



Mayor

M. Andy Moore

Mayor Pro-Tem

John A. Dunn

Council Members

Marlon Lee

David Stevens

Travis Scott

David Barbour

Stephen Rabil

Roger A. Wood

Town Attorney

Robert Spence, Jr.

Town Manager

Michael L. Scott

Finance Director

Greg Siler

Town Clerk

Shannan Parrish

## Town Council

## Agenda

## Packet

Meeting Date: Tuesday, October 6, 2020

Meeting Time: 7:00 p.m.

Meeting Place: Town Hall Council Chambers

350 East Market Street

Smithfield, NC 27577





**TOWN OF SMITHFIELD  
TOWN COUNCIL AGENDA  
REGULAR MEETING OCTOBER 6, 2020  
7:00 PM**

Call to Order

Invocation

Pledge of Allegiance by Girl Scout Troop 614

Approval of Agenda

Page

Presentations:

1. Administering Oath of Office to new Police Officer Julie Carroll  
(Mayor – M. Andy Moore) See attached information.....1
2. CDBG Housing Revitalization update  
(Skip Green)

Public Hearings:

1. SUP-20-09 Michael Sherman: The applicant is requesting a Special Use Permit to construct a single-family dwelling on property located within a B-2 (Business) zoning district. The property considered for approval is located on the south side of the intersection of East Lee Street and South Sixth Street and further identified as Johnston County Tax ID# 5036038  
(Planning Director – Stephen Wensman) See attached information.....3
2. Community Development Block Grant: The Town of Smithfield is considering submitting a Covid-19 Community Development Block Grant Program (CDBG-CV). The CDBG-CV application requests a \$900,000 CDBG-CV grant to: (1) make broadband improvements at four **locations to upgrade internet service within the Town’s corporate limits;** (2) **make improvements to the Town’s Park Amphitheater;** and project administration.  
(Town Manager – Michael Scott) See attached information.....23

Citizens Comments

Consent Agenda Items:

- 1. Approval of Minutes:
  - a. August 24, 2020 – Special Meeting
  - b. September 1, 2020 – Regular Meeting
  - c. September 1, 2020 – Closed Session (Under Separate Cover)
  - d. September 22, 2020 – Special Meeting.....25
  
- 2. Special Event: Theater in the Park- Consideration and request for approval **to allow Cista Lueeze’s Brunch House Theatre, Inc. to** Close Front Street and a section of the Greenway by the Town Commons stage. This request was originally approved at the August Town Council Meeting. The additional request is due to the closing of the Greenway and Front Street (Planning Director – Stephen Wensman) See attached information..... 55
  
- 3. Special Event: Church Service – Consideration and request for approval to allow Alice Wells to hold a church service on October 11<sup>th</sup> from 2:00pm until 4:00pm at Smithfield Community Park. The request includes the use of amplified sound. (Planning Director – Stephen Wensman) See attached information.....57
  
- 4. Special Event: Documentary Showing – Consideration and request for approval to allow Margaret Scovil to show a free documentary on October 23<sup>rd</sup> from 6:30pm until 8:30pm and again on October 25<sup>th</sup> from 4:00pm until 6:00pm at the Town Commons. This request includes the use of amplified sound and the closure of Front Street from east Johnston Street. (Planning Director – Stephen Wensman) See attached information.....61
  
- 5. Special Event: Fireworks Display – Consideration and request for approval **to allow Smithfield Parks and Recreation to hold a Veteran’s Day fireworks display** on November 11<sup>th</sup> from 5:00pm until 7:00pm from Smithfield Community Park. The request includes the use of amplified sound. (Parks and Recreation Director – Gary Johnson) See attached information..... 65
  
- 6. Career Ladder - Police Department: Consideration and request for approval to promote a Police Officer II to the rank of Master Police Officer (Chief of Police – R. Keith Powell) See attached information..... 69
  
- 7. Consideration and request for approval to adopt Resolution No. 666 (15-2020) authorizing the disposition of certain surplus property and the auctioning of most of that property by the electronic auction service of GovDeals.com (Town Clerk – Shannan Parrish) See attached information.....81
  
- 8. Consideration and request for approval to adopt Resolution No. 667 (16-2020) authorizing the submission of a CDBG- CV application (Town Manager – Michael L. Scott) See attached information.....85

9. Consideration and request for approval to bring forward budget encumbrances from the 2019-2020 fiscal year to the 2020-2021 fiscal year  
(Finance Director – Greg Siler) See attached information.....89

10. Consideration and request for approval to replace cardio fitness equipment at the Smithfield Recreation and Aquatics Center  
(Parks and Recreation Director – Gary Johnson) See attached information.....95

11. Board Appointment  
a. **Paul "Sonny" Howard**, Jr. has submitted an application for consideration to be appointed to a first term on the Parks and Recreation Advisory Committee  
(Town Clerk – Shannan Parrish) See attached information.....103

12. New Hire Report  
(HR Director/ PIO – Tim Kerigan) See attached information.....107

Business Items:

1. **Consideration and request for approval to accept the Governor’s** Highway Safety Program Grant for a two-officer traffic team  
(Chief of Police – R. Keith Powell) See attached information.....109

2. Consideration and request for approval to adopt the Design-Build criteria for the proposed Police Department Expansion Project  
(Town Engineer – Bill Dreitzler and Chief of Police – R. Keith Powell).....115  
See attached information

3. Consideration and request for approval of the Spring Branch Community restoration Project Contract with KCI  
(Planning Director – Stephen Wensman) See attached information.....121

**Councilmember’s Comments**

**Town Manager’s Report**

- Financial Report (See attached information).....227
- Department Reports (See attached information).....231
- **Manager’s Report** (Will be provided at the meeting)

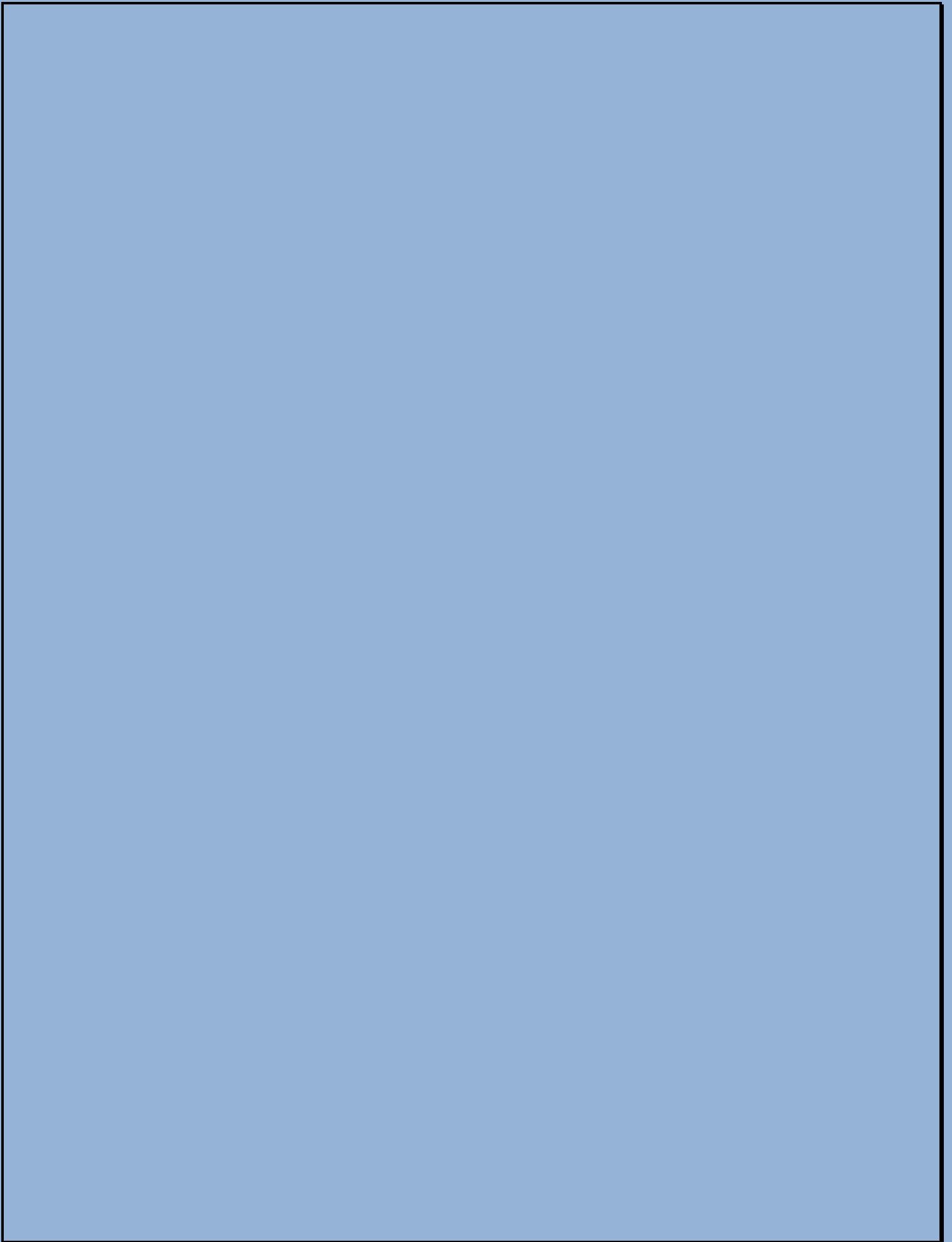
Closed Session: Pursuant to NCGS 143-318.11 (a)(1), (3) and (6)

Reconvene in Open Session

Adjourn



# Presentations







# Request for Town Council Action

Presentation: Police Swear  
in  
Presentation  
Date: 10/06/2020

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Subject: Oath of Office  
Department: Police Department  
Presented by: Mayor Andy Moore  
Presentation: Presentation

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## Issue Statement

The Police Department has hired a new officer to fill existing vacancies within the Police Department. Julie Smith Carroll has been hired to fill one of these positions. Julie Smith Carroll was hired by the agency and sent to Basic Law Enforcement Training and has successfully completed the training. She has been assigned to the Patrol Division for Field Training.

## Financial Impact

N/A

## Action Needed

Swear in this new officer and welcome her into the Smithfield Community.

## Recommendation

Swear in this new officer and welcome her into the Smithfield Community.

Approved:  Town Manager  Town Attorney

## Attachments:

1. Oath of Office



# Staff Report

Presentation: Oath  
of  
Office

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## OATH OF OFFICE

### SMITHFIELD POLICE DEPARTMENT

"I, Julie Smith Carroll , the undersigned, do solemnly swear or affirm that I will support the Constitution of the United States; that I will faithfully and bear true allegiance to the State of North Carolina and to the Constitutional powers and authorities which are, or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; that I will be alert and vigilant to enforce the criminal laws of this state; that I will not be influenced in any manner on account of personal bias or prejudice; and that I will faithfully and impartially execute the duties of my office as a law enforcement officer according to the **best of my skill, abilities and judgment, so help me God.**"

\_\_\_\_\_  
Signature

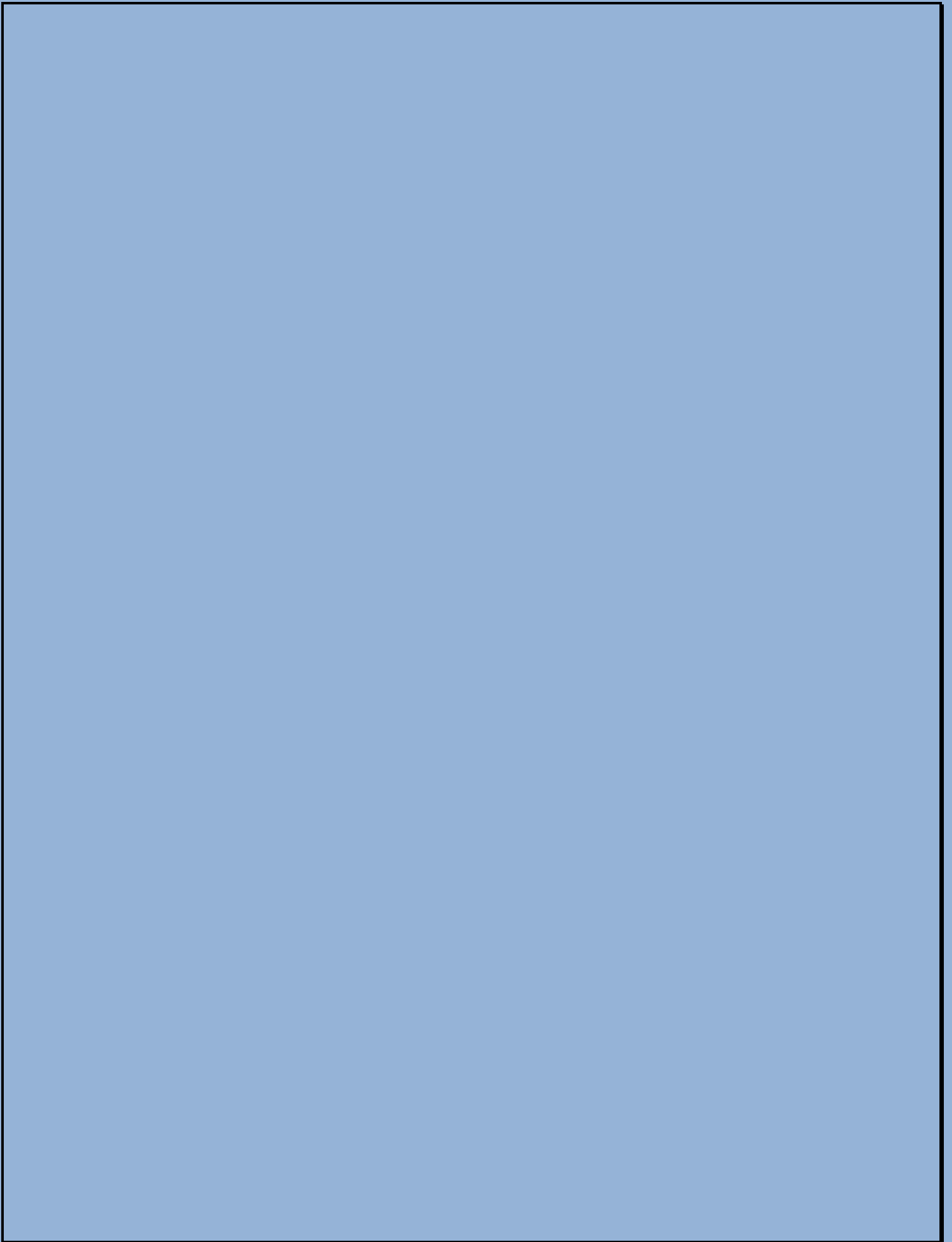
\_\_\_\_\_  
Date

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Judge/Clerk

\_\_\_\_\_  
Commission Expires

# Public Hearings





# Request for Town Council Action

Public Hearing: SUP- 20-09  
Date: 10/06/2020

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Subject: East Lee Street Single Family Dwelling  
Department: Planning  
Presented by: Stephen Wensman - Planning Director  
Presentation: Special Use Quasi-Judicial Hearing

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## Issue Statement

The Council is requested to approve a Special Use Permit for a single-family dwelling located at 602 East Lee Street and within a B-2 Zoning District.

## Financial Impact

None.

## Action Needed

To review the special use permit request and make a decision whether to approve, approve with conditions or deny.

## Recommendation

Planning Staff recommends the Town Council approve SUP-20-09.

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff report
2. Findings of Fact
3. Application
4. Site Plans
5. Adjacent Owner Listing and Certification



# Staff Report

Public SUP-  
Hearing: 20-09

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## REQUEST:

The applicant is requesting a Special Use Permit to construct a single-family dwelling on property located within a B-2 (Business) zoning district. The property considered for approval is located on the south side of the intersection of East Lee Street and South Sixth Street and further identified as Johnston County Tax ID# 5036038.

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## SPECIAL USE:

All residential uses within the non-residential zoning districts require a Special Use Permit.

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## APPLICATION:

Application Number: SUP-20-09  
Location: 602 East Lee Street  
Project Name: East Lee Street Single Family Dwelling  
Parcel ID number: 169306-48-8706  
Town Limits/ETJ: Town Limits  
Applicant: Michael Sherman  
Property Owner: **Michael Sherman**  
Agents: None

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## SITE/DEVELOPMENT DATA:

Acreage: .163 acres  
**Present Zoning: B-3 (Business)**  
Existing Uses: Single Family Dwelling  
Proposed Use: Single Family Dwelling  
School Impacts: None  
Parks and Recreation: None  
Water Provider: Town of Smithfield  
Sewer Provider: Town of Smithfield  
Electric Provider: Town of Smithfield

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ADJACENT ZONING AND LAND USES:

	Exiting Zoning	Existing Use:
North	R-8	Single Family Residential
South	B-2	Funeral Home
West	R-8	Single Family Residential
East	B-2	Insurance Office

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ANALYSIS:

The applicant is proposing to rehabilitate the southeast corner of East Lee Street and South Sixth Street by removing and existing single-family dwelling and replacing it with newly constructed single-family dwelling built to current state building codes. The applicant has provided a site plan indicating that the building setbacks for a single-family dwelling within a B-2 zoning district can and will be met. The site plan also indicates that access to sewer and electric service will be from the right-of-way of South Sixth Street and access to public water will from the right-of-way of East Lee Street. The site plan indicates two required off street parking space will be provided with access for East Lee Street. Access to the property from South Sixth Street and accessory structures are not requested at this time.

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DRAFT FINDINGS OF FACT:

The UDO, Article 4, sets forth eight findings of fact that are required for approval of a special use permit through a quasi-judicial process. (Please see the attached application which **contains the applicant's findings of fact**). Staff's opinion for each finding are shown in *Bold/Italics* below:

4.9.3.5.1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare. *The public's health, safety, or general welfare have been addressed with the proposed site plan.*

4.9.3.5.2. The special use will be in harmony with the existing development and uses within the area in which it is to be located. *The special use is complementary to the surrounding residential land uses and will be in an asset to the community at large.*

4.9.3.5.3. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. *The special use will not impede normal and ordinary development of the residential district. A single family*

*dwelling at this location will not impeded commercial activities along the South Brightleaf Boulevard corridor.*

4.9.3.5.4. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided. *Adequate utilities, off street parking, access and other facilities exist or are being adequately provided for.*

4.9.3.5.5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. *Adequate egress and ingress currently exist to the site. The proposed egress and ingress are configured to allow for access two off street parking spaces.*

4.9.3.5.6. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located. *With a special use permit, the use will conform to the applicable regulations.*

4.9.3.5.7. Public access shall be provided in accordance with the recommendations **of the Town's land use plan and access plan or the present amount of public access** and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern. ***There are no conflicts with the Town's adopted plans.***

4.9.3.5.8. The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council. *With a special use permit, the use is permitted within the zoning district.*

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PLANNING DEPARTMENT RECOMMENDATION:

The Planning Department recommends approval of the SUP-20-09 based on the findings of fact with 3 conditions:

1. **That a site plan be submitted for review in accordance with the Town's Unified Development Ordinance.**

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RECOMMENDED MOTIONS:

Staff recommends the following motions to approve SUP-20-09:



- **"Move to recommend approval of SUP-20-09 for the construction of a single-family dwelling on property located within a B-2 (Business) zoning district.**

1. That a site plan be submitted for review in accordance with the **Town's Unified Development Ordinance.**

- **"Move to approve eight findings of fact for the special use permit SUP-20-09 as recommended in the staff report on pages \_\_\_\_\_."**

**Town of Smithfield**  
**Special Use Permit Application**  
**Finding of Fact / Approval Criteria**

**Application Number:** SUP-20-09      **Name:** Michael Sherman - Single Family Dwelling

**Request:** The applicant is requesting a Special Use Permit to construct a single-family dwelling on property located within a B-2 (Business) zoning district. The property considered for approval is located on the south side of the intersection of East Lee Street and South Sixth Street and further identified as Johnston County Tax ID# 5036038.

In approving an application for a special use permit in accordance with the principles, conditions, safeguards, and procedures specified herein, the Town Council may impose reasonable and appropriate conditions and safeguards upon the approval. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Town Council. The Town Council shall include in its comments a statement as to the consistency of the application with the Town's currently adopted Comprehensive Plan. The applicant has the burden of producing competent, substantial evidence tending to establish the facts and conditions which the below requires.

The Town Council shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:

1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.
2. The special use will be in harmony with the existing development and uses within the area in which it is to be located.
3. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.
7. Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.
8. The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council.

**Once all findings have been decided one of the two following motions must be made:**

**Motion to Approve:** *Based upon satisfactory compliance with the above stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant's representative, I move to approve Special Use Permit Application # SUP-20-09 with the following condition:*

1. That a site plan be submitted for review in accordance with the Town's Unified Development Ordinance.

**Motion to Deny:** *Based upon failure to meet all of the above stated findings and for reasons stated therein, I move to deny Special Use Permit Application # SUP-20-09 for the following stated reason:*

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**Record of Decision:**

**Based on a motion and majority vote of the Town of Smithfield Town Council for the Special Use Permit Application Number SUP-20-09 is hereby:**

\_\_\_\_\_ **approved upon acceptance and conformity with the following conditions:**

1. That a site plan be submitted for review in accordance with the Town's Unified Development Ordinance.

\_\_\_\_\_ **denied for the noted reasons.**

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**Decision made this 6<sup>th</sup> day of October 2020 while in regular session.**

\_\_\_\_\_  
**M. Andy Moore, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Shannan L. Parrish, Town Clerk**



Town of Smithfield  
Planning Department  
350 E. Market St Smithfield, NC 27577  
P.O. Box 761, Smithfield, NC 27577  
Phone: 919-934-2116  
Fax: 919-934-1134

## SPECIAL USE PERMIT APPLICATION

*Pursuant to Article 4, of the Town of Smithfield Unified Development Ordinance, an owner of land within the jurisdiction of the Town (or a duly authorized agent) may petition the Town Council to allow a Special Use. Special Uses are uses that may be appropriate in a particular district, but has the potential to create incompatibilities with adjacent uses.*

*Special Use Permit applications must be accompanied by nine (9) sets of the application, nine (9) sets of required plans and one (1) digital copy of all required documents, an Owner's Consent Form (attached) and the application fee.*

### SITE INFORMATION:

Name of Project: Lee Street Rebuild      Acreage of Property: .163      7100 SQ.FT.  
Parcel ID Number: 15036038      Tax ID: 15036038  
Deed Book: 02793      Deed Page(s): 0747  
Address: 602 E. Lee Street  
Location: Corner of E. Lee Street and S. Sixth Street

Existing Use: Residential      Proposed Use: Residential  
Existing Zoning District: B-2

Is project within a Planned Development:      Yes      No  
Planned Development District (if applicable): N/A  
Is project within an Overlay District:      Yes      No  
Overlay District (if applicable): N/A

### FOR OFFICE USE ONLY

File Number: \_\_\_\_\_ Date Submitted: \_\_\_\_\_ Date Received: \_\_\_\_\_ Amount Paid: \_\_\_\_\_

**OWNER INFORMATION:**

**Name:** Michael Sherman, Laura Lee Sherman

**Mailing Address:** Post Office Box 1322 Four Oaks, NC 27524

**Phone Number:** 919-669-6931, 919-669-6932 **Fax:**

**Email Address:** michaelshermanelectric@gmail.com lauraleesherman@hotmail.com

**APPLICANT INFORMATION:**

**Applicant:** Michael Sherman

**Mailing Address:** Post Office Box 1322 Four Oaks, NC 27524

**Phone Number:** 919-669-6931 **Fax:**

**Contact Person:** Michael Sherman

**Email Address:** michaelshermanelectric@gmail.com

**STATEMENT OF JUSTIFICATION**

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

Demolish single-family dwelling and rebuild single-family dwelling.

Lined area for providing detailed information and attachments.

**REQUIRED FINDING OF FACT**

*Article 4 of the Town of Smithfield Unified Development Ordinance requires applications for a Special Use Permit to address the following findings. The applicant has the burden of producing competent, substantial evidence tending to establish the facts and conditions which this section requires. The Town Council shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:*

- 1) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.  
A single-family dwelling will not endanger the public health, safety, or general welfare of the neighborhood.  
\_\_\_\_\_
- 2) The special use will be in harmony with the existing development and uses within the area in which it is to be located.  
A single-family dwelling currently exists on this corner lot zoned B-2 with other single-family dwellings adjacent in zone R-8  
\_\_\_\_\_
- 3) The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.  
A new single-family home will improve all the surrounding properties.  
\_\_\_\_\_
- 4) Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.  
Currently all necessary facilities are being provided. The proposed plan does not require additional facilities.  
\_\_\_\_\_
- 5) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.  
Existing and future ingress and egress is adequate, meeting UDO requirements.  
\_\_\_\_\_
- 6) The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.  
Proposed project conforms to all UDO requirements and regulations.  
\_\_\_\_\_
- 7) Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.  
Parking and public access are in accordance with recommendations of the Town of Smithfield land use plan.  
\_\_\_\_\_
- 8) The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council.  
The proposed single-family dwelling conforms to the current and future plans adopted by the Town Council.  
\_\_\_\_\_  
\_\_\_\_\_

## REQUIRED SITE PLAN INFORMATION

***Article 5 of the Town of Smithfield Unified Development Ordinance requires a site plan be prepared by a professional engineer, registered land surveyor, or licensed architect and shall be drawn to scale of not less than one inch equals 30 feet. The site plan shall be based on the latest tax map information and shall be of a size as required by each individual site plan. The site plan shall contain the following information, if applicable as determined by the UDO Administrator:***

- 1) A key map of the site with reference to surrounding areas and existing street locations.
- 2) The name and address of the owner and site plan applicant, together with the names of the owners of all contiguous land and of property directly across the street as shown by the most recent tax records.
- 3) Parcel Identification Numbers (PIN) for site and adjacent properties.
- 4) Deed book and page reference demonstrating ownership of property.
- 5) Location of all existing and proposed structures, including their outside dimensions and elevations, streets, entrances, and exits on the site, on contiguous property, and on property directly across the street.
- 6) Building setback, side line, and rear yard distances.
- 7) Location of watercourses, ponds, flood zones, water supply watershed areas, and riparian buffers.
- 8) All existing physical features, including existing trees greater than eight (8) inches in diameter measured four and one-half (4.5) feet above ground level, and significant soil conditions.
- 9) Topography showing existing and proposed contours at no greater than ten (10) foot intervals. All reference benchmarks shall be clearly designated.
- 10) The zoning of the property, including zoning district lines where applicable.
- 11) Lot line dimensions and property lines of the tract to be developed (with dimensions identified), adjacent property lines (including corporate limits, Town boundaries, and county lines).
- 12) Parking, loading, and unloading areas shall be indicated with dimensions, traffic patterns, access aisles, and curb radii per the requirements of Article 10, Part I.
- 13) Types of surfaces for drives, sidewalks, and parking areas.
- 14) Location and design of existing and proposed sanitary waste disposal systems, water mains and appurtenances (including fire hydrants) on or adjacent to the parcel.
- 15) Other utility lines both under- and above-ground, including electric power, telephone, gas, cable television.
- 16) Location of all US Clean Water Act Section 404 wetland areas, located of detention/retention ponds (Best Management Practices), riparian buffers and impervious surface areas with area dimensions, and ratios of impervious surface to the total size of the lot.
- 17) The location of all common areas.
- 18) The location and dimensions of all areas intended as usable open space, including all recreational areas. The plans shall clearly indicate whether such open space areas are intended to be offered for dedication to public use or to remain privately owned.
- 19) Landscaping and buffering plan showing what will remain and what will be planted, indicating names of plants, trees, and dimensions, approximate time of planting, and maintenance plans per the requirements of Article 10, Part II. The plan shall include the tree line of wooded areas and individual trees eight (8) inches in diameter or more, identified by common or scientific name.
- 20) Proposed site lighting.

# PROPOSED PLAN ZONE B-2

ADDRESS: 602 E. LEE ST. SMITHFIELD, NC  
OWNERS: MICHAEL SHERMAN & LAURA LEE SHERMAN  
PARCEL: 15036038  
ACRES: .163

E. LEE STREET

SIXTH STREET  
95'

75.5'

DRIVEWAY

20'

PROPOSED  
PARKING  
2 SPACES

20'

AZALEA  
Rhododendron  
obtusum

PROPOSED  
RESIDENTIAL  
SINGLE FAMILY  
DWELLING

1,496 sq ft

NATURAL  
GAS  
RELOCATE

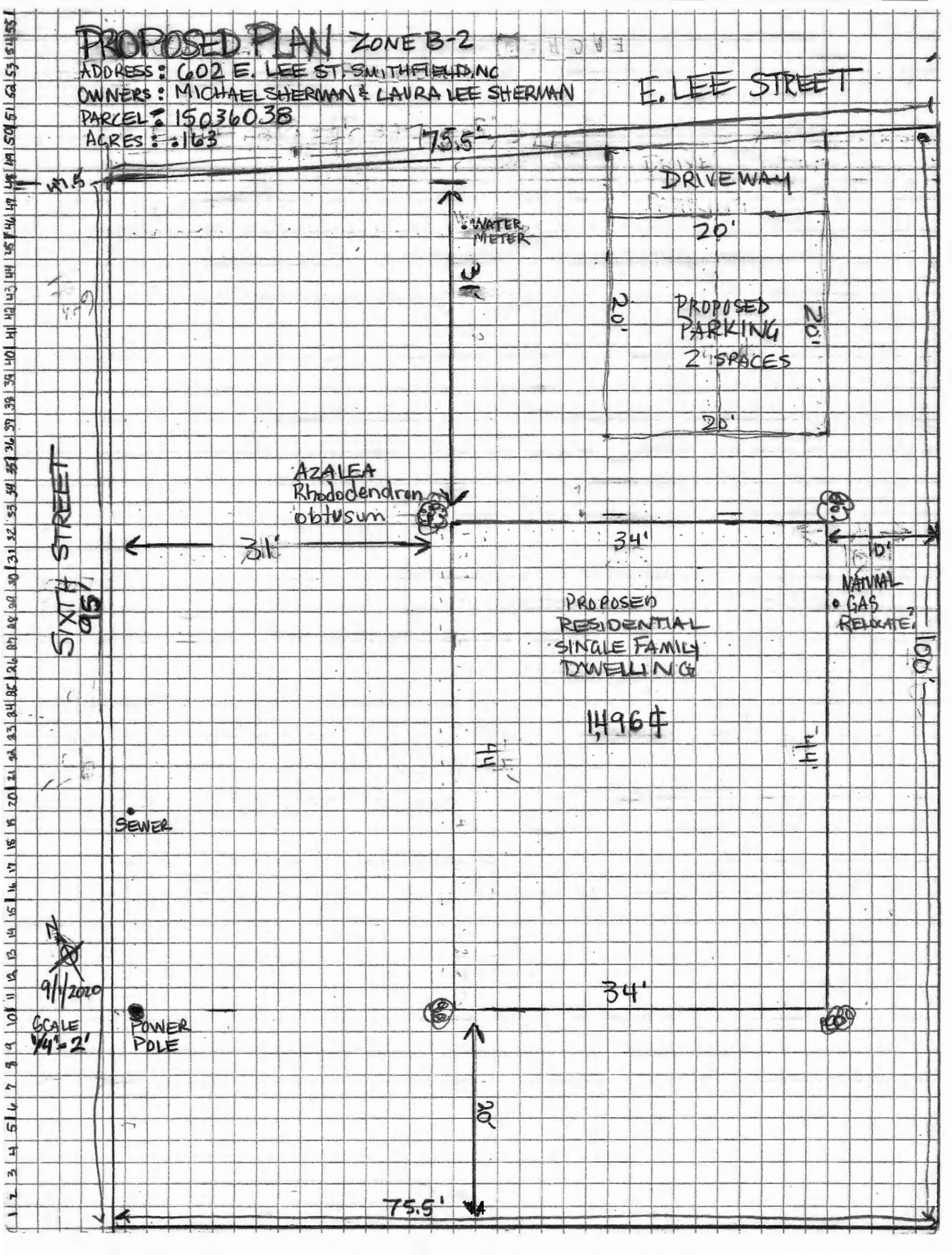
SEWER

POWER  
POLE

9/1/2020  
SCALE  
1/4" = 2'

75.5'

100'





# EXISTING PLAN ZONE B-2

ADDRESS: 602 E. LEE ST. SMITHFIELD

OWNERS: MICHAEL SHERMAN, LAURALEE SHERMAN

PARCEL: 15036038

ACRES: .2163

E. LEE STREET

SIXTH STREET

95'

100'

75.5

WATER METER

EXISTING DRIVEWAY

26'

27'

16'

NATURAL GAS METER

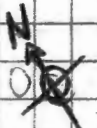
EXISTING RESIDENTIAL SINGLE FAMILY DWELLING TO BE REMOVED

1,359 sq ft

SEWER

10'

47'



9/11/2019

SCALE 1/4" = 2'

POWER POLE

18'

3'  
3'

STORAGE BUILDING TO BE REMOVED

75.5'

APPLICANT AFFIDAVIT

*I/We, the undersigned, do hereby make application and petition to the Town Council of the Town of Smithfield to approve the subject Special Use Permit. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Smithfield, North Carolina, and will not be returned.*

**Michael Sherman**



9/1/2020

*Print Name*

*Signature of Applicant*

*Date*

# OWNER'S CONSENT FORM

Name of Project: Lee Street Rebuild Submittal Date: 9/1/2020

## OWNERS AUTHORIZATION

I hereby give CONSENT to Michael Sherman (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge the property I have an ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the Town of Smithfield to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

  
*Signature of Owner*

MICHAEL SHERMAN  
LAURA LEE SHERMAN  
*Print Name*

9/1/2020  
*Date*

## CERTIFICATION OF APPLICANT AND/OR PROPERTY OWNER

I hereby certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Smithfield, North Carolina, and will not be returned.

