription Year, the applicable annual subscription Fee will be prorated based on the number of months in the Partial Subscription Year. The annual subscription Fee for Subscription Software and associated recurring Services may include certain one-time Fees, such as start-up fees, license fees, or other fees set forth in an Ordering Document. WatchGuard will have the right to suspend the Subscription Software and any recurring Services if Customer fails to make any payments when due.

**5.2. License True-Up.** WatchGuard will have the right to conduct an audit of total user licenses credentialed by Customer for any Subscription Software during a Subscription Term, and Customer will cooperate with such audit. If WatchGuard determines that Customer's usage of the Subscription Software during the applicable Subscription Term exceeded the total number of licenses purchased by Customer, WatchGuard may invoice Customer for the additional licenses used by Customer, pro-rated for each additional license from the date such license was activated, and Customer will pay such invoice in accordance with the payment terms in the MCA.

## **6. Liability.**

**6.1. ADDITIONAL EXCLUSIONS.** IN ADDITION TO THE EXCLUSIONS FROM DAMAGES SET FORTH IN THE MCA, AND NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, WATCHGUARD WILL HAVE NO LIABILITY FOR (A) INTERRUPTION OR FAILURE OF CONNECTIVITY, VULNERABILITIES, OR SECURITY EVENTS; (B) DISRUPTION OF OR DAMAGE TO CUSTOMER'S OR THIRD PARTIES' SYSTEMS, EQUIPMENT, OR DATA, INCLUDING DENIAL OF ACCESS TO USERS, OR SHUTDOWN OF SYSTEMS CAUSED BY INTRUSION DETECTION SOFTWARE OR HARDWARE; (C) AVAILABILITY OR ACCURACY OF ANY DATA AVAILABLE THROUGH THE SUBSCRIPTION SOFTWARE OR SERVICES, OR INTERPRETATION, USE, OR MISUSE THEREOF; (D) TRACKING AND LOCATION-BASED SERVICES; OR (E) BETA SERVICES.

**6.2. Voluntary Remedies.** WatchGuard is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed or excluded issues in the MCA or **Section 6.1 – Additional Exclusions** above, but if WatchGuard agrees to provide Services to help resolve such issues, Customer will reimburse WatchGuard for its reasonable time and expenses, including by paying WatchGuard any Fees set forth in an Ordering Document for such Services, if applicable.

**7. WatchGuard as a Controller or Joint Controller.** In all instances where WatchGuard acts as a controller of data, it will comply with the applicable provisions of the Motorola Privacy Statement at [https://www.motorolasolutions.com/en\\_us/about/privacy-policy.html#privacystatement](https://www.motorolasolutions.com/en_us/about/privacy-policy.html#privacystatement) as may be updated from time to time. WatchGuard holds all Customer Contact Data as a controller and shall Process such Customer Contact Data in accordance with the Motorola Privacy Statement. In instances where WatchGuard is acting as a joint controller with Customer, the Parties will enter into a separate Addendum to the Agreement to allocate the respective roles as joint controllers.

**8. Survival.** The following provisions will survive the expiration or termination of this SSA for any reason: **Section 4 – Term; Section 5 – Payment; Section 6.1 – Additional Exclusions; Section 8 – Survival.**

The Parties hereby enter into this SSA as of [REDACTED] (the “SSA Date”).<sup>1</sup>

**WatchGuard Video, Inc.**

**Customer:** [REDACTED]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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<sup>1</sup> [REDACTED] NTD: Signature blocks can be removed if this SSA is attached to the MCA when the MCA is executed.

## Master Customer Agreement

This Master Customer Agreement (the “**MCA**”) is entered into between WatchGuard Video, Inc., with offices at 415 E. Exchange Parkway, Allen, TX 75002 (“**WatchGuard**”) and the entity set forth in the signature block below (“**Customer**”). WatchGuard and Customer will each be referred to herein as a “**Party**” and collectively as the “**Parties**”. This Agreement (as defined below) is effective as of the date of the last signature (the “**Effective Date**”).

### 1. Agreement.

**1.1. Scope; Agreement Documents.** This MCA governs Customer’s purchase of Products (as defined below) and Services (as defined below) from WatchGuard. Additional terms and conditions applicable to specific Products and Services are set forth in one or more addenda attached to this MCA (each an “**Addendum**”, and collectively the “**Addenda**”). In addition, the Parties may agree upon solution descriptions, equipment lists, statements of work, schedules, technical specifications, and other ordering documents setting forth the Products and Services to be purchased by Customer and provided by WatchGuard and additional rights and obligations of the Parties (the “**Ordering Documents**”). To the extent required by applicable procurement law, a proposal submitted by WatchGuard in response to a competitive procurement process will be included within the meaning of the term Ordering Documents. This MCA, the Addenda, and any Ordering Documents collectively form the Parties’ “**Agreement**”.

**1.2. Order of Precedence.** Each Addendum will control with respect to conflicting terms in the MCA, but only as applicable to the Products and Services described in such Addendum. Each Ordering Document will control with respect to conflicting terms in the MCA or any Addenda, but only as applicable to the Products and Services described on such Ordering Document.

### 2. Products and Services.

**2.1. Products.** WatchGuard will (a) sell hardware provided by WatchGuard (“**Equipment**”), (b) license software which is either preinstalled on Equipment or installed on Customer-Provided Equipment (as defined below) and licensed to Customer by WatchGuard for a perpetual or other defined license term (“**Licensed Software**”), and (c) license cloud-based software as a service products and other software which is either preinstalled on Equipment or installed on Customer-Provided Equipment, but licensed to Customer by WatchGuard on a subscription basis (“**Subscription Software**”) to Customer, to the extent each is set forth in an Ordering Document, for Customer’s own use in accordance with this Agreement. The Equipment, Licensed Software, and Subscription Software shall collectively be referred to herein as “**Products**”, or individually as a “**Product**”. At any time during the Term (as defined below), WatchGuard may substitute any Products at no cost to Customer, if the substitute is substantially similar to the Products set forth in the applicable Ordering Documents.

#### 2.2. Services.

2.2.1. WatchGuard will provide services related to purchased Products (“**Services**”), to the extent set forth in an Ordering Document.

2.2.2. Integration Services; Maintenance and Support Services. If specified in an Ordering Document, WatchGuard will provide, for the term of such Ordering Document, (a) design, deployment, and integration Services in order to design, install, set up, configure, and/or integrate the applicable Products at the

applicable locations (“**Sites**”), agreed upon by the Parties (“**Integration Services**”), or (b) break/fix maintenance, technical support, or other Services (such as software integration Services) (“**Maintenance and Support Services**”), each as further described in the applicable statement of work. Maintenance and Support Services and Integration Services will each be considered “Services”, as defined above.

2.2.3. Service Ordering Documents. The Fees for Services will be set forth in an Ordering Document and any applicable project schedules. A Customer point of contact will be set forth in the applicable statement of work for the Services. For purposes of clarity, each statement of work will be incorporated into, and form an integral part of, the Agreement.

2.2.4. Service Completion. Unless otherwise specified in the applicable Ordering Document, Services described in an Ordering Document will be deemed complete upon WatchGuard’s performance of all Services listed in such Ordering Document (“**Service Completion Date**”); provided, however, that Maintenance and Support Services may be offered on an ongoing basis during a given Ordering Document term, in which case such Maintenance and Support Services will conclude upon the expiration or termination of such Ordering Document.

2.3. Non-Preclusion. If, in connection with the Products and Services provided under this Agreement, WatchGuard makes recommendations, including a recommendation to purchase other products or services, nothing in this Agreement precludes WatchGuard from participating in a future competitive bidding process or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement standards or other laws, regulations, or policies.

2.4. Customer Obligations. Customer will ensure that information Customer provides to WatchGuard in connection with receipt of Products and Services are accurate and complete in all material respects. Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for WatchGuard to provide the Products and Services and perform its other duties under this Agreement. Unless the applicable Ordering Document states otherwise, WatchGuard may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions or Customer information, decisions, or approvals described in this Section. If any assumptions in the Ordering Documents or information provided by Customer prove to be incorrect, or if Customer fails to perform any of its obligations under this Agreement, WatchGuard’s ability to perform its obligations may be impacted and changes to the Agreement, including the scope, Fees, and performance schedule may be required.

2.5. Documentation. Products and Services may be delivered with documentation for the Equipment, software Products, or data that specifies technical and performance features, capabilities, users, or operation, including training manuals, and other deliverables, such as reports, specifications, designs, plans, drawings, analytics, or other information (collectively, “**Documentation**”). Documentation is and will be owned by WatchGuard, and unless otherwise expressly agreed in an Addendum or Ordering Document that certain Documentation will be owned by Customer. WatchGuard hereby grants Customer a limited, royalty-free, worldwide, non-exclusive license to use the Documentation solely for its internal business purposes in connection with the Products and Services.

**2.6. WatchGuard Tools and Equipment.** As part of delivering the Products and Services, WatchGuard may provide certain tools, equipment, models, and other materials of its own. Such tools and equipment will remain the sole property of WatchGuard, unless they are to be purchased by Customer as Products and are explicitly listed on an Ordering Document. The tools and equipment may be held by Customer for WatchGuard's use without charge and may be removed from Customer's premises by WatchGuard at any time without restriction. Customer will safeguard all tools and equipment while in Customer's custody or control, and be liable for any loss or damage. Upon the expiration or earlier termination of this Agreement, Customer, at its expense, will return to WatchGuard all tools and equipment in its possession or control.

**2.7. Authorized Users.** Customer will ensure its employees and Authorized Users comply with the terms of this Agreement and will be liable for all acts and omissions of its employees and Authorized Users. Customer is responsible for the secure management of Authorized Users' names, passwords and login credentials for access to Products and Services. "**Authorized Users**" are Customer's employees, full-time contractors engaged for the purpose of supporting the Products and Services that are not competitors of WatchGuard, and the entities (if any) specified in an Ordering Document or otherwise approved by WatchGuard in writing (email from an authorized WatchGuard signatory accepted), which may include affiliates or other Customer agencies.

**2.8. Export Control.** Customer, its employees, and any other Authorized Users will not access or use the Products and Services in any jurisdiction in which the provision of such Products and Services is prohibited under applicable laws or regulations (a "**Prohibited Jurisdiction**"), and Customer will not provide access to the Products and Services to any government, entity, or individual located in a Prohibited Jurisdiction. Customer represents and warrants that (a) it and its Authorized Users are not named on any U.S. government list of persons prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) it and its Authorized Users are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) Customer will not permit its Authorized Users to access or use the Products or Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) Customer and its Authorized Users will comply with all applicable laws regarding the transmission of technical data exported from the U.S. and the country in which Customer, its employees, and the Authorized Users are located.

**2.9. Change Orders.** Unless a different change control process is agreed upon in writing by the Parties, a Party may request changes to an Addendum or an Ordering Document by submitting a change order to the other Party (each, a "**Change Order**"). If a requested change in a Change Order causes an increase or decrease in the Products or Services, the Parties by means of the Change Order will make appropriate adjustments to the Fees, project schedule, or other matters. Change Orders are effective and binding on the Parties only upon execution of the Change Order by an authorized representative of both Parties.

### **3. Term and Termination.**

**3.1. Term.** The term of this MCA ("**Term**") will commence on the Effective Date and continue until six (6) months after the later of (a) the termination, expiration, or discontinuance of services under the last Ordering Document in effect, or (b) the expiration of all applicable warranty periods, unless the MCA is earlier terminated as set forth herein. The applicable Addendum or Ordering Document will set forth the term for the Products and Services governed thereby.

**3.2. Termination.** Either Party may terminate the Agreement or the applicable Addendum or Ordering Document if the other Party breaches a material obligation under the Agreement and does not cure such breach within thirty (30) days after receipt of notice of the breach or fails to produce a cure plan within such period of time. Each Addendum and Ordering Document may be separately terminable as set forth therein.

**3.3. Suspension of Services.** WatchGuard may terminate or suspend any Products or Services under an Ordering Document if WatchGuard determines: (a) the related Product license has expired or has terminated for any reason; (b) the applicable Product is being used on a hardware platform, operating system, or version not approved by WatchGuard; (c) Customer fails to make any payments when due; or (d) Customer fails to comply with any of its other obligations or otherwise delays WatchGuard's ability to perform.

**3.4. Effect of Termination or Expiration.** Upon termination for any reason or expiration of this Agreement, an Addendum, or an Ordering Document, Customer and the Authorized Users will return or destroy (at WatchGuard's option) all WatchGuard Materials and WatchGuard Confidential Information in their possession or control and, as applicable, provide proof of such destruction, except that Equipment purchased by Customer should not be returned. If Customer has any outstanding payment obligations under this Agreement, WatchGuard may accelerate and declare all such obligations of Customer immediately due and payable by Customer. Notwithstanding the reason for termination or expiration, Customer must pay WatchGuard for Products and Services already delivered. Customer has a duty to mitigate any damages under this Agreement, including in the event of default by WatchGuard and Customer's termination of this Agreement.

#### **4. Payment and Invoicing.**

**4.1. Fees.** Fees and charges applicable to the Products and Services (the "**Fees**") will be as set forth in the applicable Addendum or Ordering Document, and such Fees may be changed by WatchGuard at any time, except that WatchGuard will not change the Fees for Products and Services purchased by Customer during the term of an active Ordering Document or during a Subscription Term (as defined and further described in the applicable Addendum). Changes in the scope of Services described in an Ordering Document may require an adjustment to the Fees due under such Ordering Document. If a specific invoicing or payment schedule is set forth in the applicable Addendum or Ordering Document, such schedule will apply solely with respect to such Addendum or Ordering Document. Unless otherwise specified in the applicable Ordering Document, the Fees for any Services exclude expenses associated with unusual and costly Site access requirements (e.g., if Site access requires a helicopter or other equipment), and Customer will reimburse WatchGuard for these or other expenses incurred by WatchGuard in connection with the Services.

**4.2. Taxes.** The Fees do not include any excise, sales, lease, use, property, or other taxes, assessments, duties, or regulatory charges or contribution requirements (collectively, "**Taxes**"), all of which will be paid by Customer, except as exempt by law, unless otherwise specified in an Ordering Document. If WatchGuard is required to pay any Taxes, Customer will reimburse WatchGuard for such Taxes (including any interest and penalties) within thirty (30) days after Customer's receipt of an invoice therefore. Customer will be solely responsible for reporting the Products for personal property tax purposes, and WatchGuard will be solely responsible for reporting taxes on its income and net worth.

**4.3. Invoicing.** WatchGuard will invoice Customer at the frequency set forth in the applicable Addendum or Ordering Document, and Customer will pay all invoices within thirty (30) days of

the invoice date or as otherwise specified in the applicable Addendum or Ordering Document. Late payments will be subject to interest charges at the maximum rate permitted by law, commencing upon the due date. WatchGuard may invoice electronically via email, and Customer agrees to receive invoices via email at the email address set forth in an Ordering Document. Customer acknowledges and agrees that a purchase order or other notice to proceed is not required for payment for Products or Services.

## **5. Sites; Customer-Provided Equipment; Non-WatchGuard Content.**

**5.1. Access to Sites.** Customer will be responsible for providing all necessary permits, licenses, and other approvals necessary for the installation and use of the Products and the performance of the Services at each applicable Site, including for WatchGuard to perform its obligations hereunder, and for facilitating WatchGuard's access to the Sites. No waivers of liability will be imposed on WatchGuard or its subcontractors by Customer or others at Customer facilities or other Sites, but if and to the extent any such waivers are imposed, the Parties agree such waivers are void.

**5.2. Site Conditions.** Customer will ensure that (a) all Sites are safe and secure, (b) Site conditions meet all applicable industry and legal standards (including standards promulgated by OSHA or other governmental or regulatory bodies), (c) to the extent applicable, Sites have adequate physical space, air conditioning, and other environmental conditions, electrical power outlets, distribution, equipment, connections, and telephone or other communication lines (including modem access and interfacing networking capabilities), and (d) Sites are suitable for the installation, use, and maintenance of the Products and Services. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

**5.3. Site Issues.** WatchGuard will have the right at any time to inspect the Sites and advise Customer of any deficiencies or non-conformities with the requirements of this **Section 5 – Sites; Customer-Provided Equipment; Non-WatchGuard Content**. If WatchGuard or Customer identifies any deficiencies or non-conformities, Customer will promptly remediate such issues or the Parties will select a replacement Site. If a Party determines that a Site identified in an Ordering Document is not acceptable or desired, the Parties will cooperate to investigate the conditions and select a replacement Site or otherwise adjust the installation plans and specifications as necessary. A change in Site or adjustment to the installation plans and specifications may cause a change in the Fees or performance schedule under the applicable Ordering Document.

**5.4. Customer-Provided Equipment.** Certain components, including equipment and software, not provided by WatchGuard may be required for use of the Products and Services ("**Customer-Provided Equipment**"). Customer will be responsible, at its sole cost and expense, for providing and maintaining the Customer-Provided Equipment in good working order. Customer represents and warrants that it has all rights in Customer-Provided Equipment to permit WatchGuard to access and use the applicable Customer-Provided Equipment to provide the Products and Services under this Agreement, and such access and use will not violate any laws or infringe any third-party rights (including intellectual property rights). Customer (and not WatchGuard) will be fully liable for Customer-Provided Equipment, and Customer will immediately notify WatchGuard of any Customer-Provided Equipment damage, loss, change, or theft that may impact WatchGuard's ability to provide the Products and Services under this Agreement, and Customer acknowledges that any such events may cause a change in the Fees or performance schedule under the applicable Ordering Document.

**5.5. Non-WatchGuard Content.** In certain instances, Customer may be permitted to access, use, or integrate Customer or third-party software, services, content, and data that is not provided by WatchGuard (collectively, “**Non-WatchGuard Content**”) with or through the Products and Services. If Customer accesses, uses, or integrates any Non-WatchGuard Content with the Products or Services, Customer will first obtain all necessary rights and licenses to permit Customer’s and its Authorized Users’ use of the Non-WatchGuard Content in connection with the Products and Services. Customer will also obtain the necessary rights for WatchGuard to use such Non-WatchGuard Content in connection with providing the Products and Services, including the right for WatchGuard to access, store, and process such Non-WatchGuard Content (e.g., in connection with Subscription Software), and to otherwise enable interoperation with the Products and Services. Customer represents and warrants that it will obtain the foregoing rights and licenses prior to accessing, using, or integrating the applicable Non-WatchGuard Content with the Products and Services, and that Customer and its Authorized Users will comply with any terms and conditions applicable to such Non-WatchGuard Content. If any Non-WatchGuard Content require access to Customer Data (as defined below in Section \_\_\_ below), Customer hereby authorizes WatchGuard to allow the provider of such Non-WatchGuard Content to access Customer Data, in connection with the interoperation of such Non-WatchGuard Content with the Products and Services. Customer acknowledges and agrees that WatchGuard is not responsible for, and makes no representations or warranties with respect to, the Non-WatchGuard Content (including any disclosure, modification, or deletion of Customer Data resulting from use of Non-WatchGuard Content or failure to properly interoperate with the Products and Services). If Customer receives notice that any Non-WatchGuard Content must be removed, modified, or disabled within the Products or Services, Customer will promptly do so. WatchGuard will have the right to disable or remove Non-WatchGuard Content if WatchGuard believes a violation of law, third-party rights, or WatchGuard’s policies is likely to occur, or if such Non-WatchGuard Content poses or may pose a security or other risk or adverse impact to the Products or Services, WatchGuard, WatchGuard’s systems, or any third party (including other WatchGuard customers). Nothing in this Section will limit the exclusions set forth in **Section 7.2 – Intellectual Property Infringement**.

## **6. Representations and Warranties.**

**6.1. Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that (a) it has the right to enter into the Agreement and perform its obligations hereunder, and (b) the Agreement will be binding on such Party.

**6.2. WatchGuard Warranties.** Subject to the disclaimers and exclusions below, WatchGuard represents and warrants that (a) Services will be provided in a good and workmanlike manner and will conform in all material respects to the descriptions in the applicable Ordering Document; and (b) for a period of ninety (90) days commencing upon the Service Completion Date for one-time Services, the Services will be free of material defects in materials and workmanship. Other than as set forth in subsection (a) above, recurring Services are not warranted but rather will be subject to the requirements of the applicable Addendum or Ordering Document. WatchGuard provides other express warranties for WatchGuard-manufactured Equipment, WatchGuard-owned software Products, and certain Services. Such express warranties are included in the applicable Addendum or Ordering Document. Such representations and warranties will apply only to the applicable Product or Service that is the subject of such Addendum or Ordering Document.

**6.3. Warranty Claims; Remedies.** To assert a warranty claim, Customer must notify WatchGuard in writing of the claim prior to the expiration of any warranty period set forth in this MCA or the applicable Addendum or Ordering Document. Unless a different remedy is otherwise expressly set forth for a particular warranty under an Addendum, upon receipt of such claim, WatchGuard will investigate the claim and use commercially reasonable efforts to repair or replace any confirmed materially non-conforming Product or re-perform any non-conforming Service, at its option. Such remedies are Customer's sole and exclusive remedies for WatchGuard's breach of a warranty. WatchGuard's warranties are extended by WatchGuard to Customer only, and are not assignable or transferrable.

**6.4. Pass-Through Warranties.** Notwithstanding any provision of this Agreement to the contrary, WatchGuard will have no liability for third-party software or hardware provided by WatchGuard; provided, however, that to the extent offered by third-party providers of software or hardware and to the extent permitted by law, WatchGuard will pass through express warranties provided by such third parties.

**6.5. WARRANTY DISCLAIMER.** EXCEPT FOR THE EXPRESS AND PASS THROUGH WARRANTIES IN THIS AGREEMENT, PRODUCTS AND SERVICES PURCHASED HEREUNDER ARE PROVIDED "AS IS" AND WITH ALL FAULTS. WARRANTIES SET FORTH IN THE AGREEMENT ARE THE COMPLETE WARRANTIES FOR THE PRODUCTS AND SERVICES AND WATCHGUARD DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND QUALITY. WATCHGUARD DOES NOT REPRESENT OR WARRANT THAT USE OF THE PRODUCTS AND SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF SECURITY VULNERABILITIES, OR THAT THEY WILL MEET CUSTOMER'S PARTICULAR REQUIREMENTS.

## **7. Indemnification.**

**7.1. General Indemnity.** WatchGuard will defend, indemnify, and hold Customer harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual third-party claim, demand, action, or proceeding ("**Claim**") for personal injury, death, or direct damage to tangible property to the extent caused by WatchGuard's negligence, gross negligence or willful misconduct while performing its duties under an Ordering Document or an Addendum, except to the extent the claim arises from Customer's negligence or willful misconduct. WatchGuard's duties under this **Section 7.1 – General Indemnity** are conditioned upon: (a) Customer promptly notifying WatchGuard in writing of the Claim; (b) WatchGuard having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with WatchGuard and, if requested by WatchGuard, providing reasonable assistance in the defense of the Claim.

**7.2. Intellectual Property Infringement.** WatchGuard will defend Customer against any third-party claim alleging that a WatchGuard-developed or manufactured Product or Service (the "**Infringing Product**") directly infringes a United States patent or copyright ("**Infringement Claim**"), and WatchGuard will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim, or agreed to in writing by WatchGuard in settlement of an Infringement Claim. WatchGuard's duties under this **Section 7.2 – Intellectual Property Infringement** are conditioned upon: (a) Customer promptly notifying WatchGuard in writing of the Infringement Claim; (b) WatchGuard having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with

WatchGuard and, if requested by WatchGuard, providing reasonable assistance in the defense of the Infringement Claim.

- 7.2.1. If an Infringement Claim occurs, or in WatchGuard's opinion is likely to occur, WatchGuard may at its option and expense: (a) procure for Customer the right to continue using the Infringing Product; (b) replace or modify the Infringing Product so that it becomes non-infringing; or (c) grant Customer (i) a pro-rated refund of any amounts pre-paid for the Infringing Product (if the Infringing Product is a software Product, i.e., Licensed Software or Subscription Software) or (ii) a credit for the Infringing Product, less a reasonable charge for depreciation (if the Infringing Product is Equipment, including Equipment with embedded software).
- 7.2.2. In addition to the other damages disclaimed under this Agreement, WatchGuard will have no duty to defend or indemnify Customer for any Infringement Claim that arises from or is based upon: (a) Customer Data, Customer-Provided Equipment, Non-WatchGuard Content, or third-party equipment, hardware, software, data, or other third-party materials; (b) the combination of the Product or Service with any products or materials not provided by WatchGuard; (c) a Product or Service designed, modified, or manufactured in accordance with Customer's designs, specifications, guidelines or instructions; (d) a modification of the Product or Service by a party other than WatchGuard; (e) use of the Product or Service in a manner for which the Product or Service was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to use or install an update to the Product or Service that is intended to correct the claimed infringement. In no event will WatchGuard's liability resulting from an Infringement Claim extend in any way to any payments due on a royalty basis, other than a reasonable royalty based upon revenue derived by WatchGuard from Customer from sales or license of the Infringing Product.
- 7.2.3. This **Section 7.2 – Intellectual Property Infringement** provides Customer's sole and exclusive remedies and WatchGuard's entire liability in the event of an Infringement Claim. For clarity, the rights and remedies provided in this Section are subject to, and limited by, the restrictions set forth in **Section 8 – Limitation of Liability** below.

**7.3. Customer Indemnity.** Customer will defend, indemnify, and hold WatchGuard and its subcontractors, subsidiaries and other affiliates harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual or threatened third-party claim, demand, action, or proceeding arising from or related to (a) Customer-Provided Equipment, Customer Data, or Non-WatchGuard Content, including any claim, demand, action, or proceeding alleging that any such equipment, data, or materials (or the integration or use thereof with the Products and Services) infringes or misappropriates a third-party intellectual property or other right, violates applicable law, or breaches the Agreement, (b) Customer-Provided Equipment's failure to meet the minimum requirements set forth in the applicable Documentation or match the applicable specifications provided to WatchGuard by Customer in connection with the Products or Services; (c) Customer's (or its service providers, agents, employees, or Authorized User's) negligence or willful misconduct; and (d) Customer's or its Authorized User's breach of this Agreement. This indemnity will not apply to the extent any such claim is caused by WatchGuard's use of Customer-Provided Equipment, Customer Data, or Non-WatchGuard Content in violation of the Agreement. WatchGuard will give Customer prompt, written notice of

any claim subject to the foregoing indemnity. WatchGuard will, at its own expense, cooperate with Customer in its defense or settlement of the claim.

## **8. Limitation of Liability.**

**8.1. DISCLAIMER OF CONSEQUENTIAL DAMAGES.** EXCEPT FOR PERSONAL INJURY OR DEATH, WATCHGUARD, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE “**WATCHGUARD PARTIES**”) WILL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER WATCHGUARD’S INDEMNITY OBLIGATIONS, A CAUSE OF ACTION FOR BREACH OF CONTRACT, UNDER TORT THEORY, OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR REVENUES, EVEN IF WATCHGUARD HAS BEEN ADVISED BY CUSTOMER OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES AND WHETHER OR NOT SUCH DAMAGES OR LOSSES ARE FORESEEABLE.

**8.2. DIRECT DAMAGES.** EXCEPT FOR PERSONAL INJURY OR DEATH, THE TOTAL AGGREGATE LIABILITY OF THE WATCHGUARD PARTIES, WHETHER BASED ON A CLAIM IN CONTRACT OR IN TORT, LAW OR EQUITY, RELATING TO OR ARISING OUT OF THE AGREEMENT WILL NOT EXCEED THE FEES SET FORTH IN THE ORDERING DOCUMENT UNDER WHICH THE CLAIM AROSE. NOTWITHSTANDING THE FOREGOING, FOR ANY SUBSCRIPTION SOFTWARE OR FOR ANY RECURRING SERVICES, THE WATCHGUARD PARTIES’ TOTAL LIABILITY FOR ALL CLAIMS RELATED TO SUCH PRODUCT OR RECURRING SERVICES IN THE AGGREGATE WILL NOT EXCEED THE TOTAL FEES PAID FOR SUCH SUBSCRIPTION SOFTWARE OR RECURRING SERVICE, AS APPLICABLE, DURING THE CONSECUTIVE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FROM WHICH THE FIRST CLAIM AROSE.

**8.3. ADDITIONAL EXCLUSIONS.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, WATCHGUARD WILL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF (A) CUSTOMER DATA, INCLUDING ITS TRANSMISSION TO WATCHGUARD, OR ANY OTHER DATA AVAILABLE THROUGH THE PRODUCTS OR SERVICES; (B) CUSTOMER-PROVIDED EQUIPMENT, NON-WATCHGUARD CONTENT, THE SITES, OR THIRD-PARTY EQUIPMENT, HARDWARE, SOFTWARE, DATA, OR OTHER THIRD-PARTY MATERIALS, OR THE COMBINATION OF PRODUCTS AND SERVICES WITH ANY OF THE FOREGOING; (C) LOSS OF DATA OR HACKING; (D) MODIFICATION OF PRODUCTS OR SERVICES BY ANY PERSON OTHER THAN WATCHGUARD; (E) RECOMMENDATIONS PROVIDED IN CONNECTION WITH OR BY THE PRODUCTS AND SERVICES; (F) DATA RECOVERY SERVICES OR DATABASE MODIFICATIONS; OR (G) CUSTOMER’S OR ANY AUTHORIZED USER’S BREACH OF THIS AGREEMENT OR MISUSE OF THE PRODUCTS AND SERVICES.