  
*Signature of Owner/Applicant* MICHAEL SHERMAN  
*Print Name*

9/1/2020  
*Date*

## FOR OFFICE USE ONLY

File Number: \_\_\_\_\_ Date submitted: \_\_\_\_\_ Date received: \_\_\_\_\_

# 600 Block of Lee Street

**Project Name:**  
East Lee Street  
Single Family Dwell

**Location:**  
602 East  
Lee Street

**File Number:**  
SUP-20-09

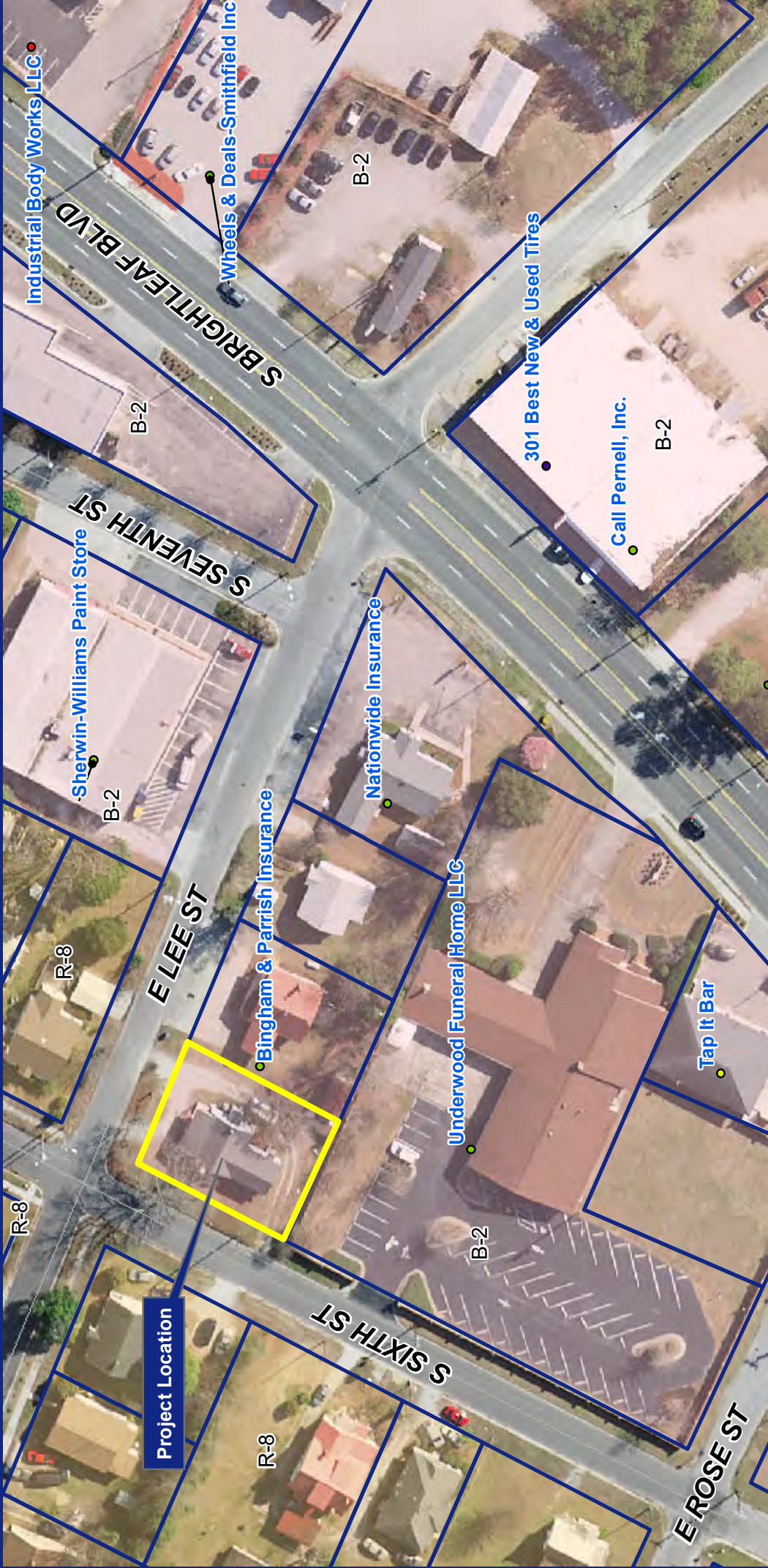
**Existing Zoning:**  
B-2 Business

**Request:**  
Single Family  
Dwelling

**Property Owner:**  
Michael Sherman

**Tax ID# 5036038**

**Project Location**



1 in = 80 ft

Adjacent Property Owners of  
SUP-20-09

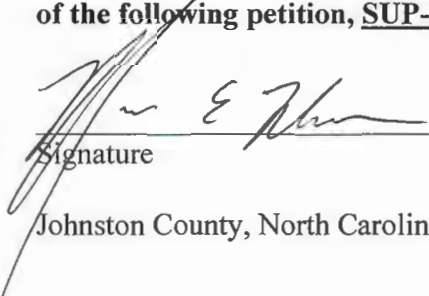
TAG	PIN	NAME	ADDRESS	CITY	STATE	ZIPCODE
15036039	169306-48-8752	PARRISH, CHARLES I JR	376 SKINNER RD	FOUR OAKS	NC	27524-0000
15036038	169306-48-8706	SHERMAN, MICHAEL J	PO BOX 1322	FOUR OAKS	NC	27524-0000
15036011	169306-48-6842	ARGUETA, ANGEL R	522 S 6TH STREET	SMITHFIELD	NC	27577-0000
15036014	169306-48-6871	WHITLEY, H LANDIS	208 W LANGDON AVE	SMITHFIELD	NC	27577-0000
15036042	169306-48-8699	SOUTH POLLOCK STREET LLC	PO BOX 1031	SMITHFIELD	NC	27577-1031
15036027	169306-48-7943	GARDNER, MICHAEL	515 E LEE ST	SMITHFIELD	NC	27577-4441
15036036	169306-48-8895	RAMOS, JUANA FRANCISCA H.	511 S 6TH ST	SMITHFIELD	NC	27577-4459



PLANNING DEPARTMENT  
Mark E. Helmer, AICP, Senior Planner

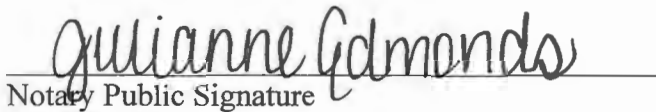
ADJOINING PROPERTY OWNERS CERTIFICATION

I, Mark E. Helmer, hereby certify that the property owner and adjacent property owners of the following petition, SUP-20-09, were notified by First Class Mail on 9-21-20.

  
\_\_\_\_\_  
Signature  
Johnston County, North Carolina

I, Julianne Edmonds, Notary Public for Johnston County and State of North Carolina do hereby certify that Mark E. Helmer personally appeared before me on this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal, this the

21st day of September, 2020

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

Julianne Edmonds  
\_\_\_\_\_  
Notary Public Name

My Commission expires on January 15, 2023  
(Seal)





**PLANNING DEPARTMENT**  
Mark E. Helmer, AICP, Senior Planner

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## **Notice Of Public Hearing**

Notice is hereby given that the Town Council of the Town of Smithfield will conduct a public hearing during the course of their open meeting which starts at 7:00 P.M. on Tuesday, October 6, 2020 in the Town Hall Council Chambers located at 350 East Market Street to consider the following requests:

**SUP-20-09 Michael Sherman:** The applicant is requesting a Special Use Permit to construct a single-family dwelling on property located within a B-2 (Business) zoning district. The property considered for approval is located on the south side of the intersection of East Lee Street and South Sixth Street and further identified as Johnston County Tax ID# 5036038.

All interested persons are encouraged to attend. To accommodate disabilities and to comply with ADA regulations, please contact the town office if you need assistance. Further inquiries regarding this matter may be directed to the Smithfield Planning Department at (919) 934-2116 or online at [www.smithfield-nc.com](http://www.smithfield-nc.com).

**Run "Legal Ad" in the New & Observer Zone Edition on 9/25/20**







# Request for Town Council Action

Public Hearing: 2<sup>nd</sup> Public Hearing  
CDBG  
Date: 10/06/2020

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Subject: Public Hearing Community Development Block Grant  
Department: General Government  
Presented by: Town Manager Michael Scott  
Presentation: Public Hearing

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## Issue Statement

The Town Manager is requesting approval to apply for a Covid-19 Community Development Block Grant (CDBG-CV)

## Financial Impact

None. The grant is up to \$900,000 with no matching funds required.

## Action Needed

Hold a 2<sup>nd</sup> Public Hearing to solicit Community Input regarding areas the Town should consider soliciting funding for under CDBG-CV.

## Recommendation

Complete 2<sup>nd</sup> Public Hearing for the CDBG-CV Grant.

Approved:  Town Manager  Town Attorney

## Attachments:

- Staff Report



# Staff Report

Public Hearing: 2<sup>nd</sup> Public Hearing CDBG

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Funds to help local governments and communities respond to the health and economic impacts of COVID-19 are available in **our area from North Carolina's Community Development Block Grant Coronavirus (CDBG-CV) program.**

Initially, the State will provide approximately \$28.5 million in funds received from the U. S. **Department of Housing and Urban Development (HUD) to support North Carolina's COVID-19** response efforts. This allocation was authorized by the federal CARES Act of 2020, Public Law 116-136.

## *CDBG-CV Program Overview*

The North Carolina CDBG-CV Program is designed to help units of local government respond to and recover from the health and economic impacts of COVID-19. The program will assist non-entitlement areas across the state, which include incorporated municipalities under 50,000 and counties under 200,000 in population, by supporting public service, public facilities, and special economic development activities. N.C. Commerce will award CDBG-CV funds on a first-come, first-served basis with a focus on local needs identified by the community in collaboration with state and local health officials.

CDBG-CV projects must incorporate at least one of the following as an area of focus:

- Support families and communities through telehealth support and other public services.
- Protect the most vulnerable and high-risk populations.
- Assist small businesses with economic recovery.
- Address testing, tracing, and tracking trends.

The Town of Smithfield is interested in seeking funds from the Covid-19 Community Development Block Grant Program (CDBG-CV). The CDBG-CV program is administered by the North Carolina Department of Commerce and the North Carolina Department of Environment and Natural Resources.

This is the second of two public hearings being held to solicit input from the public. This second public hearing allows the community to learn of the proposed activities to be carried out should the CDBG-CV funding request be granted, including the amount of the funding request and the total cost of the activities.

# Consent

## Agenda Items



The Smithfield Town Council and the Planning Board held a Special Meeting on Monday, August 24, 2020 at 6:30 p.m. in the Town Hall Council Chambers located at 350 East market Street, Mayor M. Andy Moore presided.

Councilmen Present:

John Dunn, Mayor Pro-Tem  
Marlon Lee, District 1  
David Stevens, District 2  
Dr. David Barbour, District 4  
Stephen Rabil, At-Large  
Roger Wood, At-Large

Planning Board Members Present

Stephen Upton, Chairman  
Mark Lane, Vice Chairman  
Alisa Bizzell  
Teresa Daughtry  
Michael Johnson  
Debbie Johnson-Howard  
Doris Wallace

Council Absent

Travis Scott, District 3

Planning Board Member Absent

Ashley Spain

Others present

Bob Spence, Jr., Town Attorney  
Michael Scott, Town Manager  
Stephen Wensman, Planning Director  
Mark Helmer, Senior Planner  
Shannan Parrish, Town Clerk

- I. **Call to Order**  
Mayor Moore called the meeting to order at 6:30
- II. **Approval of the Agenda**  
Councilman Wood made a motion, seconded by Councilman Stevens to approve the agenda as submitted. Unanimously approved.
- III. **Recognition of Planning Board members in attendance**  
Mayor Moore recognized those members in attendance.
- IV. **Overview of topics:**
  1. **Conditional Zoning, the basic concept**

Town Attorney Bob Spence, Jr. provided the members of the Council and the Planning Board with a basis overview of zoning. Mr. Spence explained when zoning began property was in a certain district and it restricted the uses of the property. It did that so that properties would increase in value. The general concept of zoning was general use districts. The court started seeing problems and they needed to restrict the uses and some uses that were inconsistent could still work well together.

The Town's UDO has 8 conditions for Special Use Permit approval. To find those conditions, the law requires a person to be able to appear before the board and receive due process. A fair due process follows certain complex rules. It does not allow the board to speak with the applicant prior to the hearing. The problem the Town has seen has been the adversarial hearings. Often a developer will hire an attorney and present expert witnesses. An average citizen would not know to do that. No one understands the rules unless the professionals. We developed this process in order to protect people and to allow them to have their due process.

Quasi-judicial proceedings are used for special use and conditional use permits. Those permits were allowed statewide and were encouraged so that they could fit evidentiary standards. The process is almost too rigorous. The County implemented conditional use zoning. Basically, the zoning is done and afterwards it allows for conditions to be placed on the property. You rezone the property first and then special use permit second. It's more flexible. A more relaxed discussion can be had since it is a legislative zoning process. Conditional zoning basically allows you to zone into a district and you simply have a conversation about it. There are no evidentiary rules. There are no restrictions on ex parte communication. This allows for the strict rules to be eliminated. The Council would amend the code to

allow conditional zoning. The applicant would be able to choose if they wanted to proceed with the quasi-judicial process or the conditional zoning process.

Mayor Moore questioned if the Town would have to have conditional zoning and the quasi-judicial process. Town Attorney Bob Spence responded you do not have to have both processes. Mayor Moore further questioned who would choose the process an applicant follows. Mr. Spence responded it was the applicant's choice which path they would follow.

Mark Lane stated the Planning Board wanted the ability to be able to discuss these hearings. Mr. Spence responded the Planning Board could act as a mediator to work with the applicant on any issues prior to the application being received by the Council.

Mr. Spence stated the Planning Board used to hold quasi-judicial hearings which limited the Planning Board from having discussions with the developer and anyone who opposed the project. Mr. Spence recommended amending the code to allow the Planning Board to hear conditional zoning cases.

Councilman Barbour stated the Council could eliminate all quasi-judicial hearing. Mr. Spence stated they could be eliminated

Chairman Stephen Upton stated the Planning Board used to hold quasi-judicial hearings. From a legal standpoint, why was the quasi-judicial hearings removed from the Planning Board. Mr. Wensman responded the courts are more particular on procedural errors and also ex parte communication.

## **2. 160D**

## **3. Conditions done right**

## **4. Legal Risks in Planning Board Recommendations in Quasi-Judicial Hearings**

## **5. Subdivision Review: Administrative or Quasi-Judicial**

Town Attorney Bob Spence stated there was not a well-drawn subdivision ordinance in Smithfield. Right now subdivisions come before the Town Council and they have no discretion refuse the subdivision

Vice Chairperson Mark Lane questioned if the applicant has everything in place in accordance with the law and the UDO how would the Town be able to legally deny the request. Mr. Spence responded the Town can add some subjective general criteria that will allow for unusual situations where the applicant would meet the technical requirements, but the Council could deny the request if they deemed it unsafe. The Council needs to determine if it wants subdivision review to be a quasi-judicial proceeding and an administrative proceeding

Teresa Daughtry asked for Mr. Spence's recommendation on how to address the subdivision review process given that if it meets all the requirements, it cannot be denied. Mr. Spence responded he and Planning Staff would present to the board a subdivision ordinance with quasi-judicial standards. This would be done at the preliminary plat stage.

## **6. Spot Zoning: What is it?**

Town Attorney Bob Spence explained that an article on Spot Zoning was included in everyone's packet.

# **V. UDO Changes Summary**

Planning Director Stephen Wensman informed the Council and the Planning Board that there were proposed changes in Articles 3, 4, 5, 6 and 7 of the UDO.

## **1. Conditional Zoning**

Planning Director Stephen Wensman explained a conditional zoning option was as a parallel zoning district to each of the primary zoning districts. Conditional zoning was a negotiated approach to a legislative decision (rezoning) which allows maximum flexibility to tailor regulations to a site and project. Conditional Zoning Districts are zoning districts in which all the site-specific standards and conditions are incorporated

into the zoning district regulations. Our current PUD regulations are a form of conditional zoning for mixed use developments. Conditional Zoning is a similar process but for developments that are not mixed use. The conditional zoning can only be for a land use that is permitted in the primary zoning district and the only the land use shown on the approved site plan. Staff's intent was to amend the UDO to make many land uses that require SUPs to be permitted land uses with strict supplementary standards to encourage Conditional Zoning as an alternative.

## **2. Quasi-Judicial Approvals of Subdivision Preliminary Plats**

Planning Director Stephen Wensman explained the major change would be major preliminary plat approvals would move from administrative approval to quasi-judicial. This would allow the Council to conditionalize subdivision approval and provide for expert comment. The change would also allow the developers to submit a preliminary plat without complete engineered construction plans as is currently required. This would be more development friendly. The Council approval will allow for conditions to be incorporated into the preliminary plat approval, such as requiring construction drawings to conform to the UDO.

## **3. Adopt 160 D Enabling Legislation Changes into the UDO**

Planning Director Stephen Wensman explained the Town would have to adopt required changes to the UDO as a result of changes to the new combined enabling legislation both Counties and Towns, 160D. 160D requires Towns to adopted 160D changes into local regulations no later than July 1, 2001. The changes affect all Articles of the UDO; but only those in Articles 3 ,4, 5, 6 and 7 are being addressed at this time.

## **4. Adopt HPC regulations into UDO**

Planning Director Stephen Wensman explained the Historic Properties Commission would be moved from the Administrivia Code of Ordinance into the UDO

## **VI. Discuss Key Issues**

Planning Director Stephen Wensman explained he needed feedback from the Council and the Planning Board of some key issues.

Mr. Wensman asked What role should the Planning Board have in quasi-judicial subdivision review? Should they hold quasi-judicial hearings? Should they hold informal public meetings with feedback for the developer without ex-parte communication to Council? Staff is proposing the meeting be noticed similar to a public hearing for the Planning Board. Those discussion would be for the benefit of the developer and the neighborhood and not the Council as it would be considered ex parte communication. A workshop type meeting could be held to get all the issues out into the open to have a meaningful conversation.

It was the consensus that no recommendations from the Planning Board will be made to the Council.

Mr. Wensman asked should the Planning Board review Special Use Permits? Should they hold quasi-judicial hearings? Should they hold informal public meetings with feedback for the applicant without ex-parte communication to Council, or should they hold informal public meetings with recommendation forwarded to the Town Council? Mr. Wensman explained the Town was trying to be developer friendly by eliminating unneeded meetings. It was his recommendation to have the Town Council to continue to hear all quasi-judicial hearings for the remaining special uses. Hopefully, most developers will choose the conditional zoning process so the Planning Board can be involved in the process.

Mr. Wensman stated Mr. Spence questioned if the Special Use Permit finding of fact be updated. Mr. Spence stated he would like to go back to using the old Finding of Fact.

Mr. Wensman asked What should the expiration of abandoned Special Uses be? As drafted, if a special use ceases for 6-months or more, the special use is void. This would help the Town eliminate many non-conforming sites, such as used car dealerships. There was no objection to this recommendation.

Mr. Wensman asked should the Town allow rezoning to R-6, reversing a previous policy, in order to accommodate market demand? The South 2nd Street lots are a recent example of recent R-6 development. Mr. Wensman stated that market demand is wanting small lot. He was recommending opening up the R-6 zoning district. There

was no resolve to this recommendation

Mr. Wensman stated Multi-family residential development currently requires a special use permit and there are no standards. Should multi-family be a permitted use with supplementary standards, to encourage Conditional Zoning with a site-specific plan? Mr. Wensman was recommended detailed standards for multi-family. The consensus was to follow the recommendation.

Mr. Wensman stated the changes to the table of uses should be carefully considered by the Planning Board and Town Council. Mr. Wensman further stated that all supplementary standards be reviewed.

Teresa Daughtry questioned if the changes would be submitted to the Planning Board and the Town Council. Mr. Wensman responded the changes will be submitted to the Planning Board and the Planning Board will work through it until is completed. Once completed it would be submitted to the Council for approval

Mark Lane stated when he got on the Planning Board, he was told that the Board made recommendations to the Town Council and they do no longer do that. Mr. Spence responded if the Planning Board hears quasi-judicial cases, it cannot provide any information to the Council. With several zoning issues the Planning Board can act as more of a mediator and have more informal conversation to help resolve issues prior to the application being sent to the Council.

Teresa Daughtry asked for Mr. Spence's recommendation on the Planning Board holding quasi-judicial hearings without an attorney present. Mr. Wensman responded for quasi-judicial hearings; an attorney needs to be present. If the Planning Board held more of the informal meetings, there would be no need to have an attorney present. Mr. Spence stated the informal process would help immensely.

Mr. Wensman played a video from the School of Government for the Town Council and the Planning Board.

## **Adjourn**

Councilman Barbour made a motion, seconded by Councilman Rabil, to adjourn the meeting. The meeting adjourned at approximately 8:45 pm.

ATTEST:

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M. Andy Moore, Mayor

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Shannan L. Parrish, Town Clerk



The Smithfield Town Council met in regular session on Tuesday, September 1, 2020 at 7:00 p.m. in the Council Chambers of the Smithfield Town Hall, Mayor M. Andy Moore presided.

Councilmen Present:

John Dunn, Mayor Pro-Tem  
Marlon Lee, District 1  
David Stevens, District 2  
Travis Scott, District 3  
Dr. David Barbour, District 4  
Stephen Rabil, At-Large  
Roger Wood, At-Large

Councilmen Absent

Administrative Staff Present

Michael Scott, Town Manager  
John Blanton, Fire Chief  
Lenny Branch, Public Works Director  
Ted Credle, Public Utilities Director  
Gary Johnson, Parks & Rec Director  
Tim Kerigan, Human Resources/PIO  
Shannan Parrish, Town Clerk  
R. Keith Powell, Chief of Police  
Greg Siler, Finance Director  
Stephen Wensman, Planning Director

*(Note: All Town Department Heads were present, but due to Social Distancing and Mass gathering restrictions related to Covid19, they were not present in the meeting room unless an item from their Department was discussed)*

Also Present

Bob Spence, Town Attorney

Administrative Staff Absent

**CALL TO ORDER**

Mayor Moore called the meeting to order at 7:01 pm.

**INVOCATION**

The invocation was given by Councilman Scott followed by the Pledge of Allegiance.

**APPROVAL OF AGENDA:**

Councilman Wood made a motion, seconded by Councilman Barbour, to approve the agenda with the following amendment:

- Move Consent Agenda Item #7 *Consideration and request for approval to adopt changes in the utility late fee policy* to Business Item #6.

Unanimously approved.

**PRESENTATIONS:**

**1. Administering Oath of Office to new Police Officer Alexander Watts**

Mayor Moore administered the oath of Office to new Police Officer Alexander Watts and welcomed him to the Town of Smithfield.

**2. Update from the Public Library of Johnston County and Smithfield**

Executive Director Renita Barksdale provided the Council with an update on the Public Library. She explained the Library had to lay off 2 full time and 2 part time positions which resulted in an annual savings of \$130,000. All new materials will be shelf ready when received by the library. The library implemented a temporary virtual library card program while the facility remains closed. 275 new patrons have been registered. The library also offers curbside pick up which 1500 patrons have used. The library has updated its COVID-19 procedures for when the library is reopened to the

public. The library was awarded a CARES Act grant in the amount of \$7,600 for laptops and classes to be used by patrons when the library is reopened.

## **PUBLIC HEARINGS:**

1. **Zoning Text Amendment Request – Lesley Thomas (ZA-20-02)**: The applicant is requesting an amendment to the Town of Smithfield Unified Development Ordinance (UDO) Article 6, Section 6.5 Table of Uses and Activities to allow for child care centers as an accessory use to Churches/Places of Worship as a special use in all zoning districts that allow for Churches/Places of Worship.

Councilman Lee made a motion, seconded by Councilman Stevens, to open the public hearing. Unanimously approved.

Planning Director Stephen Wensman informed the Council childcare centers were regulated by the Division of Child Development and early education. Childcare center is defined as where at any one time there are three or more preschool aged children or nine or more school aged children receiving childcare. Religious sponsored programs are given the option in the childcare law to operate under a notice of compliance with childcare rules and laws rather than a childcare license. The Division of Child Development and early education monitors programs that operate under the notice of compliance in the same manner that all other programs are monitored to ensure the safety and health of the children. If a religious sponsored program receives childcare subsidies, the exemptions apply except they must meet the health safety and training requirements of staff. Mr. Wensman outlined the history of childcare centers in Smithfield. He explained in 1994, the zoning ordinance permitted daycare establishments in all residential zoning districts with a board of adjustment approved conditional use permit. Subsequent unified development ordinances adopted in 2008 removed daycare centers from the list of permitted uses in all residential districts. All childcare establishments permitted before 2008 are now considered legal non-conforming, and they cannot rebuild if destroyed by fire or natural disaster. In the 2016 UDO, childcare centers are not allowed in residential districts as either primary or accessory uses.

Mr. Wensman explained the draft zoning ordinance amendment would allow child care centers with a Town Council issued special use permit as an accessory use to churches and places of worship in all zoning districts that currently allow for churches and places of worship. All childcare centers accessory to churches will be required to meet the supplemental regulations for childcare centers and Churches/places of worship.

Supplemental Regulations are as follows:

### 7.4.1. Child Care Center

7.4.1.1. When a center is licensed for six to twenty-nine children, inclusive, there shall be 75 square feet per child of outdoor play area for the total number of children for which the center is licensed. In addition, the total number of children on the playground shall not exceed the number the space will accommodate at 75 square feet per child. When a center is licensed for 30 or more children, there shall be 75 square feet per child of outdoor play area for at least one-half of the total number for which the center is licensed, provided that the minimum amount of space on the outdoor play area shall be enough to accommodate at least 30 children. The outdoor play area shall provide an area that is shaded by a building, awnings, trees, or other methods. The outdoor area shall be designed so that staff are able to see and easily supervise the entire area.

7.4.1.2. If a special use permit is required, the permit shall establish the hours of operation.

7.4.1.3. Minimum paved off-street parking spaces: Two spaces plus one for each employee.

7.4.1.4. Minimum paved off-street loading and unloading area: In addition to the off-street parking area, there shall be sufficient paved driveway to accommodate at least two autos at one time for the purpose of loading and unloading passengers. The drop off area must be full drive through with no backing of vehicles required.

**SECTION 7.32 CHURCHES /PLACES OF WORSHIP, CLUB OR PRIVATE LODGE MEETING HALLS AND INDOOR STORAGE FACILITIES. (AMENDED 8/7/18 SEE ZA-18-04) (Supplemental Regulations)**

7.32.1 Churches/Places of Worship and Club or Private Lodge Meeting Halls shall have adequate parking meeting Article 10, Section 10.3.

7.32.2 The land use will not significantly increase traffic on local roadways within a residential neighborhood.

7.32.3 In B-2 and B-3 zoning districts, the land use should not substantially decrease vehicular and/or pedestrian traffic or inhibit business activity for adjacent commercial businesses particularly during normal business hours. Obviously, some businesses have more traffic than others. The Town recognizes that businesses in these zoning districts need active adjacent business space to attract customers to B-2 and B-3 zoning districts. The town intends for planning policies to encourage business traffic in these zoning districts while not prohibiting uses with less traffic. If a special use, due to inactivity during business hours or otherwise, substantially decreases commercial traffic then that special use is likely not to be in harmony with the existing development and uses with the area in which it is to be located.

7.32.4 The land use will not impede the normal and orderly development of the surrounding property for uses permitted in the district. If a substantial portion of a commercial center is closed or not attracting traffic during normal business hours then that absence of activity would likely impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

**PROPOSED AMENDMENT:**

Article 6, Section 6.5 is proposed to be amended to read as follows:

**SECTION 6.5 TABLE OF USES AND ACTIVITIES.**

Accessory Uses / Buildings	R-20A	R-10	R-8	R-6	R-MH	O/I	B-2	B-3	Supplemental Regulation
<u>Child Care Center (As accessory use to Churches/places of worship)</u>	<u>SS</u>	<u>SS</u>	<u>SS</u>	<u>SS</u>	<u>SS</u>	<u>SS</u>	<u>SS</u>	<u>SS</u>	<u>Section 7.4.1</u> <u>Section 7.32</u>

Planning Staff and the Planning Board recommend approval of the zoning text amendment ZA- 20-02 with a statement declaring the request consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

Planning Director Stephen Wensman has incorporated his entire record and provided it to Council in written form in the September 1, 2020 agenda packet

Councilman Scott stated that in the presentation, Mr. Wensman explained there were many childcare centers that were not in compliance. Mr. Wensman responded there were childcare centers in churches in residential districts .

Councilman Scott questioned why this was not addressed when the UDO was updated. Mr. Wensman responded he was unsure why this issue was not addressed because he was not employed with the Town at the time of the UDO update.

Councilman Barbour stated it would be nice to know why the decisions were made during the UDO update. He asked Mayor Moore if he remembered any of those discussions. Mayor Moore responded he was unsure, but he believed it may have been because people did not want childcare centers in residential areas and therefore the UDO did not allow it. Churches are allowed in residential areas and a lot of churches have childcare and after school childcare. When this was removed from the UDO, they may have not considered churches.

Mr. Wensman clarified the 2008 edition of the UDO removed childcare centers from residential areas and the 2016 edition did not add it back. Mr. Wensman further stated the special use permit process was a process where if there were perceived issues with adjoining properties and the intensity of the use, reasonable conditions could be put on a permit to address those conditions above and beyond the special use supplementary standards.

Councilman Scott asked when an applicant requested this change, were they required to pay a fee. Mr. Wensman responded they were required to pay a \$400 fee for a text amendment.

Mayor Moore asked if there was anyone in attendance that wished to speak on the matter. There were no comments from anyone in attendance.

Councilman Wood made a motion, seconded by Councilman Barbour, to close the public hearing. Unanimously approved.

Councilman Scott made a motion, seconded by Councilman Lee, to approve zoning text amendment ZA-20-02, adding Child Care Centers as an accessory use to Churches/ Places of worship as a special use. and to refund the applicant the \$400 zoning text amendment fee. Unanimously approved.

Councilman Scott made a motion, seconded by Councilman Wood, the Town Council finds the zoning text amendment, ZA-20-02, amending Article 6, Section 6.5 Table of Uses and Activities consistent with the Town of Smithfield Comprehensive Growth Management Plan and other adopted plans, and that the amendment is reasonable and in the public interest. Unanimously approved.

Mayor Moore stated he was unsure if there was a staff error in regards to this text amendment.

Town Clerk Shannan Parrish administered affirmations to those that wished to offer testimony during the Public Hearings.

- 2. Special Use Permit Request – Lesley Thomas (SUP-20-07):** The applicant is requesting a Special Use Permit for a Child Care Center as an accessory use to a Church on property located within an R-6 (Residential) zoning district. The properties considered for approval are located on the northwest side of Second Avenue approximately 200 feet southwest of its intersection with West Street. The properties are further identified as Johnston County Tax ID# 15066010 and 15066023.

Councilman Barbour made a motion, seconded by Councilman Wood, to open the public hearing. Unanimously approved.

Planning Director Stephen Wensman testified the church in question was Greater Vision Worship Center Church of God of Prophecy located at 720 Second Avenue. This property continued all the way to Blount Street. With the approved text amendment, childcare centers as an accessory to churches requires a special use permit. The area consisted of two properties and as a condition of approval, staff is requesting the applicant submit a lot recombination plat to combine the two

properties. Originally the applicant submitted a plan with two separate parking lots not connected. Staff worked with the applicant to improve the flow of the site. A particular concern was cars trying to enter the parking lot, finding it full and then they would have to drive around the block to locate a parking space in the other lot. Staff felt this would increase traffic in a residential neighborhood. Staff wanted to make it efficient for people to find onsite parking. Doing this created some issues with the playground being that it was a little farther from the church than originally planned. To address this, the applicant will be adding fencing along the parking between the church and the playground.

Mr. Wensman testified the existing 2519 sq. ft church is located within a single-family residential neighborhood. The site was currently accessed from Second Avenue by two curb cuts to a looped gravel/dirt driveway and parking with no access to Blount Street. The parking lot was somewhat undefined with no curbs and no stormwater features. The Blount side of the property is a grassy area. Existing vegetation is found on the Blount Street side and toward the center of the property. There was a small shed located behind the church building. A concrete sidewalk provides pedestrian access from the street to the doors of the church. The church is planning to construct a 611 sq. ft. addition to the rear of the 1,515 sq. ft sanctuary for a clergy room and chancel (stage area) and a 582 sq. ft. addition to the north of the sanctuary for offices. The childcare center will occupy the 1,004 sq. ft. (+/- 46' x 22') area on the south side of the sanctuary. The childcare center will have a 618 sq. ft. area for the kid's activities, a staff bathroom, a children's bathroom, and a kitchenette.

Bufferyards are required between residential and nonresidential uses. The UDO requires either a Type B (20-foot) bufferyard or a Type C bufferyard in this case. The site plans cannot dimensionally accommodate the 20' bufferyard, so a combination of fence and landscaping will be required.

A 2250 sq. ft. playground is proposed behind the church on the Blount Street side of the property. With the building additions and the childcare, the applicant is proposing 43 new paved parking stalls including two handicap accessible stalls. The sanctuary will have 112 seats requiring 37 parking stalls and the daycare will have a maximum of 24 children and two employees requiring 6 parking stalls in accordance with the parking requirements of Section 10.3 of the UDO. According to the preliminary site plan, the new impervious areas would not trigger the need for on-site stormwater management. A landscaping plan will be required for the entire site with review of the construction plans. A lighting plan will be required for the entire site with review of the construction plans.

Mr. Wensman reviewed staff's opinion of the findings. They are as follows:

#### **STAFF'S FINDINGS OF FACT**

1. The public's health, safety, or general welfare have been addressed with the proposed site plan.
2. The special use is complementary to the existing church use and will be in harmony and will provide daycare services to the area.
3. The special use will not impede normal and ordinary development of the residential district. The church is existing, and the entire site will be improved with the daycare use benefiting the surrounding properties.
4. Adequate utilities, parking, access and other facilities exist or are being adequately provided for.
5. Adequate egress and ingress currently exist to the site. The proposed egress and ingress are configured with the parking lots connected to minimize traffic on adjacent streets.
6. With a special use permit, the use will conform to the applicable regulations.
7. There are no conflicts with the Town's adopted plans.

8. With a special use permit, the use is permitted within the zoning district.

The Planning Department recommends approval of the Special Use Permit, SUP-20-07, with the following conditions:

1. That a site plan be submitted for review in accordance with the Town's Unified Development Ordinance including the supplementary standards for childcare facilities, Section 7.4.
2. That the applicant submit a Lot Recombination Plat for approval to combined the lots into one.
3. A handicap curb ramp be installed at the sidewalk at Second Avenue

Planning Director Stephen Wensman has incorporated his entire record and provided it to Council in written form in the September 1, 2020 agenda packet.

Mayor Moore asked if there were any questions from the Council.

Councilman Barbour questioned if the property owner owned the church. Mr. Wensman responded that Mrs. Thomas does own the church.