**8.4. Voluntary Remedies.** WatchGuard is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed issues in **Section 8.3 – Additional Exclusions** above, but if WatchGuard agrees to provide Services to help resolve such issues, Customer will reimburse WatchGuard for its reasonable time and expenses, including by paying WatchGuard any Fees set forth in an Ordering Document for such Services, if applicable.

**8.5. Statute of Limitations.** Customer may not bring any claims against an WatchGuard Party in connection with this Agreement or the Products and Services more than one (1) year after the date of accrual of the cause of action.

## 9. Confidentiality.

**9.1. Confidential Information.** “**Confidential Information**” means any and all non-public information provided by one Party (“**Discloser**”) to the other (“**Recipient**”) that is disclosed under this Agreement in oral, written, graphic, machine recognizable, or sample form, being clearly designated, labeled or marked as confidential or its equivalent or that a reasonable businessperson would consider non-public and confidential by its nature. With respect to WatchGuard, Confidential Information will also include Products and Services, and Documentation, as well as any other information relating to the Products and Services. The nature and existence of this Agreement are considered Confidential Information of the Parties. In order to be considered Confidential Information, information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by Discloser by submitting a written document to Recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

**9.2. Obligations of Confidentiality.** During the Term and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (a) not disclose Confidential Information to any third party, except as expressly permitted in this **Section 9 - Confidentiality**; (b) restrict disclosure of Confidential Information to only those employees (including, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must access the Confidential Information for the purpose of, and who are bound by confidentiality terms substantially similar to those in, this Agreement; (c) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (d) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (e) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (f) only use the Confidential Information as needed to fulfill its obligations and secure its rights under this Agreement.

**9.3. Exceptions.** Recipient is not obligated to maintain as confidential any information that Recipient can demonstrate by documentation (a) is publicly available at the time of disclosure or becomes available to the public without breach of this Agreement; (b) is lawfully obtained from a third party without a duty of confidentiality to Discloser; (c) is otherwise lawfully known to Recipient prior to such disclosure without a duty of confidentiality to Discloser; or (d) is independently developed by Recipient without the use of, or reference to, any of Discloser’s Confidential Information or any breach of this Agreement. Additionally, Recipient may disclose Confidential Information to the extent required by law, including a judicial or legislative order or proceeding.

**9.4. Ownership of Confidential Information.** All Confidential Information is and will remain the property of Discloser and will not be copied or reproduced without the express written permission of Discloser (including as permitted herein). Within ten (10) days of receipt of Discloser’s written request, Recipient will return or destroy all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain (a) one (1) archival copy of the Confidential Information for use only in case of a dispute concerning this Agreement and (b) Confidential Information that has been automatically stored in accordance with Recipient’s standard backup or recordkeeping procedures, provided, however that Recipient will remain

subject to the obligations of this Agreement with respect to any Confidential Information retained subject to clauses (a) or (b). No license, express or implied, in the Confidential Information is granted to the Recipient other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. Discloser represents and warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

## **10. Proprietary Rights; Data; Feedback.**

**10.1. Data Definitions.** The following terms will have the stated meanings: “**Customer Contact Data**” means data WatchGuard collects from Customer, its Authorized Users, and their end users for business contact purposes, including marketing, advertising, licensing and sales purposes; “**Service Use Data**” means data generated by Customer’s use of the Products and Services or by WatchGuard’s support of the Products and Services, including personal information, location, monitoring and recording activity, product performance and error information, activity logs and date and time of use; “**Customer Data**” means data, information, and content, including images, text, videos, documents, audio, telemetry and structured data base records, provided by, through, or on behalf of Customer, its Authorized Users, and their end users through the use of the Products and Services. Customer Data does not include Customer Contact Data, Service Use Data, or information from publicly available sources or other Third-Party Data or WatchGuard Data; “**Third-Party Data**” means information obtained by WatchGuard from publicly available sources or its third party content providers and made available to Customer through the Products or Services; “**WatchGuard Data**” means data owned or licensed by WatchGuard; “**Feedback**” means comments or information, in oral or written form, given to WatchGuard by Customer or Authorized Users, including their end users, in connection with or relating to the Products or Services; and “**Process**” or “**Processing**” means any operation or set of operations which is performed on personal information or on sets of personal information, whether or not by automated means, such as collection, recording, copying, analyzing, caching, organization, structuring, storage, adaptation, or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**10.2. WatchGuard Materials.** Customer acknowledges that WatchGuard may use or provide Customer with access to software, tools, data, and other materials, including designs, utilities, models, methodologies, systems, and specifications, which WatchGuard has developed or licensed from third parties (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, or derivative works of the foregoing, whether made by WatchGuard or another party) (collectively, “**WatchGuard Materials**”). The Products and Services, WatchGuard Data, Third-Party Data, and Documentation, are considered WatchGuard Materials. Except when WatchGuard has expressly transferred title or other interest to Customer by way of an Addendum or Ordering Document, the WatchGuard Materials are the property of WatchGuard or its licensors, and WatchGuard or its licensors retain all right, title and interest in and to the WatchGuard Materials (including, all rights in patents, copyrights, trademarks, trade names, trade secrets, know-how, other intellectual property and proprietary rights, and all associated goodwill and moral rights). For clarity, this Agreement does not grant to Customer any shared development rights in or to any WatchGuard Materials or other intellectual property, and Customer agrees to execute any documents and take any other actions reasonably requested by WatchGuard to effectuate the foregoing. WatchGuard and its licensors reserve all rights not expressly granted to Customer, and no rights, other than those expressly granted herein, are granted to Customer by implication, estoppel or otherwise. Customer will not modify, disassemble, reverse engineer, derive source code or create derivative works from, merge with other software, distribute,

sublicense, sell, or export the Products and Services or other WatchGuard Materials, or permit any third party to do so.

**10.3. Ownership of Customer Data.** Customer retains all right, title and interest, including intellectual property rights, if any, in and to Customer Data. WatchGuard acquires no rights to Customer Data except those rights granted under this Agreement including the right to Process and use the Customer Data as set forth in **Section 10.4 – Processing Customer Data** below and in other applicable Addenda. The Parties agree that with regard to the Processing of personal information which may be part of Customer Data, Customer is the controller and WatchGuard is the processor, and may engage sub-processors pursuant to **Section 10.4.3 – Sub-processors**.

**10.4. Processing Customer Data.**

10.4.1. WatchGuard Use of Customer Data. To the extent permitted by law, Customer grants WatchGuard and its subcontractors a right to use Customer Data and a royalty-free, worldwide, non-exclusive license to use Customer Data (including to process, host, cache, store, reproduce, copy, modify, combine, analyze, create derivative works from such Customer Data and to communicate, transmit, and distribute such Customer Data to third parties engaged by WatchGuard) to (a) perform Services and provide Products under the Agreement, (b) analyze the Customer Data to operate, maintain, manage, and improve WatchGuard Products and Services, and (c) create new products and services. Customer agrees that this Agreement, along with the Documentation, are Customer's complete and final documented instructions to WatchGuard for the processing of Customer Data. Any additional or alternate instructions must be agreed to according to the Change Order process. Customer represents and warrants to WatchGuard that Customer's instructions, including appointment of WatchGuard as a processor or sub-processor, have been authorized by the relevant controller.

10.4.2. Collection, Creation, Use of Customer Data. Customer further represents and warrants that the Customer Data, Customer's collection, creation, and use of the Customer Data (including in connection with WatchGuard's Products and Services), and WatchGuard's use of such Customer Data in accordance with the Agreement, will not violate any laws or applicable privacy notices or infringe any third-party rights (including intellectual property and privacy rights). Customer also represents and warrants that the Customer Data will be accurate and complete, and that Customer has obtained all required consents, provided all necessary notices, and met any other applicable legal requirements with respect to collection and use (including WatchGuard's and its subcontractors' use) of the Customer Data as described in the Agreement.

10.4.3. Sub-processors. Customer agrees that WatchGuard may engage sub-processors who in turn may engage additional sub-processors to Process personal data in accordance with this Agreement. When engaging sub-processors, WatchGuard will enter into agreements with the sub-processors to bind them to data processing obligations to the extent required by law.

**10.5. Data Retention and Deletion.** Except for anonymized Customer Data, as described above, or as otherwise provided under the Agreement, WatchGuard will delete all Customer Data following termination or expiration of this MCA or the applicable Addendum or Ordering

Document, with such deletion to occur no later than ninety (90) days following the applicable date of termination or expiration, unless otherwise required to comply with applicable law. Any requests for the exportation or download of Customer Data must be made by Customer to WatchGuard in writing before expiration or termination, subject to **Section 13.9 – Notices**. WatchGuard will have no obligation to retain such Customer Data beyond expiration or termination unless the Customer has purchased extended storage from WatchGuard through a mutually executed Ordering Document.

**10.6. Service Use Data.** Customer understands and agrees that WatchGuard may collect and use Service Use Data for its own purposes, including the uses described below. WatchGuard may use Service Use Data to (a) operate, maintain, manage, and improve existing and create new products and services, (b) test products and services, (c) to aggregate Service Use Data and combine it with that of other users, and (d) to use anonymized or aggregated data for marketing, research or other business purposes. Service Use Data may be disclosed to third parties. It is Customer's responsibility to notify Authorized Users of WatchGuard's collection and use of Service Use Data and to obtain any required consents, provide all necessary notices, and meet any other applicable legal requirements with respect to such collection and use, and Customer represents and warrants to WatchGuard that it has complied and will continue to comply with this Section.

**10.7. Third-Party Data and WatchGuard Data.** WatchGuard Data and Third-Party Data may be available to Customer through the Products and Services. Customer and its Authorized Users may use WatchGuard Data and Third-Party Data as permitted by WatchGuard and the applicable Third-Party Data provider, as described in the applicable Addendum. Unless expressly permitted in the applicable Addendum, Customer will not, and will ensure its Authorized Users will not: (a) use the WatchGuard Data or Third-Party Data for any purpose other than Customer's internal business purposes; (b) disclose the data to third parties; (c) "white label" such data or otherwise misrepresent its source or ownership, or resell, distribute, sublicense, or commercially exploit the data in any manner; (d) use such data in violation of applicable laws; (e) remove, obscure, alter, or falsify any marks or proprietary rights notices indicating the source, origin, or ownership of the data; or (f) modify such data or combine it with Customer Data or other data or use the data to build databases. Additional restrictions may be set forth in the applicable Addendum. Any rights granted to Customer or Authorized Users with respect to WatchGuard Data or Third-Party Data will immediately terminate upon termination or expiration of the applicable Addendum, Ordering Document, or this MCA. Further, WatchGuard or the applicable Third-Party Data provider may suspend, change, or terminate Customer's or any Authorized User's access to WatchGuard Data or Third-Party Data if WatchGuard or such Third-Party Data provider believes Customer's or the Authorized User's use of the data violates the Agreement, applicable law or WatchGuard's agreement with the applicable Third-Party Data provider. Upon termination of Customer's rights to use any WatchGuard Data or Third-Party Data, Customer and all Authorized Users will immediately discontinue use of such data, delete all copies of such data, and certify such deletion to WatchGuard. Notwithstanding any provision of the Agreement to the contrary, WatchGuard will have no liability for Third-Party Data or WatchGuard Data available through the Products and Services. WatchGuard and its Third-Party Data providers reserve all rights in and to WatchGuard Data and Third-Party Data not expressly granted in an Addendum or Ordering Document.

**10.8. Feedback.** Any Feedback provided by Customer is entirely voluntary, and will not create any confidentiality obligation for WatchGuard, even if designated as confidential by Customer. WatchGuard may use, reproduce, license, and otherwise distribute and exploit the Feedback without any obligation or payment to Customer or Authorized Users and Customer represents

and warrants that it has obtained all necessary rights and consents to grant WatchGuard the foregoing rights.

**10.9. Improvements; Products and Services.** The Parties agree that, notwithstanding any provision of this MCA or the Agreement to the contrary, all fixes, modifications and improvements to the Services or Products conceived of or made by or on behalf of WatchGuard that are based either in whole or in part on the Feedback, Customer Data, or Service Use Data (or otherwise) are the exclusive property of WatchGuard and all right, title and interest in and to such fixes, modifications or improvements will vest solely in WatchGuard. Customer agrees to execute any written documents necessary to assign any intellectual property or other rights it may have in such fixes, modifications or improvements to WatchGuard.

## **11. Force Majeure; Delays Caused by Customer.**

**11.1. Force Majeure.** Except for Customer's payment obligations hereunder, neither Party will be responsible for nonperformance or delayed performance due to events outside of its reasonable control. If performance will be significantly delayed, the affected Party will provide notice to the other Party, and the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule.

**11.2. Delays Caused by Customer.** WatchGuard's performance of the Products and Services will be excused for delays caused by Customer or its Authorized Users or subcontractors, or by failure of any assumptions set forth in this Agreement (including in any Addendum or Ordering Document). In the event of a delay under this **Section 11.2 – Delays Caused by Customer**, (a) Customer will continue to pay the Fees as required hereunder, (b) the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule, and (c) Customer will compensate WatchGuard for its out-of-pocket costs incurred due to the delay (including those incurred by WatchGuard's affiliates, vendors, and subcontractors).

**12. Disputes.** The Parties will use the following procedure to resolve any disputes relating to or arising out of this Agreement (each, a "**Dispute**"):

**12.1. Governing Law.** All matters relating to or arising out of the Agreement are governed by the laws of the State of Texas, unless Customer is the United States Government (or an agency thereof), in which case all matters relating to or arising out of the Agreement will be governed by the laws of the State in which the Products and Services are provided. The terms of the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply.

**12.2. Negotiation; Mediation.** Either Party may initiate dispute resolution procedures by sending a notice of Dispute ("**Notice of Dispute**") to the other Party. The Parties will attempt to resolve the Dispute promptly through good faith negotiations, including timely escalation of the Dispute to executives who have authority to settle the Dispute (and who are at a higher level of management than the persons with direct responsibility for the matter). If a Dispute is not resolved through negotiation, either Party may initiate mediation by sending a notice of mediation ("**Notice of Mediation**") to the other Party. The Parties will choose an independent mediator within thirty (30) days of such Notice of Mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, but if the Parties are unable to agree upon a mediator, either Party may request that the American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute. All in

person meetings under this **Section 12.2 – Negotiation; Mediation** will take place in Dallas, Texas, and all communication relating to the Dispute resolution will be maintained in strict confidence by the Parties. Notwithstanding the foregoing, any Dispute arising from or relating to WatchGuard's intellectual property rights will not be subject to negotiation or mediation in accordance with this Section, but instead will be decided by a court of competent jurisdiction, in accordance with **Section 12.3 – Litigation, Venue, Jurisdiction** below.

**12.3. Litigation, Venue, Jurisdiction.** If the Dispute has not been resolved by mediation within sixty (60) days from the Notice of Mediation, either Party may submit the Dispute to a court of competent jurisdiction in the state in which the Products and Services are provided. . Each Party expressly consents to the exclusive jurisdiction of such courts for resolution of any Dispute and to enforce the outcome of any mediation.

### **13. General.**

**13.1. Compliance with Laws.** Each Party will comply with applicable laws in connection with the performance of its obligations under this Agreement, including that Customer will ensure its and its Authorized Users' use of the Products and Services complies with law (including privacy laws), and Customer will obtain any FCC and other licenses or authorizations (including licenses or authorizations required by foreign regulatory bodies) required for its and its Authorized Users' use of the Products and Services. WatchGuard may, at its discretion, cease providing or otherwise modify Products and Services (or any terms related thereto in an Addendum or Ordering Document), in order to comply with any changes in applicable law.

**13.2. Audit; Monitoring.** WatchGuard will have the right to monitor and audit use of the Products, which may also include access by WatchGuard to Customer Data and Service Use Data. Customer will provide notice of such monitoring to its Authorized Users and obtain any required consents, including individual end users, and will cooperate with WatchGuard in any monitoring or audit. Customer will maintain during the Term, and for two (2) years thereafter, accurate records relating to any software licenses granted under this Agreement to verify compliance with this Agreement. WatchGuard or a third party ("**Auditor**") may inspect Customer's and, as applicable, Authorized Users' premises, books, and records. WatchGuard will pay expenses and costs of the Auditor, unless Customer is found to be in violation of the terms of the Agreement, in which case Customer will be responsible for such expenses and costs.

**13.3. Assignment and Subcontracting.** Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. WatchGuard may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to a subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns.

**13.4. Waiver.** A delay or omission by either Party to exercise any right under this Agreement will not be construed to be a waiver of such right. A waiver by either Party of any of the obligations to be performed by the other, or any breach thereof, will not be construed to be a waiver of any succeeding breach or of any other obligation. All waivers must be in writing and signed by the Party waiving its rights.

**13.5. Severability.** If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision will be deemed to be

modified to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement will not be affected, and each such provision will be valid and enforceable to the full extent permitted by applicable law.

**13.6. Independent Contractors.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership, or formal business organization of any kind.

**13.7. Third-Party Beneficiaries.** The Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that the Agreement will not benefit, or create any right or cause of action in or on behalf of, any entity other than the Parties. Notwithstanding the foregoing, a licensor or supplier of third-party software included in the software Products will be a direct and intended third-party beneficiary of this Agreement.

**13.8. Interpretation.** The section headings in this Agreement are included only for convenience. The words “including” and “include” will be deemed to be followed by the phrase “without limitation”. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

**13.9. Notices.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as FedEx, UPS, or DHL), and will be effective upon receipt.

**13.10. Cumulative Remedies.** Except as specifically stated in this Agreement, all remedies provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity, by contract, or otherwise. Except as specifically stated in this Agreement, the election by a Party of any remedy provided for in this Agreement or otherwise available to such Party will not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract, or otherwise.

**13.11. Survival.** The following provisions will survive the expiration or termination of this Agreement for any reason: **Section 2.4 – Customer Obligations; Section 3.4 – Effect of Termination or Expiration; Section 4 – Payment and Invoicing; Section 6.5 – Warranty Disclaimer; Section 7.3 – Customer Indemnity; Section 8 – Limitation of Liability; Section 9 – Confidentiality; Section 10 – Proprietary Rights; Data; Feedback; Section 11 – Force Majeure; Delays Caused by Customer; Section 12 – Disputes; and Section 13 – General.**

**13.12. Entire Agreement.** This Agreement, including all Addenda and Ordering Documents, constitutes the entire agreement of the Parties regarding the subject matter hereto, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and will have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment, or other form will not be considered an amendment or

modification or part of this Agreement, even if a representative of each Party signs such document.

The Parties hereby enter into this MCA as of the Effective Date.

**WatchGuard Video, Inc.**

**Customer:** [REDACTED]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



March 16, 2021

TOWN OF HOLLY SPRINGS, NC

Enclosed for your review, please find the **Municipal Lease** documentation in connection with the radio equipment to be lease purchased from Motorola Solutions Inc. The interest rate and payment streams outlined in Equipment Lease Purchase Agreement #25083 are valid for contracts that are executed and returned on or before **April 26, 2021**. After **4/26/21**, the Lessor reserves the option to re-quote and re-price the transaction based on current market interest rates.

Once complete, a set with **ORIGINAL "wet" signatures** should be returned to me at the address below:

Motorola Solutions Credit Company LLC  
Attn: Paul Mecaskey / 44<sup>th</sup> Floor  
500 W. Monroe  
Chicago, IL 60661

***To help expedite the order process & given the Covid-19 crisis, I can work off a scanned copy with the originals to follow. Please scan prior to mailing & keep a copy for your records.***

Should you have any questions, please contact me at 847-538-3707.

Thank You,

MOTOROLA SOLUTIONS CREDIT COMPANY LLC  
Paul Mecaskey

# LESSEE FACT SHEET

Please help Motorola Solutions Inc. provide excellent billing service by providing the following information:

1. Complete **Billing** Address TOWN OF HOLLY SPRINGS, NC

\_\_\_\_\_

\_\_\_\_\_

Attention:

\_\_\_\_\_

Phone:

\_\_\_\_\_

2. Lessee County Location:

\_\_\_\_\_

3. Federal Tax I.D. Number

\_\_\_\_\_

4. Purchase Order Number to be referenced on invoice (if necessary) or other “descriptions” that may assist in determining the applicable cost center or department: \_\_\_\_\_

5. Equipment description that you would like to appear on your invoicing: \_\_\_\_\_

## Appropriate Contact for Documentation / System Acceptance Follow-up:

6. Appropriate Contact & Mailing Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

E-mail:

\_\_\_\_\_

Phone:

\_\_\_\_\_

Fax:

\_\_\_\_\_

7. Payment remit to address:

**Motorola Solutions Credit Company LLC  
P.O. Box 71132  
Chicago IL 60694-1132**

Thank you

## EQUIPMENT LEASE-PURCHASE AGREEMENT

**Lease Number: 25083**

**LESSEE:**

**TOWN OF HOLLY SPRINGS, NC**  
128 S Main Street  
Holly Springs, NC 27540

**LESSOR:**

Motorola Solutions, Inc.  
500 W. Monroe  
Chicago, IL 60661

Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, the equipment, software, upgrades of same, extended warranties and other support, and other personal property described in Schedule A attached hereto ("Equipment") in accordance with the following terms and conditions of this Equipment Lease-Purchase Agreement ("Lease").

**1. TERM.** This Lease will become effective upon the execution hereof by Lessor. The Term of this Lease will commence on date specified in Schedule A attached hereto and unless terminated according to terms hereof or the purchase option, provided in Section 18, is exercised this Lease will continue until the Expiration Date set forth in Schedule B attached hereto ("Lease Term").

**2. RENT.** Lessee agrees to pay to Lessor or its assignee the Lease Payments (herein so called), including the interest portion, in the amounts specified in Schedule B. The Lease Payments will be payable without notice or demand at the office of the Lessor (or such other place as Lessor or its assignee may from time to time designate in writing), and will commence on the first Lease Payment Date as set forth in Schedule B and thereafter on each of the Lease Payment Dates set forth in Schedule B. Any payments received later than ten (10) days from the due date will bear interest at the highest lawful rate from the due date. Except as specifically provided in Section 5 hereof, the Lease Payments will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, or recoupment for any reason whatsoever. Lessee reasonably believes that funds can be obtained sufficient to make all Lease Payments during the Lease Term and hereby covenants that a request for appropriation for funds from which the Lease Payments may be made will be requested each fiscal period, including making provisions for such payment to the extent necessary in each budget submitted for the purpose of obtaining funding. It is Lessee's intent to make Lease Payment for the full Lease Term if funds are legally available therefor and in that regard Lessee represents that the Equipment will be used for one or more authorized governmental or proprietary functions essential to its proper, efficient and economic operation.

**3. DELIVERY AND ACCEPTANCE.** Lessor will cause the Equipment to be delivered to Lessee at the location specified in Schedule A ("Equipment Location"). Lessee will accept the Equipment as soon as it has been delivered and is operational. Lessee will evidence its acceptance of the Equipment either (a) by executing and delivering to Lessor a Delivery and Acceptance Certificate in the form provided by Lessor; or (b) by executing and delivering the form of acceptance provided for in the Contract (defined below).

Even if Lessee has not executed and delivered to Lessor a Delivery and Acceptance Certificate or other form of acceptance acceptable to Lessor, if Lessor believes the Equipment has been delivered and is operational, Lessor may require Lessee to notify Lessor in writing (within five (5) days of Lessee's receipt of Lessor's request) whether or not Lessee deems the Equipment (i) to have been delivered and (ii) to be operational, and hence be accepted by Lessee. If Lessee fails to so respond in such five (5) day period, Lessee will be deemed to have accepted the Equipment and be deemed to have acknowledged that the Equipment was delivered and is operational as if Lessee had in fact executed and delivered to Lessor a Delivery and Acceptance Certificate or other form acceptable to Lessor.

**4. REPRESENTATIONS AND WARRANTIES.** Lessee acknowledges that the Equipment leased hereunder is being manufactured and installed by Motorola Solutions, Inc. (or one of its wholly owned subsidiaries) pursuant to contract (the "Contract") covering the Equipment. Lessee acknowledges that on or prior to the date of acceptance of the Equipment, Lessor intends to sell and assign Lessor's right, title and interest in and to this Agreement and the Equipment to an assignee ("Assignee"). LESSEE FURTHER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE OR KIND WHATSOEVER, AND AS BETWEEN LESSEE AND THE ASSIGNEE, THE PROPERTY SHALL BE ACCEPTED BY LESSEE "AS IS" AND "WITH ALL FAULTS". LESSEE AGREES TO SETTLE ALL CLAIMS DIRECTLY WITH LESSOR AND WILL NOT ASSERT OR SEEK TO ENFORCE ANY SUCH CLAIMS AGAINST THE ASSIGNEE. NEITHER LESSOR NOR THE ASSIGNEE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER AS A RESULT OF THE LEASE OF THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, PROPERTY DAMAGE OR LOST PRODUCTION WHETHER SUFFERED BY LESSEE OR ANY THIRD PARTY.

Lessor is not responsible for, and shall not be liable to Lessee for damages relating to loss of value of the Equipment for any cause or situation (including, without limitation, governmental actions or regulations or actions of other third parties).

**5. NON-APPROPRIATION OF FUNDS.** Notwithstanding anything contained in this Lease to the contrary, Lessee has the right to not appropriate funds to make Lease Payments required hereunder in any fiscal period and in the event no funds are appropriated or in the event funds appropriated by Lessee's governing body or otherwise available by any lawful means whatsoever in any fiscal period of Lessee for Lease Payments or other amounts due under this Lease are insufficient therefor, this Lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee of any kind whatsoever, except as to the portions of Lease Payments or other amounts herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available. The Lessee will immediately notify the Lessor or its Assignee of such occurrence. In the event of such termination, Lessee agrees to promptly discontinue use of the Equipment, remove or delete any software which is part of the Equipment from all of Lessee's computers and electronic devices, and peaceably surrender possession of the Equipment to Lessor or its Assignee on the date of such termination, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States designated by Lessor. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment. Non-appropriation of funds shall not constitute a default hereunder for purposes of Section 16.

**6. LESSEE CERTIFICATION.** Lessee represents, covenants and warrants that: (i) Lessee is a state or a duly constituted political subdivision or agency of the state of the Equipment Location; (ii) the interest portion of the Lease Payments shall be excludable from Lessor's gross income pursuant to Section 103 of the Internal Revenue Code of 1986, as it may be amended from time to time (the "Code"); (iii) the execution, delivery and performance by the Lessee of this Lease have been duly authorized by all necessary action on the part of the Lessee; (iv) this Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; (v) Lessee will comply with the information reporting requirements of Section 149(e) of the Internal Revenue Code of 1986 (the "Code"), and such compliance shall include but not be limited to the execution of information statements requested by Lessor; (vi) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the Lease to be an arbitrage bond within the meaning of Section 148(a) of the Code; (vii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, this Lease to be a private activity bond within the meaning of Section 141(a) of the Code; (viii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the interest portion of the Lease Payment to be or become includible in gross income for Federal income taxation purposes under the Code; (ix) Lessee will be the only entity to own, use and operate the Equipment

during the Lease Term; and (x) Lessee agrees that the Equipment shall be and remain personal property notwithstanding the manner in which the same may be attached or affixed to realty, and Lessee shall do all acts and enter into all agreements necessary to insure that the Equipment remains personal property.

Lessee represents, covenants and warrants that: (i) it will do or cause to be done all things necessary to preserve and keep the Lease in full force and effect, (ii) it has complied with all laws relative to public bidding where necessary, and (iii) it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal period.

If Lessee breaches the covenant contained in this Section, the interest component of Lease Payments may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, notwithstanding anything to the contrary contained in Section 11 of this Agreement, Lessee agrees to pay promptly after any such determination of taxability and on each Lease Payment date thereafter to Lessor an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludibility (including, without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error). Notwithstanding anything herein to the contrary, any additional amount payable by Lessee pursuant to this Section 6 shall be payable solely from Legally Available Funds.

It is Lessor's and Lessee's intention that this Agreement not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment for federal income tax purposes.

**7. TITLE TO EQUIPMENT; SECURITY INTEREST.** Upon shipment of the Equipment to Lessee hereunder, title to the Equipment (other than any intellectual property rights in the software comprising part of the Equipment) will vest in Lessee subject to any applicable license; provided, however, that (i) in the event of termination of this Lease by Lessee pursuant to Section 5 hereof; or (ii) upon the occurrence of an Event of Default hereunder, and as long as such Event of Default is continuing, title will immediately vest in Lessor or its Assignee, and Lessee shall immediately discontinue use of the Equipment, remove the Equipment from Lessee's computers and other electronic devices and deliver the Equipment to Lessor or its Assignee. In order to secure all of its obligations hereunder, Lessee hereby (i) grants to Lessor a first and prior security interest in any and all right, title and interest of Lessee in the Equipment and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds therefrom; (ii) agrees that this Lease may be filed as a financing statement evidencing such security interest; and (iii) agrees to execute and deliver all financing statements, certificates of title and other instruments necessary or appropriate to evidence such security interest.

**8. USE; REPAIRS.** Lessee will use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment and shall comply with all laws, ordinances, insurance policies, the Contract, any licensing or other agreement, and regulations relating to, and will pay all costs, claims, damages, fees and charges arising out of the possession, use or maintenance of the Equipment. Lessee, at its expense will keep the Equipment in good repair and furnish and/or install all parts, mechanisms, updates, upgrades and devices required therefor.