Councilman Barbour questioned if the church disbanded would that mean that the childcare center must cease operations because it would be out of compliance. Mr. Wensman responded the childcare center can only be operational if it is an accessory use to a church.

Mayor Moore asked the applicant if she had any other information she would like to present. Mrs. Thomas testified her husband was the pastor of the church and they would remain a church and the daycare would always be a part of that if they could have this special use permit

Mayor Moore asked Mrs. Thomas if she agreed with the testimony provided by Mr. Wensman. Mrs. Thomas testified that she did agree with the testimony offered by Mr. Wensman. She informed the Council that the name of the church had changed to True Vine Apostolic Ministries, Inc. She further stated it was important to be granted the special use permit for the community and for her grandchildren. The church has about 12 children all under the age of 9. The addition of the childcare center would be a great benefit to the community.

Mayor Moore asked if there was any in attendance sworn to testify in this matter. There was no one in attendance that wished to testify on the matter.

Councilman Rabil questioned if Mrs. Thomas reached the maximum amount of 24 children at the childcare center would she have to come back before the Council for approval. Mr. Wensman responded Mrs. Thomas would have to comply with the State's standards.

Mrs. Thomas stated they were going through the state to get licensed. They were going to make sure they were following the Department of Health and Human Services.

Councilman Barbour made a motion, seconded by Councilman Wood, to close the public hearing. Unanimously approved.

### **The Written Finding**

Mayor Pro-Tem Dunn made a motion, seconded by Councilman Rabil, to approve the eight findings of fact for Special Use Permit SUP20-07 as recommended in the staff report on pages 18 and 19 of the agenda packet. Unanimously approved.

The Town Council shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:

1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.
2. The special use will be in harmony with the existing development and uses within the area in which it is to be located.
3. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.
7. Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.
8. The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council.

**Record of Decision: Approval of Special Use Permit Application Number SUP-20-07**

Councilman Barbour made a motion, seconded by Councilman Rabil, to recommend approval of SUP-20-07 for a childcare center as an accessory to a church based with three conditions of approval:

1. That a site plan be submitted for review in accordance with the Town's Unified Development Ordinance including the supplementary standards for childcare facilities, Section 7.4.
2. That the applicant submits a Lot Recombination Plat for approval to combine the lots into one.
3. A handicap curb ramp be installed at the sidewalk at Second Avenue"

Unanimously approved.

**CITIZEN'S COMMENTS:**

- Rick Mercier of 193 Fireweed Place in Clayton, NC introduced himself to the Council as a candidate for the Johnston County Board of Education. He explained he decided to run for the school board because he was extremely discouraged by the chaos and incompetence of the current school board. He promised that the success of Smithfield Selma High School was at the top of his priority list. He stated his professional experience would prepare him to serve on the school board along with his integrity and passion. He stated he would be honored for their support.
- Omar McKnight of 4560 Hargrove Road, Raleigh, NC informed the Council he was in attendance to remain vigilant because of the overgrown properties adjacent to his mother's residence on Old Goldsboro Road. He stated one of the lots has been cut, but not properly. Mr. McKnight stated he was unsure why it has taken so long to get some people to comply with the code while others were being threatened with fines. He asked if the Council if something was going to be done to address the issue

of nuisance grass. Mr. McKnight stated Mr. Mark Lane has made some racist comments on his Facebook post. He stated those comments were disturbing since he believed Mr. Lane was an employee of the Town. Mr. McKnight stated this was his hometown and he cared about it. He asked for prompt attention to his complaints of nuisance grass.

- Mark Lane of 2108 Yelverton Grove Road, Smithfield, NC asked the Council when they went into closed session to have Councilman Lee to share the post with everyone referenced by Mr. McKnight. He stated he cannot control what others post. He can only control what he posts.

## CONSENT AGENDA:

Councilman Barbour made a motion, seconded by Councilman Wood, to approve the following items as listed on the Consent Agenda:

1. The following minutes were approved
  - August 4, 2020 – Regular Meeting
  - August 4, 2020 – Closed Session
2. Approval was granted to install “No Parking” signs on Equity Drive.
3. Approval was granted to accept the FEMA Assistance to Firefighters Grant.
4. Approval was granted to adopt Resolution #663 (12-2020) for the NCDEQ asset inventory and assessment grant for the sanitary sewer collection system.

### RESOLUTION NO. 663 (12-2020) BY GOVERNING BODY OF THE TOWN OF SMITHFIELD SEWER ASSET INVENTORY AND ASSESSMENT

WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of Asset Inventory and Assessment projects for water and sewer systems, and

WHEREAS, The Town of Smithfield has need for and intends to update an asset management plan for its sewer system described as the *Town of Smithfield Sewer Asset Management Plan*, including asset inventories, condition assessment of critical assets, and other components of a comprehensive asset management program for sewer, and

WHEREAS, The Town of Smithfield intends to request state grant assistance for the project,

NOW THEREFORE BE IT RESOLVED, BY THE TOWN COUNCIL FOR THE TOWN OF SMITHFIELD:

That Town of Smithfield, the Applicant, will arrange financing for all remaining costs of the project, including matching funds, if approved for a State grant award.

That Michael L. Scott, the Authorized Official, and successors so titled, is hereby authorized to execute and file an application on behalf of the Applicant with the State of North Carolina for a grant to aid in the development of the project described above.

That the Authorized Official, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the Applicant has substantially complied or will substantially comply with all



Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the 1<sup>st</sup> day of September 2020 at the Town Hall Council Chambers in Smithfield, North Carolina.

5. Approval was granted to adopt Resolution #664 (13-2020) for the NCDEQ asset inventory and assessment grant for the water distribution system.

**RESOLUTION NO. 664 (13-2020)  
BY GOVERNING BODY OF THE TOWN OF SMITHFIELD  
WATER ASSET INVENTORY AND ASSESSMENT**

WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of Asset Inventory and Assessment projects for water and sewer systems, and

WHEREAS, The Town of Smithfield has need for and intends to update an asset management plan for its water system described as the Town of Smithfield Water Asset Management Plan, including asset inventories, condition assessment of critical assets, and other components of a comprehensive asset management program for water, and

WHEREAS, The Town of Smithfield intends to request state grant assistance for the project,

NOW THEREFORE BE IT RESOLVED, BY THE TOWN COUNCIL FOR THE TOWN OF SMITHFIELD:

That Town of Smithfield, the Applicant, will arrange financing for all remaining costs of the project, including matching funds, if approved for a State grant award.

That Michael L. Scott, the Authorized Official, and successors so titled, is hereby authorized to execute and file an application on behalf of the Applicant with the State of North Carolina for a grant to aid in the development of the project described above.

That the Authorized Official, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the Applicant has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the 1<sup>st</sup> day of September 2020 at the Town Hall Council Chambers in Smithfield, North Carolina.

6. Bid was awarded to W. Landis Bullock Industrial and Contractor Supply in the amount of \$12,251.20 for the purchase of a 2020 Scag Zero Turn Mower to truck to be utilized by Appearance Division of the Public Works Department. Bids received are as follows:

• W. Landis Bullock Industrial and Contractor Supply:	\$12,251.20
• Musgrave Equipment:	\$14,000.00
• Quality Equipment:	\$18,636.75

7. New Hire Report

<u>Position</u>	<u>Department</u>	<u>Budget Line</u>	<u>Rate of Pay</u>
P/T Lifeguard	P&R - Aquatics	10-60-6220-5100-0230	\$8.00/hr.
Utility Line Mechanic	PU – Water/Sewer	30-71-7220-5100-0200	\$14.88/hr.(\$30,950.40/yr.)

**Current Vacancies**

<u>Position</u>	<u>Department</u>	<u>Budget Line</u>
Assistant Finance Director	Finance	10-10-4200-5100-0200
Police Officer I (3 positions)	Police	10-20-5100-5100-0200
Pump Station Mechanic	PU – Water/Sewer	30-71-7220-5100-0200

**Business Items:**

- 1. Consideration and request for approval to allow the Downtown Smithfield Development Corporation to hold outdoor dining events on South Third Street on September 11<sup>th</sup>, September 25<sup>th</sup>, October 9<sup>th</sup> and October 23<sup>rd</sup> from 5:00 pm until 9:30. This request includes closing South Third Street for outside dining and amplified sound for a busker**

Planning Director Stephen Wensman stated the request would have to comply with any Executive Order in place by the Governor. At this time, outdoor events were limited to 50 people. They believe there would be 100 people in attendance. Those businesses that have sidewalk café permits could have tables on the sidewalk and those businesses that wished to participate would have to apply for a sidewalk café permit.

Mayor Pro-Tem Dunn questioned how many restaurants on that section of South Third Street had sidewalk café permits. Mr. Wensman responded SoDoSoPa was the only restaurant with the sidewalk café permit. Mayor Pro-Tem Dunn questioned if this would diminish SoDoSOPa’s outdoor seating. Mr. Wensman responded their seating was currently on Johnston Street so they would be able to add seating to South Third Street.

Councilman Scott questioned if this was for a special event. Mr. Wensman responded the DSDC is anticipating over 100 people would be in attendance, but that would be against the current restrictions in place by the Governor’s Executive Order. The reasons the request was before the Council was due to the street closure and the over 100 people in attendance. Currently, they would be restricted to 50 people.

Councilman Wood questioned how this event would be managed. DSDC Executive Director Sarah Edwards stated the idea was to give the ability of all our restaurants to serve people and provide a place downtown to eat thus expanding their dining rooms. Currently, restaurants are only allowed to be at 50% capacity. It’s not just to help the restaurants in that block but to also allow someone to bring their dinner from Simple Twist, Sami’s or Gotham’s to Third Street where seating would be provided. That is the reason for the road closure. In terms of management, the DSDC would have hand sanitizing stations. The DSDC would also rent tables and chairs which would be cleaned between patrons. Signage would include adhering to the three W’s (wear your masks, wait 6 feet, and wash your hands). Ms. Edwards stated there were other communities doing this in such a way that it expands outdoor dining for restaurants. and the Governor’s mass gathering order is not an issue in those places. Based on the street you could have a maximum of 50 tables if you space them all out to provide for social distancing.

Mayor Pro-Tem Dunn questioned if the Governor’s Executive Order would apply to this event. Ms. Edwards responded it was not 100% clear, but other Town’s were holding similar events. But if is only 50 people were able to attend that would be better for the restaurants.

Councilman Wood asked how the number of people would be managed and he would not vote for something that against the Executive Order.

Mayor Pro-Tem Dunn questioned the regulations for a sidewalk café permit. Mr. Wensman responded the owner would have to show where they were going to put their tables and they would have to follow

it and it would have to be adjacent to the restaurant. What Ms. Edwards was proposing is people could carry out their food from a restaurant and sit at any of the tables on Third Street. This would be different than what SoDoSoPa would be able to do because they could simply expand their services. Under the Oak could also apply for the sidewalk café permit and have service in front of the restaurant on the sidewalk.

Councilman Barbour stated another problem could be the entertainment that would be offered because that could be perceived as a gathering. Ms. Edwards responded if the busker was an issue that could be eliminated. The goal was to offer the restaurants additional seating capacity. And also, to make Smithfield a safe place to be.

Councilman Scott suggested the Council approve the request under its authority and in compliance with the Governor's Executive Order.

Town Manager Michael Scott stated he had one point of clarity. When this originally came to staff there was a lot of discussion about allowing alcohol in the street as a part of this request. He wanted to make sure staff understood the Council's wishes. Sidewalk cafes were created primarily to allow restaurants to have alcohol on the sidewalk with their dinner. They must have a large amount of liability insurance to protect the Town. If the Council is going to extend dining into the street, we cannot legally extend the alcohol service into the street without amending our current ordinance on alcohol. It does not allow alcohol on the street anywhere in Town. The Town Manager wanted to make sure that everyone was clear as to what would be required for alcohol sales, consumption and being allowed to have open containers. Legally, all they could do is extend a restaurant to the sidewalk with a sidewalk cafe permit. If they're going to have alcohol, that's all the farther it can go. It can't go anywhere else. The Town Manager further stated he'd like to find some common ground to assist the downtown restaurants, but the Town Attorney believes this would constitute as a mass gathering.

Mayor Pro-Tem Dunn asked for Town Attorney Bob Spence's legal opinion. Mr. Spence responded the Governor's Executive Order limited the number of a gathering to 50 people. Putting out 50 spaces would be violating the order. He suggested that Ms. Edwards work with the Planning Department. Mr. Spence suggested starting this with a more conservative approach with Town staff observing.

Mayor Pro-Tem Dunn made a motion, seconded by Councilman Wood, to allow the Planning Department to work with DSDC on this event and in compliance with the Governor's Executive Order. If the Executive Order changes, Planning staff would work with DSDC to increase the seating capacity in accordance with any new order. This motion included approval to close South Third Street on September 11th, September 25th, October 9th and October 23<sup>rd</sup>. Unanimously approved.

**2. Consideration and Request for approval to allow the Downtown Smithfield Development Corporation to hold Take Out Tuesday events with amplified sound for a busker at 305 East Market Street from 10:00am until 2:00pm every Tuesday until October 27<sup>th</sup>**

Planning Director Stephen Wensman addressed the Council to allow the DSDC to have a busker for a takeout Tuesday event. The request is before you because approval is needed for the amplified sound.

Councilman Barbour made a motion, seconded by Councilman Wood, to approve the request allowing amplified sound at 305 East market Street from 10:00am until 2:00pm every Tuesday until October 27, 2020. Unanimously approved.

**3. Consideration and Request for Approval to adopt Ordinance No. 505 Amending the Town of Smithfield's Code of Ordinances Chapter 8, Article II: Noxious Weeds and Grass and Similar Nuisances**

Planning Director Stephen Wensman stated this item was brought before the Council in response to the issue the gentlemen mentioned earlier tonight. Staff was attempting to strengthen the Town's Ordinance to be effective and make code enforcement more efficient. Staff proposed an amendment

to Chapter 8, Article II Section 8.27 amending the nuisance regulations as it pertained to tall grass in wooded areas and added a chronic violator provision section 8-34. The intent was to create code enforcement to be more effective and enforceable utilizing less staff time. Repeat offenders cause staff to address the same code violation. The Code Enforcement Officer spends 50% of his time dealing with the same property owners and the same properties every summer. The repeat offender clause was intended to speed up that process. Mr. Wensman explained staff has difficulties enforcing tall grass nuisance particularly as it pertains to wooden lots. Tall grass nuisances on public boulevards adjacent to properties are a problem because the Code does not address it.

Mr. Wensman explained the repeat offenders provision was included because there were only a few that ignored grasses and weeds until threatened by letters or ultimately the Town ends up abating the property and they receive a bill. The current process is a long process. The Code Enforcement Officer must investigate the complaint and document it. Then a notice must be sent to the property owner allowing them 10 days to abate the issue. The property must be reinspected after the 10 days. If it has not been abated, Public Works will be ordered to mow the property and invoice the owner. By this time, the grass is excessively overgrown. Because this is such a long process, it gives the perception that the Town is not addressing the issue. The provision in the proposed ordinance will allow the Town to immediately abate the property if the Town has given three violations in a calendar year. Public Works will immediately mow the property and bill the owner.

Councilman Rabil questioned the percentage of invoices that are paid when Public Works mows the property. The Town Manager responded it was about 50%. Some owners were willing to pay what the Town charges because it is cheaper than hiring a mowing service. That is a disincentive for them to follow the rules. The Town Manager stated that Mr. Spence discovered the chronic violator provision in the State statute that seemed to be a fix to address this issue. The chronic violator provision allows the Town to place a lien against the business or against the person and would be reflected in the tax rolls. This would ensure payment to the Town.

Mr. Wensman explained the next part of the Ordinance Amendment was adding a definition for wooded areas because currently it was not defined. The problem we are experiencing is tall grass emerges into weeds and it quickly sprouts small trees. The weeds are taller than these small trees and the property owner claims it is a wooded area and it cannot be mowed. Staff is trying to provide clarity to this. New provision would exempt wooded areas, but it provides a definition for woods which is *“any tax parcel of property which is covered over substantially all its surface with trees of a size and density that the trees in themselves prohibit cleaning with a five (5) foot wide bush hog type mower or which in the opinion of the town manager or his designee is so substantially covered by mature trees as to be a wooded lot; whether a parcel is so covered will be determined by a town code enforcement officer, if so designated by the Town Manager.”*

Mr. Wensman explained another provision in the Code addressed right of way maintenance. He explained most property owners maintain their properties and the boulevard up to the curb, but in some instances, residents refuse. The Code does not address this situation and Public Works is the default for maintenance of these boulevards. The new provision requires property owners to maintain tall grass and weeds along the road frontage.

Mayor Pro-Tem Dunn questioned if the new businesses along M. Durwood Stephenson Parkway responsible for mowing in front of their businesses which are a part of NCDOT's right of way. Mr. Wensman responded they would be responsible for cutting that area.

Mr. Wensman explained the simplification on of the tall grass and weed standard. The old standard required abatement or maintenance if you were 100 feet from an open street, 100 feet from a property line with a structure of 59 feet from an occupied dwelling. To simplify the Code, the new standard would be 100 feet from a property line with a commercial building or dwelling.

Mayor Moore stated there were a lot of wooden areas in Smithfield. If the lot was wooden but the right of way was not, then it would have to be mowed.

Mayor Pro-Tem Dunn stated he would have a problem requiring businesses to have to mow large right of ways when some right of ways in town are mowed by the Town. Town Attorney Bob Spence stated that there may need to be some amendments to this ordinance in the future. He and staff were

trying to establish an overall rule that works for the Town.

Councilman Barbour made a motion, seconded by Councilman Scott, to approve Ordinance No. 505 Amending the Town of Smithfield's Code of Ordinances Chapter 8, Article II: Noxious Weeds and Grass and Similar Nuisances as proposed by staff. Unanimously approved.

**TOWN OF SMITHFIELD  
North Carolina**

**ORDINANCE NO. 505**

**AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD CODE OF ORDINANCES CHAPTER 8, ARTICLE II NOXIOUS WEEDS AND GRASS AND SIMILAR NUISANCES**

**WHEREAS**, Chapter 8, Article II of the Town of Smithfield's Code of Ordinances outlines the regulations concerning noxious weeds and grass and similar nuisances within the Town; and

**WHEREAS**, the Planning Director Stephen Wensman, is requesting the Ordinance be amended as it pertains to declaration of nuisance for growth of weeds and grasses over 12" and adding a chronic violator provision.

**NOW THEREFORE BE IT ORDAINED** by the Town Council of the Town of Smithfield that Chapter 8, Article II - Noxious Weeds and Grass and Similar Nuisances:

**PART I**

[Revise Article II, Section 8-27 (2) to exclude wooded areas and to define wooded areas and (3) to make a public nuisance unmaintained public right-of-way, except for agricultural properties]

**ARTICLE II. NOXIOUS WEEDS AND GRASS AND SIMILAR NUISANCES**

**Sec. 8-27.** The following enumerated and described conditions are hereby found, deemed and declared to constitute a detriment, danger, and hazard to the health, safety, morals and general welfare of the inhabitants of the town and are found, deemed and declared to be public nuisances **per se** wherever the same may exist and the creation, maintenance or failure to abate any nuisances is hereby declared unlawful:

- (1) Any condition which is a breeding ground or harbor for mosquitoes or a breeding ground or harbor for rats, snakes, or other pests or has the potential for becoming a breeding ground or harbor for such pests;
- (2) A place, **other than a "Wooded Area"** of heavy growth of weeds or grasses over twelve (12) inches in height which ~~lie less than one hundred (100) feet from any abutting open street or which lies less than one hundred (100) feet from any adjoining property line which contains a dwelling or business structure. or is a place of heavy growth of weeds or grasses over twelve (12) inches in height which lies within fifty (50) feet of any occupied dwelling;~~ provided, that the nuisance defined ~~by this subsection shall be cleared and cut to the satisfaction of~~ **"Wooded Areas" are exempt from**

this restriction and are defined as any tax parcel of property which is covered over substantially all its surface with trees of a size and density that the trees in themselves prohibit cleaning with a five (5) foot wide bush hog type mower or which in the opinion of the town manager or his designee is so substantially covered by mature trees as to be a wooded lot; whether a parcel is so covered will be determined by a town code enforcement officer, if so designated by the Town Manager.

- (3) Except for agricultural properties, any growth of weeds or grasses over twelve (12) inches in height, not including wooded areas, in or along a public right-of-way, including an alley or easement. The right of way as herein referenced is *defined* as the land between the "Edge", hereinafter Edge, of pavement, alley or curb line and the property line. Some of that area herein defined to be right of way may not technically be the right of way of the street but nevertheless as herein defined the obligation to maintain growths extends to the Edge The maintenance of such right-of-way shall be the responsibility of the property owner with property adjacent to or fronting on such right-of-way=
- ~~(3)~~(4) A place of growth of noxious vegetation, including poison sumac (*Rhus vernix*), poison ivy (*Rhus radicans*) or poison oak (*Rhus toxicodendron*), in a location likely to be accessible to the general public;
- ~~(4)~~ (5) An open place of collection of water for which no adequate natural drainage is provided and where insects tend to breed or which is or is likely to become a nuisance or a menace to public health;
- ~~(5)~~ (6) An open place of concentration of combustible items such as mattresses, boxes, paper, automobile tires and tubes, trash, refuse, brush, old clothes, rags or any other combustible materials or objects of a like nature;
- ~~(6)~~ (7) Is an open place of collection of garbage, food waste, animal waste or any other rotten or putrescible matter of any kind;
- ~~(7)~~ (8) Hides, dried or green provided the same may be kept for sale in the town when thoroughly cured and odorless;
- ~~(8)~~ (9) Any furniture, appliances, automotive parts or pieces or other wood or metal products of any kind or nature openly kept which have jagged edges of metal or glass, or areas of confinement, or areas which may provide a habitat for rats, snakes, insects, or other pests;
- ~~(9)~~ (10) Any improper or inadequate drainage on private property which causes flooding, interferes with the use of, or endangers in any way the streets, sidewalks, parks or other town owned property of any kind;
- ~~(10)~~ (11) Any stormwater retention or detention pond or other impoundment device which is operating improperly;
- ~~(11)~~ (12) Any stormdrain, sewer manhole, abandoned well or other private or public facility which is not properly covered with a grate or other means to remove any hazard to pedestrians or motor traffic;
- ~~(12)~~ (13) Any ditch, trench, or below ground portion of a construction project which remains open for more than fourteen (14) days without being completed or which is not protected with barricades, flags or other means so as to constitute a hazard to pedestrians or motor traffic;
- ~~(13)~~ (14) Failure to clean or clear a public street of mud and debris related to a construction, timbering or other similar land use project within twelve (12) hours after notification by the town manager or his designee for major and minor thoroughfares or within twenty-four (24) hours after such notification for collector and local streets; however, if it is found by the town manager or his designee that the situation is causing a clear and present danger or hazard to traffic or the general public, such cleaning or clearing may be required to take place as soon after notification as practicable;
- ~~(14)~~ (15) Any condition which violates the rules and regulations of the Johnston County Health Department; or
- (45) (16) Any other condition specifically declared to be a danger to the public health, safety, morals, and general welfare of inhabitants of the city and a public nuisance by the town council which proceeding may be initiated by the town manager or his designee before the board after giving written notice thereof. Such notice shall state the condition existing, the location and that the board will be requested on a day certain, after a public hearing at which the person notified may appear

and be heard, to declare that the conditions existing constitute a danger to the public health, safety, morals and general welfare of the inhabitants of the city and a public nuisance. After such declaration by the board in the form of an ordinance, the condition will be abated as provided for in this chapter, provided no administrative appeal shall lie from the proceeding pursuant to the subsection and initiated by the town manager or his designee before the town council.

- (17) The outdoor storage of any tire upon any premises with the Town in such a manner that it does not conform to the approved storage methods defined in Article III, Section 8-51.

## PART II

[Revise Article II, adding Section 8-34-Chronic violator provision.]

### Sec. 8-34 - Chronic violator provision.

The Town may notify a “chronic violator” of the Town’s public nuisance ordinance that, if the violator’s property is found to be in violation of the ordinance, the Town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. A chronic violator is defined as a person who owns property whereupon, in the previous calendar year, the city gave notice of violation at least three times under any provision of the public nuisance ordinance

The notice shall be sent by registered or certified mail. When service is attempted by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected.

Sec. 8-34 8-35– Civil Penalty Provided.

## PART III

That the Town of Smithfield’s Code of Ordinances shall be page numbered and revision dated as necessary to accommodate these changes.

## PART IV

That these amendments to the Town of Smithfield’s Code of Ordinances shall become effective upon adoption.

Councilman Scott questioned if Powell Bill monies allocated the NCDOT for right of way grass maintenance could be paid directly to the Town instead of being paid to NCDOT’s contractor. The Town Manager responded he would investigate that.

#### **4. Consideration and request for approval to award a contract to Withers & Ravenel for professional services to perform a AWIA risk and resiliency assessment and an emergency response plan for the Town of Smithfield.**

Public Utilities Director Ted Credle addressed the council to seek approval for the proposed consultant and the proposed contract for the Town of Smithfield America's Water Infrastructure Act (AWIA), risk and resiliency assessment and the associated Emergency Response Plan. In 2018, United States Congress passed the America's Water Infrastructure Act (AWIA). AWIA did many things from attempting to improve flood control, to redefining the term navigable waterways, to spurring further development and hydroelectric power. One of the components of the AWIA is the mandate that every water system in the country perform a risk and resiliency assessment on their entire system. Each water system is encouraged to use the findings of this assessment to establish or update their mandatory associated Emergency Response Plan. Based on the bioterrorism Act of

2002 AWIA mandates that we focus on malevolent acts of terrorism, or other intentional threats such as vandalism, cyber security, natural hazards. Specifically, the water system is to assess the risk to system critical components, such as physical assets that include underground pipes, storage tanks, water plant, treatment processes, source water intakes, barriers for security, electronic or automated monitoring systems, chemical supply, chemical use chemical storage, beyond the physical assets in the systems. AWIA also mandates that we analyze our current monitoring practices, SCADA systems, cybersecurity, our financial infrastructure, our operation and maintenance on the system practices in the long term capital plan to respond to a natural or manmade disaster This is a comprehensive analysis that will take multiple months. A system of our size must submit a certification to the EPA, that our assessment was complete by June 30, 2021. This table was provided by the EPA. A system of our size must also submit a second certification to the EPA that the Emergency Response Plan was either developed or updated by December or by the end of the year of 2021.

Mr. Credle explained the Town publicly advertised for qualified firms to help us with this assessment on July 29. We received six bids on August 21. These submittals were then reviewed by panel. And the panel concurred that the recommended firm of choice was WithersRavenel, Inc. a multi-discipline consulting firm based in Cary. Staff is asking the council to approve the recommended firm also authorize the Town Manager to execute the contract for these services for a project budget not to exceed \$60,000.

Councilman Barbour questioned if this was in the budget. Mr. Credle responded there were funds set aside for SCADA improvements and some of those funds will have to be used. This was more expensive then we thought it would be, but after reaching out to other Town's our size, staff determined that this amount was within range.

Councilman Scott questioned if there was another firm that could provide professional services at a cheaper rate. Mr. Credle responded this was one of those services where you cannot ask for a price up front. Since it is for professional services, the Town must choose the most qualifies firm. Staff will negotiate with the firm not to exceed \$60,000.

Town Manager Michael Scott stated Councilman Scott was right. We were remiss in not budgeting this properly this year. It is not in the budget. Had we budgeted it, it would not have been a problem to pay for it because we had \$350,000 that we set aside for possible expenses at the water plant and that budget would have been \$290,000 instead. . If you are concerned, we can take the money from there and leave the rest of the budget intact. That would have occurred if we had properly budgeted.

Councilman Barbour made a motion, seconded by Councilman Stevens, to award the contract to Withers & Ravenel for professional services to perform a AWIA risk and resiliency assessment and an emergency response plan for the Town of Smithfield. Councilman Barbour, Councilman Stevens, Mayor Pro-Tem Dunn, Councilman Lee, Councilman Rabil and Councilman Wood voted in favor of the motion. Councilman Scott voted against the motion. Motion passed 6 to 1.

## **5. Consideration and request for approval to hold a Veteran's Day Fireworks Display**

The Town Manager explained this request was in front of the Council because of the COVID-19 atmosphere. Staff discovered it was difficult to find things to do for citizenry that was not considered a mass gathering. Staff reviewed some options and realized Veterans Day was on November 11<sup>th</sup> and thought it would be a great way to honor our veterans a little more than we normally do. Staff investigated the Fourth of July celebrations managed by neighboring communities. People parked in their cars in various locations to watch the fireworks display. Staff's biggest issue was finding a location central enough where we could set off a firework display where people could enjoy them. Staff decided Community Park could be used since there was plenty of parking at the park, the school and neighboring businesses. People would remain in their cars to adhere to social distancing and not be in violation of the Governor's Order. Once staff started talking about it, we thought we could get a local radio station involved to play patriot music during the event so people could listen to while remaining in their cars. Staff contacted Seymour Johnson Air Force Base to request a fly over before the event. These are all things people can enjoy from their cars. It would also bring people into Town to visit our restaurants and businesses. We have also talked about doing a Facebook Live event. Staff has already talked to the ROTC at SSS High School requesting their participation. Staff really wanted to do something that the citizens could look forward to attending. Staff believes the budget



for the firework display would be less than \$10,000 and more likely it would be \$7,500 to \$8,000. The request was to allow staff to move forward with the firework display. Since there are budgeted funds in the Parks and Recreation Part Time staff that have not been used because of COVID-19, funds for this would come from that line.

Councilman Scott asked if the Community Park was a set location or would you consider something more commercial. The Town Manager responded staff was trying to find something centrally located with a lot of parking. Staff was certainly open to other suggestions.

Councilman Scott made a motion, seconded by Councilman Wood, to approve the request as submitted. Unanimously approved.

#### **6. Consideration and request for approval to adopt changes in utility late fee policy**

This item was moved from the Consent Agenda. Councilman Scott stated on page 79 of the agenda packet, it says that the late penalty which includes mail received after the due date regardless of the posted. He asked if that was supposed to say "post mark" and not post. Finance Director Greg Siler responded that meant regardless of the post mark.

Councilman Scott questioned if that could be changed to allow for payments that were postmarked before the due date. Mr. Siler responded that would have to be a manual process because all late fees are done at the same time. It would be labor intensive for the staff.

Councilman Scott made a motion, seconded by Councilman Wood, to adopt changes in the utility late fee policy as submitted by staff. Unanimously approved.

#### **Councilmembers Comments:**

- Councilman Scott questioned how the CARES Funds were being used. The Town Manager responded Johnston County has already allocated the Town's share of those funds in the amount of a little more than 450,000. What we have to do is turn in a monthly report until the first of January, that shows how we're being reimbursed for that money because this is a reimbursement. But one of the eligible expenses is police and fire. Salaries and benefits for public safety are automatically reimbursable. We are turning in monthly reports showing what our police department is costing us and what our fire department is costing us every month which would be over a million dollars by the time January rolls around. At this time, none of the funds are being allocated. Some funds were used for the installation of cameras, door locks and speakers in Town Hall

Councilman Scott asked if the Town could allocate some of those funds to the employees as hazard pay. The Town Manager responded he would investigate if those funds could be used for the purpose.

- Councilman Lee publicly expressed his appreciation to the Town Manager for assisting a family who needed their grass maintained. He explained that both he and the Manager worked together to assist that family.
- Councilman Wood recognized the Smithfield Fire Department, Police Department and all the first Responders for their efforts during the recent flooding and tragedy on Galilee Road.
- Councilman Barbour stated staff was working on how we can implement and utilize drones in the Town of Smithfield. Working diligently to be a drone friendly community.
- Mayor Pro-Tem Dunn stated that the events on Galilee Road was a terrible event where many different agencies responded. He explained that every day first responders train for when these types of events occur. These first responders put their lives on the line to help others. He asked for the public to thank those first responders for what they do.
- Mayor Moore explained the water event that occurred on Galilee Road when a mother and two children were swept away in raging flood water. The Mayor publicly expressed his appreciation to all the first responders. He expressed his appreciation to the Public Works Department and Public Utilities Departments. The Mayor stated that Chief Blanton did a fantastic job at the press

conference.

**Town Manager's Report:**

Town Manager Michael Scott gave a brief update to the Council on the following items:

- Equity Drive Repairs: We are awaiting a phasing plan from the Equity Drive contractor, prior to the beginning of construction. This may take till mid-September. Repairs/construction is planned to begin on the North side and move south through the project.
- Storm Damage: At this time businesses along Highway 301 South have reported damage due to flooding. We also have road damage at Vermont and Meadowbrook Lane and along Crestview Drive. Both streets have earth that has washed out near the side of the road around a culvert. Both can be repaired in house by pumping cement into the area around the culvert that has been washed away. Neither road should require closure except during repairs.
- Utility Customers: The utility account report is a little different because we have entered into contracts with customers. Notice that there is only \$ 22,000 this month because \$81,431 under contract with customers.

**Closed Session Pursuant to NCGS 143-318.11 (a)(1)**

Mayor Pro-Tem Dunn made a motion, seconded by Councilman Wood, to enter into Closed Session pursuant to the aforementioned statute. Unanimously approved at approximately 9:44pm

**Reconvene in Open Session**

Councilman Stevens made a motion, seconded by Councilman Rabil, to reconvene in Open Session. Unanimously approved at approximately 10:18pm

**Adjourn**

Being no further business, Councilman Barbour made a motion, seconded by Councilman Wood to adjourn the meeting. The meeting adjourned at approximately 10:19pm

ATTEST:

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M. Andy Moore, Mayor

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Shannan L. Parrish, Town Clerk

The Smithfield Town Council held a Special Called Meeting on Tuesday, September 22, 2020 at 6:30pm in the Council Chambers of the Smithfield Town Hall., Mayor M. Andy Moore presided.

Councilmen Present:

John Dunn, Mayor Pro-Tem  
Marlon Lee, District 1  
David Stevens, District 2  
Travis Scott, District 3  
Dr. David Barbour, District 4  
Stephen Rabil, At-Large  
Roger Wood, At-Large

Administrative Staff Present

Michael Scott, Town Manager  
Ted Credle, Public Utilities Director  
Tim Kerigan, Human Resources/PIO  
Shannan Parrish, Town Clerk  
Greg Siler, Finance Director

**Call to Order**

Mayor Moore called the meeting to order at 6:32

**Invocation**

Councilman Scott offered the invocation followed by the Pledge of Allegiance.