**9. ALTERATIONS.** Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment.

**10. LOCATION; INSPECTION.** The Equipment will not be removed from, [or if the Equipment consists of rolling stock, its permanent base will not be changed from] the Equipment Location without Lessor's prior written consent which will not be unreasonably withheld. Lessor will be entitled to enter upon the

Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operation.

**11. LIENS AND TAXES.** Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. Lessee shall pay, when due, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, licensing, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by Lessor's income. If Lessee fails to pay said charges and taxes when due, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes, Lessee shall reimburse Lessor therefor within ten days of written demand.

**12. RISK OF LOSS: DAMAGE; DESTRUCTION.** Lessee assumes all risk of loss or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make Lease Payments or to perform any other obligation under this Lease. In the event of damage to any item of Equipment, Lessee will immediately place the same in good repair with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair (an "Event of Loss"), Lessee at the option of Lessor will: either (a) replace the same with like equipment in good repair; or (b) on the next Lease Payment date, pay Lessor the sum of : (i) all amounts then owed by Lessee to Lessor under this Lease, including the Lease payment due on such date; and (ii) an amount equal to all remaining Lease Payments to be paid during the Lease Term as set forth in Schedule B.

In the event that Lessee is obligated to make such payment with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Lease Payment and the Balance Payment (as set forth in Schedule B) to be made by Lessee with respect to that part of the Equipment which has suffered the Event of Loss.

**13. INSURANCE.** Lessee will, at its expense, maintain at all times during the Lease Term, fire and extended coverage, public liability and property damage insurance with respect to the Equipment in such amounts, covering such risks, and with such insurers as shall be satisfactory to Lessor, or, with Lessor's prior written consent, Lessee may self-insure against any or all such risks. All insurance covering loss of or damage to the Equipment shall be carried in an amount no less than the amount of the then applicable Balance Payment with respect to such Equipment. The initial amount of insurance required is set forth in Schedule B. Each insurance policy will name Lessee as an insured and Lessor or its Assigns as an additional insured, and will contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies will be payable to Lessee and Lessor or its Assigns as their interests may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event that Lessee has been permitted to self-insure, Lessee will furnish Lessor with a letter or certificate to such effect. In the event of any loss, damage, injury or accident involving the Equipment, Lessee will promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto.

**14. INDEMNIFICATION.** Lessee shall, to the extent permitted by law, indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages or liabilities, including attorneys' fees and court costs, arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, licensing, possession, use, operation, rejection, or return and the recovery of claims under insurance policies thereon.

**15. ASSIGNMENT.** Without Lessor's prior written consent, Lessee will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Lease or the Equipment or any interest in this Lease or the Equipment or; (ii) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign its rights, title and interest in and to this Lease, the Equipment and any documents executed with respect to this Lease and/or grant or assign a security interest in this Lease and the Equipment, in whole or in part. Any such assignees shall have all of the rights of Lessor under this Lease. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Lessee covenants and agrees not to assert against the Assignee any claims or defenses by way of abatement, setoff, counterclaim, recoupment or the like which Lessee may have against Lessor. No assignment or reassignment of any Lessor's right, title or interest in this Lease or the Equipment shall be effective unless and until Lessee shall have received a notice of assignment, disclosing the name and address of each such assignee; provided, however, that if such assignment is made to a bank or trust company as paying or escrow agent for holders of certificates of participation in the Lease, it shall thereafter be sufficient that a copy of the agency agreement shall have been deposited with Lessee until Lessee shall have been advised that such agency agreement is no longer in effect. During the Lease Term Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with Section 149(a) of the Code, and the regulations, proposed or existing, from time to time promulgated thereunder. No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee will acknowledge such assignments in writing if so requested.

After notice of such assignment, Lessee shall name the Assignee as additional insured and loss payee in any insurance policies obtained or in force. Any Assignee of Lessor may reassign this Lease and its interest in the Equipment and the Lease Payments to any other person who, thereupon, shall be deemed to be Lessor's Assignee hereunder.

**16. EVENT OF DEFAULT.** The term "Event of Default", as used herein, means the occurrence of any one or more of the following events: (i) Lessee fails to make any Lease Payment (or any other payment) as it becomes due in accordance with the terms of the Lease when funds have been appropriated sufficient for such purpose, and any such failure continues for ten (10) days after the due date thereof; (ii) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure is not cured within twenty (20) days after written notice thereof by Lessor; (iii) the discovery by Lessor that any statement, representation, or warranty made by Lessee in this Lease or in writing delivered by Lessee pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; (iv) proceedings under any bankruptcy, insolvency, reorganization or similar legislation shall be instituted against or by Lessee, or a receiver or similar officer shall be appointed for Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within twenty (20) days after the institution or occurrence thereof; or (v) an attachment, levy or execution is threatened or levied upon or against the Equipment.

**17. REMEDIES.** Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, Lessor may, at its option, exercise any one or more of the following remedies: (i) by written notice to Lessee, declare all amounts then due under the Lease, and all remaining Lease Payments due during the fiscal period in effect when the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable; (ii) by written notice to Lessee, request Lessee to (and Lessee agrees that it will), at Lessee's expense, promptly discontinue use of the Equipment, remove the Equipment from all of Lessee's computers and electronic devices, return the Equipment to Lessor in the manner set forth in Section 5 hereof, or Lessor, at its option, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same; (iii) sell or lease the Equipment or sublease it for the account of Lessee, holding Lessee liable for all Lease Payments and other amounts due prior to the effective date of such selling,

leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, Lessee or sublessee pursuant to such sale, lease or sublease and the amounts payable by Lessee hereunder; (iv) promptly return the Equipment to Lessor in the manner set forth in Section 5 hereof; and (v) exercise any other right, remedy or privilege which may be available to it under applicable laws of the state of the Equipment Location or any other applicable law or proceed by appropriate court action to enforce the terms of the Lease or to recover damages for the breach of this Lease or to rescind this Lease as to any or all of the Equipment. In addition, Lessee will remain liable for all covenants and indemnities under this Lease and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

**18. PURCHASE OPTION.** Upon thirty (30) days prior written notice from Lessee to Lessor, and provided that no Event of Default has occurred and is continuing, or no event, which with notice or lapse of time, or both could become an Event of Default, then exists, Lessee will have the right to purchase the Equipment on the Lease Payment dates set forth in Schedule B by paying to Lessor, on such date, the Lease Payment then due together with the Balance Payment amount set forth opposite such date. Upon satisfaction by Lessee of such purchase conditions, Lessor will transfer any and all of its right, title and interest in the Equipment (other than any intellectual property rights in the software comprising part of the Equipment) to Lessee as is, without warranty, express or implied, except that the Equipment is free and clear of any liens created by Lessor.

**18.1 PARTIAL PAYMENT/PURCHASE OPTION – GRANT FUNDING.** Upon thirty (30) days prior written notice from Lessee to Lessor, and provided no Event of Default has occurred and is continuing, or no event, which with notice or lapse of time, or both could become an Event of Default, then exists, Lessee will have the right to make a partial payment against the Lease one time per calendar year at an amount no less than \$175,000.00 SO LONG AS SUCH PAYMENT IS BEING MADE FROM A FEDERAL GRANT FUNDING AWARD and upon Lessor's request, Lessee will provide Lessor certification of such. Application of said payment shall first be applied to accrued interest with the remainder going against the principal. Should Lessee make such payment, all remaining Lease Payments will be adjusted accordingly over the remainder of the Lease Term and Lessor shall provide to Lessee a revised Schedule B. Any reduction in outstanding principal can be viewed as the Lessee obtaining a greater equity position in the Lease subject to Lessor's rights pursuant to the other terms of this Lease.

**19. NOTICES.** All notices to be given under this Lease shall be made in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to such mailing.

**20. SECTION HEADINGS.** All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

**21. GOVERNING LAW.** This Lease shall be construed in accordance with, and governed by the laws of, the state of the Equipment Location.

**22. DELIVERY OF RELATED DOCUMENTS.** Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease.

**23. ENTIRE AGREEMENT; WAIVER.** This Lease, together with Schedule A Equipment Lease-Purchase Agreement, Schedule B, Evidence of Insurance, Statement of Essential Use/Source of Funds, Certificate of Incumbency, Certified Lessee Resolution (if any), Bank Qualified Statement, Information Return for Tax-Exempt Governmental Obligations and the Delivery and Acceptance Certificate and other attachments

hereto, and other documents or instruments executed by Lessee and Lessor in connection herewith, constitutes the entire agreement between the parties with respect to the Lease of the Equipment, and this Lease shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of the Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

The waiver by Lessor of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

**24. EXECUTION IN COUNTERPARTS.** This Lease may be executed in several counterparts, either electronically or manually, all of which shall constitute but one and the same instrument. Lessor reserves the right to request receipt of a manually-executed counterpart from Lessee. Lessor and Lessee agree that the only original counterpart for purposes of perfection by possession shall be the original counterpart manually executed by Lessor and identified as "Original", regardless of whether Lessee's execution or delivery of said counterpart is done manually or electronically.

\*\*\* SIGNATURE PAGE TO FOLLOW \*\*\*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 30th day of April, 2021.

**LESSEE:**

TOWN OF HOLLY SPRINGS, NC

**LESSOR:**

**MOTOROLA SOLUTIONS, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**CERTIFICATE OF INCUMBENCY**

I, \_\_\_\_\_ do hereby certify that I am the duly elected or  
(Printed Name of Secretary/Clerk )

appointed and acting Secretary or Clerk of the TOWN OF HOLLY SPRINGS, NC, an entity duly organized and existing under the laws of the **State of North Carolina** that I have custody of the records of such entity, and that, as of the date hereof, the individual(s) executing this agreement is/are the duly elected or appointed officer(s) of such entity holding the office(s) below his/her/their respective name(s). I further certify that (i) the signature(s) set forth above his/her/their respective name(s) and title(s) is/are his/her/their true and authentic signature(s) and (ii) such officer(s) have the authority on behalf of such entity to enter into that certain Equipment Lease Purchase Agreement number **25083**, between TOWN OF HOLLY SPRINGS, NC and Motorola Solutions, Inc. If the initial insurance requirement on Schedule B exceeds \$1,000,000, attached as part of the Equipment Lease Purchase Agreement is a Certified Lessee Resolution adopted by the governing body of the entity.

**IN WITNESS WHEREOF**, I have executed this certificate and affixed the seal of TOWN OF HOLLY SPRINGS, NC, hereto this

\_\_\_\_\_ day of \_\_\_\_\_, 2021.

By: \_\_\_\_\_

(Signature of Secretary/Clerk)

**SEAL**

## **OPINION OF COUNSEL**

With respect to that certain Equipment Lease-Purchase Agreement 25083 by and between Motorola Solutions, Inc. and the Lessee, I am of the opinion that: (i) the Lessee is, within the meaning of Section 103 of the Internal Revenue Code of 1986, a state or a fully constituted political subdivision or agency of the State of the Equipment Location described in Schedule A hereto; (ii) the execution, delivery and performance by the Lessee of the Lease have been duly authorized by all necessary action on the part of the Lessee, (iii) the Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; and (iv) Lessee has sufficient monies available to make all payments required to be paid under the Lease during the current fiscal year of the Lease, and such monies have been properly budgeted and appropriated for this purpose in accordance with State law. This opinion may be relied upon by the Lessor and any assignee of the Lessor's rights under the Lease.

---

Attorney for TOWN OF HOLLY SPRINGS, NC

**SCHEDULE A  
EQUIPMENT LEASE-PURCHASE AGREEMENT**

**Schedule A                      25083**  
**Lease Number:**

This Equipment Schedule is hereby attached to and made a part of that certain Equipment Lease-Purchase Agreement Number **25083** ("Lease"), between MOTOROLA SOLUTIONS INC. ("Lessor") and TOWN OF HOLLY SPRINGS, NC ("Lessee").

Lessor hereby leases to Lessee under and pursuant to the Lease, and Lessee hereby accepts and leases from Lessor under and pursuant to the Lease, subject to and upon the terms and conditions set forth in the Lease and upon the terms set forth below, the following items of Equipment

| <b>QUANTITY</b>                  | <b>DESCRIPTION (Manufacturer, Model, and Serial Nos.)</b> |
|----------------------------------|-----------------------------------------------------------|
|                                  | Refer to attached Equipment List.                         |
|                                  |                                                           |
|                                  |                                                           |
|                                  |                                                           |
| <b>Equipment Location:</b><br>NC |                                                           |

**Initial Term: 51 Months                      Commencement Date:            4/30/2021**  
**First Payment Due Date:            6/1/2021**

**Six (6) consecutive payments** as outlined in the attached Schedule B, plus Sales/Use Tax of \$0.00, payable on the Lease Payment Dates set forth in Schedule B.

Lessee: TOWN OF HOLLY SPRINGS, NC

## Schedule B (Lease #25083)

Capital Related to Solution \$ 580,308.21  
Op-X / Recurring Services \$ 317,160.82  
**Total Solution Contract Price \$ 897,469.03** (includes applicable sales @ 7.25%)

Compound Period: Annual  
Nominal Annual Rate: 0.000%  
CASH FLOW DATA

| Event | Start Date | Amount     | End Date |
|-------|------------|------------|----------|
| Loan  | 4/30/2021  | 580,308.21 | 7/1/2025 |

### AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

|              | Date      | Lease<br>Payment | Interest | Principal     | Balance    | Op-X / Recurring<br>Services | TOTAL<br>PAYMENT |
|--------------|-----------|------------------|----------|---------------|------------|------------------------------|------------------|
| Loan         | 4/30/2021 |                  |          |               | 580,308.21 |                              |                  |
| 1            | 6/1/2021  | 12,139.86        | 0.00     | 12,139.86     | 568,168.35 | \$ 52,860.14                 | \$ 65,000.00     |
| 2            | 7/1/2021  | 36,600.06        | 0.00     | 36,600.06     | 531,568.29 | \$ 52,860.14                 | \$ 89,460.20     |
| 3            | 7/1/2022  | 132,892.07       | 0.00     | 132,892.07    | 398,676.22 | \$ 52,860.14                 | \$ 185,752.21    |
| 4            | 7/1/2023  | 132,892.07       | 0.00     | 132,892.07    | 265,784.15 | \$ 52,860.14                 | \$ 185,752.21    |
| 5            | 7/1/2024  | 132,892.07       | 0.00     | 132,892.07    | 132,892.08 | \$ 52,860.14                 | \$ 185,752.21    |
| 6            | 7/1/2025  | 132,892.08       | 0.00     | 132,892.08    | 0.00       | \$ 52,860.14                 | \$ 185,752.22    |
| Grand Totals |           | \$ 580,308.21    | \$ -     | \$ 580,308.21 |            | \$ 317,160.82                | \$ 897,469.03    |

INITIAL INSURANCE REQUIREMENT: \$580,308.21

Except as specifically provided in Section five of the Lease hereof, Lessee agrees to pay to Lessor or its assignee the Lease Payments, including the interest portion, in the amounts and dates specified in the above payment schedule.