**Approval of the Agenda**

Councilman Wood made a motion, seconded by Councilman Barbour, to approve the agenda as submitted. Unanimously approved.

**1. Public Hearing**

- a. Community Development Block Grant: The Town of Smithfield is considering submitting a Covid-19 Community Development Block Grant Program (CDBG-CV). The purpose of the public hearing is to obtain citizen input into the identification of community needs and desired CDBG activities**

Councilman Rabil made a motion, seconded by Councilman Barbour, to open the public hearing. Unanimously approved.

Town Manager Michael Scott introduced Skip Green. Mr. Green has assisted the Town with various CDBG grants. Mr. Green stated this was the first of two required public hearings. He explained the Town of Smithfield was interested in seeking funds from the State's Small Cities Community Development Block Grant Program (CDBG). The CDBG program is administered by the North Carolina Department of Commerce and the North Carolina Department of Environment and Natural Resources. Mr. Green explained the State of North Carolina's CDBG Program permits grant funds to be used toward infrastructure projects that address health/safety needs such as; public water and sewer projects, as well as, public service, public facilities, and economic development to address pandemic's such as COVID-19. It also allows for funds to be used for neighbor revitalization needs which included: housing development, acquisition, disposition, clearance and remediation activities, relocation, public facilities such as: senior center, housing for homeless persons, housing or shelters for victims of domestic violence, transitional housing facility, community, neighborhood, or recreation facility. Funds can be used for public infrastructure which includes building demolition and vacant building renovation. Funds can be used to support Economic Development projects. Applications for Economic Development must show that more than 60% of the CDBG will benefit low or moderate-income persons through job creation or retention. Applications for other CDBG programs, unless specified by program regulations, must show that funded activities: (1) will provide greater than a 50% benefit to low-or-moderate income persons; (2) benefit identified special need populations; (3) address health and safety needs; or (4) eliminate slum & blight.

Mr. Green informed the Council that the State recently released a COVID-19 program to assist businesses, nonprofit organizations and the public for COVID-19 related issues. In all instances, the applicant would have to be the Town of Smithfield. If the Town chose to work with any group, it would be through an interlocal agreement.

Mayor Moore asked if there were any questions from the Council. There were none.

Mayor Moore asked if anyone in attendance wished to speak on the matter.

Peter Hulth of 215 North Third Street questioned the amount of allocated funds. Mr. Green responded that each grant was individual. The COVID-19 has a maximum dollar amount of \$900,000. The Neighborhood Revitalization has a maximum dollar amount of \$750,000. Since Johnston County is a tier three county, the maximum dollar amount for economic development purposes would be \$750,000. A locality cannot receive more than \$1.25 million in a fiscal year. Exceptions can be made in special circumstances such as COVID-19.

Councilman Barbour made a motion, seconded by Councilman Wood, to close the public hearing. Unanimously approved.

No action was needed or taken by the Council.

Councilman Lee asked Mr. Green to provide an update on the current CDBG Housing Revitalization grant at the next Council meeting. Mr. Green responded those wishing to participate in the program have completed their formal application. The Town has advertised twice for legal services, but there have been no responses. Legal services are needed for title searches of the properties. It was important to have all the legal work completed before the housing write-ups were completed. Once legal services are obtained, housing write-ups will begin.

## **2. Business Items**

### **a. Citizen request to address the Council (Pam Lampe)**

Pam Lampe of 415 North Second St. requested the Town Council to vote no on Resolution No. 665 because the expansion of the water plant was unnecessary. She stated Smithfield citizens only use 1.5 MGD of the current water plant capacity of 6.2 MGD. Just 24 %, which meant the capacity for future growth was 4.7 MGD. The Town's expected future rate of growth reported to outside agencies is low. For instance, according to the Town's Local Government Commission loan application, they expect 1.24% growth. Also, the 2019 Local Water Supply Report, filed with the NC Division of Water Resources by Mr. Credle shows little growth by 2060. This report was approved by council in June 2020 and it provided no justification for any expansion of the water supply and it should have if growth was expected. Some council members have said we may need more water supply because of potential economic development in West Smithfield. However, Clayton uses 3 MGD capacity, of which 1 MGD is for the pharmaceutical companies/industrial users. The Town always has the capacity to provide for this. Also, since water and sewer go together, the real question to Council is whether we have the sewer capacity for such economic growth. It was understood that the sewer capacity with the county was 2.4 MGD. Compare this to water capacity of 6.2 MGD. Johnston County's sewer bulk capacity fee is 11.00/gallon, so 1 MGD sewer capacity costs \$11 million. She asked if it made sense to expand water capacity when the Town lacks sewer capacity. The LGC also rightfully questioned whether the \$12 million loan was adequate for the cost of the project since the numbers are 3 years old. If recent experience with the broken plant generator is any indication, the costs will be significantly higher. The generator's estimated cost in 2017 was \$300,000 and now its estimated over \$500,000. She questioned what the Council would do if the project came in over budget. As for this resolution, some on the council have told us: "I am voting for the resolution to borrow money, but not necessarily for the expansion." We would like to have this on the record and part of the minutes as to who among the council support this statement. Why not just borrow money for deferred maintenance? The LGC could reduce the principal of this loan easily. So, unless you are reducing the loan principal, please vote no for the new resolution #665. Thank you.

Emma Gemmell asked if others could address the Council. Mayor Moore stated this was not a public hearing, but if there were no objections from the Council, she could speak briefly. Councilman Barbour stated that while he did not have a problem with limited additional comments, this was not advertised as a public hearing. Therefore, others were not provided the same right to speak in favor of or against adoption of the Resolution.

Emma Gemmell of 207 Hancock Street explained to the Council that for over two years, she and Mrs. Lampe have provided the Council and staff with clear facts that the citizens of Smithfield do not need more water since the Town has an abundance of water. She stated that she and Mrs. Lampe have had questions that either have not been answered or have been unsatisfactorily answered. She further stated it was time for the Town to show its citizens facts that make the water plant expansion a necessity. She requested the Council vote against Resolution No. 655 for the unnecessary expansion of the water plant.

Kay Kennedy of 122 West Riverside Drive expressed her appreciation to Mrs. Lampe and Mrs. Gemmel for their extensive work on this project. She stated she found it alarming that the Town would even consider this project amid the COVID-19 pandemic. She explained she agreed with Mrs. Lampe and Mrs. Gemmel that the expansion of the water plant was unnecessary. She further explained that it was her understanding there were pipes that needed to be repaired before the Town spent funds on the expansion of the water plant. She strongly suggested the Town put the expansion of the water plant on hold until COVID-19 is no longer an issue and the Town has a better grasp of how the pandemic would influence the economy. She stated the Council should vote against the resolution stating it was the wrong time to do so.

**b. Consideration and Request for approval to adopt Resolution No. 665 (14-2020) reaffirming Resolution No. 611 (16-2017) for the water plant expansion/ improvements for state loan funding.**

Town Manager Michael Scott addressed the Council on a request for approval to reaffirm Resolution No. 611 made in September 2017 with Resolution No. 665 for the water plant expansion/ improvements. Resolution No. 611 was voted on and approved to apply for a loan for the expansion and improvements to the water plant at an estimated cost of \$12.05 million. Resolution No. 611 was presented to the Local Government Commission (LGC) on September 1, 2020. They reviewed the loan and because of the delay of the project and some issues with the May 28<sup>th</sup> special meeting. They were unsure if the Council voted to delay the overall project. They asked the Town to reaffirm the resolution before the LGC's October meeting. The only change to the original resolution was the LGC asked that their findings of facts be included in the resolution. This will ensure that there was no confusion about what they must decide as they are looking at this loan approval.

The Town Manager stated he had additional information that may address some of the citizen's concerns.

He explained some have stated the Town's rates were too high and rates would increase because of the water plant expansion. The rates were not high as some might believe. For an in-town residential customer using 4,000 gallons of water the monthly cost would be \$27.89. In comparison, the same amount in Selma would cost \$32.53, in Johnston County would cost \$34.60 and in Clayton would cost \$42.52. When comparing rates, even though the Town increased its rates this fiscal year, Smithfield's rates were still lower than surrounding communities.

The Town Manager stated he also heard concerns over COVID-19 and how that would impact the Town. He explained it was a pandemic that was ever changing. While the Town was concerned, the Town was fiscally responsible and sound in all its funds. He further explained the water and sewer fund was an enterprise fund which was self-supporting driven by fees and usage. Tax dollars do not support the enterprise fund. The water and sewer enterprise fund currently had a fund balance of 115% which meant, the Town could continue operations for an entire year without receiving any revenue. The Council was provided a monthly report on utility bills (which includes water, sewer, electric, trash collection and yard debris) that were in the arrears because of COVID-19. In June, \$122,606 was not collected due to customers being unable to pay their utility bills. In July, the amount increased to \$128,000. In August, the number decreased to \$104,000 and the Town has customers that have entered into contracts to pay their unpaid utility bill at an estimated amount of \$81,000. Those customers under contract are making those payments. Staff believed the \$81,000 will be paid. This potentially leaves the Town in the arrears \$22,000 which is not significant considering the total budget. A lot of communities are experiencing much different results, but Smithfield has competent people who work hard and are willing to pay their bills. COVID-19 is currently not impacting the Town of Smithfield as it is in other communities and it should not impact this discussion.

The Town Manager explained the water plant capacity was currently 6.2 MGD (million gallons per day). When it is expanded, the plant will have a capacity of 8.3 MGD. The Town's current usage was approximately 5 MGD which was 80% of the plant's capacity. This was significant because when the plant reached 80% capacity, the Department of Environmental Quality mandated that the Town start planning for what we will do when the plant reaches 90% capacity. At 90% capacity, the Town must expand its water plant or purchase water from another source. The Town must have a plan in place so it can provide water for its customers.

The Town Manager explained the Town currently sold 3.5 MGD to Johnston County. 1.5 MGD are sold to Town customers. He has heard that the Town could buy back its allocation to Johnston County or we could

take it back and use it for Town customers. The Town could take back .5 MGD from the allocation to Johnston County at no cost simply by notifying them a year in advance. The 1 MGD of the contract amount requires a two-year notification to Johnston County and at a cost of \$3.25 per gallon. Which would be a reimbursement since Johnston County already paid the Town \$3.25 million for that capacity fee. If the Town chose to buy back the capacity, the money goes to Johnston County depending on how much the Town wants to purchase. The Town could buy back 1.5 MGD from Johnston County, but the 2 MGD is under contract until August of 2027. This contract has been in place since 1999. The 2 MGD is purchased by Johnston County whether they use it or not.

The Town Manager explained that when new houses or new businesses come into Town, the Town must allocate a certain amount of water for those homes and businesses. If a two-bedroom house is built, the Town must permit water capacity of 240 GPD (gallons per day) of water and an additional 120 GPD for each additional bedroom. For hotels, the Town must permit water capacity of 120 GPD per bedroom. Currently, the Town of Smithfield has 11 hotels. An additional hotel will open in October and another hotel just broke ground on September 13th. When all the hotels are in full operation, there will be about 1,000 hotel rooms in Smithfield. The Town must consider its residents, but also the millions of people that visit the Town. The Cracker Barrell restaurant in Smithfield is the busiest Cracker Barrell in the state of North Carolina because of its location.

The Town Manager stated it was suggested that the Town could buy 2 MGD of capacity from Johnston County which is roughly the same amount produced by the expansion of the water plant. To purchase 2 MGD of capacity from Johnston County that would cost the Town \$12.5 million to reserve the water for the Town. The Town would also have to pay \$2.85 for every thousand gallons used. The annual cost if the Town used 2 MGD would be \$2,080,500. That would be the cost if the Town had to purchase water from Johnston County instead of building or enhancing the Town's water plant.

The Town Manager explained that currently the water plant has a maximum capacity of 6.2 MGD, but only 90% of that capacity can be used which equates to 5.6 MGD. The Town's usage is 1.5 MGD and the Town allocates 2 MGD capacity to Johnston County. Those two numbers equal 3.5 MGD. The Town has projects that are ready to come online by 2023 to use another .3 MGD.

As for growth, a lot of growth is expected in the Town of Smithfield. Growth projections indicate that an additional 2 MGD will be needed in the next 10 years. The debt for this loan will be paid off by 2041. At that time, we also estimate during that last ten-year period, the Town will need an additional 2.25 MGD. This will place the water plant at almost half a million gallons of its current capacity without the expansion. With the expansion, the Town would maintain 1.64 MGD for future development. The Town Manager explained while some may think the expansion was unnecessary now, you have to consider this was a twenty year loan and the Town had to plan for twenty years into the future. Based on the current growth of the Town, staff believed the expansion was going to be necessary for the future.

Some of the projects that make up the .3 MGD usage are as follows: the East River build out which is currently in phase 2 and will need an allocation of 90,000 GPD, the Hampton Inn that will go online in October will need an allocation of 13,000 GPD, the Tru Hotel which just broke ground will need an allocation of 11,000 GPD and additional development will need an allocation of 190,000 GPD.

The Town Manager addressed the cost of the project. He explained the estimated cost was \$16.7 million, but staff will not know the actual cost until the project is bid out. When those bids are received, staff will then know the overall cost of the water plant expansion. If the project comes in well over this amount, the Council will have to figure out if the project was worth doing. The County just received bids for its new detention center and that bid was so low they are going to be able to build two additional buildings for the same amount as was originally budgeted for one building. Because of COVID-19, the trend was for construction projects the competition was fierce because people want to work. Staff is hopeful bids for this project will come in considerably lower, but we will not know until the bids are received.

The Town Manager reiterated that the estimated cost for the water plant expansion was \$16.7 million. \$3.25 million was paid by Johnston County for the additional capacity fee. Council voted that those funds be used for engineering fees and one additional water tank at the site. The Town can pay cash for both of those. \$6.5 million is needed for the expansion of the plant. \$7.4 million is needed for improvements to the plant. A 5% contingency was also built into the cost. As Mrs. Lampe earlier stated, the Council could consider taking out a loan for the \$7.4 million for improvements to the water plant. The Town Manager explained that

the \$12.05 million dollar loan would be at an interest rate of 1.82%. The annual debt service (loan) payment would be \$719,244 and the interest on the loan (if not paid off early) would be \$2.33 million. If the Town chose to only obtain a loan for the \$7.4 million for improvements, we would likely not receive the 1.82% interest rate and would probably not be able to obtain a loan from the lender because of turning down the \$12.05 million loan. If the Town chose to pursue the \$7.4 million for improvements and we estimate at 2.5% interest rate, the Town would still pay over \$2 million in interest. The annual debt payment would be \$470,500 for twenty-years. If the Town lowered the terms to 10 years, the total interest paid on the loan would be just under \$1 million, but the annual debt service payment would be \$837,120. That would be a considerable increase which would have to be investigated. Staff knows it can afford the annual debt service payment of \$719,244 because of the results of the recent Utility Financial Solutions (USF) rate analysis that included the debt service payment. The results revealed the Town can afford the annual debt service payment. If the Town were able to obtain a loan for the \$7.4 million at an interest rate of 1.82% for ten years, the total interest would be \$669,000, but the annual debt service payment would be about \$800,000.

The Town Manager reiterated that the water plant capacity was 6.2 MGD and only 90% of that can be used. The Town currently has 1.5 MGD for current water usage. If the Town has additional development, it would have to buy back the 1.5 MGD capacity from Johnston County. Staff does not believe that will be enough for future development. The Town still has the 2 MGD it is under contract to provide Johnston County until 2027. With the known developments, that will leave the Town with 896,000 GPD for the maximum capacity of 6.2%. That would leave 274,000 GPD that could be used to reach the 90% capacity. The Town needs to expand the water plant for future development and growth

Councilman Barbour made a motion, seconded by Councilman Wood, to adopt Resolution No. 665 (14-2020) reaffirming Resolution No. 611 (16-2017) for the water plant expansion/ improvements for state loan funding.

Councilman Scott asked if the Council could have a discussion before a vote was taken because he did have a question for the Town Manager. Councilman Scott questioned how the Town Manager obtain the \$12.5 million it would cost the Town to purchase water from Johnston County. The Town Manager responded he obtained that information from Johnston County's current fee schedule.

Councilman Scott stated he was concerned that the Town was not getting a good deal from the county. If the Town had more security from the county that they were going to continue to purchase water from the Town, the decision to expand would be a no brainer. He stated that no matter what happened, the Town should continue to negotiate with the county.

Councilman Scott stated staff also had to do a better job with its capital improvement plan because it does not reflect the \$7.45 million in deferred maintenance. Staff must do a better job of planning.

Councilman Scott stated that the citizens have expressed some great concerns about the expansion of the water plant. He stated his real concern was the risk the Town was taking for Smithfield to help others. He further stated he had done some research and the proposed water plant expansion provided by staff highlighted the need for the expansion due to the expansion of Novo Nordisk in Clayton and the 500 jobs it would bring. The report also talked about the historic growth in Johnston County. With the pandemic like it is, the Town may get a better deal on the construction of the water plant, but it is important to note that this was a risk the Town was taking.

Councilman Scott stated in the Town Manager's presentation, the Town Manager the water plant was a part of an enterprise fund. The enterprise fund pays for itself, but the resolution clearly states that the increase in taxes, if any, necessary to service the proposed debt, will not be excessive. Councilman Scott stated if the Town failed or if the county decided to stop purchasing water from the Town, the debt must be paid. He further stated that was why he was opposed to this project at this moment in time.

Mayor Pro-Tem Dunn stated he agreed with Councilman Scott on some of the issues because it was an uncertain time. He felt the Town needed to plan for the future. He stated the maintenance issues also needed to be addressed. There is not any guarantee of what will happen. No one wants to rush out and borrow \$12 million today, but the Town needs to plan for when that day will come.

Mayor Moore called for the vote on the motion on the floor.

Councilman Barbour made a motion, seconded by Councilman Wood, to adopt Resolution No. 665 (14-2020) reaffirming Resolution No. 611 (16-2017) for the water plant expansion/ improvements for state loan funding. Councilman Barbour, Councilman Wood, Mayor Pro-Tem Dunn, Councilman Stevens and Councilman Rabil voted in favor of the motion. Councilman Scott and Councilman Lee voted against the motion. The motion passed five to two.

**RESOLUTION No. 665 (14-2020)**  
**BY TOWN COUNCIL OF THE TOWN OF SMITHFIELD**  
**APPROVING FUNDING APPLICATION**

**WHEREAS**, The Federal Clean Water Act Amendments of 1987 and the North Carolina the Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of collection system, stream restoration, stormwater treatment, drinking water treatment works, and/or drinking water distribution system or other “green” project), and

**WHEREAS**, The Town of Smithfield has need for and intends to construct an expansion to the existing drinking water treatment works to expand capacity of the plant. Work includes installation of new process units, upgrade of existing process units and other work, as applicable, for the new capacity.

**WHEREAS**, The Town of Smithfield intends to request state loan and/or grant assistance for the project.

**NOW THEREFORE BE IT RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF SMITHFIELD:**

That Town of Smithfield, the **Applicant**, will arrange financing for all remaining costs of the project, if approved for a State loan and/or grant award.

That the **Applicant** will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.

That the governing body of the **Applicant** agrees to include in the loan agreement a provision authorizing the State Treasurer, upon failure of the Town of Smithfield to make scheduled repayment of the loan, to withhold from the Town of Smithfield any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.

That the **Applicant** will provide for efficient operation and maintenance of the project on completion of construction thereof.

That Mayor M. Andy Moore, the **Authorized Official**, and successors so titled, is hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a (loan and/or grant) to aid in the construction of the project described above.

That the **Applicant**, authorizes the filing of an application with the Local Government Commission, pursuant to NCGS 159G-40, for approval of the State of North Carolina loan in the principal amount not to exceed \$12,050,000, and directs the **Authorized Official**, and successors so titled, to file such application with the Local Government Commission.

That the **Applicant** makes the following factual findings:

1. That the proposed project, as described above, to be financed with a State loan, is necessary and expedient.
2. That the amount of the proposed loan, \$12,050,000, is adequate and not excessive for the proposed project.
3. That the **Applicant's** debt management policies and procedures are good, and **Applicant** has in the past always appropriated funds in accordance with North Carolina law during each fiscal year in an amount sufficient to pay its required debt service.



4. That the increase in taxes, if any, necessary to service the proposed debt, will not be excessive. No tax increase is proposed. The scheduled fees and charges along with other available funds of the water and sewer utility system will be adequate to pay principal and interest on the debt.
5. That the rate of interest proposed for the State loan is reasonable and at or below market rates.

That the **Authorized Official**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Originally Adopted on the 5<sup>th</sup> day of September 2017 in Smithfield, North Carolina.

Reaffirmed by the Town Council on this the 22<sup>nd</sup> day of September 2020 in Smithfield, North Carolina by a vote of 5 ayes and 2 nays.

### **Adjourn**

Councilman Barbour made a motion, seconded by Councilman Wood, to adjourn the meeting. The meeting adjourned at approximately 7:22pm.

ATTEST:

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M. Andy Moore, Mayor

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Shannan L. Parrish, Town Clerk





# Request for Town Council Action

Consent Agenda Item:  
Application for Temporary Use Permit  
Date: **10/06/2020**

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Subject: Temporary Use Permit  
Department: **Cista Lueeze's Brunch House Theatre, Inc.**  
Presented by: Planning Department  
Presentation: Consent Agenda Item

---

## Issue Statement

The Council is being asked to allow **Cista Lueeze's Brunch House Theatre, Inc.** to close Front Street and the Greenway by the Town Commons stage on October 24, 2020.

## Financial Impact

## Action Needed

To approve the Temporary Use Permit Application

## Recommendation

Staff recommends approval of the Temporary Use Permit with the addition to closing Front Street and a portion of the Greenway on the day of the event.

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff Report
2. Updated Temporary Use Permit Application



## Staff Report

Consent  
Agenda  
Item: Application  
for  
Temporary  
Use Permit

---

**Cista Lueeze’s Brunch House Theatre, Inc. is requesting to** close Front Street and block use of the Greenway by the Town Commons stage on October 24, 2020. The applicant was previously approved on September 1<sup>st</sup>, 2020 to hold a play at Town Commons stage on October 24<sup>th</sup>, 2020 from 1:00-4:00 pm. These requests to close Front Street and block use of the Greenway by Town Commons have been added since the previous approval. The purpose of these changes is to social distance more and allow more space for the cast of the play to change outfits underneath the hospitality tent. Everyone will wear masks or face shields the entire time. This is contingent on any Executive Order in place by the Governor at the time of the event.



# Request for Town Council Action

Consent  
Agenda  
Item: Application  
for  
Temporary  
Use Permit  
Date: 10/06/2020

---

Subject: Temporary Use Permit  
Department: Planning Department  
Presented by: Stephen Wensman – Planning Director  
Presentation: Consent Agenda Item

---

## Issue Statement

The Council is being asked to allow Alice Wells to hold a church service at Smithfield Community Park on October 11<sup>th</sup>, 2020 from 2:00-4:00 pm.

## Financial Impact

N/A

## Action Needed

To approve the Temporary Use Permit Application

## Recommendation

Staff recommends approval of the temporary use permit application in accordance with any Executive Order by the Governor at the time of the event

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff Report
2. Temporary Use Permit Application



# Staff Report

Consent  
Agenda  
Item: Application  
for  
Temporary  
Use Permit

---

Alice Wells would like to hold a church service at Smithfield Community Park on October 11<sup>th</sup>, 2020 from 2:00-4:00 pm. The service will be held on the Football Practice Field. Amplified sound will be used during that time. No food or goods will be sold, less than 100 people are expected to attend. No trash cans are needed and no street closures are necessary. The applicant is aware of the restrictions and concerns with the pandemic and will observe all required guidelines. **The event is also contingent on any Executive Order in place at the time of the event.**



Town of Smithfield  
 Planning Department  
 P.O. Box 761 or  
 350 East Market Street  
 Smithfield, NC 27577

### Temporary Use Permit Application

**TYPES OF TEMP USE OR EVENT**

- Special Event
- Town recognized event \_\_\_\_\_
- Over 100 people in attendance
- Live Band or Amplified Sound microphone
- Requires closure or blockage of Town Street
- Involves Food Trucks
- Requires Security (potential safety, security concerns)
- Involves structures larger than 200 square feet and canopies larger than 400 square feet
- Involves Town park property
- Involves Fireworks

**OTHER TEMP USES**

- Modular Office Units
- Emergency, construction and repair residence
- Temporary storage facility (portable storage unit)
- Sale of agricultural products grown off-site
- Sale of Fireworks
- Other (please describe) \_\_\_\_\_

**Completed applications should be submitted to the Town of Smithfield Planning Department at least 4 weeks prior to an event or temporary use.**

<u>Church Service</u> Name of Event (if applicable)	<u>Community Park (Football Practice Field)</u> Location of Event/Use (exact street address)
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Applicant name Alice Wells E-mail address alicewells56@yahoo.com

Address 506 E. Lee Street Zip 27577

Phone number 919-464-5693 Event date October 11th, 2020

Event start time 2:00 Event end time 4:00

Event set up time 1:30 Event cleanup time 4:30

Sound amplification Hours 2:00 4:00 Will food or goods be sold? NO

# Food Trucks if applicable \_\_\_\_\_ (requires a valid permit from NC Department of Agriculture, a copy of the vehicle or trailer registration and/or ABC Permit, if applicable)

Security agency name & phone, if applicable: \_\_\_\_\_

Will any Town property be used (i.e., streets, parks, greenways)? park - Community

If any Town streets require closure, please list all street names. \_\_\_\_\_

Are event trash cans needed? NO How many? none

Property owner name (if not applicant) Smithfield parks and Recreation

Address Smithfield, NC Zip 27577

Phone number (919) 934-2116 E-mail address \_\_\_\_\_

Method of Payment: Cash \_\_\_\_\_ Check# \_\_\_\_\_ Credit Card \_\_\_\_\_ Amount \$ \_\_\_\_\_

Email applications to [julie.edmonds@smithfield-nc.com](mailto:julie.edmonds@smithfield-nc.com) or drop them off in the Planning Department. All applicants should read the following pages before completing all sections required. Incomplete applications may increase the permit processing time. If a person other than the property owner signs this application, a **notarized written authorization from the property owner must be attached.**

**CERTIFICATION OF APPLICANT AND/OR PROPERTY OWNER**

I hereby certify that the information contained in this application is true to the best of my knowledge and I further certify that this event/use will be conducted per all applicable local laws. I certify that I have received the attached information concerning the regulations for Temporary Uses. If an event, I certify that I have notified all adjoining property owners of the planned event.

Alice Wells      Alice Wells      8-27-20  
Applicant's Name (print)      Signature      Date

Planning Director signature: Stephen Wen      Date: 9/3/20

**OWNERS AUTHORIZATION**

I hereby give CONSENT to \_\_\_\_\_ (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge the property I have an ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the Town of Smithfield to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

Property owners name (print) Town of Smithfield

Signature: Julie Edmonds      Date: 9.3.2020





# Request for Town Council Action

Consent  
Agenda  
Item: Application  
for  
Temporary  
Use Permit  
Date: 10/06/2020

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Subject: Temporary Use Permit  
Department: Planning Department  
Presented by: Stephen Wensman - Planning Director  
Presentation: Consent Agenda Item

---

## Issue Statement

The Council is being asked to allow Margaret Scovil to show a free documentary at Town Commons on October 23rd from 6:30pm until 8:30pm and on October 25<sup>th</sup> from 4:00pm until 6:00pm

## Financial Impact

N/A

## Action Needed

To approve the Temporary Use Permit Application

## Recommendation

Staff recommends approval of the temporary use permit application in accordance with any Executive Order by the Governor at the time of the event

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff Report
2. Temporary Use Permit Application



# Staff Report

Consent  
Agenda  
Item: Application  
for  
Temporary  
Use Permit

---

Margaret Scovil is requesting to show a free documentary called Three Rivers, Three Towns at Town Commons. This event would begin on October 23rd at 6:30 pm and end at 8:30 pm. The second showing would be on October 25<sup>th</sup> from 4:00 pm-6:00pm. Amplified sound would be use during both showings. No food or goods will be sold. The applicant has requested to close off Front Street from E. Johnston Street. Two event trash cans have been requested from Public Works. The event is also contingent on any Executive Order in place at the time of the event.



Town of Smithfield  
 Planning Department  
 P.O. Box 761 or  
 350 East Market Street  
 Smithfield, NC 27577

### Temporary Use Permit Application

**TYPES OF TEMP USE OR EVENT**

- Special Event
- Town recognized event \_\_\_\_\_
- Over 100 people in attendance
- Live Band or Amplified Sound (Movie)
- Requires closure or blockage of Town Street
- Involves Food Trucks
- Requires Security (potential safety, security concerns)
- Involves structures larger than 200 square feet and canopies larger than 400 square feet
- Involves Town park property
- Involves Fireworks

**OTHER TEMP USES**

- Modular Office Units
- Emergency, construction and repair residence
- Temporary storage facility (portable storage unit)
- Sale of agricultural products grown off-site
- Sale of Fireworks
- Other (please describe) Tables of free literature/information

Completed applications should be submitted to the Town of Smithfield Planning Department at least 4 weeks prior to an event or temporary use.

TO FREE PUBLIC

<u>Documentary shown:</u> <u>Three Rivers, Three Towns</u> Name of Event (if applicable)	<u>Town Commons - Band Stand</u> Location of Event/Use (exact street address)
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Applicant name Margaret Scovill E-mail address megascovill@yahoo.com  
 Address 718 S. 2nd St Zip 27577

\* Phone number 919-631-1345 Event date(s) Oct. 23 and 25 (Fri/Sun)  
 Event start time Fri 6:30 end: 8:30 rain date Nov. 6 and 8  
 Event set up time Sun 4:00 end 6:00 Event cleanup time 8 PM

Sound amplification Hours 2 hours Will food or goods be sold? no

# Food Trucks if applicable \_\_\_\_\_ (requires a valid permit from NC Department of Agriculture, a copy of the vehicle or trailer registration and/or ABC Permit, if applicable)

Security agency name & phone, if applicable: \_\_\_\_\_

Will any Town property be used (i.e., streets, parks, greenways)? Amphitheater Town Commons

If any Town streets require closure, please list all street names. request blocking off front St. from E. Johnston St.

Are event trash cans needed? yes How many? 2

Property owner name (if not applicant) Town of Smithfield/Smithfield Parks Rec  
 Address P.O. Box 761 Smfld, NC Zip 27577

Phone number \_\_\_\_\_ E-mail address \_\_\_\_\_

Method of Payment: Cash \_\_\_\_\_ Check# \_\_\_\_\_ Credit Card \_\_\_\_\_ Amount \$ 100.00

Email applications to [julie.edmonds@smithfield-nc.com](mailto:julie.edmonds@smithfield-nc.com) or drop them off in the Planning Department. All applicants should read the following pages before completing all sections required. Incomplete applications may increase the permit processing time. If a person other than the property owner signs this application, a notarized written authorization from the property owner must be attached.

**CERTIFICATION OF APPLICANT AND/OR PROPERTY OWNER**

I hereby certify that the information contained in this application is true to the best of my knowledge and I further certify that this event/use will be conducted per all applicable local laws. I certify that I have received the attached information concerning the regulations for Temporary Uses. If an event, I certify that I have notified all adjoining property owners of the planned event.

Margaret A. Seovil      Margaret A. Seovil      Sept. 14, 2020  
Applicant's Name (print)      Signature      Date

Planning Director signature: Stephen Wern      Date: 9/15/20

**OWNERS AUTHORIZATION**

I hereby give CONSENT to \_\_\_\_\_ (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge the property I have an ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the Town of Smithfield to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

Property owners name (print) Town of Smithfield

Signature: Julie Edmonds      Date: 9/15/2020



# Request for Town Council Action

Consent  
Agenda  
Item:  
Date:

Application  
for  
Temporary  
Use Permit  
10/06/2020

---

Subject: Temporary Use Permit  
Department: Planning Department & Parks and Recreation  
Presented by: Stephen Wensman – Planning Director  
Presentation: Consent Agenda Item

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## Issue Statement

The Council is being asked to allow Smithfield Parks and Recreation to hold a firework display on **Veteran's Day** at Smithfield Community Park.

## Financial Impact

Less than \$10,000

## Action Needed

To approve the Temporary Use Permit Application

## Recommendation

Staff recommends approval of the temporary use permit application in accordance with any Executive Order by the Governor at the time of the event

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff Report
2. Temporary Use Permit Application



# Staff Report

Consent  
Agenda  
Item: Application  
for  
Temporary  
Use Permit

---

Smithfield Parks and Recreation is requesting to have a firework **display for Veteran's Day**. This event would take place on November 11, 2020 from Smithfield Community Park. Setup would begin at 8:00 am and cleanup would be over by 11:00 pm. The event will take place from 5:00 pm to 7:00 pm and amplified sound will be used during that time. No food or goods will be sold. No trash cans are needed, no streets will be closed, and no police presence has been requested. The event is also contingent on any Executive Order in place at the time of the event.

The intent is to allow people to enjoy the fireworks display from their vehicles, parked in areas around and near Community Park. We plan to include some additional portions that will be used in a combination of Face Book Live and a local radio station. The event will not encourage large gatherings, but instead allow for ease of social distancing while celebrating **those who have served in our Nation's Military and kept our Country safe through, often times, supreme sacrifices.**



Town of Smithfield  
 Planning Department  
 P.O. Box 761 or  
 350 East Market Street  
 Smithfield, NC 27577

### Temporary Use Permit Application

**TYPES OF TEMP USE OR EVENT**

- Special Event
- Town recognized event \_\_\_\_\_
  - Over 100 people in attendance
  - Live Band or Amplified Sound \_\_\_\_\_
  - Requires closure or blockage of Town Street
  - Involves Food Trucks
  - Requires Security (potential safety, security concerns)
  - Involves structures larger than 200 square feet and canopies larger than 400 square feet
  - Involves Town park property
  - Involves Fireworks

**OTHER TEMP USES**

- Modular Office Units
- Emergency, construction and repair residence
- Temporary storage facility (portable storage unit)
- Sale of agricultural products grown off-site
- Sale of Fireworks
- Other (please describe) \_\_\_\_\_

**Completed applications should be submitted to the Town of Smithfield Planning Department at least 4 weeks prior to an event or temporary use.**

<u>Veterans Day Fireworks Display</u> Name of Event (if applicable)	<u>Smithfield Community Park</u> Location of Event/Use (exact street address)
--	--

Applicant name Gary Johnson E-mail address gary.johnson@smithfield-nc.com

Address 600 N Durwood Stephenson Pkwy Zip 27577

Phone number 919 934 2148 Event date 11-11-20

Event start time 5:00 Event end time 7:00

Event set up time 8:00 AM Event cleanup time 11:00 PM

Sound amplification Hours 5:00 - 7:00 Will food or goods be sold? No

# Food Trucks if applicable 1 (requires a valid permit from NC Department of Agriculture, a copy of the vehicle or trailer registration and/or ABC Permit, if applicable)

Security agency name & phone, if applicable: \_\_\_\_\_

Will any Town property be used (i.e., streets, parks, greenways)? Community Park

If any Town streets require closure, please list all street names. NONE

Are event trash cans needed? No How many? \_\_\_\_\_

Property owner name (if not applicant) Town of Smithfield Park & Recreation

Address 600 N. Durwood Stephenson Pkwy Zip 27577

Phone number 919 934 2148 E-mail address gary.johnson@smithfield-nc.com

Method of Payment: Cash \_\_\_\_\_ Check# \_\_\_\_\_ Credit Card \_\_\_\_\_ Amount \$ \_\_\_\_\_

Email applications to [julie.edmonds@smithfield-nc.com](mailto:julie.edmonds@smithfield-nc.com) or drop them off in the Planning Department. All applicants should read the following pages before completing all sections required. Incomplete applications may increase the permit processing time. If a person other than the property owner signs this application, a notarized written authorization from the property owner must be attached.