ORIGINAL ISSUE DISCOUNT (if applicable):

Lessee acknowledges that the amount financed by Lessor is \$545,443.21 and that such amount is the issue price for this Lease Payment Schedule for federal income tax purposes. The difference between the principal amount of this Lease Payment Schedule and the issue price is original issue discount as defined in Section 1288 of the Code. The yield for this Lease Payment Schedule for federal income tax purposes is 2.57%. Such issue price and yield will be stated in the applicable Form 8038-G.

## **EVIDENCE OF INSURANCE**

Fire, extended coverage, public liability and property damage insurance for all of the Equipment listed on Schedule A number **25083** to that Equipment Lease Purchase Agreement number **25083** will be maintained by **TOWN OF HOLLY SPRINGS, NC** as stated in the Equipment Lease Purchase Agreement.

This insurance is provided by:

\_\_\_\_\_  
Name of insurance provider

\_\_\_\_\_  
Address of insurance provider

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Phone number of local insurance provider

\_\_\_\_\_  
E-mail address

In accordance with the Equipment Lease Purchase Agreement Number **25083**, **TOWN OF HOLLY SPRINGS, NC**, hereby certifies that following coverage are or will be in full force and effect:

| <b>Type</b>                | <b>Amount</b> | <b>Effective Date</b> | <b>Expiration Date</b> | <b>Policy Number</b> |
|----------------------------|---------------|-----------------------|------------------------|----------------------|
| Fire and Extended Coverage | _____         | _____                 | _____                  | _____                |
| Property Damage            | _____         | _____                 | _____                  | _____                |
| Public Liability           | _____         | _____                 | _____                  | _____                |

**Certificate shall include the following:**

**Description:** All Equipment listed on Schedule A number 25083 to that Equipment Lease Purchase Agreement number 25083. Please include equipment cost equal to the Initial Insurance Requirement on Schedule B to Equipment Lease Purchase Agreement number 25083 and list any deductibles.

**Certificate Holder:**

MOTOROLA SOLUTIONS, INC. and or its assignee as additional insured and loss payee  
500 W Monroe  
Chicago, IL 60661

**If self insured, contact Motorola representative for template of self insurance letter.**

## STATEMENT OF ESSENTIAL USE/SOURCE OF FUNDS (# 25083)

To further understand the essential governmental use intended for the equipment together with an understanding of the sources from which payments will be made, **please address the following questions** by completing this form or by sending a separate letter:

- 1.** What is the specific use of the equipment?
- 2.** Why is the equipment essential to the operation of **TOWN OF HOLLY SPRINGS, NC**?
- 3.** Does the equipment replace existing equipment?

If so, why is the replacement being made?

- 4.** Is there a specific cost justification for the new equipment?  
If yes, please attach outline of justification.

- 5.** What is the expected source of funds for the payments due under the Lease for the current fiscal year and future fiscal years?

☐ General Fund

- Have dollars already been appropriated for the Lease Payment? Yes -or- No

- If yes, for what fiscal year(s) have appropriations been made? \_\_\_\_\_

☐ Combination of Federal Grant funding supplemented by General Revenues

- What fiscal year(s) is expected to be funded via federal grants: \_\_\_\_\_

- What fiscal year(s) is expected to be funded via general revenues: \_\_\_\_\_

- Have these general revenues already been appropriated for the Lease Payment(s)? Yes -or- No

☐ Other (please describe): \_\_\_\_\_

**CERTIFIED LESSEE RESOLUTION (Lease# 25083)**

At a duly called meeting of the Governing Body of the Lessee (as defined in the Lease) ***held on or before the execution date of the Lease***, the following resolution was introduced and adopted.

BE IT RESOLVED by the Governing Board of Lessee as follows:

1.     Determination of Need. The Governing Body of Lessee has determined that a true and very real need exists for the acquisition of the Equipment or other personal property described in the Lease between TOWN OF HOLLY SPRINGS, NC (Lessee) and Motorola Solutions, Inc. (Lessor).
2.     Approval and Authorization. The Governing body of Lessee has determined that the Lease, substantially in the form presented to this meeting, is in the best interests of the Lessee for the acquisition of such Equipment or other personal property, and the Governing Board hereby approves the entering into of the Lease by the Lessee and hereby designates and authorizes the following person(s) referenced in the Lease to execute and deliver the Lease on Lessee's behalf with such changes thereto as such person deems appropriate, and any related documents, including any escrow agreement, necessary to the consummation of the transactions contemplated by the Lease.
3.     Adoption of Resolution. The signatures in the Lease from the designated individuals for the Governing Body of the Lessee evidence the adoption by the Governing Body of this Resolution.

## Bank Qualified Statement (Lease# 25083)

LESSEE CERTIFIES THAT IT (circle one) HAS or HAS NOT

DESIGNATED THIS LEASE AS A QUALIFIED TAX-EXEMPT OBLIGATION IN ACCORDANCE WITH SECTION 265(b)(3) OF THE CODE AND IF THE LESSEE HAS DESIGNATED THIS LEASE AS A QUALIFIED TAX-EXEMPT OBLIGATION, IT HAS NOT DESIGNATED MORE THAN \$10,000,000 OF ITS OBLIGATIONS AS QUALIFIED TAX-EXEMPT OBLIGATIONS IN ACCORDANCE WITH SUCH SECTION FOR THE CURRENT CALENDAR YEAR AND THAT IT REASONABLY ANTICIPATES THAT THE TOTAL AMOUNT OF TAX-EXEMPT OBLIGATIONS TO BE ISSUED BY LESSEE DURING THE CURRENT CALENDAR YEAR WILL NOT EXCEED \$10,000,000.

Form **8038-G**

(Rev. September 2018)

Department of the Treasury  
Internal Revenue Service**Information Return for Tax-Exempt Governmental Bonds**

► Under Internal Revenue Code section 149(e)

► See separate instructions.

**Caution:** If the issue price is under \$100,000, use Form 8038-GC.► Go to [www.irs.gov/F8038G](http://www.irs.gov/F8038G) for instructions and the latest information.

OMB No. 1545-0720

|                                                                                                                             |            |                                                                |  |
|-----------------------------------------------------------------------------------------------------------------------------|------------|----------------------------------------------------------------|--|
| <b>Part I Reporting Authority</b>                                                                                           |            | If Amended Return, check here ► <input type="checkbox"/>       |  |
| 1 Issuer's name<br><b>Town of Holly Springs, NC</b>                                                                         |            | 2 Issuer's employer identification number (EIN)                |  |
| 3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)                |            | 3b Telephone number of other person shown on 3a                |  |
| 4 Number and street (or P.O. box if mail is not delivered to street address)<br><b>128 S Main Street</b>                    | Room/suite | 5 Report number (For IRS Use Only)<br><b>3</b>                 |  |
| 6 City, town, or post office, state, and ZIP code<br><b>Holly Springs, NC 27540</b>                                         |            | 7 Date of issue<br><b>4/30/2021</b>                            |  |
| 8 Name of issue<br><b>Equipment Lease Purchase Agreement 25083</b>                                                          |            | 9 CUSIP number                                                 |  |
| 10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) |            | 10b Telephone number of officer or other employee shown on 10a |  |

|                                                                                                        |    |                  |           |
|--------------------------------------------------------------------------------------------------------|----|------------------|-----------|
| <b>Part II Type of Issue (enter the issue price).</b> See the instructions and attach schedule.        |    |                  |           |
| 11 Education                                                                                           | 11 |                  |           |
| 12 Health and hospital                                                                                 | 12 |                  |           |
| 13 Transportation                                                                                      | 13 |                  |           |
| 14 Public safety                                                                                       | 14 | <b>\$545,443</b> | <b>21</b> |
| 15 Environment (including sewage bonds)                                                                | 15 |                  |           |
| 16 Housing                                                                                             | 16 |                  |           |
| 17 Utilities                                                                                           | 17 |                  |           |
| 18 Other. Describe ►                                                                                   | 18 |                  |           |
| 19a If bonds are TANs or RANs, check only box 19a..... ► <input type="checkbox"/>                      |    |                  |           |
| b If bonds are BANs, check only box 19b ..... ► <input type="checkbox"/>                               |    |                  |           |
| 20 If bonds are in the form of a lease or installment sale, check box ..... ► <input type="checkbox"/> |    |                  |           |

|                                                                                                         |                         |                        |                                         |                               |               |
|---------------------------------------------------------------------------------------------------------|-------------------------|------------------------|-----------------------------------------|-------------------------------|---------------|
| <b>Part III Description of Bonds.</b> Complete for the entire issue for which this form is being filed. |                         |                        |                                         |                               |               |
|                                                                                                         | (a) Final maturity date | (b) Issue price        | (c) Stated redemption price at maturity | (d) Weighted average maturity | (e) Yield     |
| 21                                                                                                      | <b>7/1/2025</b>         | <b>\$ \$545,443.21</b> | <b>\$ 580,308.21</b>                    | <b>4.25</b> years             | <b>2.57 %</b> |

|                                                                                  |                                                                                          |    |  |  |  |
|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|----|--|--|--|
| <b>Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)</b> |                                                                                          |    |  |  |  |
| 22                                                                               | Proceeds used for accrued interest                                                       | 22 |  |  |  |
| 23                                                                               | Issue price of entire issue (enter amount from line 21, column (b))                      | 23 |  |  |  |
| 24                                                                               | Proceeds used for bond issuance costs (including underwriters' discount)                 | 24 |  |  |  |
| 25                                                                               | Proceeds used for credit enhancement                                                     | 25 |  |  |  |
| 26                                                                               | Proceeds allocated to reasonably required reserve or replacement fund                    | 26 |  |  |  |
| 27                                                                               | Proceeds used to refund prior tax-exempt bonds. Complete Part V                          | 27 |  |  |  |
| 28                                                                               | Proceeds used to refund prior taxable bonds. Complete Part V                             | 28 |  |  |  |
| 29                                                                               | Total (add lines 24 through 28)                                                          | 29 |  |  |  |
| 30                                                                               | Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) | 30 |  |  |  |

|                                                                                           |                                                                                                                                 |
|-------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| <b>Part V Description of Refunded Bonds.</b> Complete this part only for refunding bonds. |                                                                                                                                 |
| 31                                                                                        | Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded . . . ► <u>                    </u> years  |
| 32                                                                                        | Enter the remaining weighted average maturity of the taxable bonds to be refunded . . . . . ► <u>                    </u> years |
| 33                                                                                        | Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY) . . . ► <u>                    </u>      |
| 34                                                                                        | Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)                                                                 |

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 9-2018)

**Part VI Miscellaneous**

- |            |  |  |
|------------|--|--|
| <b>35</b>  |  |  |
| <b>36a</b> |  |  |
| <b>37</b>  |  |  |
- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions . . . . .
- b** Enter the final maturity date of the GIC ▶ (MM/DD/YYYY) \_\_\_\_\_
- c** Enter the name of the GIC provider ▶ \_\_\_\_\_
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .
- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the following information:
- b** Enter the date of the master pool bond ▶ (MM/DD/YYYY) \_\_\_\_\_
- c** Enter the EIN of the issuer of the master pool bond ▶ \_\_\_\_\_
- d** Enter the name of the issuer of the master pool bond ▶ \_\_\_\_\_
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ..... ▶ ☐
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ..... ▶ ☐
- 41a** If the issuer has identified a hedge, check here ▶ ☐ and enter the following information:
- b** Name of hedge provider ▶ \_\_\_\_\_
- c** Type of hedge ▶ \_\_\_\_\_
- d** Term of hedge ▶ \_\_\_\_\_
- 42** If the issuer has superintegrated the hedge, check box ..... ▶ ☐
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ..... ▶ ☐
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box ..... ▶ ☐
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here ▶ ☐ and enter the amount of reimbursement . . . . . ▶ \_\_\_\_\_
- b** Enter the date the official intent was adopted ▶ (MM/DD/YYYY) \_\_\_\_\_

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

▶ \_\_\_\_\_ Date \_\_\_\_\_ ▶ \_\_\_\_\_ Type or print name and title

Signature of issuer's authorized representative

**Paid Preparer Use Only**

|                            |                      |      |                                                 |      |
|----------------------------|----------------------|------|-------------------------------------------------|------|
| Print/Type preparer's name | Preparer's signature | Date | Check <input type="checkbox"/> if self-employed | PTIN |
| Firm's name ▶              | Firm's EIN ▶         |      |                                                 |      |
| Firm's address ▶           | Phone no.            |      |                                                 |      |

Form **8038-G** (Rev. 9-2018)

# EQUIPMENT LEASE PURCHASE AGREEMENT DELIVERY AND ACCEPTANCE CERTIFICATE

The undersigned Lessee hereby acknowledges receipt of the Equipment described below (“Equipment”) and Lessee hereby accepts the Equipment after full inspection thereof as satisfactory for all purposes of lease Schedule A to the Equipment Lease Purchase Agreement executed by Lessee and Lessor.