**CERTIFICATION OF APPLICANT AND/OR PROPERTY OWNER**

I hereby certify that the information contained in this application is true to the best of my knowledge and I further certify that this event/use will be conducted per all applicable local laws. I certify that I have received the attached information concerning the regulations for Temporary Uses. If an event, I certify that I have notified all adjoining property owners of the planned event.

EARLY JOHNSON                      [Signature]                      9-8-20  
Applicant's Name (print)                      Signature                      Date

Planning Director signature: [Signature]                      Date: 9-8-20

**OWNERS AUTHORIZATION**

I hereby give CONSENT to \_\_\_\_\_ (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge the property I have an ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the Town of Smithfield to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

Property owners name (print) EARLY JOHNSON

Signature: [Signature]                      Date: 9-8-20





# Request for Town Council Action

Consent  
Agenda  
Item: Police  
Promotion  
Date: 10/06/2020

---

Subject: Promotion  
Department: Police Department  
Presented by: Chief R.K. Powell  
Presentation: Consent Agenda

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## Issue Statement

This is a request to promote one officer from the rank of Police Officer II (POII) to Master **Police Officer (MPO), moving from pay grade 17 to pay grade 18. Under the Town's Employee Handbook**, all promotions to a higher pay grade will be accompanied by an increase to the next pay grade minimum salary or 5% increase, whichever is greater.

## Financial Impact

This salary increase will be covered by the Police **Department's current budget and will not** require a budget amendment to the current salary line item. In this case the required salary increase for the current budget year will be \$1,912.55

## Action Needed

The Officer has followed the attached career ladder policy previously approved by the Council found in the support documentation and has earned the promotion. The Police Chief recommends this promotion and a five percent salary increase, moving him to the next pay grade in the current Town Public Service Pay Scale (see attached)

## Recommendation

It is requested to allow this Officer to be promoted to Master Patrol Officer (MPO).

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff Report
2. Officer Request and Training Record
3. Career Ladder Criteria
4. Public Service Pay Scale



# Staff Report

Consent  
Agenda Promotion  
Item:

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This is a request to promote one officer from the rank of Police Officer II (POII) to Master Police Officer (MPO), moving **from pay grade 17 to pay grade 18. Under the Town's Employee Handbook**, all promotions to a higher pay grade will be accompanied by an increase to the next pay grade minimum salary or 5% increase, whichever is greater.

Date: September 9, 2020  
To: Chief of Police R. K. Powell *RKP*  
From:  
Subject: Career Ladder Advancement

This memo is to notify the Chief of Police of my interest in advancing in the career ladder to rank of Master Patrol Officer. I have obtained all necessary requirements. These are:

- I have worked for the Smithfield Police Department for approximately five years, having been hired 09/14/2015
- I have held the rank of Police Officer II for approximately two years, having reached that rank on 07/02/2018
- I have obtained a High School Diploma, having graduated in 2011
- I have completed the following courses relevant to this advancement:
  - Field Training Officer (06/23/2017)
  - Crisis Intervention Training (07/28/2017)
  - Field Training Officer Supervisor (11/25/2018)

I have been diligently working toward obtaining my Intermediate Law Enforcement Certificate. Additionally, I have trained and supervised numerous new officers.





**Chapter 500**  
**Personnel Policy 504: Promotions & Career Development**  
**Effective Date: January 1, 2014 Revised Date: June 15, 2020**  
**Approved by: Chief Robert K. Powell**

*R.K. Powell*

**I. POLICY STATEMENT**

It shall be the policy of the Department to select the most qualified candidates to fulfill the duties and responsibilities of each position within the agency. All aspects of this policy are in keeping with the Department's goals as an equal opportunity employer.

**II. COMMENTARY**

The purpose of this directive is to establish guidelines for the administration of the Department's promotion process.

A career ladder program will provide for the advancement of police officers who demonstrate increasing levels of knowledge, skills, and abilities. Advancement and promotional processes will be administered fairly and impartially, using testing and evaluation mechanisms that evaluate past performance as well as future potential through the use of job-related criteria.

**III. PROCEDURES**

A. Administration

1. The Smithfield Police Department is responsible for the administration of the promotion process. When deemed necessary, assistance may be utilized from other entities within or outside of Town government.
2. The Chief of Police has the authority and responsibility for administering the Department's promotion process. All promotional materials will be maintained and secured in the Chief's office.
3. Responsibilities of the Chief of Police include:
  - a) Maintaining authority over all phases of the process
  - b) Determining the skills, knowledge, and abilities required for each position
  - c) Initiating promotional processes on an as-needed basis
  - d) Selecting a candidate for promotion at the completion of the process

4. The Chief of Police may delegate selected duties to other Departmental employees to facilitate the promotional process.

5. When it is deemed in the best interest of the Department, the Chief of Police may waive any of the prescribes qualifications or eligibility requirements, except those established by the North Carolina Criminal Justice Education and Training Standards Commission or other legal authority.

B. Vacancy Announcements

1. Prior to the commencement of any promotional process, the Department will post written notices announcing the following information:

- a) Description of the position to be filled;
- b) Description of eligibility requirements;
- c) Closing date

2. Personnel eligible to participate in the promotional process will submit a letter of intent through the chain of command to the Chief of Police. The candidate's supervisor and each person in the chain of command will indicate approval or disapproval of the candidate's suitability to participate in the process. Disapprovals must be justified in writing and forwarded to the Chief of Police.

3. Once the application period for the given position has been officially closed, all eligible applicants who meet the minimum requirements for the position will be considered for the Department's promotional process. The Chief of Police or designee will ensure the eligibility of the applicants prior to the beginning of the promotion process.

4. When deemed necessary, the Chief of Police has the authority to order a written test for any promotional process. Written tests given will be standardized, validated, and approved by the Town Human Resources Department.

5. An officer who is not recommended for promotion by his/her supervisor will receive a written recommendation for improvement and a follow-up date for review by the supervisor. The officer has the right to appeal through the appropriate chain of command to the Chief of Police.

C. Promotional Procedures

1. Chief of Police or designee will conduct a review of applicable Human Resources and Departmental personnel records in order to evaluate the promotional potential of the candidates. This review serves to verify law enforcement credentials, certifications, and work performance history of the applicants to ensure that the minimum qualifications have been met for each applicant. Candidates are not ranked at this point of the process; however, candidates who do not meet all the preferred qualifications for the position may be eliminated at this stage of the process. Candidates are ranked according to their promotional potential only at the completion of the assessment center phase of the promotion process.

2. The promotional process will consist of an assessment designed to measure each candidate's ability to perform the specific job; The assessment will evaluate each candidate's performance in handling job-related problems and situations through specially-developed simulation exercises; Promotional assessments may include, but are not limited to, written projects, oral presentations, oral interviews, conflict role plays, and counseling role plays.
3. Prior to each promotional process, promotional procedures will be reviewed to determine current applicability. A description of the selection process will be provided to each candidate.
4. The Chief of Police will evaluate the Department's promotional process as needed. The process will be evaluated for validity and effectiveness. All components of the promotion process will be job related and non-discriminatory. Tests used in the process will be purchased from a commercial vendor that have completed validity studies for job relatedness and non-discriminatory practices.
5. For general promotional purposes, lateral entry from other agencies for supervisory positions will not be commonly practiced. However, prior experience at another law enforcement agency may be used toward meeting the requirements for a higher level position after initial entry requirements (including probationary period) are met. Prior experience with another agency will be assessed and a lateral-entry candidate's eligibility for hire above the classification of entry level officer will be evaluated by the Chief of Police on a case-by-case basis. (Exception to this is the position of Chief of Police and any other senior management positions as determined by the Town Manager).
6. Newly hired and newly promoted personnel will serve a probationary period of six months as required by the Town of Smithfield *Personnel Policy*. An evaluation of performance will be conducted after the completion of six months for newly promoted personnel. Newly hired personnel will be evaluated in accordance with Departmental standards.

D. Minimum Qualifications for Promotion

1. Sergeant

To be eligible for promotion to the position of Sergeant, candidates must:

- a) Have served as a Master Police Officer for two years;
- b) Have completed a total of 172 training hours;
- c) Within 12 months of promotion to Sergeant, an officer must complete First Line Supervision;
- d) Have been awarded the Intermediate Law Enforcement Certificate by the North Carolina Criminal Justice Education and Training Standards Commission;
- e) Have received a rating of "Better than Satisfactory" or higher on the last two annual performance appraisals or a rating of "Outstanding" on the last annual performance appraisal;
- f) The effect of disciplinary action on eligibility for advancement is at the supervisor's discretion.

2. Lieutenant

To be eligible for promotion to the position of Lieutenant, candidates must:

- a) Have served as a Sergeant for two years;
- b) Within 12 months of promotion to Lieutenant, an officer must complete a Law Enforcement management program such as AOMP, FBI National Academy, etc;
- c) Have been awarded the Intermediate Law Enforcement Certificate by the North Carolina Criminal Justice Education and Training Standards Commission;
- d) Have received a rating of "Better than Satisfactory" or higher on the last two annual performance appraisals or a rating of "Outstanding" on the last annual performance appraisal;
- e) The effect of disciplinary action on eligibility for advancement is at the supervisor's discretion.

3. Captain

To be eligible for promotion to the position of Captain, candidates must:

- a) Have served as a Lieutenant with the Smithfield Police Department for two years;
- b) Have completed a Law Enforcement management program such as AOMP, FBI National Academy, etc;
- c) Have been awarded the Advanced Law Enforcement Certificate by the North Carolina Criminal Justice Education and Training Standards Commission;
- d) Have received a rating of "Better than Satisfactory" or higher on the last two annual performance appraisals or a rating of "Outstanding" on the last annual performance appraisal;
- e) The effect of disciplinary action on eligibility for advancement is at the supervisor's discretion.

7. Newly hired and newly promoted personnel will serve a probationary period of six months as required by the Town of Smithfield *Personnel Policy*. An evaluation of performance will be conducted after the completion of six months for newly promoted personnel. Newly hired personnel will be evaluated in accordance with Departmental standards.

E. Review and Appeal

1. Within (5) working days of the conclusion of a promotional process, candidates may review their performance results in each element of the promotional process to include:

- a) Review of the answer key to any written exams administered, unless prohibited by the leaseholder of the test
- b) Review of the written results of scored elements of the selection process
- c) Review of reports/materials used in the selection process



However, in accordance with NCGS 160A-168(C1), testing or examination materials may be withheld from disclosure to the employee or other persons if the material was used solely to determine qualifications for promotion and in the opinion of the agency the disclosure of such material would compromise the objectivity or the fairness of the testing or examination process.

2. Candidates may contest any results filed by requesting a meeting with the Chief of Police or designee administering the process. The Chief of Police or designee will conduct a review of the report(s) and discuss findings with all staff in the supervisory chain of command.

3. The Chief of Police or designee will inform the contesting employee of the final decision at the completion of the review.

4. If an employee feels that fair treatment has not been received during any portion of the promotional process, he/she is urged to use the Department's grievance procedures contained in Policy 507.

F. Career Ladder

1. The career ladder program will include the following classifications.

- a) Police Officer I
- b) Police Officer II
- c) Master Police Officer

2. Each level in the career ladder will have certain minimum requirements necessary to qualify for advancement or promotion to the next level. Upon fulfilling the requirements necessary for advancement to Police Officer II and Master Police Officer the officer will submit a memorandum to the Chief of Police containing the following information:

- a) Hire date
- b) Date of last advancement, if applicable
- c) Level of education
- d) Complete list of required classes and dates attended
- e) Date awarded applicable law enforcement certificate(s)

3. This memorandum must be endorsed by the officer's Team Commander and the appropriate Division Commander. The Division Commander will forward the memorandum to the Chief of Police after having verified the information contained therein.

4. An officer who is not recommended for advancement will receive a written recommendation for improvement and a follow-up date for review by the supervisor. The officer has the right to appeal through the appropriate chain of command to the Chief of Police.

5. After consideration of all factors deemed relevant by the Chief of Police, the officer will be notified of the advancement decision within 30 days following receipt of the memorandum by the Chief of Police.

G. Minimum Qualifications for Advancement

1. Police Officer I

Entry-level candidates must:

- a) Meet the basic requirements established by the North Carolina Criminal Justice Education and Training Standards Commission
- b) Meet minimal requirements for employment with the Town of Smithfield as set forth in the Town of Smithfield Personnel Policy
- c) Appear before a Department review board made up of officers selected by the Chief of Police
- d) Pass an extensive background investigation and successfully complete a psychological evaluation, physical examination, drug test, and CVSA examination

All finalists will be interviewed by the Chief of Police. Officers are required to successfully complete the department's Field Training Program and required Solo Patrol Assignment within the first year of Probationary employment.

2. Police Officer II

To be considered for advancement to Police Officer II, candidates must:

- a) Have completed the following as a Police Officer I:
  - \* Successfully completed one year probation and probationary requirements in as required in Police Officer I
  - \* Receive Radar Certification
  - \* Receive Standardized Field Sobriety Testing Certification
  - \* Receive Intoximeter Certification
- b) Have been awarded the Basic Law Enforcement Certificate by the North Carolina Criminal Justice Education and Training Standards Commission
- c) Have received a rating of "Satisfactory" or higher on the last annual performance appraisal
- d) The effect of disciplinary action on eligibility for advancement is at the supervisor's discretion.

3. Master Police Officer

To be considered for advancement to Master Police Officer, candidates must:

- a) Have served as a Police Officer II for one year
- b) Have completed training hours, including:
  - 40 hours of Management/Supervision Training
  - Field Training Officer Certification and become Field Training Officer for the Department. After completion of FTO Training, the officer can be assigned a trainee by the Chief of Police or his Designee
  - Completion of Crisis Intervention Team (CIT) Certification.

c) Have received a rating of "Better than Satisfactory" or higher on the last two annual performance appraisals or a rating of "Outstanding" on the last annual performance appraisal

d) The effect of disciplinary action on eligibility for advancement is at the supervisor's discretion.



<b><i>POLICE Job Class</i></b>	<b>Range</b>	<b>Minimum</b>	<b>Hourly</b>	<b>Mid-Point</b>	<b>Maximum</b>
Police Officer I (43 HR/WK)	218	41,590	18.60		64,465
Police Officer II - (43 HR/WK)	219	43,646	19.52	55,649	67,651
Master Police Officer - (43 HR/WK)	220	45,838	20.50	58,443	71,049
Police Sergeant - (43 HR/WK)	221	48,007	21.47	61,209	74,411
Not Assigned	222	50,407	22.54	64,269	78,131
Police Lieutenant (43 HR/WK)	223	53,083	23.74	67,681	82,279
Not Assigned	224	55,737	24.93	71,065	86,393
Not Assigned	225	58,524	26.17	74,618	90,712
Police Captain	226	62,088	29.85	79,162	96,236
Not Assigned	227	65,192	31.34	83,120	101,048
Not Assigned	228	68,452	32.91	87,276	106,101
Not Assigned	229	71,875	34.56	91,640	111,406
Police Chief	230	74,755	35.94	95,313	115,870



# Request for Town Council Action

Consent  
Agenda  
Item: Surplus  
Property  
Date: 10/06/2020

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Subject: Surplus Property  
Department: Various  
Presented by: Various Department Heads  
Presentation: Consent Agenda Item

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## Issue Statement

Various Town Department are requesting to have vehicles and equipment declared as surplus property. The vehicles and equipment can be auctioned on Govdeals.com, thus **removing them from the Town's inventory.**

## Financial Impact

None

## Action Needed

Approval of Resolution No. 666 (15-2020) Authorizing the sale of certain personal property at public auction.

## Recommendation

Staff recommends the items listed on the resolution be declared surplus property and allow them to be auctioned on GovDeals.com

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff Report
2. Resolution No. 666 (15-2020)



# Staff Report

Consent  
Agenda  
Item

Surplus  
Property

Staff is requesting the following items be declared surplus property thus allowing them to be sold at the online Public Auction site, GovDeals.com.

Dept.	Vin/Ser.#	Description
General Gov		41 Computers
General Gov		41 Monitors
General Gov		Keyboards & Cables
General Gov		Drive Encloser
General Gov		Projector
Finance	070X766	Hasler Mail Folder Inserter with Cabinet
Planning	JPSC72F4HT	HP model Q3716A printer with toner
Planning		Toshiba model T-FC500U-K printer with toner
Planning	2G1WS55R479259317	2007 Chevrolet Impala
Police	2B3KA43V19H597268	2009 Dodge Charger
Police	2B3CL1CT6BH556478	2011 Dodge Charger
Police	2B3CL1CT1BH554675	2011 Dodge Charger
Police	2B3CL1CT5BH556483	2011 Dodge Charger
Police	2C3DXAT6EH121240	2014 Dodge Charger
Police		6 vehicle prisoner dividers
Police		4 used ATV tires
Fire	1FMRU16W61LA24361	2001 Ford Expedition
Fire		1992 Service Truck Body
Fire	Various	Lot of 9 - <b>1.5" Akron Turbojet nozzle</b>
Fire	Panther/Warb-Hp	Lot of 31 air packs
Fire	Panther/Warb-Hp	Lot of 63 masks
Fire	Panther/Warb-Hp	Lot of 59 bottles
Public Works	1FTWW32Y88EB42978	2008 Ford F-350
P & R	IFDWF36S23EB91247	2003 Ford F-350 Dump
P & R	TC2653D090624	2000 John Deer 2653A reel mower
P & R	015387	Scag Turf Tiger
P & R		John Deere 420 Tractor
P & R		Allis Chalmers 5015/9518 Tractor
P & R		John Deere Gator 4x2
P & R		Diamond Vera Pro 2000 3 wheel drag

TOWN OF SMITHFIELD RESOLUTION # 666 (15-2020)  
 AUTHORIZING THE SALE OF CERTAIN  
 PERSONAL PROPERTY AT PUBLIC AUCTION

WHEREAS, the Town Council of the Town of Smithfield desires to dispose of certain surplus property of the Town in accordance with NC GS 160A-270; and

WHEREAS, the Town Council of the Town of Smithfield desires to utilize the auction services of a public electronic auction service.

NOW, THEREFORE, BE IT RESOLVED by the Town Council that:

1. The following described property is hereby declared to be surplus to the needs of the Town:

Dept.	Vin/Ser.#	Description
General Gov		41 Computers
General Gov		41 Monitors
General Gov		Keyboards & Cables
General Gov		Drive Encloser
General Gov		Projector
Finance	070X766	Hasler Mail Folder Inserter with Cabinet
Planning	JPSC72F4HT	HP model Q3716A printer with toner
Planning		Toshiba model T-FC500U-K printer with toner
Planning	2G1WS55R479259317	2007 Chevrolet Impala
Police	2B3KA43V19H597268	2009 Dodge Charger
Police	2B3CL1CT6BH556478	2011 Dodge Charger
Police	2B3CL1CT1BH554675	2011 Dodge Charger
Police	2B3CL1CT5BH556483	2011 Dodge Charger
Police	2C3DXAT6EH121240	2014 Dodge Charger
Police		6 vehicle prisoner dividers
Police		4 used ATV tires
Fire	1FMRU16W61LA24361	2001 Ford Expedition
Fire		1992 Service Truck Body
Fire	Various	Lot of 9 - 1.5" Akron Turbojet nozzle
Fire	Panther/Warb-Hp	Lot of 31 air packs
Fire	Panther/Warb-Hp	Lot of 63 masks
Fire	Panther/Warb-Hp	Lot of 59 bottles
Public Works	1FTWW32Y88EB42978	2008 Ford F-350
P & R	IFDWF36S23EB91247	2003 Ford F-350 Dump
P & R	TC2653D090624	2000 John Deer 2653A reel mower

P & R	015387	Scag Turf Tiger
P & R		John Deere 420 Tractor
P & R		Allis Chalmers 5015/9518 Tractor
P & R		John Deere Gator 4x2
P & R		Diamond Vera Pro 2000 3 wheel drag

2. The Town Manager or his designee is authorized to receive, on behalf of the Town Council, bids via public electronic auction for the purchase of the described property.
3. The public electronic auction will be held beginning no earlier than October 19, 2020.
4. The Town Council further authorizes the disposal of Town surplus property by use of a public electronic auction system provided by GovDeals Inc. The property for sale can be viewed at [www.govdeals.com](http://www.govdeals.com). Citizens wanting to bid on property may do so at [www.govdeals.com](http://www.govdeals.com). The terms of the sale shall be: All items are sold as is, where is, with no express or implied warranties; All items will be sold for cash or certified check only; Payment must be received for all items sold before they may be removed from the premises; All items sold must be paid for and removed from the site of the sale within 5 business days of the sale, or they will be subject to resale.
5. The Town Clerk shall cause a notice of the public auction for surplus property to be noticed by electronic means in accordance with G.S. 160A-270(c), available on the Town of Smithfield website [www.smithfield-nc.com](http://www.smithfield-nc.com)
6. The highest bid, if it complies with the terms of the sale, may be accepted by the Finance Director or his designee and the sale consummated.

Adopted this the 6<sup>th</sup> day of October 2020

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M. Andy Moore, Mayor

ATTEST:

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Shannan L. Parrish, Town Clerk





# Request for Town Council Action

Consent Agenda Item: Resolution to Submit CDBG Application  
Date: 10/06/2020

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Subject: CDBG-CV Application Submission  
Department: General Government  
Presented by: Town Manager Michael Scott  
Presentation: Consent Agenda

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## Issue Statement

In order to submit an application for a North Carolina Community Development Block Grand Coronavirus (CDBG-CV) Program, the Town Council must adopt a Resolution stating such.

## Financial Impact

None. The grant is up to \$900,000 with no matching funds required.

## Action Needed

The Council is asked to adopt Resolution No. 667 (16-2020)

## Recommendation

Staff Recommends adopting Resolution No. 667 (16-2020) for the submission of a CDBG-CV application that will benefit small business with economic recovery as well as provide increased free internet access for its citizens in open public spaces that are conducive to promoting healthy, socially-distanced gathering spaces.

Approved:  Town Manager  Town Attorney

## Attachments:

- Staff Report
- Resolution No. 667 (16-2020)



## Staff Report

Consent Resolution  
Agenda to Submit  
Item: CDBG  
Application

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In order to formally submit a North Carolina Community Development Block Grant Coronavirus (CDBG-CV) Program application, the Town must formally adopt a resolution stating its intent. If awarded, the grant funds will be used to benefit small business with economic recovery as well as provide increased free internet access for its citizens in open public spaces that are conducive to promoting healthy, socially-distanced gathering spaces. This would be accomplished by creating WiFi hotspots for free internet access in parks **throughout the Town's four districts. This would also include renovating the downtown amphitheater.** Renovation for the amphitheater would create an accessible location for all, provide free-wifi, install seating and tables where employees can work, students can study and everyone can research healthcare options; or simply relax and have peace of mind.

**TOWN OF SMITHFIELD  
RESOLUTION # 667 (16-2020)**

**APPLICATION FOR NORTH CAROLINA COMMUNITY DEVELOPMENT BLOCK GRANT CORONAVIRUS  
(CDBG-CV) PROGRAM FUNDING FOR SMALL BUSINESS AND ECONOMIC RECOVERY AND ENHANCING  
INTERNET ACCESS**

**WHEREAS**, the Town of Smithfield’s Town Council has previously indicated its desire to assist in small business and economic recovery, as well as enhancing internet access within the Town; and,

**WHEREAS**, the Town Council has held two public hearings concerning the proposed application for North Carolina Community Development Block Grant Coronavirus (CDBG-CV) funding to benefit its most vulnerable and high-risk citizens, those lacking proper internet access and those small businesses negatively impacted by COVID-19 restrictions, and

**WHEREAS**, the Town Council wishes the Town to pursue a formal application for North Carolina Community Development Block Grant Coronavirus (CDBG-CV) to benefit its high proportion of low to moderate income citizens, and

**WHEREAS**, the Town Council certifies it will meet all federal regulatory and statutory requirements of the state of North Carolina Community Development Block Grant Coronavirus (CDBG-CV) program,

**NOW, THEREFORE BE IT RESOLVED**, by the Town of Smithfield Town Council that:

The Town is authorized to submit a formal application to the North Carolina Department of Commerce’s Rural Economic Development Division (REDD) for approval of a Community Development Block Grant Coronavirus (CDBG-CV).

The Mayor Andy Moore, and successors so titled, is hereby authorized to execute and submit a formal application to the North Carolina Department of Commerce for approval of a Community Development Block Grant Coronavirus (CDBG-CV).

That Michael Scott, Manager, and successors so titled, is hereby authorized and directed to furnish such information as the North Carolina Department of Commerce may request in connection with an application or with the project proposed; to make assurances as contained in the application; and to execute such other documents as may be required in connection with the application.

Adopted this the 6<sup>th</sup> day of October, 2020 in Smithfield, North Carolina.

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M. Andy Moore, Mayor

ATTEST:

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Shannan L. Parrish, Town Clerk





# Request for Town Council Action

Consent  
Agenda  
Item: Bring Forward  
Encumbrances  
Date: 10/06/2020

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Subject: To Bring Forward Budget Encumbrances from the 2019-2020 Budget Year to the 2020-2021 Budget Year in the General, Water/Sewer, Electric and J.B George Funds.

Department: Finance  
Presented by: Greg Siler – Finance Director  
Presentation: Consent Agenda Item

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Issue Statement: Several budgeted line items in the General, Water/Sewer, Electric and J.B. George Fund were delayed in the 2019-2020 Fiscal Year for various reasons and need to be brought forward to the current year.

Financial Impact: As indicated by each amendment: \$677,008 in the General Fund, \$213,812 in the Water/Sewer Fund, \$233,862 in the Electric Fund and \$2,679 in the J.B. George Fund

Action Needed: Board Approval on Attachments A & B

Recommendation: Council Approval

Approved:  Town Manager  Town Attorney

Attachments: 1. Year End Approved Purchase Encumbrances for 2019-2020 (Attachment A)  
2. Year End Approved Purchase Order Encumbrances for 2019-2020 (Attachment B)



# Staff Report

Consent  
Agenda Encumbrances  
Item:

On June 02, 2020, Council granted approval to bring forward funds from the 2019-2020 budget year for ongoing projects and/or items ordered through purchase orders that had not been completed or delivered (see attachment A and B). In summary, the General Fund was approved to encumber \$736,064; the Water/Sewer Fund was approved for \$350,477; the Electric Fund was approved for \$264,160; and the J.B. George Fund was approved for \$3,529. The actual amount needed in each Fund decreased as some purchases were completed. In the General Fund \$677,008 of the \$736,064 approved is needed; \$213,812 of the approved \$350,477 Water/Sewer Fund is needed; \$233,862 of the approved \$264,160 in the Electric Fund is needed; and \$2,679 of the approved \$3,529 for the J.B. George Fund is needed. Below is a summary of the approved amount compared to the actual amount needed to encumber.

	<u>Amount Approved</u>	<u>Actual Needed</u>
General Fund	\$ 736,064	\$ 677,008
Water/Sewer Fund	350,477	213,812
Electric Fund	264,160	233,862
J.B. George Fund	3,529	2,679

**EXHIBIT A**

**ENCUMBRANCES FROM 2019-2020 TO 2020-2021**

**GENERAL FUND**

	<b>Amount Requested</b>	<b>Amount Available</b>
10-61-4110-5300-5710 Non-Departmental - Economic Development	\$ 25,000	\$ 25,000
10-61-4110-5300-5712 Non-Departmental - S.H.A.R.P Reimbursements	20,000	20,000
10-10-4110-5300-0771 Non-Departmental - Unemployment Compensation	15,000	15,000
10-10-4900-5300-4501 Planning - ServiceContracts (Engineering Standards Manual & Pedestrian Planning)	30,000	30,000
10-10-4900-5700-7400 Planning - Capital Outlay	12,000	12,000
10-60-5500-5300-3440 General Serv. - Appearance Commission	26,685	4,747
10-60-5500-5700-7400 General Serv. - Capital Outlay (Painting Mausoleum)	3,000	3,000
10-30-5600-5300-7300 Streets -Sidewalk & Curb Repair (NCDOT Sidewalk Agreement)	112,406	112,406
10-30-5600-5300-7400 Streets -Capital Outlay (I95 Bridge Lighting)	93,000	93,000
10-30-5600-5300-7401 Streets -Street Paving (Equity Drive)	173,000	173,000
10-76-5800-5970-9110 Transfer to GF Capital Reserve	80,000	80,000
	<u>\$ 590,091</u>	<u>\$ 568,153</u>

**WATER FUND**

30-71-7220-5300-5710 Water Dist/Sewer Coll. - Economic Development	<u>\$ 200,000</u>	<u>\$ 200,000</u>
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**Electric FUND**

31-72-7230-5300-5710 Electric - Economic Development	<u>\$ 200,000</u>	<u>\$ 200,000</u>
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**J.B. GEORGE BEAUTIFICATION FUND**  
 40-61-4100-5300-3400 J.B. George Projects  
 40-61-4100-5300-3410 J.P. George Projects

\$	2,381	\$	2,381
	1,148		298
\$	<u>3,529</u>	\$	<u>2,679</u>

APPROVED: \_\_\_\_\_  
 M Andy Moore, Mayor

VERIFIED: \_\_\_\_\_  
 Shannan Parrish, Town Clerk



EXHIBIT B

ENCUMBRANCES FOR PURCHASE ORDERS ISSUED PRIOR TO 6/30/2020

G/L ACCOUNT	ACCOUNT DESCRIPTION	DEPARTMENT	VENDOR	PO#	AMOUNT REQUESTED	AMOUNT NEEDED
10-10-4100-5700-7400	Capital Outlay	Gen Gov	CB Towers LLC	20208008	\$20,317.50	\$20,317.50
10-10-4100-5700-7400	Capital Outlay	Gen Gov	Municipal Code Corp	20186293-R2	\$9,600.00	\$9,600.00
10-20-5100-5300-3100	Vehicle Supplies/Maint.	Police	Communications International	20207993	\$2,125.00	\$2,125.00
10-20-5100-5300-3100	Vehicle Supplies/Maint.	Police	Communications International	20207994	\$3,072.00	\$0.00
10-20-5100-5300-3100	Vehicle Supplies/Maint.	Police	Communications International	20207995	\$660.00	\$0.00
10-20-5100-5300-3300	Supplies/Operations	Police	Rhinehart Fire Services	20208045	\$500.00	\$0.00
10-20-5100-5300-3600	Uniforms	Police	Lawmens	20207960	\$655.00	\$655.00
10-20-5100-5300-3600	Uniforms	Police	Galls	20207992	\$1,278.00	\$0.00
10-20-5100-5300-3600	Uniforms	Police	American Uniform Sales	20208101	\$1,200.00	\$0.00
10-20-5100-5300-3600	Uniforms	Police	Lawmens	20208102	\$1,450.00	\$1,450.00
10-20-5100-5700-7400	Capital Outlay	Police	Performance Chrysler	20208024	\$16,365.00	\$16,365.00
10-20-5100-5700-7400	Capital Outlay	Police	Atlantic Resources	20208025	\$2,400.00	\$2,400.00
10-20-5100-5700-7400	Capital Outlay	Police	First Citizens Bank Visa(NCDMV)	20208026	\$5,000.00	\$5,000.00
10-20-5300-5125-0601	Firefighters Physicals	Fire	UNC Physicians Network	20208076	\$11,340.00	\$11,340.00
10-60-5500-5300-3440	Appearance Commission	Parks & Rec	Barrs Recreation	20207896	\$12,665.20	\$0.00
10-60-5500-5300-3440	Appearance Commission	PW-Appearance	Partners in Recognition	20207936	\$3,018.66	\$0.00
10-60-5500-5300-3440	Appearance Commission	Parks & Rec	Rodney S Blackmon	20208098	\$3,877.67	\$3,877.67
10-60-5500-5700-7400	Capital Outlay	PW-Appearance	Mark Gregory Roofing	20197362-R1	\$14,800.00	\$14,800.00
10-60-5500-5700-7400	Capital Outlay	PW-Appearance	Dennis Evans	20197408-R1	\$10,000.00	\$10,000.00
10-60-6200-5300-1700	Equip Maint & Repair	Parks & Rec	Molinas Tree Service	20207605	\$1,800.00	\$0.00
10-60-6200-5300-1700	Equip Maint & Repair	Parks & Rec	James Paul Edwards Inc	20208096	\$1,800.00	\$1,800.00
10-60-6200-5300-1700	Equip Maint & Repair	Parks & Rec	James Paul Edwards Inc	20208097	\$850.00	\$850.00
10-60-6200-5300-1700	Equip Maint & Repair	Parks & Rec	Blueprint Construction	20208106	\$1,200.00	\$0.00
10-60-6200-5300-3300	Supplies/Operations	Parks & Rec	The Casey Group	20208067	\$1,510.00	\$0.00
10-60-6220-5300-1700	Equip Maint & Repair	Parks & Rec	The Sage Landscaper	20208099	\$1,500.00	\$0.00
10-60-6220-5300-1700	Equip Maint & Repair	Parks & Rec	Volt Power	20208100	\$3,420.00	\$0.00
10-60-6220-5300-3300	Supplies/Operations	Parks & Rec	Zones Inc	20208109	\$820.00	\$0.00
10-60-6220-5300-3900	Aquatic Supplies	Parks & Rec	Gupton Services	20208070	\$4,474.00	\$0.00
10-61-4110-5300-5710	Economic Development	Gen Gov	Shandy Communications	20208007	\$7,898.00	\$7,898.00
10-61-4110-5300-5710	Economic Development	Gen Gov	CB Towers LLC	20208008	\$376.75	\$376.75
					\$145,972.78	\$108,854.92

**WATER FUND**

				PO Number			
30-71-7200-5300-1700	Equip Maint & Repair	PU-Water Plant	KL Shane Inc	20208062	\$17,135.00	\$0.00	\$0.00
30-71-7200-5300-1700	Equip Maint & Repair	PU-Water Plant	Masons Fab & Designs	20208073	\$2,100.00	\$0.00	\$0.00
30-71-7200-5300-4501	Service Contracts	PU-Water Plant	Inenco Inc	20207799	\$7,400.00	\$0.00	\$0.00
30-71-7200-5700-7400	Capital Outlay	PU-Water Plant	TA Loving Company	20207990	\$110,000.00	\$0.00	\$0.00
30-71-7220-5300-1700	Equip Maint & Repair	PU-Water Sewer	Nixon Power Services	20207568	\$5,030.51	\$5,030.51	\$5,030.51
30-71-7220-5300-4501	Service Contracts	PU-Water Sewer	Nixon Power Services	20207568	\$8,781.84	\$8,781.84	\$8,781.84
					\$150,447.35		\$13,812.35

**ELECTRIC FUND**

31-72-7230-5300-1700	Equip Maint & Repair	PU-Electric	Mark Beauchamp	20207826	\$14,682.50	\$0.00	\$0.00
31-72-7230-5300-1700	Equip Maint & Repair	PU-Electric	Jackson Builders	20208042	\$2,250.00	\$0.00	\$0.00
31-72-7230-5300-3100	Vehicle Supplies/Maintena	PU-Electric	Altec Industries	20207881	\$5,526.80	\$0.00	\$0.00
31-72-7230-5300-3300	Supplies/Operations	PU-Electric	Anixter	20207785	\$2,426.88	\$2,426.88	\$2,426.88
31-72-7230-5300-3300	Supplies/Operations	PU-Electric	National Transformers	20208000	\$8,665.00	\$8,665.00	\$8,665.00
31-72-7230-5300-3300	Supplies/Operations	PU-Electric	Anixter	20208001	\$8,910.72	\$4,926.40	\$4,926.40
31-72-7230-5300-3300	Supplies/Operations	PU-Electric	Stuart C Itby Co	20208003	\$1,343.25	\$0.00	\$0.00
31-72-7230-5300-3300	Supplies/Operations	PU-Electric	National Transformers	20208004	\$15,060.00	\$15,060.00	\$15,060.00
31-72-7230-5300-3300	Supplies/Operations	PU-Electric	Wesco	20208005	\$5,294.80	\$2,783.80	\$2,783.80
					\$64,159.95		\$33,862.08

**GENERAL CAPITAL PROJECT FUND**

46-10-4900-5700-7400	Wayfinding	Planning	ACSM INC	20197166-R1	\$117,375.00	\$117,375.00	\$117,375.00
46-40-5800-5700-7404	Hook Leaf Truck	PW-Sanitation	NCDMV	20197333-R1	\$2,006.00	\$2,006.00	\$2,006.00
					\$119,381.00		\$119,381.00

APPROVED: \_\_\_\_\_

M. Andy Moore, Mayor

VERIFIED: \_\_\_\_\_

Shannan Parrish, Town Clerk



# Request for Town Council Action

Consent SRAC  
Agenda Fitness  
Item: Equipment  
Date: 10/06/2020

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Subject: SRAC Fitness Equipment Acquisition  
Department: Parks and Recreation / SRAC  
Presented by: Gary Johnson – Parks and Recreation Director  
Presentation: Consent Agenda Item

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## Issue Statement

The Smithfield Recreation and Aquatics Center is requesting approval to replace its cardio / fitness equipment.