Equipment Lease Purchase Agreement No.: 25083

Lease Schedule A No. : 25083

## EQUIPMENT INFORMATION

| QUANTITY | MODEL NUMBER | EQUIPMENT DESCRIPTION                                                                          |
|----------|--------------|------------------------------------------------------------------------------------------------|
|          |              | Equipment referenced in lease Schedule A# 25083. See Schedule A for a detailed Equipment List. |
|          |              |                                                                                                |
|          |              |                                                                                                |
|          |              |                                                                                                |
|          |              |                                                                                                |
|          |              |                                                                                                |
|          |              |                                                                                                |
|          |              |                                                                                                |

LESSEE:

TOWN OF HOLLY SPRINGS, NC

By: \_\_to be completed after delivery\_\_

Date: \_\_\_\_\_



## 4RE/VISTA Price Quote

CUSTOMER: Holly Springs Police Department

ISSUED: 1/12/2021 3:32 PM

EXPIRATION: 2/20/2021 12:00 AM

,  
,,  
,,,

**TOTAL PROJECT ESTIMATED AT:  
\$836,800.96**

ATTENTION: NC state contract # 680D

SALES CONTACT: John Adams

PHONE: 919-552-7110

DIRECT: (214) 785-2647

E-MAIL:

E-MAIL: john.adams@motorolasolutions.com

### V300 Proposal

#### VISTA HD Cameras and Options

| Part Number     | Detail                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Qty    | Direct     | Discount | Total Price  |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------------|----------|--------------|
| VIS-300-BWC-001 | V300, Body Worn Camera, 1080P, WiFi/Bluetooth with Removable Battery                                                                                                                                                                                                                                                                                                                                                                                   | 92.00  | \$995.00   | \$0.00   | \$74,970.80  |
| VIS-300-CHG-001 | V300, USB Dock, D300, Desktop Charge/Upload Kit Incl. Power and USB Cables                                                                                                                                                                                                                                                                                                                                                                             | 76.00  | \$95.00    | \$0.00   | \$5,905.96   |
| VIS-300-BAT-RMV | V300, Battery, Removable and Rechargeable, 3.8V, 4180mAh                                                                                                                                                                                                                                                                                                                                                                                               | 152.00 | \$99.00    | \$0.00   | \$12,308.96  |
| 4RE-STD-GPS-RV2 | V300 and 4RE System Bundle. Includes 4RE Standard DVR Camera System with integrated 200GB automotive grade hard drive, ZSL camera, 16GB USB removable thumb drive, rear facing cabin camera, GPS, hardware, cabling and your choice of mounting bracket. It will also include the V300 Continuous Use Wearable Camera with 12 hours continuous HD recording, one camera mount, 128 GB of storage, Wi-Fi docking base, Power over Ethernet Smart Switch | 60.00  | \$5,550.00 | \$0.00   | \$272,394.00 |
| WAR-300-CAM-NOF | Warranty, V300 3 Year, No-Fault                                                                                                                                                                                                                                                                                                                                                                                                                        | 152.00 | \$450.00   | \$0.00   | \$55,951.20  |

#### 4RE Hardware Warranties

| Part Number     | Detail                                         | Qty   | Direct   | Discount | Total Price |
|-----------------|------------------------------------------------|-------|----------|----------|-------------|
| WAR-4RE-CAR-1ST | Warranty, 4RE, In-Car, 1st Year (Months 1-12)  | 60.00 | \$0.00   | \$0.00   | \$0.00      |
| WAR-4RE-CAR-2ND | Warranty, 4RE, In-Car, 2nd Year (Months 13-24) | 60.00 | \$100.00 | \$0.00   | \$5,208.00  |
| WAR-4RE-CAR-3RD | Warranty, 4RE, In-Car, 3rd Year (Months 25-36) | 60.00 | \$200.00 | \$0.00   | \$10,416.00 |
| WAR-4RE-CAR-4TH | Warranty, 4RE, In-Car, 4th Year (Months 37-48) | 60.00 | \$325.00 | \$0.00   | \$16,926.00 |
| WAR-4RE-CAR-5TH | Warranty, 4RE, In-Car, 5th Year (Months 49-60) | 60.00 | \$450.00 | \$0.00   | \$23,436.00 |

#### Shipping and Handling

| Part Number | Detail                                   | Qty  | Direct     | Discount | Total Price |
|-------------|------------------------------------------|------|------------|----------|-------------|
| Freight     | Shipping/Handling and Processing Charges | 1.00 | \$3,840.00 | \$0.00   | \$3,141.12  |

415 E. Exchange Parkway • Allen, TX • 75002  
Toll Free (800) 605-6734 • Main (972) 423-9777 • Fax (972) 423-9778  
[www.WatchGuardVideo.com](http://www.WatchGuardVideo.com)



## 4RE/VISTA Price Quote

\$480,658.04

### EvidenceLibrary.com

#### Evidence Library 4 Web Software and Licensing

| Part Number     | Detail                                                                                                        | Qty    | Direct   | Discount | Total Price  |
|-----------------|---------------------------------------------------------------------------------------------------------------|--------|----------|----------|--------------|
| ELC-SAH-UNL-ASD | Evidencelibrary.com, Software and Hosting, Unlimited Assigned, Annually per device (60 4RE + 76 v300) x 5 yrs | 680.00 | \$495.00 | \$0.00   | \$292,168.80 |

#### Server Hardware and Software

| Part Number     | Detail                                                                                           | Qty  | Direct     | Discount | Total Price         |
|-----------------|--------------------------------------------------------------------------------------------------|------|------------|----------|---------------------|
| ELC-UPL-SRV-CLD | EvidenceLibrary.com, Azure Virtual Upload Server, VM size: B2ms, 1TB staging, per Year (5 years) | 5.00 | \$1,500.00 | \$0.00   | \$7,500.00          |
|                 |                                                                                                  |      |            |          | <b>\$299,668.80</b> |

### Technical Services Calculator

#### WatchGuard Video Technical Services

| Part Number     | Detail                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Qty  | Direct     | Discount | Total Price       |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------------|----------|-------------------|
| SVC-4RE-ONS-400 | Tier 1 Onsite Installation. Includes Project Coordination, One Pre-Deployment IT Call, Provisioning of ELC and Azure AD, Install OS and SQL (if Purchased from WatchGuard), Limited EL Client Installations, Limited Configuring of 4RE Units, Limited MDC App Installations, Interview Room Configuration, Limited Configuration of Body Worn Cameras, Full Testing of WatchGaurd Systems, Installation of Evidence Library, Training of Officer and Admin Staff, Limited Vehicle Install Inspections, Vendor Management, Supp | 1.00 | \$5,000.00 | \$0.00   | \$5,000.00        |
|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |      |            |          | <b>\$5,000.00</b> |

### 4RE and VISTA Proposal

#### 4RE In-Car System and Options

| Part Number     | Detail                                     | Qty   | Direct   | Discount | Total Price |
|-----------------|--------------------------------------------|-------|----------|----------|-------------|
| CAM-4RE-PAN-NHD | Additional Front Camera, 4RE, HD Panoramic | 60.00 | \$200.00 | \$0.00   | \$9,816.00  |

#### Wireless Video Transfer and Networking Options

| Part Number     | Detail                                                                                            | Qty   | Direct   | Discount | Total Price |
|-----------------|---------------------------------------------------------------------------------------------------|-------|----------|----------|-------------|
| 4RE-WRL-KIT-101 | MikroTik Configured Wireless Kit, 4RE In-Car 802.11n (Radio, Antenna, PoE, 2-10' Ethernet Cables) | 60.00 | \$200.00 | \$0.00   | \$9,816.00  |
| WAP-MIK-CON-802 | WiFi Access Point, Configured, MikroTik, 802.11n, 5GHz, SXT, AP                                   | 6.00  | \$250.00 | \$0.00   | \$1,242.12  |

#### WatchGuard Video Technical Services

| Part Number     | Detail                                                  | Qty   | Direct   | Discount | Total Price |
|-----------------|---------------------------------------------------------|-------|----------|----------|-------------|
| SVC-4RE-INS-100 | 4RE System Installation, In-Car (Per Unit Charge) - MCA | 60.00 | \$510.00 | \$0.00   | \$30,600.00 |

#### Shipping and Handling

| Part Number | Detail | Qty | Direct | Discount | Total Price |
|-------------|--------|-----|--------|----------|-------------|
|-------------|--------|-----|--------|----------|-------------|

415 E. Exchange Parkway • Allen, TX • 75002  
Toll Free (800) 605-6734 • Main (972) 423-9777 • Fax (972) 423-9778  
[www.WatchGuardVideo.com](http://www.WatchGuardVideo.com)



## 4RE/VISTA Price Quote

|         |                                          |      |        |        |             |
|---------|------------------------------------------|------|--------|--------|-------------|
| Freight | Shipping/Handling and Processing Charges | 1.00 | \$0.00 | \$0.00 | \$0.00      |
|         |                                          |      |        |        | \$51,474.12 |

Total Estimated Tax, may vary from State to State \$0.00

|                           |                     |
|---------------------------|---------------------|
| Configuration Discounts   | \$151,947.04        |
| Additional Quote Discount | \$-151,947.04       |
| <b>Total Amount</b>       | <b>\$836,800.96</b> |

NOTE: This is only an estimate for 4RE & VISTA related hardware, software and WG Technical Services. Actual costs related to a turn-key operation requires more detailed discussion and analysis, which will define actual back-office costs and any costs associated with configuration, support and installation. Please contact your sales representative for more details.

Title and risk of loss for the Equipment will pass to Customer upon shipment by Motorola, notwithstanding any other terms and conditions.

To accept this quotation, sign, date and return with Purchase Order: \_\_\_\_\_ DATE: \_\_\_\_\_

## Equipment Purchase and Software License Addendum

This Equipment Purchase and Software License Addendum (this “**EPSLA**”) is entered into between WatchGuard Video, Inc., with offices at 415 E. Exchange Parkway, Allen, TX 75002 (“**WatchGuard**”) and the entity set forth in the signature block below or in the MCA (“**Customer**”), and will be subject to, and governed by, the terms of the Master Customer Agreement entered into between the Parties, effective as of [REDACTED] (the “**MCA**”). Capitalized terms used in this EPSLA, but not defined herein, will have the meanings set forth in the MCA.

**1. Addendum.** This EPSLA governs Customer’s purchase of Equipment and license of Licensed Software (and, if set forth in an Ordering Document, related Services) from WatchGuard, and will form part of the Parties’ Agreement.

### **2. Delivery of Equipment and Licensed Software.**

**2.1. Delivery and Risk of Loss.** WatchGuard will provide to Customer the Products (and, if applicable, related Services) set forth in an Ordering Document, in accordance with the terms of the Agreement. WatchGuard will, using commercially reasonable practices, pack the ordered Equipment and ship such Equipment to the Customer address set forth in the applicable Ordering Document or otherwise provided by Customer in writing, using a carrier selected by WatchGuard. Notwithstanding the foregoing, delivery of Equipment (and any incorporated Licensed Software) will occur, and title and risk of loss for the Equipment will pass to Customer, upon shipment by WatchGuard in accordance with Ex Works, WatchGuard’s premises (Incoterms 2020). Customer will pay all shipping costs, taxes, and other charges applicable to the shipment and import or export of the Products and Services, as applicable, and Customer will be responsible for reporting the Products for personal property tax purposes. Delivery of Licensed Software for installation on Equipment or Customer-Provided Equipment will occur upon the earlier of (a) electronic delivery of the Licensed Software by WatchGuard, and (b) the date WatchGuard otherwise makes the Software available for download by Customer. If agreed upon in an Ordering Document, WatchGuard will also provide Services related to such Products.

**2.2. Delays.** Any shipping dates set forth in an Ordering Document are approximate, and while WatchGuard will make reasonable efforts to ship Products by any such estimated shipping date, WatchGuard will not be liable for any delay or related damages to Customer. Time for delivery will not be of the essence, and delays will not constitute grounds for cancellation, penalties, termination, or a refund.

**2.3. Beta Services.** If WatchGuard makes any beta version of a software application (“**Beta Service**”) available to Customer, Customer may choose to use such Beta Service at its own discretion, provided, however, that Customer will use the Beta Service solely for purposes of Customer’s evaluation of such Beta Service, and for no other purpose. Customer acknowledges and agrees that all Beta Services are offered “as-is” and without any representations or warranties or other commitments or protections from WatchGuard. WatchGuard will determine the duration of the evaluation period for any Beta Service, in its sole discretion, and WatchGuard may discontinue any Beta Service at any time. Customer acknowledges that Beta Services, by their nature, have not been fully tested and may contain defects or deficiencies.

### 3. Licensed Software License and Restrictions.

**3.1. Licensed Software License.** Subject to Customer's and its Authorized Users' compliance with the Agreement (including payment terms), WatchGuard hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicenseable, and non-exclusive license to use the Licensed Software identified in an Ordering Document, in object code form only, and the associated Documentation, solely in connection with the Equipment provided by WatchGuard or authorized Customer-Provided Equipment (as applicable, the "**Designated Products**") and solely for Customer's internal business purposes. Unless otherwise stated in an Addendum or the Ordering Document, the foregoing license grant will be limited to the number of licenses set forth in the applicable Ordering Document and will continue for the life of the applicable Designated Product. Except as otherwise permitted in an applicable Addendum or Ordering Document, Customer may install, access, and use Licensed Software only in Customer's owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Licensed Software remotely from any location.

**3.2. Subscription License Model.** If the Parties mutually agree that any Licensed Software purchased under this EPSLA will be replaced with or upgraded to Subscription Software, then upon such time which the Parties execute the applicable Ordering Document, the licenses granted under this EPSLA will automatically terminate, and such Subscription Software will be governed by the terms of the applicable Addendum under this Agreement.

**3.3. End User Licenses.** Notwithstanding any provision to the contrary in the Agreement, certain Licensed Software is governed by a separate license, EULA, or other agreement, including terms governing third-party equipment or software, such as open source software, included in the Products and Services. Customer will comply, and ensure its Authorized Users comply, with any such additional terms applicable to third-party equipment or software.

**3.4. Customer Restrictions.** Customers and Authorized Users will comply with the applicable Documentation in connection with their use of the Products. Customer will not and will not allow others, including the Authorized Users, to: (a) make the Licensed Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; (b) reverse engineer, disassemble, or reprogram the Licensed Software or any portion thereof to a human-readable form; (c) modify, create derivative works of, or merge the Licensed Software with other software or equipment; (d) copy, reproduce, distribute, lend, lease, or transfer the Licensed Software or Documentation for or to any third party without the prior express written permission of WatchGuard; (e) take any action that would cause the Licensed Software or Documentation to be placed in the public domain; (f) use the Licensed Software to compete with WatchGuard; or (g) remove, alter, or obscure, any copyright or other notice.

**3.5. Copies.** Customer may make one (1) copy of the Licensed Software solely for archival, back-up, or disaster recovery purposes during the term of the applicable Licensed Software license. Customer may make as many copies of the Documentation reasonably required for the internal use of the Licensed Software during such Licensed Software's license term. Unless otherwise authorized by WatchGuard in writing, Customer will not, and will not enable or allow any third party to: (a) install a licensed copy of the Licensed Software on more than one (1) unit of a Designated Product; or (b) copy onto or transfer Licensed Software installed in a unit of a Designated Product onto another device. Customer may temporarily transfer Licensed Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Customer provides written notice to WatchGuard of the

temporary transfer and identifies the device on which the Licensed Software is transferred. Temporary transfer of the Licensed Software to another device must be discontinued when the original Designated Product is returned to operation and the Licensed Software must be removed from the other device. Customer must provide prompt written notice to WatchGuard at the time temporary transfer is discontinued.

**3.6. Resale of Equipment.** Equipment contains embedded Licensed Software. If Customer desires to sell its used Equipment to a third party, Customer must first receive prior written authorization from WatchGuard and obtain written acceptance of the applicable Licensed Software license terms, including the obligation to pay relevant license fees, from such third party.

#### **4. Term.**

**4.1. Term.** The term of this EPSLA (the “**EPSLA Term**”) will commence upon either (a) the Effective Date of the MCA, if this EPSLA is attached to the MCA as of such Effective Date, or (b) the EPSLA Date set forth on the signature page below, if this EPSLA is executed after the MCA Effective Date, and will continue until the later of (i) three (3) years after the first order for Products is placed via an Ordering Document, or (ii) the expiration of all applicable warranty periods (as set forth in **Section 6.1 – WatchGuard Warranties** below) under this EPSLA, unless this EPSLA or the Agreement is earlier terminated in accordance with the terms of the Agreement.