## Financial Impact

Approved Budgeted Amount for FY 2019-2020: \$ 114,000.00

Amount of Purchase/Bid/ Contract: \$ 113,276.29

## Action Needed

Approve the request for the acquisition of cardio / fitness equipment for SRAC

## Recommendation

Approve the request for the acquisition of cardio / fitness equipment for SRAC

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff Report
2. Request for Proposals
3. Quote Totals



# Staff Report

Consent Agenda SRAC Fitness Equipment

In the 20-21 FY Budget, Town Council allocated \$ 114,000.00 for the acquisition and replacement of cardio / fitness equipment for SRAC. The current equipment, with a typical life span of 4 years, has been in service for 5 years with some pieces being in use since the **building's opening in 2009.**

The Parks and Recreation Department sent out a request and received proposals from three vendors. Advantage Sports and Fitness, Prosource Fitness Equipment and Freemotion Fitness each submitted.

After reviewing each proposal and researching the proposed equipment included in each, staff has put together an equipment package from multiple vendors in the amount of \$ 113,276.29 which is within the allocated and budgeted amount. SRAC is requesting to purchase PreCor cardio equipment from Advantage Sports and Fitness and a fitness bay system and attachments as well as spin bikes from Prosource Fitness Equipment. Even though the cardio equipment by Precor was not the lowest bid, the added value of durability and technology of that equipment outweighs the additional expense. By splitting the package, staff is convinced SRAC would be getting the absolute biggest value.

The request is for:

Advantage Sports and Fitness

7	Precor Treadmill	\$ 49,574.00
4	Precor Fixed Ramp Elliptical	\$ 23,776.00
2	Adapted Motion Adjustable Stride Elliptical	\$ 14,294.00
1	Precor Upright Bike	\$ 4,768.00
1	Precor Recumbent Bike	\$ 4,969.00
	Equipment Trade-in	(\$ 6,900.00)

Prosource Fitness Equipment

1	TRX Studio Line Triple Suspension Bay System	\$ 4,284.00
1	TRX Studio Land Mine Attachment	\$ 116.00
1	TRX Studio Line Srength Bay Post Attachment	\$ 1,236.00
6	TRX Storage Line Shelf	\$ 1,536.00
1	TRX Studio Line Stability Ball Shelf	\$ 206.00
24	Suspension Bay Attachements	\$ 1,447.03
3	Schwin AC Performance Group Cylce	\$ 5,697.00

Freight and Installation \$ 8,273.26

TOTAL \$ 113,276.29

**TOWN OF SMITHFIELD, NC**  
**REQUEST for PROPOSALS**

**TITLE: Fitness Equipment Replacement**

**ISSUE DATE:**

**SUBMITTAL DEADLINE:**

**ISSUING AGENCY:** *Smithfield Recreation and Aquatics Center*

This Request for Proposals (RFP) is to to solicit proposals from qualified firms to provide replacement fitness and cardiovascular equipment and general maintenance on the equipment

**SEALED BIDS SHALL be received BY MAIL, OR HAND-DELIVERY no later than 3:00 PM on Thursday, August 20, 2020**

**The address for mailings is:**

**Smithfield Recreation and Aquatics Center  
P.O. Box 2344  
Smithfield, NC 27577**

**The address for hand-deliveries is:**

**Smithfield Recreation and Aquatics Center  
600 M. Durwood Stephenson Parkway  
Smithfield, NC 27577**

**BIDS received after this deadline will not be considered.**

The firm must have the financial ability to undertake the work and assume the liability. The selected firm(s) will be required to furnish proof of Professional Liability insurance coverage in the minimum amount of \$1,000,000.00. The firm(s) must have an adequate accounting system to identify costs chargeable to the project.

## **SCOPE OF SERVICE**

The Smithfield Recreation and Aquatics Center is requesting bids for the replacement fitness and cardiovascular equipment. The contractor must be able to provide services and/or materials to the Town pursuant of the provisions below.

**PURPOSE:** The purpose and intent of the Request for Proposals (RFP) is to solicit proposals from qualified firms to provide replacement fitness and cardiovascular equipment and general maintenance on the equipment

**BACKGROUND:** The Town desires a contractor to provide these services upon purchase and provide 3 years of maintenance on a quarterly period.

**TOWN DESIGNATED REPRESENTATIVE:**

Dale Ham  
Director, SRAC  
Town of Smithfield  
600 M. Durwood Stephenson Parkway  
Smithfield, NC 27577  
(919) 934-1408  
[Dale.ham@smithfield-nc.com](mailto:Dale.ham@smithfield-nc.com)

Should any proposing contractor request to visit on site, correspondence, and questions concerning this RFP should be directed to Dale Ham

**REQUIREMENTS:** The contractor is required to provide, install new equipment. Removal / Trade-in / Buyback of existing equipment and provide maintenance services on all equipment. The RFP shall meet general specifications for the following equipment:

**NEW EQUIPMENT:**

Cardiovascular Equipment:

- Seven (7) Full Commercial Treadmills w/ Embedded TV & Adaptive Box for Cable
- Two (2) Full Commercial Fixed Stride Ellipticals w/ Embedded TV & Adaptive Box for Cable
- Two (2) Full Commercial Adjustable Stride Ellipticals w/ Embedded TV & Adaptive Box for Cable
- One (1) Full Commercial Recumbent Bike w/ Embedded TV & Adaptive Box for Cable
- One (1) Full Commercial Upright Bike w/ Embedded TV & Adaptive Box for Cable
- Four (4) Full Commercial Spinning Bikes

Functional Training Equipment:

- Three (3) Functional Systems w/ Storage Bay, including:
  - Storage
  - Squat Rack
  - Landmine
  - Heavy Punching Bag

Plates Dumbbells and Misc Items:

- One (1) 1500 lbs. Capacity Olympic Bar
- One (1) 410 lbs. of Rubber Encased Olympic Plates
- Four (4) Slam Balls (10lb, 15lb, 20lb, 25lb)
- Five (5) Kettlebells (15lb, 20lb, 25lb, 35lb, 45lb)
- Two (2) Stability Balls (55cm, 65cm)

**REMOVAL / TRADE-IN / BUYBUCK of EXISTING EQUIPMENT:**

Ten (10) Treadmills

Six (6) Ellipticals  
Two (2) Recumbent Bikes

**MAINTENANCE of EQUIPMENT:**

Three (3) Year Preventive Maintenance Services for all cardiovascular equipment (QUARTERLY)

**SUBMITTAL REQUIREMENTS**

**Firms submitting RFPs are encouraged to carefully check them for conformance to the requirements stated above. If RFPs do not meet ALL of these requirements they will be disqualified.**

**SELECTION PROCESS**

Following is a general description of the selection process:

- The Town of Smithfield Selection Committee will review all qualifying RFP submittals.
- The Town of Smithfield Selection Committee MAY, at the Town's discretion, shortlist a minimum of two (2) firms to be interviewed.
- In order to be considered for selection, consultants must submit a complete response to this RFP prior to the specified deadlines. Failure to submit all information in a timely manner will result in disqualification.

**SELECTION CRITERIA**

All firms who submit responsive RFQs will be considered.

**SUBMISSION SCHEDULE AND KEY DATES**

\*\* Notification will **ONLY** be sent to selected firms.

**SMITHFIELD RECREATION AND AQUATICS CENTER  
EQUIPMENT PROPOSAL QUOTES**

**ADVANTAGE SPORTS & FITNESS INC**

<b>Quantity</b>	<b>Product</b>	<b>Sale Price</b>	<b>Line Total</b>
	<b>DISPLAYS</b>		
	PRECOR 700 Series 15" P82 Console		
	<b>TREADMILLS</b>		
7	Precor BP TRM781 P82 Tread/120V 120V / 20 AMP Dedicated Line 5-20R NEMA Receptacle	\$7,082.00	\$49,574.00
	<b>ELLIPTICALS</b>		
4	Fixed Ramp Precor BP EFX781 P82 TB Elliptical 110V Power Required	\$5,944.00	\$23,776.00
	<b>MISC: ADAPTED MOTIOIN TRAINER</b>		
2	Adjustable Stride 0-36" Precor BP AMT783 P82 FS 110V Power Required	\$7,147.00	\$14,294.00
	<b>CYCLES</b>		
1	Precor BP UBK885 P82 Upright Bike	\$4,768.00	\$4,768.00
1	Precor BP RBK885 P82 Recumbent Bike 110V Power Required	\$4,969.00	\$4,969.00
	<b>WARRANTY</b>		
	EXTENDED WARRANTY 3 Years Parts and Labor		
	<b>TRADE IN EQUIPMENT</b>		
10	True Treadmills	\$400.00	
8	True Ellipticals	\$300.00	-\$6,900.00
2	True Recumbent Cycles	\$250.00	
	<b>TOTAL</b>		<b>\$90,481.00</b>



**SMITHFIELD RECREATION AND AQUATICS CENTER  
EQUIPMENT PROPOSAL QUOTES**

**PROSOURCE FITNESS EQUIPMENT**

<b>Quantity</b>	<b>Product</b>	<b>Sale Price</b>	<b>Line Total</b>
	<b>DISPLAYS</b>		
	TRUE FITNESS 650 Series Envision16- 16" Adaptive Touch Screen Display		
	<b>TREADMILLS</b>		
7	TRUE FITNESS Commercial 650 Series 120V / 20 AMP Dedicated Line 5-20R NEMA Receptacle	\$5,831.00	\$40,824.00
	<b>ELLIPTICALS</b>		
2	TRUE FITNESS Commercial 900 Series Elliptical 110V / 15 AMP Power Required	\$5,391.00	\$10,782.00
	<b>MISC: ADJUSTABLE STRIDE ELLIPTICAL</b>		
4	TRUE FITNESS Spectrum Adjustable Stride 110V / 15 AMP Power Required	\$6,034.00	\$24,136.00
	<b>CYCLES</b>		
1	TRUE FITNESS Commercail 900 Series Upright Bike	\$2,994.00	\$2,994.00
1	TRUE FITNESS Commercail 900 Series Recumbent Bike 110V / 15 AMP Power Required	\$3,253.00	\$3,253.00
	<b>WARRANTY</b>		
	LIFETIME Frame Treadmill: 5 yr Motor / 3 Years Parts and Labor Elliptical / Bike: 3 yr Motor / 3 Years Parts and Labor		
	<b>TRADE IN EQUIPMENT</b>		
10 8 2	True Treadmills True Ellipticals True Recumbent Cycles	-\$3,500.00	-\$3,500.00
	<b>TOTAL</b>		<b>\$78,489.00</b>

**SMITHFIELD RECREATION AND AQUATICS CENTER  
EQUIPMENT PROPOSAL QUOTES**

**FREEMOTION  
(INCOMPLETE BID)**

<b>Quantity</b>	<b>Product</b>	<b>Sale Price</b>	<b>Line Total</b>
	<b>DISPLAYS</b>		
	FREE MOTION		
	<b>TREADMILLS</b>		
5	t22.9 Reflex Treadmill	\$5,995.00	\$29,975.00
2	t22.9 Incline Trainer	\$6,495.00	\$12,990.00
	<b>ELLIPTICALS</b>		
	<i>NONE QUOTED</i>		
	<b>MISC:</b>		
	<i>NONE QUOTED</i>		
	<b>CYCLES</b>		
4	t22.7 Coach Bike	\$3,495.00	\$13,980.00
	<b>WARRANTY</b>		
	3 Years Parts and Labor		
	<b>TRADE IN EQUIPMENT</b>		
	<i>NONE QUOTED</i>		
		<b>TOTAL</b>	<b>\$56,945.00</b>



# Request for Town Council Action

Consent Advisory  
Agenda Board  
Item: Appointment  
Date: 10/06/2020

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Subject: Advisory Board Appointments  
Department: General Government  
Presented by: Town Clerk - Shannan Parrish  
Presentation: Consent Agenda

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## Issue Statement

The Town Council is asked to consider a new appointment to the Parks and Recreation Advisory Committee

## Financial Impact

N/A

## Action Needed

The Town Council is asked to consider and approve the appointment of Paul **"Sonny" Howard, Jr.** to the Parks and Recreation Advisory Committee

## Recommendation

Staff recommends approval of this appointment

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff Report
2. **Paul "Sonny" Howard, Jr.**– Board Application



# Staff Report

Consent    Advisory  
Agenda    Board  
Item      Appointments

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## Appearance Commission

**Paul "Sonny" Howard, Jr.** has submitted an application for consideration to be appointed to a first term on the Parks and Recreation Advisory Committee

## Current Board vacancies are as follows:

- Appearance Commission – 2 positions
- Board of Adjustment – 3 In Town positions
- Library Board of Trustees – 1 position
- Parks and Recreation Advisory Commission – 2 positions



Town of Smithfield
Board, Commission, or Committee
Application

Name: Howard Jr. "Sonny" Paul H.
Home Address: 221 West Woodlawn Drive (MI)
Business Name & Address: Howard Farms 1661 Hwy 96 N. Selma N.C. 27576
Telephone Numbers: 919-934-2540 919-524-5669 Debbie@Cardinarealty-nc.com

Please check the Board(s) that you wish to serve on:

Appearance Commission
Board of Adjustment In Town Resident
Board of Adjustment ETJ Member
Historic Properties Commission
Library Board of Directors
Parks/Recreation Advisory Commission
Planning Board In-Town Resident
Planning Board ETJ Resident
Other:

Interests & Skills: I truly want to see the Town of Smithfield grow in all aspects, economically, business, industry and continue to provide for our families and youth to have all varieties of recreation and an array of activities for every family to enjoy.

Circle highest level of education completed: (High School) 10 11 12 GED College 1 2 3 4 5 6

Recent Job Experiences: Worked as an official (1972-2017) in football, basketball, baseball, and softball. officiated for 42 yrs. on the high school level and umpired USSA softball for 45 years Hall of fame inductee 1996. USSA - (First inductee).

Civic or Service Organization Experience: Member of St. Paul's Episcopal Church - since 1992

Town Boards previously served on and year(s) served:

Please list any other Boards/Commissions/Committees on which you currently serve: 1) State Board of Episcopal Farm Workers Ministry 3) Johnston County livestock Arena Advisory Board.

Why are you interested in serving on this Board/Commission/Committee? *I have worked probably longer (1972 - 2017) as a official in football, basketball, baseball, and softball than anyone in Smithfield. I have seen the Parks and Recreation Dept. grow tremendously in so many ways. The Smithfield Community Park, Aquatics Center (SRAC) Center, The Greenway Expansion, Dog Park, and the coming of our splash pool. I would like to be part of this growth and share ideas for our continual growth in P & R.*

Affirmation of Eligibility: Has any formal charge of professional misconduct, criminal misdemeanor or felony ever been filed against you in any jurisdiction?

Yes  No If yes, please explain disposition: \_\_\_\_\_

Is there any conflict of interest or other matter that would create problems or prevent you from fairly and impartially discharging your duties as an appointee of the Smithfield Town Council?  Yes  No If yes, please explain: \_\_\_\_\_

I understand this application is public record and I certify that the facts contained in this application are true and correct to the best of my knowledge. I authorize and consent to background checks and to the investigation and verification of all statements contained herein as deemed appropriate and if necessary. I further authorize all information concerning my qualifications to be investigated and release all parties from all liability for any damages that may result from this investigation. I understand and agree that any misstatement may be cause for my removal from any Board/Commission/Committee. I understand regular attendance to any Council Board/Commission/Committee is important and, accordingly, I further understand that if my attendance is less than the standards established for any such body that this is cause for removal. Lacking any written standards for attendance by any Board/Commission/Committee, it is expected that I will attend at least 75% of all meetings during any one calendar year to maintain my seat on any Board/Commission/Committee to which I may be appointed. This form will remain on file in the Office of the Town Clerk and requests for updates will be sought prior to any consideration for reappointment (or future appointment) to any Board/Commission/Committee.

Printed Name: Paul H. Howard Jr.  
 Signature: *Paul H. Howard Jr.* Date: 13 Sep. 2020

Return completed for to:  
 Shannan Parrish  
 Town Clerk  
 P. O. Box 761  
 Smithfield, North Carolina 27577  
 Phone: (919) 934-2116 Fax: (919) 989-8937 E-Mail: [shannan.parrish@smithfield-nc.com](mailto:shannan.parrish@smithfield-nc.com)

**Applicants are required to be a resident of the Town of Smithfield for In-Town positions and within the Town's ETJ for ETJ positions**



# Staff Report

Consent  
Agenda  
Item: New  
Hire /  
Vacancy  
Report

## Background

Per Policy, upon the hiring of a new or replacement employee, the Town Manger or Department Head shall report the new/replacement hire to the Council on the Consent Agenda at the next scheduled monthly Town Council meeting.

In addition, please find the following current vacancies:

<u>Position</u>	<u>Department</u>	<u>Budget Line</u>
Assistant Finance Director	Finance	10-10-4200-5100-0200
Firefighter I	Fire	10-20-5300-5100-0200
Fire Inspector (Part-time)	Fire	10-20-5300-5100-0210
Licensed Water Plant Operator	PU – Water Plant	30-71-7200-5100-0200
Police Officer I (4 positions)	Police	10-20-5100-5100-0200
Pump Station Mechanic	PU – Water/Sewer	30-71-7220-5100-0200

## Action Requested

The Town Council is asked to acknowledge that the Town has successfully filled the following vacancies in accordance with the Adopted FY 2020-2021 Budget.

<u>Position</u>	<u>Department</u>	<u>Budget Line</u>	<u>Rate of Pay</u>
P/T Lifeguard	P&R - Aquatics	10-60-6220-5100-0230	\$8.00/hr.
P/T SRAC General Staff	P&R – Aquatics	10-60-6220-5100-0210	\$9.00/hr.

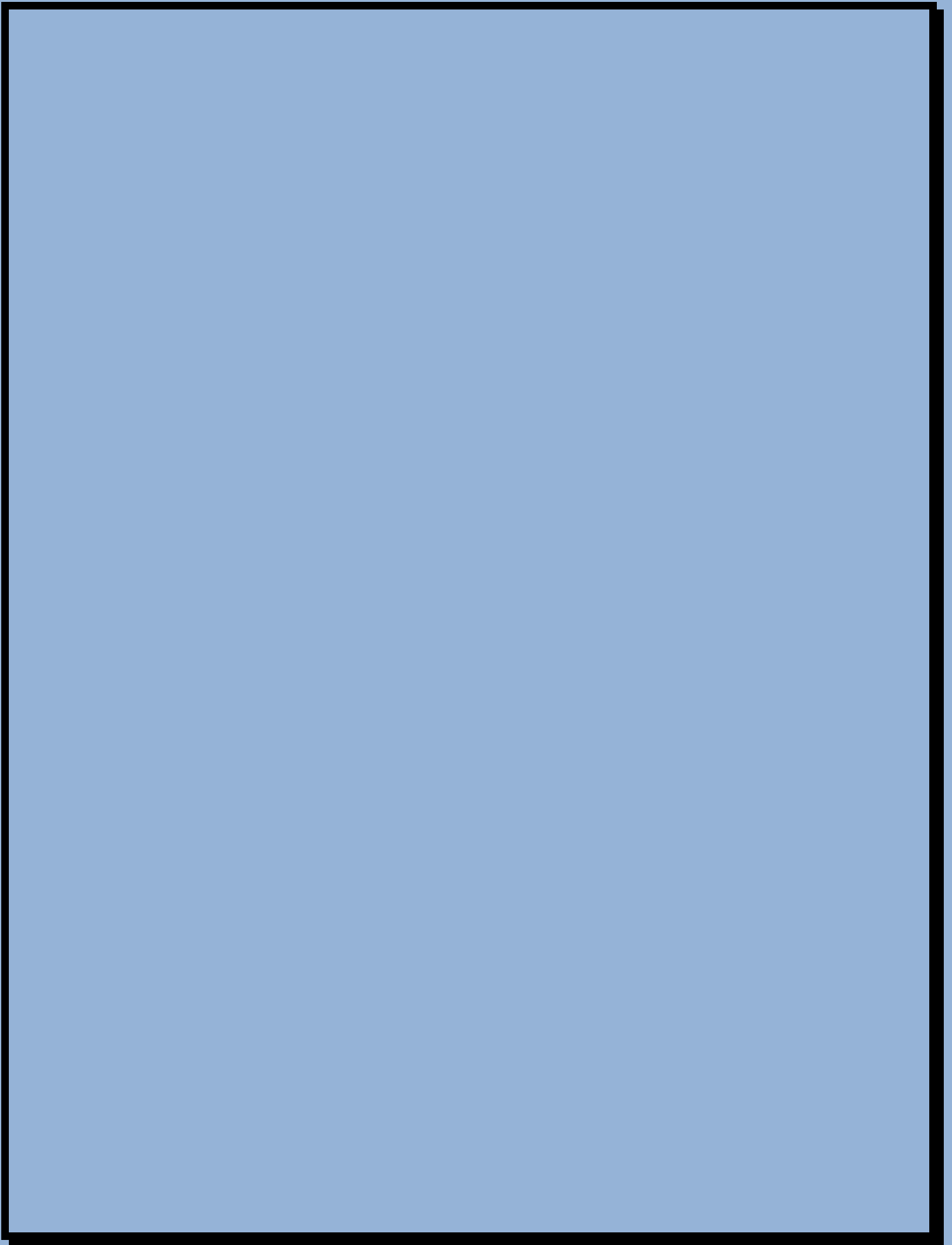
## Additional Notes – COVID-19:

While we have experienced a few positive COVID tests with town staff, we have overall been very fortunate. Employees have been diligent with proper hygiene and adherence to safety guidelines and protocols. In addition, department heads are exercising an abundance of caution and providing proper time off for testing and quarantining to ensure the best of safety for employees and the public we serve. To this date, we have had no need for employees to request donations of sick leave from other employees. However, administration will be quick to act should the need arise.





# Business Items





# Request for Town Council Action

Business Item: Traffic Grant  
Date: 10/06/2020

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Subject: GHSP Traffic Grant  
Department: Police Department  
Presented by: Chief R.K. Powell  
Presentation: Business Item

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## Issue Statement

The Police Department has been awarded **the GHSP's FY 2021** grant, which Council had already approved the agency to apply for the grant in March of 2020. The agency has been **authorized to proceed with the implementation of GHSP's FY 2021 grant. The approved contract period will begin on October 1, 2020 and will end on September 30, 2021.**

## Financial Impact

Amount of Purchase/Bid/ Contract: Grant would pay 85% first year, 70% second year and 50 % third year. First year grant: \$242,492/ Towns Portion: \$36,3745, Second Year Grant \$122,008/ Towns Portion \$36,603, Third Year Grant \$122,008/ Towns Portion \$61,004.

## Action Needed

It is requested that the Town Council to allow the agency to accept this grant and to create a traffic safety team and approve the budget amendment included with this request.

## Recommendation

It is requested that the Town Council to allow the agency to accept this grant and to create a traffic safety team and approve the budget amendment included with this request.

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff Report
2. GHSP Notification
3. Budget Amendment



# Staff Report

Business Item: Traffic Grant Acceptance

The grant will cover all personnel expenses and equipment expenses for a two-officer traffic team. This includes vehicles, vehicle equipment, radios, video cameras, officer salaries and benefits, officer equipment, potential salary increases during the grant period, fuel and radar units. The match amounts for the grant are 15% for year 1, 30% for year 2 and 50% for year 3. Equipment purchases are all included in year one and not spread over the 3-year period.

It is estimated the year one grant would be \$242,492.00. The match for the Town in the first year would be \$36,374.00. In year 2, the grant amount would be \$122,008, with the Town's match being \$36,603. Year 3 would be like year 2 in the grant amount, but the match would increase to \$61,004. Following year three of the grant, all equipment becomes the property of the town and the town is under no obligation to continue the program. The number of officers hired under the grant could then be decreased through attrition, should the Council choose to do so.

\$30,000 was budgeted in the event the Police Department was awarded the grant. Those funds were placed in the General Fund Contingency line until the grant became a reality. Approval of a budget amendment is included in this request to move the funds from the General Fund Contingency line to the Police Department.

In summary, the Town would receive assets and police officer time equal to \$494,000 at a three-year total cost to the Town of about \$135,000. The Town is requested to allow the Police Department to accept this grant and move forward with the implementation of the Traffic Safety Team.



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

ROY COOPER  
GOVERNOR

J. ERIC BOYETTE  
SECRETARY

September 14, 2020

James Grady  
TOWN OF SMITHFIELD  
PO Box 761  
SMITHFIELD, NC 27577

Application #: 1000009081  
Agreement #: 2000042148  
Project #: GHSP2021-PERSONNEL/EQUI

Dear James Grady,

The Governor's Highway Safety Program (GHSP) has received notification from the National Highway Traffic Safety Administration that the North Carolina Highway Safety Plan for Fiscal Year 2021 has been approved. You are authorized to proceed with implementation of the above referenced Agreements as described in its narrative and budget detail and subject to the conditions stated in the Agreement of Conditions.

The Approved Contract Period will begin on October 1, 2020 and end September 30, 2021. Only allowable costs incurred during this approved period are eligible for reimbursement. All costs must be incurred by September 30, 2021. Requests for reimbursement for costs incurred after September 30, 2021 will be denied. Additionally, GHSP must receive final claim for reimbursement no later than October 31, 2021.

Any changes in the nature, scope, or funding of this grant must be in writing and have the prior written approval of the GHSP. Any proposed changes must be submitted via the Partner connect/Grants Management System on a Change Request and be received by the GHSP at least 30 days prior to the effective date of such revision. The deadline for budget revisions is June 30, 2021 .

Should you need additional information or for assistance in scheduling a press event announcing the award of this grant, please contact your Highway Safety Specialist. I look forward to a successful project and I thank you for your commitment to highway safety.

Sincerely,

A handwritten signature in black ink that reads "Mark Ezzell".

Mark Ezzell  
Director



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## State of North Carolina North Carolina Department of Transportation Governor's Highway Safety Program

The North Carolina Governor's Highway Safety Program (GHSP) will award federal assistance in support of the project described below. The grantee affirms this GHSP award and enters into this grant agreement with GHSP. This grant period is October 1, 2020 through September 30, 2021.

The following documents are incorporated by reference and made part of this pending grant agreement:

- (1) Governor's Highway Safety Program's approved grant application;
- (2) The signed Agreement of Conditions that the grantee signed and provided to GHSP;
- (3) Resolution form that the grantee signed and provided to GHSP, and;
- (4) Any award notifications containing special conditions or requirements, if issued.

This agreement is not valid until the date the authorized NC Department of Transportation (NCDOT), Governor's Highway Safety Program (GHSP) official's electronic signature is entered for this grant agreement.

### **NCDOT GHSP Award**

Upon the Execution of this grant agreement by the grantee named below, GHSP will award a federal grant as follows:

Project Number: PT-21-06-31

Grantee: 1000001006 / TOWN OF SMITHFIELD

Application Number: 1000009081

Agreement Number: 2000042148

CFDA Number: 600

Total Eligible Cost (in U.S. Dollars): 191,852.00

Federal Percentage of Total Eligible Cost (in U.S. Dollars): 85.00000

Local Percentage of Total Eligible Cost (in U.S. Dollars): 15.00000

Effective Date: October 1, 2020



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Maximum Percentage (s) of GHSP Participation: Percentages of Federal participation are based on amounts included in the approved project budget, modified as set forth in the text following the project description.

Project Description: The Project Description includes information describing the Project within the Project Application submitted to GHSP and the approved project budget, modified by any additional statements displayed in this Grant Agreement and, to the extent GHSP concurs, statements in other documents including attachments entered in the grants management system.

The Grantee, by executing this grant agreement, affirms intent to accept this GHSP award; adopts and ratifies all statements, representations, warranties, covenants and materials it has submitted to GHSP; consents to this GHSP award; and agrees to all terms and conditions set forth in this Grant Agreement. By executing this Grant Agreement, I am simultaneously executing any Supplemental Agreement that may be required to effectuate this Grant Agreement.

Awarded by: NC Department of Transportation-GHSP

Executed by: Mark Ezzell, Director

Awarded to: TOWN OF SMITHFIELD

Executed by: James Grady

**BUDGET AMMENDMENTS**  
**October 6, 2020**

<u>GENERAL FUND</u>	<u>BEFORE</u>	<u>ADJ.</u>	<u>AFTER</u>
<b>1. Revenue</b>			
10-20-3300-3307-0090 Grant - GHSP	\$ <u>          -</u>	\$ <u>  191,852</u>	\$ <u>  191,852</u>
 <b>Expenditures</b>			
10-00-9990-5300-0000 General Fund Contingency	\$ 401,989	\$ (33,856)	\$ 368,133
10-20-5100-5100-0200 Salaries	2,154,900	87,292	2,242,192
10-20-5100-5125-0600 Group Insurance	470,000	34,716	504,716
10-20-5100-5300-0800 Training	13,895	1,200	15,095
10-20-5100-5700-7400 Police - Capital	271,550	102,500	374,050
	<u>\$ 3,312,334</u>	<u>\$ 191,852</u>	<u>\$ 3,504,186</u>

To establish and fund the Governor's Highway Safety Program Grant Award

Approved by the Smithfield Town Council this the 6th day of October, 2020

\_\_\_\_\_  
M. Andy Moore

ATTEST:

\_\_\_\_\_  
Shannan L. Parrish, Town Clerk





# Request for Town Council Action

Business Design  
Agenda Build  
Item: Criteria  
Date: 10/06/2020

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Subject: Police Department Expansion – Design-Build Criteria  
Department: Police Department  
Presented by: Bill Dreitzler – Town Engineer & R. Keith Powell – Chief of Police  
Presentation: Business Item

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## Issue Statement

The NC General Statutes require that the Town establish the project specific Design-Build Criteria to initiate the process. It is recommended that the DB Criteria be adopted by the Town. If adopted, staff will prepare and advertise a Request for Qualifications for the final architectural/engineering design plans, specifications and associated permits followed by the construction of the proposed expansion using the design-build process. The Design-Build Criteria is attached to this Action Form.

## Financial Impact

The adoption of the Design-Build Criteria will have no financial impact for the Town. The preparation of the DB Criteria, preparation of the RFQ and selection of a DB Firm will be conducted using Town Staff.

## Action Needed

Council to vote to adopt the Design-Build Criteria for the proposed Police Department Expansion Project.

## Recommendation

Staff recommends adoption of the Design-Build Criteria for the proposed Police Department Expansion Project.

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff Report
2. Design-Build Criteria



# Staff Report

Business	Design
Agenda	Build
Item:	Criteria

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After consultation with the Triangle J Council of Governments and Mr. Conor Crews, Assistant Professor of Public Law and Government, UNC School of Government, it was determined that for the Town to proceed with the Design-Build approach to the proposed Police Department Expansion we must adopt the project specific Design-Build Criteria. The Town had initially engaged with APR Restoration & Commercial Development and authorized the preparation of a Preliminary Design Package for the project. The preliminary phase included preparation of a floor plan, site plan and preliminary cost estimate. APR used the services of Design Line Studios, PLLC for this effort. The preliminary design package will be an instrumental component of the Request for Qualifications process. The UNC School of Government indicated that both APR and Design Line Studios, PLLC would be eligible to submit during the RFQ process. The Town must receive a minimum of three (3) submittals to proceed with selection. However, if less than 3 submittals are received, the Town may re-advertise the RFQ. With the second submittal, the Town may select even if there is only 1 submittal.

Bill Dreitzler, P.E.  
Smithfield Town Engineer

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Michael Scott, Town Manager  
Greg Siler, Finance Director  
Tim Kerigan, Human Resources/PIO  
Shannan Parrish, Town Clerk



350 East Market Street  
Post Office Box 761  
Smithfield, NC 27577

Bethany McKeel, Admin. Support Spec.

Telephone: 919.934.2116

Fax: 919.989.8937

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## DESIGN-BUILD CRITERIA

**Title of Item:** Establishment of Criteria for a Design-Build Delivery Method for Construction Contracts and Approval of Using the Design-Build Delivery Method for the Police Department Expansion Project

**Explanation:** **Abstract:** In accordance with Session Law 2013-401 (HB 857) regarding the addition of design-build delivery method for construction projects, the Police Department is submitting, for approval, the criteria that the Town must establish to utilize this method of delivery. Additionally, the Police Department is requesting approval to utilize the design-build method of delivery for the expansion of the Police Department. This delivery method will allow for the flexibility needed assure a fluid transition into the expanded space as well as the ability to complete the project in a timely manner and within budget.

**Explanation:** The first step in the process for utilizing the design-build method is that the governmental entity is to establish in writing the criteria used for determining the circumstances under which the design-build method is appropriate for a project. The State established six factors that must be addressed. The criteria proposed is the following:

**Criteria No. 1: The extent to which the Town can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications (RFQ) for a design-builder.**

The design-build delivery method may be used if it is determined that, for the project, the Town has professional personnel that are qualified to thoroughly define project requirements prior to issuance of a request for qualifications for a design-builder. The Town utilized the services of APR and their architectural consultant, Design Line Studios to prepare a preliminary Site Plan and preliminary Floor Plan establishing the base project requirements. APR specializes in design-build project delivery. In addition, the Town's Engineer has over 35 years of experience and has over 20 years' experience preparing RFQ's, reviewing

submittals and assisting in the selection process.

**Criteria No. 2: The time constraints for the delivery of the project.**

The design-build delivery method may be used if a project has a firm date by which a facility must be operational and the normal delivery method is likely not to be timely. The standard design-bid-build delivery system for this project would likely add 2-4 months to completion. While a firm completion date is not critical, what is critical is to minimize the disruption time to the active operations of the Police Department. A stream-lined process will reduce the impacts to the Police Department during construction.

**Criteria No. 3: The ability to ensure that a quality project can be delivered.**

The design-build delivery method may be used if it is determined that, for the project, the Town has the professional and experienced personnel to ensure that the design-build firm will provide a quality project within the budget constraints established by Council. Consideration will be given to the qualifications and experience of personnel within Engineering, Planning, Public Works and the Police Department to manage the project.

**Criteria No. 4: The capability of the Town to manage and oversee the project, including the availability of experienced staff our outside consultants who are experienced with the design-build method of project delivery.**

The design-build delivery method may be used if it is determined that, for the project, the Town has the professional and experienced personnel that are knowledgeable of design-build projects. As noted in Criteria No. 3, the Town will utilize staff from Engineering, Planning, Public Works and the Police Department to manage the project. The Town also has the option of securing an outside consultant with design-build delivery experience to manage the project.

**Criteria No. 5: A good faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.**

The design-build delivery method may be used if it is determined that, for the project, requirements will be imposed which ensure that contractors will comply with any M/WBE goals established by Council. Staff will include language within the RFQ to assure that any M/WBE goals established by Council are properly identified.

**Criteria No. 6: The criteria utilized by the Town, including a comparison of the costs and benefits of using the design-build delivery method for a given project in lieu of the other delivery methods identified.**

The criteria used by the Town which considering a design-build delivery method for a project will be as follows:

- Is the project well defined and does it include qualitative and quantitative characteristics that make a design-build contract more appropriate than other methods of delivery?

Based on the preliminary design prepared by APR and the architectural consultant Design Line Studios, that project is well defined ahead of the preparation of an RFQ for the design-build delivery method. Having the preliminary design completed lends itself to the design-build process.

- Is the project timeline overly constrained and will it be necessary to have the facility complete and operational in a short time frame?

As described under Criteria No. 1 above, a stream-lined process will reduce the impacts to the active operations of the Police Department.

- Given the scope of the project, is there a maximum budget that must be adhered to in order to allow negotiations and flexibility to make appropriate decisions on scope as the project progresses?

Council has established a budget for this project within the FY2020-FY2021 budget cycle. The design-build delivery method will allow staff greater flexibility with regards to project decisions that will be beneficial in keeping the project on budget.

- Does the design-build delivery method meet the ultimate operational goals established for the project and the quality of the product achieved as a result of a more fluid and flexible delivery method?

The design-build delivery method will offer benefits to both the project schedule and project cost that make the design-build option more appealing than the more conventional design-bid-build process for the proposed expansion of the Police Department.

**Fiscal Note:** There is no fiscal impact to the establishment of this policy and approval of the utilization of the design-build delivery method.

**Recommendation:**

To approve the criteria for use of the design-build delivery method and to authorize Town staff to move forward with the use of the design-build delivery method for the expansion of the Police Department.





# Request for Town Council Action

Business Contract  
Item: Approval  
Date: 10/06/2020

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Subject: Spring Branch Community Restoration Project -KCI  
Department: Planning Department  
Presented by: Stephen Wensman, Planning Director  
Presentation: Business Item

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## Issue Statement

The Planning Department is requesting approval of the Spring Branch Community Restoration Project Contract with KCI.

## Financial Impact

The estimated project budget is \$200,500. The project will be partially funded by NCAG Environmental Enhancement Grant in the amount \$100,000. The funding shortage is in the amount of \$100,500.

## Action Needed

To Approve the Spring Branch Community Restoration Project Contract with KCI

## Recommendation

The Planning Department recommends approval of the Spring Branch Community Restoration Project Contract with KCI.

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff Report
2. Spring Branch Community Restoration Project Contract
3. Memorandum of Understanding



# Staff Report

Agenda Item:	Contract Approval
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## Overview:

In March 2020, the Town Council accepted a NCAG Environmental Enhancement Grant in the amount of 100,000 for the Spring Branch Community Restoration Project and a Memorandum of Understanding (MOU) was executed. Since then, the Town advertised an RFO and received 3 submittals. The submittals were reviewed, and the most qualified firm was determined to be the KCI-McCormick Taylor Team with a contract to perform the work in the amount of \$200,500. The approval of this contract places a \$100,500 financial obligation on the town. It remains possible that the project might be partially paid for by wetland credits through a wetland mitigation bank. Those discussions are ongoing. If the Town is unable to receive wetland credits, contingency funds will be used.

## Contract Details:

The contractor will restore approximately 500 linear feet of Spring Branch and create/restore approximately 0.75-acres of emergent wetland. The project will provide flood attenuation, decreasing flooding of residents downstream of the project site; improve water quality, decreasing nutrient laden suspended sediment into the Neuse River, contributing to the reduction of deadly algal blooms in the Pamlico Sound, and dramatically improve habitat for aquatic flora and fauna within Spring Branch. The project will create a focal point for the community of Smithfield by incorporating a greenway within the project site; allow for the expansion of the existing community garden on site; and provide educational opportunities for students from preschool to college. The project goals include:

- Provide flood attenuation,
- Reduce nutrient pollution from Spring Branch into the Neuse River,
- Stream, floodplain, and wetland restoration/creation
- Create a focal point for the residents of Smithfield through the greenway extension, while creating educational opportunities,
- Enhance the riparian buffer,
- Floodplain reconnection,
- Installation of in-stream structures, cover and natural gravel channel material to enhance the benthic and fish habitats and communities.



Recommendation:

Staff recommends approval of the Spring Branch Community Restoration Project with KCI for the contracted amount of \$200,500.



*This Progressive Design Build Agreement  
has been developed in conjunction with  
and endorsed by the  
Water Design Build Council.*



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# PROGRESSIVE DESIGN-BUILD AGREEMENT FOR WATER AND WASTEWATER PROJECTS

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## **Document No. 545**

First Edition 2016  
© Design-Build Institute of America  
Washington, DC



# Progressive Design-Build Agreement for Water and Wastewater Projects

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

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This **AGREEMENT** is made as of the \_\_\_\_\_ 2nd \_\_\_\_\_ day of \_\_\_\_\_ September \_\_\_\_\_ in the year of 2020, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

**Town of Smithfield**

**DESIGN-BUILDER:**

**KCI Technologies**  
**4505 Falls of The Neuse Road**  
**Raleigh, NC 27609**

**PROJECT:**

*Spring Branch Community Restoration Project*

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

## **Article 1**

### **General**

- 1.1 Duty to Cooperate. Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.
- 1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract").
- 1.3 Design Services. Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

## **Article 2**

### **Design-Builder's Services and Responsibilities**

- 2.1 General Services.
  - 2.1.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project as set forth in Exhibit A. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance, and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications, and other technical materials and requirements prepared by or for Owner.
  - 2.1.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an additional service for which additional compensation shall be paid by Owner to Design-Builder. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.
- 2.2 Phased Services.
  - 2.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 2.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 2.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 7.0 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

2.2.2 Phase 2 Services. Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Article 2.3.

2.3 Proposal. The selected Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price, which may be based on Lump Sum or Design-Builder's Fee and Cost of the Work with an option for a Guaranteed Maximum Price (GMP).

2.3.1 The Proposal shall include the following unless the parties mutually agree otherwise:

2.3.1.1 The Contract Price that may be based on a Lump Sum or Design-Builder's Fee and Cost of the Work, with an option for a GMP, which shall be the sum of:

- i. Design-Builder's Fee as defined in Section 7.4.1 hereof;
- ii. The estimated Cost of the Work as defined in Section 7.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 7.6.2 hereof; and
- iii. If applicable, any prices established under Section 7.1.3 hereof;

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

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

2.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 6.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

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

2.3.1.6 If applicable, a schedule of alternate prices;

2.3.1.7 If applicable, a schedule of unit prices;

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

2.3.1.9 If applicable, a Savings provision;

2.3.1.10 If applicable, Performance Incentives;

2.3.1.11 The time limit for acceptance of the Proposal; and

2.3.1.12 An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.

## 2.3.2 Review and Adjustment to Proposal.

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

2.3.2.3 Acceptance of Proposal. If Owner accepts the Proposal, as may be amended by Design-Builder, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (Contract Price Amendment). Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the Contract Price Amendment, as it may be revised.

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

i. Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.3.2.3 above;

ii. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 7.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or

iii. Owner may terminate this Agreement for convenience in accordance with Article 9 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Item 2.3.2.4 ii. above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof, or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 2.3.2.4 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 2.3.2.4(iii), or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

## **Article 3**

### **Contract Documents**

3.1 The Contract Documents are comprised of the following:

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

3.1.2 The Contract Price Amendment referenced in Section 2.3.2.3 herein or the Proposal accepted by Owner in accordance with Section 2.3 herein.

3.1.3 This Agreement, including all exhibits (List for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the Contract Price Amendment;

3.1.4 The General Conditions of Contract;

3.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;

3.1.6 Exhibit B, Scope of Services; and

3.1.7 The following other documents, if any:

## **Article 4**

### **Interpretation and Intent**

4.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 2.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner’s acceptance of the Proposal.

4.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after Owner’s acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 3.1 hereof. *(Note, the parties are strongly encouraged to establish in the Contract Price Amendment or Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)*

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

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

4.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## **Article 5**

### **Ownership of Work Product**

5.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights, and/or patents, subject to the provisions set forth in Sections 5.2 through 5.5 below.

5.2 Owner’s Limited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner’s payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner’s occupancy of the Project, conditioned on Owner’s express understanding that its alteration of the Work Product without the involvement of Design Builder is at Owner’s sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”), and on the Owner’s obligation to provide the indemnity set forth in Section 5.5 herein.

5.3 Owner’s Limited License upon Owner’s Termination for Convenience or Design-Builder’s Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 9 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner’s payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 5.2 above, conditioned on the following:

5.3.1 Use of the Work Product is at Owner’s sole risk without liability or legal exposure to any Indemnified Party, and on the Owner’s obligation to provide the indemnity set forth in Section 5.5 herein, and

5.3.2 Owner agrees to pay Design-Builder the additional sum of Ten Thousand Dollars (\$10,000.00) as compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 5.2 if Owner resumes the Project through its employees, agents, or third parties.

5.4 Owner’s Limited License upon Design-Builder’s Default. If this Agreement is terminated due to Design-Builder’s default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 5.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 5.3 above.

5.5 Owner’s Indemnification for Use of Work Product. Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product, in whole or in part, or if Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 5, Owner shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys’ fees, arising out of or resulting from the use or alteration of the Work Product, to the fullest extent permitted by applicable law.



## Article 6

### Contract Time

6.1 Date of Commencement. The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

6.2 Substantial Completion and Final Completion.

6.2.1 Substantial Completion of the entire Work shall be achieved no later than 9/15/2021 ("Scheduled Substantial Completion Date").

The parties agree that the definition for Substantial Completion set forth in Section 1.2.18 of the General Conditions of Contract is hereby modified to read as follows:

"*Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official, if a Temporary Certificate of Occupancy is applicable to the Project."

6.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows:

*Existing Conditions Surveys/Data Gathering/Reference Reach – 10-15-20*  
*Design – 1-15-21*  
*Permitting – 4-15-21*  
*Construction 9-15-21*  
*\*all pending no issues with public meetings*

6.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

6.2.4 All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

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

6.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. However, Design-Builder and Owner acknowledge that damages could include the loss of grant funds to be paid to the Owner by the State of North Carolina in the amount of \$100,000 if the project is not completed by January 1st, 2023 (the "Grant Expiration Date"). Design-Builder agrees that at any time it reasonably believes that there may be problems in achieving substantial completion by the Grant Expiration date, it shall promptly inform the Owner to allow the Owner to request an extension in the grant expiration date. Owner agrees to permit the Design-Builder to join with the Town in formulating any such extension request if the Design-Builder so desires. If Substantial Completion is not attained by thirty (30) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner Fifty Dollars (\$50.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. If Substantial Completion is not attained by the Grant Expiration

Date, then the Design-Builder shall be responsible for the payment of any and all grant funds that are lost by the Owner.

6.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any) or Final Completion.

## **Article 7**

### **Contract Price**

#### 7.1 Contract Price.

7.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum \$60,000 for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements. Phase I Services are outlined in Section 1.7.1 to 1.7.10 in the attached RFP (Exhibit B).

7.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 7 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in Section 7.2 hereof or in the Contract Price Amendment, or equal to the Design-Builder's Fee (as defined in Section 7.4 hereof) plus the Cost of the Work (as defined in Section 7.5 hereof), subject to any GMP established in Section 7.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

7.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited services.)*

7.2 Lump Sum. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of \$140,500.00 ("Contract Price") for the Work for Phase 2 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements. Phase II Services are defined in Section 1.7.11 in the attached RFP (Exhibit B).

7.3 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

7.3.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of ten percent (10%) of the additional costs incurred for that Change Order.

7.3.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

No additional reduction to account for Design-Builder's Fee or any other markup.

7.4 Design-Builder's Fee.

7.4.1 Design-Builder's Fee shall be:

Two Hundred Thousand Five Hundred Dollars (\$ 200,500), as adjusted in accordance with Section 7.4.2 below.

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

7.4.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design Builder shall receive a Fee of ten percent (10%) of the additional Costs of the Work incurred for that Change Order, plus any other markups set forth at Exhibit B hereto.

7.4.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

No additional reduction to account for Design-Builder's Fee or any other markup.

7.5 Cost of the Work.

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

7.5.1.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

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

7.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices.

7.5.1.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 7.5.1.1 through 7.5.1.3 hereof.

7.5.1.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

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

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

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

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

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

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

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

7.5.1.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

7.5.1.14 All fuel and utility costs incurred in the performance of the Work.

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

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

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

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

7.5.1.19 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

7.5.1.20 Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property.

7.5.1.21 Accounting and data processing costs related to the Work.

7.5.1.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

7.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

7.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 7.5.1.1, 7.5.1.2, and 7.5.1.3 hereof.

7.5.2.2 Overhead and general expenses, except as provided for in Section 7.5.1 hereof, or which may be recoverable for changes to the Work.

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

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

7.6 The Guaranteed Maximum Price.

7.6.1 Design-Builder guarantees that it shall not exceed the GMP of Two Hundred Thousand Five Hundred Dollars (**\$200,500.00**). Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. *(While the Contract Price Amendment will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 2.3 above, to ensure that the basis for the GMP is well understood).*

7.7 Allowance Items and Allowance Values.

7.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Price Amendment or the Proposal.

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

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

7.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item. All other

costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.

7.7.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 7.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

*[The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction, and similar items.]*

## **Article 8**

### **Procedure for Payment**

8.1 Payment for Preliminary Services. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder: *(Insert terms.)*

8.2 Contract Price Progress Payments.

8.2.1 Design-Builder shall submit to Owner on the first (1st) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

8.2.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

8.2.3 If Design-Builder's Fee under Section 7.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

8.3 Retainage on Progress Payments.

8.3.1 Owner will retain five percent (5%) of each Application for Payment provided.

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

If a warranty reserve has been established pursuant to Section 7.5.1.23 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 7.5.1.23 above.

8.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that: (a) Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

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

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

## **Article 9**

### **Termination for Convenience**

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

9.1.1 All services performed and Work executed and for proven loss, cost, or expense in connection with the services and Work;

9.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

9.1.3 The fair and reasonable sums for overhead and profit on the sum of items 9.1.1 and 9.1.2 above.

9.2 If Owner terminates this Agreement pursuant to Section 9.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 5.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 5.

## **Article 10**

### **Representatives of the Parties**

10.1 Owner's Representatives.

10.1.1 Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address, and telephone numbers.)*

10.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address, and telephone numbers.)*

10.2 Design-Builder's Representatives.

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

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

## **Article 11**

### **Bonds and Insurance**

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

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

Performance Bond.

Required                       Not Required

Payment Bond.

Required                       Not Required

## **Article 12**

### **Other Provisions**

12.1 Other provisions, if any, are as follows: *(Insert any additional provisions.)*

12.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner's Project Criteria

DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition) ("General Conditions of Contract")

Exhibit B – Scope of Services

Owner RFP



**Article 13**

**Limitation of Liability**

13.1 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder, its Design Consultants, and Subcontractors, surety (if any) and their respective officers, directors, employees, and agents, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs, or damages whatsoever arising out of, resulting from, or in any way related to, the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) shall not exceed one hundred percent (100%) of the Contract Price. The parties agree that specific consideration has been given by the Design-Builder for this limitation and that it is deemed adequate.

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

**OWNER:**

Town of Smithfield  
*(Name of Owner)*

\_\_\_\_\_  
*(Signature)*

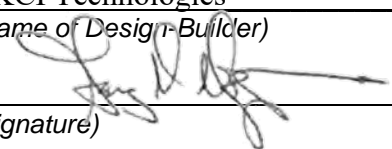
\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Title)*

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

**DESIGN-BUILDER:**

KCI Technologies  
*(Name of Design-Builder)*

  
*(Signature)*

Gary M. Mryncza, PE  
*(Printed Name)*

Senior Vice President  
*(Title)*

Date: 9/3/2020

**Exhibit A – Owner’s Project Criteria** - DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition) ("General Conditions of Contract")



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

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## **Document No. 535**

Second Edition, 2010  
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Washington, DC

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# **Article 1**

## **General**

### **1.1 Mutual Obligations**

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

### **1.2 Basic Definitions**

**1.2.1** *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum* (2010 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition).

**1.2.2** *Basis of Design Documents* are as follows: For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents." For DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum*, the Basis of Design Documents are the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any.

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

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

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

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

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

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

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

**1.2.10** *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of*

*Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

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

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

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

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

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

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

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

**1.2.18** *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

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

## **Article 2**

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services.**

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

**2.1.2** Design-Builder shall provide Owner with a monthly status report detailing the progress of

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

**2.1.3** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

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

## **2.2 Design Professional Services.**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

## **2.3 Standard of Care for Design Professional Services.**

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

## **2.4 Design Development Services.**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided

to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

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

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

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

## **2.5 Legal Requirements.**

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

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

## **2.6 Government Approvals and Permits.**

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

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

## **2.7 Design-Builder's Construction Phase Services.**

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

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-



Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

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

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

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

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

## **2.8 Design-Builder's Responsibility for Project Safety.**

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

**2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

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

their performance of the Work.

## **2.9 Design-Builder's Warranty.**

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work.**

**2.10.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

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

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

## **Article 3**

### **Owner's Services and Responsibilities**

#### **3.1 Duty to Cooperate.**

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

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

**3.1.3** Owner shall give Design-Builder timely notice of any Work that Owner notices to be

defective or not in compliance with the Contract Documents.

### **3.2 Furnishing of Services and Information.**

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

**3.2.1.1** To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

**3.2.1.2** To the extent available, geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

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

**3.2.1.4** A legal description of the Site;

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

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

### **3.3 Financial Information.**

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

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

### **3.4 Owner's Representative.**

**3.4.1** Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

### **3.5 Government Approvals and Permits.**

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

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

### **3.6 Owner's Separate Contractors.**

**3.6.1** Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## **Article 4**

### **Hazardous Conditions and Differing Site Conditions**

#### **4.1 Hazardous Conditions.**

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

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

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

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

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

**4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for

whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

#### **4.2 Differing Site Conditions.**

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

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

## **Article 5**

### **Insurance and Bonds**

#### **5.1 Design-Builder's Insurance Requirements.**

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

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

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

#### **5.2 Owner's Liability Insurance.**

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

### **5.3 Owner's Property Insurance.**

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

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

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

**5.3.4** Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

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

### **5.4 Bonds and Other Performance Security.**

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

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

## **Article 6**

### **Payment**

#### **6.1 Schedule of Values.**

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

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

#### **6.2 Monthly Progress Payments.**

**6.2.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

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

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

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

#### **6.3 Withholding of Payments.**

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

**6.3.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay

Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

#### **6.4 Right to Stop Work and Interest.**

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

#### **6.5 Design-Builder's Payment Obligations.**

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

#### **6.6 Substantial Completion.**

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

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

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

#### **6.7 Final Payment.**

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

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

**6.7.2.1** An affidavit that there are no claims, obligations or liens outstanding or



unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

**6.7.2.2** A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

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

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

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

**6.7.3** Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

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

## **Article 7**

### **Indemnification**

#### **7.1 Patent and Copyright Infringement.**

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

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

**7.1.3** Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process

or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

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

## **7.2 Tax Claim Indemnification.**

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

## **7.3 Payment Claim Indemnification.**

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

## **7.4 Design-Builder's General Indemnification.**

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

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

## **7.5 Owner's General Indemnification.**

**7.5.1** Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for

whose acts any of them may be liable.

## **Article 8**

### **Time**

#### **8.1 Obligation to Achieve the Contract Times.**

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

#### **8.2 Delays to the Work.**

**8.2.1** If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

**8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

## **Article 9**

### **Changes to the Contract Price and Time**

#### **9.1 Change Orders.**

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

**9.1.1.1** The scope of the change in the Work;

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

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

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

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

## **9.2 Work Change Directives.**

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

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

## **9.3 Minor Changes in the Work.**

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

## **9.4 Contract Price Adjustments.**

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

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

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

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

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

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

**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice

Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

## **9.5 Emergencies.**

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

# **Article 10**

## **Contract Adjustments and Disputes**

### **10.1 Requests for Contract Adjustments and Relief.**

**10.1.1** If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

### **10.2 Dispute Avoidance and Resolution.**

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

**10.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**10.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration

Association (“AAA”) pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator’s schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

### **10.3 — Arbitration.**

~~10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.~~

~~10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.~~

~~10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.~~

~~10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys’ fees and expenses incurred by the prevailing party.~~

### **10.4 Duty to Continue Performance.**

**10.4.1** Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

### **10.5 CONSEQUENTIAL DAMAGES.**

**10.5.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

**10.5.2** The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

## **Article 11**

### **Stop Work and Termination for Cause**

#### **11.1 Owner's Right to Stop Work.**

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**11.1.2** Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

#### **11.2 Owner's Right to Perform and Terminate for Cause.**

**11.2.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

**11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

### **11.3 Design-Builder's Right to Stop Work.**

**11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

**11.3.1.1** Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

**11.3.1.2** Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

**11.3.2** Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

### **11.4 Design-Builder's Right to Terminate for Cause.**

**11.4.1** Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

**11.4.1.1** The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

**11.4.1.2** Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

**11.4.1.3** Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

### **11.5 Bankruptcy of Owner or Design-Builder.**

**11.5.1** If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

**11.5.1.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request



of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

**11.5.1.2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

## **Article 12**

### **Electronic Data**

#### **12.1 Electronic Data.**

**12.1.1** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

#### **12.2 Transmission of Electronic Data.**

**12.2.1** Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

**12.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

**12.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

#### **12.3 Electronic Data Protocol.**

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error.

Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

**12.3.2** Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

**12.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

**12.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## **Article 13**

### **Miscellaneous**

#### **13.1 Confidential Information.**

**13.1.1** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

#### **13.2 Assignment.**

**13.2.1** Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

#### **13.3 Successorship.**

**13.3.1** Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

#### **13.4 Governing Law.**

**13.4.1** The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

**13.5 Severability.**

**13.5.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**13.6 No Waiver.**

**13.6.1** The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

**13.7 Headings.**

**13.7.1** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**13.8 Notice.**

**13.8.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

**13.9 Amendments.**

**13.9.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

**Exhibit B – Design-Build Contractor’s Scope of Services (Defined as in attached RFP)**

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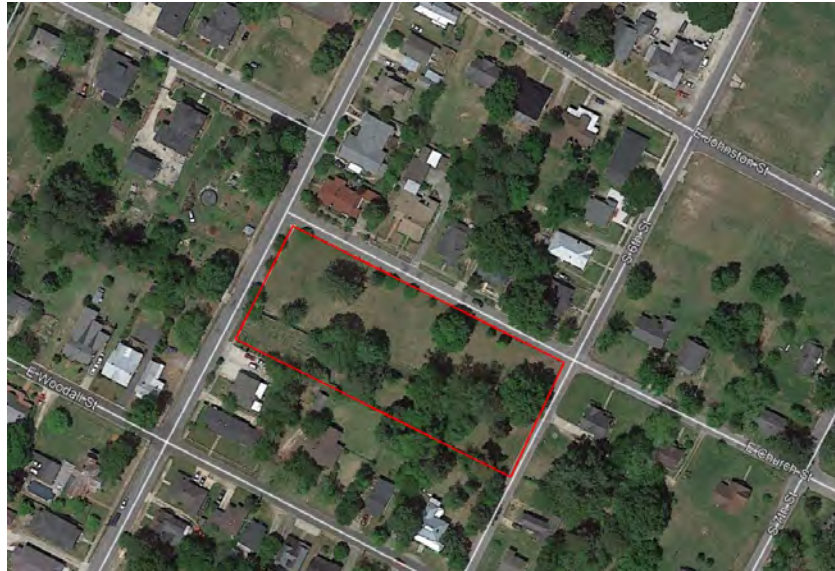
SECTION 5. DESIGN-BUILD AGREEMENT

## SECTION 1. Project Information and Procurement Process

### 1.1 Overview

The Spring Branch Community Restoration Project (SBCRP) is located within the Town of Smithfield, Johnston County, North Carolina. The SBCRP will provide enormous environmental benefits for The Town of Smithfield, the Neuse River Basin and the State of North Carolina. The proposed project will be designed to dramatically improve habitat for aquatic flora and fauna within Spring Branch; provide flood attenuation, decreasing flooding of residents downstream of the project site; improve water quality by decreasing nutrient laden suspended sediment into the Neuse River, contributing to the reduction of deadly algal blooms in the Pamlico Sound.

The project will also create a natural amenity for the community of Smithfield by incorporating a greenway within the project site; allow for the expansion of the existing community garden on site; and provide educational opportunities for students from preschool to college.



### 1.2 Statement of Purpose

It is the intention of the Town of Smithfield (“Town”), to solicit proposals for a contractor (“Contractor”) that can provide services to design and build a stream and wetland site design plan and implement said design plan for the Spring Branch Community Restoration Project (“SBCRP”). The Town is seeking design/build proposals for Phase I of the SBCRP located within city limits of the Town of Smithfield. The “Contractor” shall furnish necessary drawings, plans, permits, labor, facilities, materials, equipment, construction oversight services, and incidentals to complete the project scope of work (the “Scope of Work”) as described in Section 1.7 to be entered into between the Town and the Contractor.

### **1.3 Procurement Process**

The Town is using the design-build method. The procurement and the provision of services are in accordance with North Carolina General Statutes (G.S.) Chapter 143-128.1A and this RFQ. Selection of the Contractor will be made using this process. This process will proceed with the issuance of the RFQ where any interested Proposer can submit its Statements of Qualifications (“SOQ”) in accordance with the requirements set forth in this RFQ. The selection committee will evaluate the SOQs, and the three most highly qualified Contractors will be ranked. SOQs may not be withdrawn within 60 days from the date on which SOQs are submitted. If not as many as three SOQs have been received from qualified Contractors, the Town will again solicit for design-build services. If as a result of such second solicitation not as many as three responses are received, the Town may then begin negotiations with the highest- ranked Contractor under G.S 143-64.31 even though fewer than three responses were received. If a contract cannot be negotiated with the best qualified Contractor, negotiations shall be terminated in writing and initiated with the next best qualified Contractor.

The Contractor must review and analyze all sections of this RFP and submit all information and materials required within this RFP, providing sufficient information to allow the Town to evaluate the Proposal. Contractor, by submitting its proposal, agrees that any costs incurred by the Contractor in responding to this RFP are to be borne by Contractor and may not be billed to the Town. Contractor’s proposal must match the order in which the RFP was submitted or clearly state where the information resides. If the Town has any confusion or difficulty in retrieving the required information from a Contractor’s proposal, it may result in disqualification of such proposal. Contractor may not have the ability to resubmit its proposal to the Town

The Contractor shall provide the Town with a Certificate of Insurance verifying its limits for public liability, property damage, and automobile insurance in an amount not less than Five Million Dollars (\$5,000,000), per occurrence. For the awarded Contract, the Town shall be specifically named as an “additional insured” on all policies covering work under the Contract and the required Certificate of Insurance shall show that the Town has been added to the policies. All insurance shall be endorsed so that it cannot be canceled in less than thirty (30) days.

### **1.4 Conceptual Schedule**

To meet the requirements of project grant funding, the Town requires that the Project be completed before January 2023.

### **1.5 Construction Costs**

Based on the preliminary estimates, the Town’s Project budget is \$200,500 for phase one of the project.

## **1.6 Additional Information and Procurement Process**

- 1.6.2 This process will proceed with the issuance of the RFQ where any interested Proposer can submit its Statements of Qualifications (“SOQ”) in accordance with the requirements set forth in this RFQ.
- 1.6.3 The selection committee will evaluate the SOQs. The three most highly qualified proposers shall be ranked. SOQs may not be withdrawn within 60 days from the date on which SOQs are submitted.
- 1.6.4 If not as many as three SOQs have been received from qualified Proposers, the Town will again solicit for design-build services. If as a result of such second solicitation not as many as three responses are received, the Town may then begin negotiations with the highest- ranked Proposer under G.S 143-64.31 even though fewer than three responses were received. If a contract cannot be negotiated with the best qualified Proposer, negotiations shall be terminated in writing and initiated with the next best qualified Proposer.
- 1.6.5 The Town intends to enter into a Design-Build Agreement, a copy of which is included in Section 5.

## **1.7 Services Provided by the Design-Builder**

- 1.7.1 The scope of services to be provided are described below.
- 1.7.2 Preliminary Site Investigation
  - A. The Consultant will review all pertinent readily available existing data including:
    - a. Previously collected data on Spring Branch, previously completed Hydrologic modeling for Spring Branch, Investigate existing private utility easements on the project site, Johnston County Soil Survey, NRCS aerial photography, NWI mapping, USGS quadrangle mapping, Town of Smithfield storm utility information, and topographic survey information
- 1.7.3 Agency and Stakeholder Coordination
  - A. The design team anticipates coordinating with the Community of Smithfield, the Town of Smithfield, the Johnston County Visitor’s Bureau, Johnston County Community College, United States Army Corps of Engineers (USACE), North Carolina Department of Environmental Quality (NCDEQ) throughout the design process. This will include public meetings to gain community input and gain support for the project. We also anticipate two (2) public meetings and two (2) independent design meetings with the USACE and NCDEQ.



#### 1.7.4 Stream Channel Surface Hydrology

- A. Hydrology estimates, including storm discharges and times of concentration will be developed for the designed channel length identified for the site based upon existing and ultimate land use conditions. The hydrology estimates will be performed using GISHydro 2000; results will be calibrated and regional curve and existing gage data (if available) will be reviewed.

#### 1.7.5 Subsurface and Wetland Hydrology Evaluation

- A. The Consultant will perform approximately 2 Standard Penetration Test borings on the property. Each boring will be 15 feet deep with SPT samples taken at: 1-2.5 feet, 3.5-5.0 feet, 8.5-10 feet and 13.5-15 feet. Mechanical gradation and Atterberg Limit tests on half of the split spoon samples with natural moisture contents on all samples will occur. Infiltration tests be performed according to SCS 378 standards for all borings performed.

#### 1.7.6 Detailed Geomorphic Measurements

- A. The consultant will perform a detailed site assessment on the project and reference reach sites. The detailed assessment will involve measurements of channel geometry (plan, profile, and cross section), channel substrate (pebble counts and bulk samples), bank stability (bank height, bank slope, materials, vegetation), and in-channel and riparian habitat.

#### 1.7.7 Design discharge determinations

- A. A critical aspect of channel design is design discharge determination. These efforts will be based upon the previous verified hydrologic models on Spring Branch and further analysis. The selected consultant shall provide methods of analysis and design discharge determination decisions in a design memorandum.