**4.2. Termination.** Notwithstanding the termination provisions of the MCA, WatchGuard may terminate this EPSLA (and any Ordering Documents hereunder) immediately upon notice to Customer if Customer breaches **Section 3 – Licensed Software License and Restrictions** of this EPSLA, or any other provision related to Licensed Software license scope or restrictions set forth in an Ordering Document, EULA, or other applicable Addendum. For clarity, upon termination or expiration of the EPSLA Term, all WatchGuard obligations under this EPSLA (including with respect to Equipment and Licensed Software delivered hereunder) will terminate. If Customer desires to purchase additional Services in connection with such Equipment or Licensed Software, Customer may enter into a separate Addendum with WatchGuard, governing such Services. Customer acknowledges that WatchGuard made a considerable investment of resources in the development, marketing, and distribution of the Licensed Software and Documentation, and that Customer’s breach of the Agreement will result in irreparable harm to WatchGuard for which monetary damages would be inadequate. If Licensee breaches this Agreement, in addition to termination, WatchGuard will be entitled to all available remedies at law or in equity, including immediate injunctive relief and repossession of all non-embedded Licensed Software and associated Documentation.

**4.3. Equipment as a Service.** In the event that Customer purchases any Equipment at a price below the MSRP for such Equipment in connection Customer entering into a fixed- or minimum required-term agreement for Subscription Software, and Customer or WatchGuard terminates the Agreement, this EPSLA, or other applicable Addendum (such as the Addendum governing the purchase of such Subscription Software) prior to the expiration of such fixed- or minimum required-term, then WatchGuard will have the right to invoice Customer for, and Customer will pay, the amount of the discount to the MSRP for the Equipment or such other amount set forth in the applicable Addendum or Ordering Document. This Section will not limit any other remedies WatchGuard may have with respect to an early termination.

**5. Payment.** Customer will pay invoices for the Products and Services provided under this EPSLA in accordance with the invoice payment terms set forth in the MCA. Generally, invoices

are issued after shipment of Equipment or upon WatchGuard's delivery of Licensed Software (in accordance with **Section 2.1 – Delivery and Risk of Loss**), as applicable, but if a specific invoicing or payment schedule is set forth in the applicable Ordering Document, EULA or other Addendum, such schedule will control with respect to the applicable Products and Services referenced therein. WatchGuard will have the right to suspend future deliveries of Products and Services if Customer fails to make any payments when due.

## **6. Representations and Warranties; Liability.**

**6.1. WatchGuard Warranties.** Subject to the disclaimers and exclusions set forth in the MCA and this EPSLA, (a) for a period of one (1) year commencing upon the delivery of WatchGuard-manufactured Equipment under **Section 2.1 – Delivery and Risk of Loss**, WatchGuard represents and warrants that such WatchGuard-manufactured Equipment, under normal use, will be free from material defects in materials and workmanship; (b) to the extent permitted by the providers of third-party software or hardware included in the Products and Services, WatchGuard will pass through to Customer any warranties provided by such third parties, which warranties will apply for the period defined by the applicable third party; and (c) for a period of ninety (90) days commencing upon the delivery of WatchGuard-owned Licensed Software under **Section 2.1 – Delivery and Risk of Loss**, WatchGuard represents and warrants that such Licensed Software, when used in accordance with the Documentation and the Agreement, will be free from reproducible defects that prevent operation of features critical to the primary functionality or successful operation of the WatchGuard-developed Licensed Software (as determined by WatchGuard). The warranty set forth in subsection (c) will be referred to as the **"WatchGuard Licensed Software Warranty"**. As Customer's sole and exclusive remedy for any breach of the WatchGuard Licensed Software Warranty, WatchGuard will use commercially reasonable efforts to remedy the material defect in the applicable Licensed Software; provided, however, that if WatchGuard does not remedy such material defect within a reasonable time, then at WatchGuard's sole option, WatchGuard will either replace the defective Software with functionally-equivalent software, provide substitute software to Customer, or terminate the applicable software license and refund any paid license fees to Customer on a pro-rata basis. For clarity, the WatchGuard Licensed Software Warranty applies only to the most current version of the Licensed Software issued by WatchGuard, and issuance of updated versions of any Licensed Software does not result in a renewal or extension of the WatchGuard Licensed Software Warranty beyond the ninety (90) day warranty period.

**6.2. ADDITIONAL EXCLUSIONS.** IN ADDITION TO THE EXCLUSIONS FROM DAMAGES SET FORTH IN THE MCA, AND NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, WATCHGUARD WILL HAVE NO LIABILITY FOR (A) DEFECTS IN OR DAMAGE TO PRODUCTS RESULTING FROM USE OTHER THAN IN THE NORMAL AUTHORIZED MANNER, OR FROM ACCIDENT, LIQUIDS, OR NEGLIGENCE; (B) TESTING, MAINTENANCE, REPAIR, INSTALLATION, OR MODIFICATION BY PARTIES OTHER THAN WATCHGUARD; (C) CUSTOMER'S OR ANY AUTHORIZED USER'S FAILURE TO COMPLY WITH INDUSTRY AND OSHA OR OTHER LEGAL STANDARDS; (D) DAMAGE TO RADIO ANTENNAS, UNLESS CAUSED BY DEFECTS IN MATERIAL OR WORKMANSHIP; (E) EQUIPMENT WITH NO SERIAL NUMBER; (F) BATTERIES OR CONSUMABLES; (G) FREIGHT COSTS FOR SHIPMENT TO REPAIR DEPOTS; (H) COSMETIC DAMAGE THAT DOES NOT AFFECT OPERATION; (I) NORMAL WEAR AND TEAR; (J) ISSUES OR OBSOLESCENCE OF LICENSED SOFTWARE DUE TO CHANGES IN CUSTOMER OR AUTHORIZED USER REQUIREMENTS, EQUIPMENT, OR SYSTEMS; (K) TRACKING AND LOCATION-BASED SERVICES; OR (L) BETA SERVICES.

**6.3. Voluntary Remedies.** WatchGuard is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed or excluded issues in the MCA or **Section 6.2 – Additional Exclusions** above, but if WatchGuard agrees to provide Services to help resolve such issues, Customer will reimburse WatchGuard for its reasonable time and expenses, including by paying WatchGuard any Fees set forth in an Ordering Document for such Services, if applicable.

**7. Copyright Notices.** The existence of a copyright notice on any Licensed Software will not be construed as an admission or presumption of publication of the Licensed Software or public disclosure of any trade secrets associated with the Licensed Software.

**8. Survival.** The following provisions will survive the expiration or termination of this EPSLA for any reason: **Section 3 – Licensed Software License and Restrictions; Section 4 – Term; Section 5 – Payment; Section 6.2 – Additional Exclusions; Section 8 – Survival.**

The Parties hereby enter into this EPSLA as of [REDACTED] (the “EPSLA Date”).<sup>1</sup>

**WatchGuard Video, Inc.**

**Customer:** [REDACTED]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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<sup>1</sup> **NTD:** Signature blocks can be removed if this EPSLA is attached to the MCA when the MCA is executed.



# Holly Springs Town Council

## *Town Council Meeting Agenda Cover Sheet*

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### Agenda Item#: 12.

#### **New Business**

**Title:** Vehicle and Equipment Replacement Request

**Strategic Priority Area:** Organizational Excellence

Safe & Friendly

**Staff Resource:** Corey Petersohn, Finance

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#### **Action(s):**

Approve the budget amendment for \$1,660,831 for vehicles and equipment and authorize the Town Manager to execute associated contracts for the vehicle and equipment purchases.

#### **Explanation:**

- At the 2021 Town Council retreat, staff outlined the backlog of vehicle and equipment replacement needs due to life cycle, dilapidation, and in some cases inoperability due to failures facing the Town and the challenge to think creatively how the Town could improve the overall condition of our fleet and equipment over the next couple years.
- As part of this effort, staff has identified a funding opportunity to get a head start on needed vehicle and equipment replacements in this fiscal year ahead of next fiscal year's budget recommendation.
- Staff proposes using the following funding sources to accelerate replacement:
  - \$898,331 in CARES Act COVID-related reimbursement funding (resulting primarily from public safety operating related expenses over the past year that were eligible for reimbursement)
  - \$250,000 from the current Utility Fund budget
  - \$300,000 from prior capital project savings
  - \$42,500 from Powell Bill street maintenance reserves
  - \$170,000 from previously set aside Parks & Recreation COVID hold operating funds
- Total funding is for \$1,660,831 spread across the general, utility, and Powell Bill funds. This will be used for the purchase of:
  - \$250,000 - Utilities and Infrastructure F550 Sewer Jet Truck
  - \$300,000 - Public Works Street Sweeper Vehicle
  - \$42,500 - Public Works Powell Bill crew truck
  - \$140,000 - (2) Parks and Recreation multi-functional 15-passenger mini-buses to replace three aging vehicles
  - \$30,000 - (3) Parks and Recreation mowers
  - \$640,000 - (12) Police Vehicles (two animal control, two K9, and eight patrol vehicles)
  - \$15,000 - One-time police vehicle equipment needs
  - \$28,000 - (2) Police Department K9s and associated gear and supplies
  - \$161,500 - Fire Department safety and emergency equipment for the new ladder truck

- \$12,500 - Fire Department multi-gas meters
- \$41,331 - Public Works Facilities Maintenance Division funds to assist in facility maintenance and COVID-19 response related janitorial and cleaning contract costs
- Additionally, in February, Town Council approved a budget amendment authorizing the movement of \$130,000 for the urgent replacement of a utility fund distributions for a utility tractor trailer that was purchased earlier in the fiscal year by Public Works. The purchase contract for this vehicle did not receive Council authorization. This action retroactively authorizes the vehicle purchase contract.

**Background:**

- On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act, known as the CARES Act.
- This act appropriated funds to Wake County for reimbursement to cover costs from necessary expenditures incurred due to the public health emergency. These funds can in turn be provided to municipalities.
- The Town initially covered its COVID related expenses using FY 21 and FY22 Council approved operating budget appropriations.
- The Town has now received \$898,331 in reimbursements for costs from the County related to the Town's COVID-19 response.
- The majority of reimbursable eligible expenses occurred from Police, Fire, and the maintenance of public facilities to include janitorial and cleaning services.

**Funding Source(s):**

- Transfer \$250,000 within the Utility Fund operating budget
- Return \$300,000 in project savings from the Streets and Sidewalks Projects Fund to Street Reserves and then transfer to the General Fund operating budget
- Release \$170,000 in Parks and Recreation COVID-Hold funds within the General Fund
- Transfer \$42,500 within the Powell Bill Fund operating budget
- Appropriate \$898,331 in CARES Act reimbursements within the General Fund

**Attachment(s):**

1. FY21 Budget Amendment - Vehicle and Equipment Replacement

## Town of Holly Springs Budget Amendment Request

BE IT ORDAINED by the Town Council of the Town of Holly Springs, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2021.

**Department:** Finance **Date:** 4/6/2021

**Reason for Budget Amendment:**

To appropriate funds for the replacement of fleet and heavy equipment needs as well as appropriate CARES Act reimbursement funds from the Town's COVID-19 response.

| Expense               |                                                    |                     |                   |
|-----------------------|----------------------------------------------------|---------------------|-------------------|
| Account #             | Account Description                                | Increase            | Decrease          |
| 30-95.24              | Utility Fund - Transfer to Reserves                |                     | \$ 250,000        |
| 30-434-37-90.02       | Utility Fund - Collections - Capital Vehicle       | \$ 250,000          |                   |
| 10-422-22-90.02       | General Fund - Streets - Capital Vehicle           | \$ 300,000          |                   |
| 10-425-39-82.98       | Parks and Recreation COVID Contingency             |                     | \$ 170,000        |
| 10-425-27-90.02       | Parks and Rec - Community Center - Capital Vehicle | \$ 140,000          |                   |
| 10-425-26-90.01       | Parks and Rec - Park Maint. - Capital Equipment    | \$ 30,000           |                   |
| 10-420-62.04          | Fire - Department Supplies                         | \$ 12,500           |                   |
| 10-420-90.01          | Fire - Capital Equipment                           | \$ 161,500          |                   |
| 10-418-18-90.02       | Police - Capital Vehicle                           | \$ 661,000          |                   |
| 10-418-18-90.01       | Police - Capital Equipment                         | \$ 16,000           |                   |
| 10-418-18-62.12       | Police - Supplies K9                               | \$ 6,000            |                   |
| 10-425-30-12.05       | Public Facilities Maintenance - Contract Services  | \$ 41,331           |                   |
| 15-90.04              | Powell Bill Fund - Capital Infrastructure          |                     | \$ 42,500         |
| 15-90.02              | Powell Bill Fund - Capital Vehicle                 | \$ 42,500           |                   |
| <b>Total Expense:</b> |                                                    | <b>\$ 1,660,831</b> | <b>\$ 462,500</b> |

| Revenue               |                                            |                     |             |
|-----------------------|--------------------------------------------|---------------------|-------------|
| Account #             | Account Description                        | Increase            | Decrease    |
| 10-355.22             | General Fund Transfer from Street Reserves | \$ 300,000          |             |
| 10-316.05             | General Fund CARES Act Revenue             | \$ 898,331          |             |
| <b>Total Revenue:</b> |                                            | <b>\$ 1,198,331</b> | <b>\$ -</b> |

\_\_\_\_\_  
Department Head Signature (or electronic submission)

\_\_\_\_\_  
Finance Director Signature (if necessary)

\_\_\_\_\_  
Town Manager Signature (if necessary)

\_\_\_\_\_  
Council Approved/Notified (if necessary)

Town Manager is authorized to transfer within a department without prior approval of Town Council.

Town Manager is authorized to approve transfers between departments within the same fund up to \$50,000.

All inter-departmental transfers will be reported to Town Council by the following month.

Amendments that change the total budget or departmental transfers over \$50,000 require Town Council approval.



# Holly Springs Town Council

## *Town Council Meeting Agenda Cover Sheet*

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### **Agenda Item#: 13.**

#### **New Business**

**Title:** Appointment of Voting Delegate to NC League of Municipalities Annual Meeting

**Strategic Priority Area:** Organizational Excellence

**Staff Resource:** Linda McKinney, Town Clerk

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#### **Action(s):**

Appoint the voting delegate from Holly Springs to the NC League of Municipalities' annual meeting.

#### **Explanation:**

- This delegate is to vote for the NC League of Municipalities' (NCLM) Board of Directors, and is a separate designation from the voting delegate to the Legislative Action committee of the NCLM.
- In 2020 MPT Dan Berry was the voting delegate for the annual meeting.
- In 2021 Councilman Aaron Wolff was the voting delegate to the Legislative Action Committee.

#### **Background:**

- Each member municipality of the NCLM is eligible to cast a single vote for the Board of Directors at the NCLM annual business meeting.
- The designated voting delegate will receive their credentials and voting instructions on or before April 12, 2021.
- CityVision 2021 will be a virtual event, from April 20 through April 22, 2021. The new Board of Directors will be announced at NCLM's annual business meeting during this event.

#### **Funding Source(s):**

N/A

#### **Attachment(s):**

None