#### 1.7.8 Fluvial Geomorphic Data Analysis

- A. Data collected during the fluvial geomorphic surveys will be utilized to evaluate: Slopes (bed features, water surface, and flow indicators); velocities; hydraulic geometry values (width, depth, cross-sectional area, hydraulic radius, etc); channel roughness; stream bed composition (surface and subsurface); bar sediment distributions; Froude number; critical shear stresses for bed sediments; bank

materials, condition, and stability; design discharges; typical riparian vegetative communities for the region; habitat requirements of resident/target species; and Rosgen classification.

#### 1.7.9 Generate Permit Submission Design

- A. Complete field survey of the SBCRP.
- B. Generate 60% plans to include the following additional work and details: sediment and erosion control plan, sequence of construction and details; landscaping / planting plans and details; geometric details for proposed grading; modifications to existing details; other drainage details as needed; maintenance of traffic and parking details to facilitate construction access and staging.
- C. Complete hydraulic evaluation of existing conditions surface with HEC-RAS. Verify Existing Conditions Hydrology and Hydraulics Report performed by Jewel Engineering.
- D. Develop vertical, horizontal and cross-sectional geometry to establish proposed grading plan.
- E. Complete Sediment and Erosion Control plan including approximate site LOD, recommended staging and stockpile areas, maintenance of stream flow and construction access locations.
- F. Complete analysis of hydraulics of the proposed surface.
- G. Complete constructability review to analyze proposed construction access, sequence of construction, construction details, specifications, in-stream structure design, and channel grading plan evaluations. Present results to the Town in a memorandum.
- H. Complete a design memorandum report outlining methods, results and design decisions based on tasks 1.7.2-1.7.8.
- I. Prepare a Nationwide 27 and Pre-Construction Notification (PCN) for impacts to waters of the US and Neuse Buffer, as required, based on project impacts and any other permits required for the project.
- J. Address any Agency comments related to permits submitted for impacts to natural resources as required.
- K. Attend a progress meeting (or virtual meeting) with Town of Smithfield to discuss the design, and address any comments or questions. Provide meeting minutes and present to all interested parties. These will include a compilation of all written comments received following the permit plan submittal.

#### 1.7.10 Generate Final Design

- A. Address comments received at permit submission phase and incorporate them into the Final plans.
- B. Finalize Sediment and Erosion Control plan including site LOD, staging and stockpile areas, maintenance of stream flow, sequences of

- construction and construction access locations. Obtain Sediment and Erosion Control Permit approval.
- C. Finalize grading plan, addressing any conflicts with floodplain water surfaces or utility impacts.
- D. Finalize permits, agency coordination efforts, and receive permit approval.

#### 1.7.11 Construction Services

- A. Notify Town of Intent for Construction Start Date
- B. Schedule and Hold Kick Off Meeting on the site (or Virtual Meeting)
- C. Present Construction Plan and Schedule to the Town
- D. Establish Perimeter Controls and Erosion and Sediment Control Measures
- E. Implement construction plans developed during design services phase.
- F. Provide construction management and administration.
- G. Provide and manage site safety.
- H. Provide quality assurance and quality control services.
- I. Provide monthly cost and schedule updates to the Town.
- J. Complete construction, complete as-built survey of project.
- K. Request final acceptance meeting.
- L. Project closeout, including punch list walk through and final acceptance
- M. Warranty correction work
- N. Bond release

## **SECTION 2. Instructions for Proposers**

### **2.1 Examination and Purchase of Documents**

2.1.1 Advertisement and RFQ information for the Project can be found at the following website: <http://gov.findrfp.com/gov/List.aspx?id=31195>

2.1.2 The RFQ may be downloaded or viewed free of charge at this website. It is the downloader's responsibility to determine that a complete set of documents, as defined in the Instructions for Proposers are received.

2.1.3 This website will be updated periodically with revisions, modifications and clarifications to the RFQ, procurement and RFQ information, responses to questions asked by Proposers and additional information relevant to the procurement of the project. proposers are encouraged to routinely monitor the web site.

## 2.2 Delivery of SOQs and Procurement Schedule

2.2.1 Deliver the SOQ to the address shown below no later than 3 p.m. on 7/27/2020 for the SOQ to be accepted. SOQs received after this time will be returned unopened. Address SOQs to: If delivered by US Postal Service: Town of Smithfield Attn: Stephen Wensman PO Box 761 Smithfield, NC 27577. If delivered by any other means (UPS/FedEx/etc.): Town of Smithfield Attn: Stephen Wensman, 350 E. Market Street, Smithfield, NC 27577

### Procurement and Project Schedule

Activity	Date
Issue RFQ	6/1/2020
Deadline for Questions and Comments	7/10/2020
Submission of SOQs	7/27/2020
Interviews (optional at discretion of Town)	8/10/2020
Selection of best qualified design-builder	8/24/2020
Negotiations	8/24/2020-9/6/2020
Contract Execution	9/6/2020
Deadline for Notification of Possible Delay in Schedule	2/1/2021
Deadline for Substantial Completion	3/1/2021
Deadline for Final Completion	4/1/2021
Deadline for Final Warranty Inspection	4/1/2022

2.2.2 The Town reserves the right to schedule interviews. At this time interviews are not being included in the RFQ procurement phase.

2.2.3 The Town assumes no obligations, responsibilities and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFQ. All such costs shall be borne solely by each Proposer.

## 2.3 Point of Contact

2.3.1 To ensure fairness during the procurement process, until the Agreement is executed, Proposers and their employees, representatives and agents shall not contact Town staff, member of selection committee, or any other official, employee, representative.

2.3.2 Direct questions regarding this RFQ and Project are to be submitted in writing, electronically at the email address listed below. Modifications to the RFQ can only be made by Addenda. Point of Contact: Stephen Wensman, Planning Director, Town of Smithfield Email address: [Stephen.wensman@smithfield-nc.com](mailto:Stephen.wensman@smithfield-nc.com)

2.3.3 All communications are subject to distribution to all Proposers except deemed confidential information or as proprietary by a Proposer. The Town will share with all

Proposers all Addenda to this RFQ including any revisions based on its review of Proposer comment and questions concerning this RFQ. The Town disclaims the accuracy of information derived from any source other than the Point of Contact identified above, and the use of any such information is at the sole risk of the Proposer. Only answers and responses issued by formal Addenda shall be final and binding upon the Town. Oral and other interpretations shall be without legal effect and Proposer shall not rely on such oral and other interpretations.

## **2.4 Copies of RFQs**

2.4.1 Obtain a complete copy of the RFQ.

2.4.2 Use complete RFQ in preparing the SOQs; the Town does not assume any responsibility for errors or misinterpretations resulting from the use of an incomplete RFQ.

2.4.3 The Town will make copies of RFQ available on the above terms only for the purpose of obtaining SOQs to determine the three most highly qualified Proposers and the selection of the highest ranked Proposer and does not confer a license or grant permission or authorization for any other use.

## **2.5 Examination Before submitting an SOQ:**

- A. Examine and carefully study the RFQ, including any Addenda and the related supplemental information identified in the RFQ.
- B. Become familiar and satisfied with all federal, state, and local laws and regulations that may affect cost, progress, or the provisions of the Services.
- C. Carefully study and correlate the information known to Proposer with the RFQ, Addenda and the related supplemental information identified in the RFQ.
- D. Promptly give Point of Contact written notice of all conflicts, errors, ambiguities, or discrepancies that Proposer discovers in the RFQ, Addenda and the related supplemental information. Determine that the RFQ, Addenda and the related supplemental information are generally sufficient to indicate and convey understanding of all terms and conditions for completion of the Services.  
Instructions for

## **2.6 Interpretations and Alternate Terms and Conditions**

Prior to the SOQ submission deadline stated in this RFQ, submit all questions about the meaning or intent of the RFQ, Addenda and the related supplemental information to the Point of Contact as indicated in the RFQ. Interpretations or clarifications considered necessary by the Town in response to such questions will be issued by Addenda. Addenda will be posted on the web site. Other questions will be answered on the web site. Questions received after the question submission

date will not be answered. Town will issue Addenda as appropriate of any changes to the RFQ. An SOQ submitted with clarifications or taking exceptions to the requirements of the RFQ, except as modified by Addenda, may be rejected.

## **2.7 Preparation of SOQ**

2.7.1 The Statement of Qualifications Letter (“SOQ Transmittal Letter”) and other SOQ Forms are included with the RFQ. A copy of these forms in Word or Excel, as appropriate, will be made available to Proposers.

2.7.2 Complete all blanks on the SOQ Transmittal Letter, SOQ Form 1. Execute SOQ Form 1 as indicated below:

A. For a corporation in the corporate name with the signature of the president, a vice-president or other corporate officer accompanied by evidence of authority of the individual to sign on behalf of the corporation. Show the corporate address and state of incorporation with the signature.

B. For a partnership in the partnership name with the signature of a partner. The title of the partner must appear with the signature. The document must be accompanied by evidence of authority for that individual to sign on behalf of the partnership. Show the official address of the partnership with the signature.

C. For a limited liability company in the name of the firm with the signature of an officer of that company. The document must be accompanied by evidence of authority for that individual to sign on behalf of the company. Show the state in which the firm was formed and the official address of the firm with the signature.

D. For a joint venture with a signature of an authorized person from each joint venture member entity in the manner indicated on the SOQ Transmittal Letter. The document must be accompanied by evidence of authority for each individual to sign on behalf of their respective organizations. Show the official address of the joint venture with the signature.

2.7.3 Type or print all names in ink below the signature.

2.7.4 Acknowledge receipt of all Addenda by filling in the number and date of each Addenda received. Provide a signature as indicated to verify that the Addenda were received. A SOQ Transmittal Letter that does not acknowledge the receipt of all Addenda may be considered non-responsive.

2.7.5 Provide the name, address and telephone number of the individual to be contacted for any communications regarding the RFQ in the SOQ Transmittal Letter.

2.7.6 Proposer shall provide evidence of its authority to do business in the State of North Carolina and include such evidence with SOQ Form 1. Alternatively, Proposer will covenant to obtain such authority prior to award of the Agreement, with its execution of SOQ Form 1.

## 2.8 Confidentiality of SOQ Information

2.8.1 Documents submitted as part of the SOQ are governed by Chapter 132 (Public Records) of the General Statutes of North Carolina. If the Proposal contains confidential technical, financial, or other information that constitutes a trade secret under applicable North Carolina law (See GS 66-152(3) and GS 132-1.2), such confidential information shall be specifically and clearly identified by properly marking each page and inserting the following notice on the front page of the SOQ immediately following the Proposer's Cover Letter: "Pages of this Proposal, identified by an asterisk (\*) and along the right margin with a bold vertical line, contain information that is a trade secret under applicable North Carolina law. The Proposer requests that such information be used for the limited purpose of evaluating this Proposal. In submitting this Proposal, the Proposer represents that it is familiar with and understands the current provisions of Chapter 132 (entitled Public Records) and Article 24 of Chapter 66 (entitled "Trade Secrets Protection Act") of the North Carolina General Statutes. Furthermore, in submitting this Proposal, the Proposer also agrees that the Town of Smithfield may reveal any trade secret materials contained in the Proposal to each of the following who are involved in the review or evaluation of any Proposal submitted as part of this Project: Officers and employees of the Town of Smithfield. Additionally, the Proposer agrees to indemnify and hold harmless the following persons and entities from all costs, damages, and expenses incurred in connection with refusing to disclose any material which the Proposer has designated as a trade secret: officers and employees of The Town of Smithfield. The Proposer further understands that it may be disqualified if the Proposer designates one or more portions of its submitted Proposal as a trade secret and the Town of Smithfield's Attorney determines that the Proposer knew or should have known that any part of such portion(s) does not qualify as a trade secret under applicable North Carolina law. It is understood that the public disclosure of any portion of a Proposal will be made to the extent that the Town of Smithfield determines that such disclosure is required by applicable Law." Furthermore, marking the entire SOQ as confidential is not allowed.

## 2.9 Submittal of SOQs

2.9.1 The Proposer shall complete and submit the SOQ per the instructions and requirements of the RFQ.

- A. The SOQ shall be submitted in the following format and subject to the page limits as indicated below and elsewhere in this RFQ:

Section #	Section Title	Page Limit (single printed pages)	Counts towards Page Limit
	Cover Letter	1	Yes

1	Statement of Qualifications Transmittal Letter	Forms 1 through 4	No
2	Proposer and Design-Build Team Profiles	3	Yes
3	Proposer and Design-Build Team Qualifications and Experience	Form 7	No
4	Project Organization and Personnel	1, Form 8	Yes, except form 8
5	Design-Build Team Project Approach	6	Yes
6	Safety Program and Safety Performance	Form 9	Yes
7	Financial Information	Forms 5 and 6	No
	SOQ Page Limit (Single printed pages)	12	

B. Except for charts, schedules, tables, exhibits and other illustrative and graphical information, all information shall be prepared on 8.5” x 11” white paper, except where specifically excepted in this RFQ. Charts, schedules, tables, exhibits and other illustrative and graphical information may be on 11” x 17” paper, but must be folded to 8.5” x 11”. An 11” x 17” sheet shall be counted as one (1) page provided it is a chart, schedule, table, exhibit or other illustrative and graphical information. All printing, except for the front cover of the SOQ and any appendices, must be a font of not less than 12-point and be double-sided. A double-sided page shall be considered two (2) pages for purposes of the page limitations. The SOQ covers front and back and section dividers with tabs will not count as pages for purposes of page limitations. Any plan sheets or drawing submitted shall be drawn to an identifiable scale and submitted on 11” x 17” sheets. The SOQ shall be submitted in a spiral bound document.

C. Proposers are instructed to limit the information included in the SOQ to the information necessary to demonstrate Proposer’s technical, financial and other qualifications and experience for the Project and any other information specifically requested in this RFQ. SOQs should be prepared in a straightforward and concise manner. The Town is not interested in receiving marketing brochures, promotional material, generic narratives, elaborate binding, colored displays, etc. in the SOQs. Emphasis should be placed on clarity and completeness of content and responsiveness to the RFQ requirements.



## D. SOQ Forms

SOQ Forms		
SOQ Form Number	Title	SOQ Submittal Location
1	Statement of Qualifications Transmittal Letter	With cover letter
2	Surety Letter of Intent	Enclosed with SOQ Form 1
3	Draft Design-Build Agreement Comments	Enclosed with SOQ Form 1
4	Financial Resources Data	Section 7 Financial Information
5	Bank Credit Reference	Section 7 Financial Information
6	Proposer or Design-Builder Team Member Similar Project Experience	Section 3 Proposer or Design-Builder Team Member Similar Project Experience
7	Proposed Key Personnel Matrix	Section 4 Project Organization and Personnel
8	Proposer Safety Performance Questionnaire	Section 6 Safety Program and Safety Performance

E. Proposer shall provide one digital copy of the SOQ in portable document format (pdf) emailed to [Stephen.wensman@smithfield-nc.com](mailto:Stephen.wensman@smithfield-nc.com). The SOQ is to be a single file. Confidential information may be provided in a separate file, provided that file is referenced in the SOQ. The town will respond with an email stating that the submission was received and will be evaluated. Please submit your digital copy with the following nomenclature: SBCRP\_Proposal\_(Firm Name). Failure to properly name may result in rejection.

2.9.2 Proposers are required to submit a SOQ for consideration in award of the Agreement.

2.9.3 Proposers shall only be allowed to submit one SOQ in which it has an interest in. Reasonable grounds for believing that any Proposer has an interest in more than one SOQ for the Project shall be cause for disqualification of that Proposer and the rejection of all SOQs in which that Proposer has an interest.

## 2.10 Modification or Withdrawal of SOQ

2.10.1 Deliver the document to the place where the SOQs are to be submitted prior to the date and time for the opening of the SOQs.

2.10.2 Proposers may withdraw an SOQ by providing a written request, duly executed by an authorized representative, and delivered to the Town at any time prior to the SOQ submittal deadline or within 24 hours after SOQs are opened. If withdrawal is after SOQs

are opened, the written request shall demonstrate to the reasonable satisfaction of Town that there was a material and substantial mistake in the preparation of its SOQ. Individuals making the withdrawal will be required to provide evidence of serving as an authorized representative of the Proposer.

## 2.11 Evaluation of SOQs

2.11.1 Within 30 days after the date of opening the SOQs, the Town will evaluate and rank each SOQ with respect to the evaluation criteria described in this RFQ. In evaluating SOQs, Town will consider whether or not the SOQs fully comply with the RFQ submittal requirements.

2.11.2 In considering SOQs, Town will evaluate, score and rank the SOQs in accordance with the requirements set forth in this RFQ to determine the three most highly qualified Proposers.

2.11.3 The SOQs will be evaluated using the criteria indicated in the table below.

Evaluation Criteria	Description and RFQ Location	Max. Score
Compliant SOQ Transmittal Letter, Financial Information, Ability to Provide Bonds and Insurance	3.2.1 SOQ Transmittal Letter 3.2.7 Financial Information	Pass/Fail
Proposer Experience with Similar Size and Scope Projects	3.2.3 Proposer and Design-Build Team Qualifications and Experience	15
Key Staff Qualifications	3.2.4 Project Organization and Personnel	25
Project Approach	3.2.5 Proposer and Design-Build Team Design and Construction Approach	25
Innovation and Cost Control	3.2.5 Proposer and Design-Build Team Design and Construction Approach	20
Schedule	3.2.5 Proposer and Design-Build Team Design and Construction Approach	15
Proposer and Design-Build Team Safety Program and Safety Performance	3.2.6 Safety Program and Safety Performance	Pass/Fail
<b>Total</b>		<b>100</b>

**Rating system will be as follows:**

15-25 = Outstanding Qualified Response

12-20 = Superior Response

- 9-15 = Fully Qualified Response
- 6-10 = Minimally Qualified Response
- 3-5 = Marginal Response

2.11.4 Material misstatements and/or inaccuracies in the information submitted in the SOQs that was relied upon for evaluation, scoring and ranking may be grounds for rejection of the SOQ for this Project. Any material misstatements and/or inaccuracies, if discovered after award of the Agreement may be grounds for immediate termination of the Agreement, at the Town's sole discretion. Additionally, the Proposer will be liable to the Town for any additional costs or damages to the Town resulting from such misstatements and/or inaccuracies, including costs and attorney's fees for collecting such costs and damages.

2.11.5 Submission of an SOQ indicates Proposer's acceptance of the evaluation and scoring criteria and methodology contained in the RFQ as well as Proposer's recognition and acknowledgement that subjective judgments must be made by the selection committee during the evaluation.

## **2.12 Payment and Performance Bonds and Insurance**

### **2.12.1 Payment and Performance Bonds**

- A. With the submission of the SOQ, Proposer will be required to submit a Letter of Intent from Proposer's surety verifying the Proposer's ability to acquire payment and performance bonds in the amount of 100% of the Agreement Value as required and documenting the commitment from its surety to provide such bonds.
- B. The bonds must be issued by a surety legally licensed to do business in the State of North Carolina.
- C. The bonds shall become effective upon the awarding of the Agreement. The bonds shall be in the amount of the Town's budget as stated in this RFQ. When the price is established and prior to the initiation of construction, the bonds shall be adjusted to reflect the price.
- D. Bonds shall be in a form that complies with North Carolina G.S. Chapter 44A Article 3.

### **2.12.2 Insurance**

- A. With the submission of the SOQ, Proposer will be required to submit a Letter of Intent from Proposer's insurance company stating Proposer's ability to acquire and provide the required insurance for the Project.
- B. The required insurance shall be obtained and maintained from insurance companies that are duly licensed or authorized in the jurisdiction in which the

Project is located to issue insurance policies for the limits and coverages so required.

C. The insurance requirements are included in the draft Design-Build Agreement

## **2.13 The Draft Design-Build Agreement**

2.13.1 The draft Design-Build Agreement is contained in RFQ Section 5. Additional information sets forth the intended risk allocation, responsibilities, obligations and other requirements of the Design-Builder in performing the required Scope of Services for this Project. Information specific to the Design-Builder that may also become part of the Design-Build Agreement includes information provided in the Selected Proposer's SOQ. Once negotiated with the Selected Proposer, the Design-Build Agreement will contain the entire agreement between the parties with respect to the Project and will completely and fully supersede all other agreements of the Town and the Design-Builder, including those contained in the RFQ and the Design-Builder's Proposal.

2.13.2 Proposers are encouraged to provide detailed written comments on the Draft Design-Build Agreement by the deadline for questions and comments described on the Procurement Schedule.

2.13.3 Based on its assessment of all Proposers' comments, the Town, in its sole discretion, may make modifications to the draft Design-Build Agreement and issue addenda to the RFQ containing such modifications. The Town expects that this draft Design-Build Agreement review and comment process will substantially reduce the need for extensive post selection negotiation.

2.13.4 Each Proposer will be afforded a final opportunity to comment on the draft Design-Build Agreement by indicating its comments on SOQ Form 4, Comments on the draft Design-Build Agreement. This form will be submitted in Section One of the SOQ and will contain the Proposer's final comments on the draft Design-Build Agreement.

2.13.5 The Town fully intends to negotiate the terms and conditions of the final Design-Build Agreement and will consider suggested changes included on SOQ Form 4 during the course of negotiations with the selected Proposer. The other areas of negotiations are so marked in the draft Design-Build Agreement with the phrase "Subject to Negotiations" with the Selected Proposer".

2.13.6 It is Town's intent to limit negotiations to those items contained on SOQ Form 4. All Proposers are hereby advised to fully complete SOQ Form 4 as those items contained on such form will be the extent of negotiations. Unless there is a change in law or other uncontrollable circumstances occurring between the SOQ submission date and the date the Agreement is signed, Town does not intend to discuss or negotiate any issue, term or condition that is not specifically identified on SOQ Form 4. In the event that the Proposer selected for negotiations raises any such issue, term or condition, Town reserves the right

to suspend or terminate negotiations with the selected Proposer and to commence negotiations with the next highest ranked Proposer.

## **2.14 Requirements for Design Professionals**

Proposer shall certify to the Town that each licensed design professional who is a Design-Build Team Member, including subconsultants, was selected based on demonstrated competence and qualifications in the manner provided by North Carolina G.S. 143-64-31. This certification is included on Statement of Qualifications Transmittal Letter, SOQ Form

## **2.15 Inspection and Construction Materials Testing**

The Design-Builder will be required to provide quality assurance and quality control services in accordance with the contract documents. Independent of those services, the Town has the right to provide or contract for inspection services, testing of construction material engineering and verification testing services necessary for acceptance of the Project. The Design-Builder will be required to provide management for coordination of these services.

## **2.16 Minority, Women and Small Business**

In accordance with North Carolina Gen. Stat. §143-128, as amended by Chapter 480 of the 1989 Session Laws and by Chapter 496 of the 2001 Session Laws, it is the policy of the Town of Smithfield that on all building construction contracts with costs of \$100,000.00 or greater, including projects done by a private entity on a facility that the Town will lease or purchase, the Town shall have a minority participation goal of ten percent (10%).

## **2.17 Validity of SOQs**

The SOQ will remain in full force and effect for sixty (60) days after the SOQ submission date.

## **2.18 Responsiveness**

To be deemed responsive, SOQs must be prepared thoroughly; be responsive to the requirements and criteria contained in the RFQ; demonstrate an ability to meet the requirements of the RFQ and conform to the material terms and/or conditions of the RFQ, all as determined solely by the Town. The Town will reject an SOQ if it is materially incomplete, takes excessive exceptions to material terms and/or conditions of the RFQ or contains information that does not appear to demonstrate an ability to meet the RFQ requirements, all as determined solely by the Town. The Town will apply reasonable judgment, balance and discretion in deciding whether a SOQ is responsive.

## **2.19 Town Not Responsible for Assumptions by Proposers**

Each SOQ shall present the assumptions that the Proposer has incorporated into its SOQ. Neither the participation of the Town at any correspondence or discussions with the Proposer, nor the subsequent action of short listing a Proposer or award by the Town of the Agreement, shall in any

way be interpreted as an agreement or approval by the Town that the assumptions are reasonable or correct or that the Town accepts any liability for the Proposer's SOQ. The Town specifically disclaims responsibility or liability for any Proposer's assumptions in developing its SOQ.

## **2.20 Rights and Reservations of the Town**

In connection with this procurement process, including SOQs and the short listing of the highest ranked SOQs, the Town reserves to itself all rights (which rights shall be exercisable by Town at its sole discretion) available to it under applicable law, including without limitation, the following with or without cause and with or without notice:

- A. The right to cancel, withdraw, postpone or extend RFQ in whole or in part at any time prior to the short list determination.
- B. The right to issue a new RFQ or to revise and modify, at any time prior to the SOQ submittal date, information included in the RFQ including but not limited to the dates set or projected and factors to be considered in evaluating SOQs and the responsibilities of the Proposers.
- C. The right to modify the procurement schedule.
- D. The right to waive minor and non-material deficiencies, informalities and irregularities in an SOQ.
- E. The right to suspend and terminate the procurement process or to terminate evaluations of SOQs received at any time.
- F. The right to correspondence with the Proposers to seek an improved understanding of SOQs at any time.
- G. The right to hold meetings and conduct discussions with any or all of the Proposers to seek an improved understanding of the SOQs.
- H. The right to seek or obtain data and information from any source that has the potential to improve the understanding and evaluation of the SOQs.
- I. The right to appoint and change appointees of any selection committee.
- J. The right to use assistance of outside technical and legal experts and consultants in the evaluation process.
- K. The right to respond to all, some or none of the inquiries, questions and/or requests for clarification received relative to this RFQ.
- L. The right to seek clarifications from any Proposer to fully understand information provided in the SOQ.
- M. The right to request additional information from a Proposer during the evaluation of SOQs.

N. The right to reject an SOQ containing exceptions, additions, qualifications or conditions not called for in the RFQ.

O. The right to conduct an independent investigation of any information, including prior experience identified in an SOQ by contacting project references, accessing public information, contacting independent parties or any other means.

## **2.21 Requirements to Keep Design-Build Team Intact**

The Design-Build Team proposed by Proposer, including but not limited to the Design-Build Team Members and Key Personnel identified in the SOQ, shall remain on Proposer’s Design-Build Team for the duration of the procurement process. If circumstances require a proposed change, it must be submitted in writing to the Point of Contact. The only circumstance that would warrant such a change would occur if a person defined as one of the “Key Personnel” is no longer employed by the Proposer or Design-Build Team Member. The Town, in its sole discretion, will determine whether to authorize the change. Unauthorized changes to the Proposer’s Design-Build Team at any time during the procurement process may result in the elimination of the Proposer from further consideration. The Design-Builder shall obtain written approval from the Town prior to changing Key Personnel as will be listed in the Agreement after the Agreement has been awarded. Statement of Qualifications.

## **SECTION 3. SOQ Submission Requirements**

### **3.1 Requirements for the SOQ**

3.1.1 The Statement of Qualifications must include, as a minimum, the information described in this Section. Failure to submit the required information in the SOQ may result in the Town considering the SOQ as non-responsive and may result in rejection of the SOQ by the Town. Proposers may be required to provide supplemental information to clarify, enhance or supplement the information provided in the SOQs.

3.1.2 Proposers must provide the information requested in the RFQ. Information is requested subject to the page limits indicated, and on the SOQ Forms included in this RFQ. The SOQ is limited to 12 single printed pages. This page limit does not include the cover letter, front and back covers, section dividers, Section 3.2.7 Financial Information, and the SOQ Forms. A copy of these forms will be provided in Microsoft Word or PDF, as appropriate, to assist with the preparation of the SOQs. Information in these forms must be provided completely and in detail. Failure to include the information completely and clearly may result in lower scores in the evaluations. Information that cannot be incorporated in the form may be included in an appendix to the form. This appendix must be clearly referenced by appendix number in the form, and the appended material must include the appendix number on every sheet of the appendix. The appendix must include only the information that responds to the question or item number to which the appended information applies.

## 3.2 SOQ Submission Requirements

3.2.1 Cover Letter and SOQ Transmittal Letter Proposers are free to submit a cover letter of their choice, not exceeding one (1) page. At a minimum, the cover letter will contain the explanation required by the North Carolina General Statutes Chapter 143. North Carolina General Statutes Chapter 143-128.1A(c) (8) requires that the Proposer provide an explanation of its Design-Build Team selection, which shall consist of a list of the licensed contractors, licensed subcontractors and licensed design professionals whom the Proposer proposes to use for the Project design and construction. If the Proposer has minor work scope items that it plans to subcontract for at a later date, Proposer shall provide a description of such minor work and an outline on how the Proposer will select such subcontractors.

### 3.2.2 Proposer and Design-Build Team Profiles

A. Proposer shall provide information as to the history of the Proposer, ownership, organization and other background information including lines of business and service offerings, locations of home and other offices, years in business and providing construction services, including design and construction services for stream restoration projects, growth over time in terms of number of projects, size of projects, types of projects, firm revenue, number of employees, etc. This narrative should include a description of any other names the Proposer has had in its history and any related company that is named in the SOQ as to having relevant experience.

#### 1. Proposer Legal Structure

a. The Town is interested in understanding the legal structure of the Proposer and requests information be submitted. The information submitted shall be concise, clear and in sufficient detail to allow the Town a complete understanding.

b. If Proposer is organized as a consortium, partnership or any other form of joint venture, a limited liability company (LLC), or other form of business entity specifically formed for this Project, whether the business entity for this Project already has been legally constituted or the business entity has not yet been legally formed, the Proposer shall provide the following information:

1) Confirmation of how Proposer is or will be legally structured, identification of the parties to the legal structure, the major roles and responsibilities of the parties and percentages of ownership. Identification of the executed agreements that exist between the parties, i.e. a joint venture agreement, memo of understanding, other underlying agreements, etc.



2) Summary of the key terms of the executed agreement(s) identified above in (a) between the parties including the manner the entity will operate administratively and financially, including: who is responsible for financial management of the entity, who is responsible for the day to day management of the entity, how decisions are made, how conflicts and disagreements will be resolved and how to address any deadlocked situations or situations where a required unanimous agreement is not reached.

3) Based on the Proposer legal structure, provide a statement acknowledging that the parties are either jointly and severally liable or that each party will guarantee all of the Proposer's obligations of the Agreement.

B. Provide the names of other Design-Build Team Members (other than Proposer). Provide brief summary information as to its history, ownership, organization and other background information including lines of business and service offerings, locations of home and other offices, years in business and providing design, construction and stream restoration services, growth over time in terms of number of projects, size of projects, types of projects, firm revenue, number of employees, etc.

### 3.2.3 Proposer and Design-Build Team Qualifications and Experience

A. Proposer shall complete SOQ Form 7 which describes Proposer and if applicable, Design-Build Team experience in designing and constructing similar projects as to that proposed in this RFQ. These forms shall be submitted for no more than five (5) stream restoration projects (one form per project) that were constructed in urban environments. It is at the discretion of the Proposer to select the projects that best demonstrate meeting the RFQ submittal requirements for Proposer and if applicable Design-Build Team Qualifications and Experience.

B. The five similar projects should demonstrate:

1. Projects completed within the last 5 years.
2. Stream restoration projects consisting of at least 1,000 linear feet.
3. Design and construction of stream restoration projects that have the following attributes will be given a more favorable evaluation than those that do not:
  - a. Design for and construction of high-accuracy excavation and grading of stream channels and floodplains to provide permanent functional natural channel design features

including thalweg, riffle, step- pool, run, glide, point bar, inner berm, bankfull bench and floodplain depressions. Experience with GPS machine control technologies is preferred.

b. Design for and construction of high-accuracy installation of boulder structures with size requirements of at least 1 ton for streamflow deflection and grade control. Specifically describe the use of structures including vanes, cross-vanes, step-pools, jhook vanes, boulder plunge pools, weirs, boulder clusters and constructed riffles.

c. Design for and construction of high-accuracy installation of log-structures with size requirements of at least 30-ft length by 2-ft diameter for streamflow deflection and grade control. Typical structures include log sills, log rollers, j-hook log vanes, log weirs and constructed riffles.

d. Design for and construction of high-accuracy installation of outfall pipes, floodplain wetlands and vegetative swales for capturing, treating and discharging concentrated polluted storm water in a riparian floodplain setting that contributes to overall stream system health and integrity.

e. Successful installation of native riparian vegetation for bank stabilization and riparian habitat, including temporary erosion control grasses, permanent deep-rooted native grasses, wetland plants, live stakes, on site transplants, bare root seedlings and container plants.

f. Erosion and sedimentation control measures during river project construction including pump-around, flow diversion, sediment fence, temporary check dams and other turbidity reduction measures.

#### 3.2.4 Project Organization and Personnel

A. Provide an organizational chart(s) for this Project showing Proposer's organization and management structure that identifies the Proposer and if applicable Design-Build Team Members responsibilities for the major activities and functions to be performed for the Services. The structure of Proposer's Project organization will also identify the significant positions and participants (both firms and individuals) who are responsible for major elements of the provision of the Services. Significant positions indicated on the organizational chart can have named individuals other than Key Personnel on Form 8.

B. Describe the roles, responsibilities, functional arrangements, and reporting relationships between and among the Proposer and if applicable the Design-Build Team Members. Describe the rationale for the proposed organizational and management structure and the reasons why it is advantageous to the Town.

C. Proposer shall designate Key Personnel proposed for the Project. Key Personnel include the Project Manager, Project Superintendent, Primary Equipment Operator, Lead Stream Restoration Designer and Permitting Specialist. In addition, Design-Builder will be required to have at all times during the construction an English-speaking designee onsite. Proposers that wish to add any position and individual as a Key Personnel that serves a significant and important role can do so. The Proposer will designate such individuals and provide the information requested on SOQ Form 8 for each Key Personnel position. The Proposer must provide the services of the proposed Key Personnel for the life of the Project as a condition of the procurement. Failure to provide the proposed Key Personnel may result in the disqualification of the Proposer and may void the award of the Agreement.

D. The Proposer shall indicate in this SOQ section how the following has been satisfied: Site Superintendent and Primary Equipment Operator must have experience with at least five successful stream restoration projects in urban environments. To demonstrate this, provide a page for each of the five projects that includes construction progress photos (a brief narrative is allowed on this page).

### 3.2.5 Proposer and Design-Build Team Design and Construction Approach

A. Proposer shall provide sufficient information to enable the Town to understand the Proposer's design and construction approach, specifically for the items listed below. The submitted information should present a compelling case as to why the Proposer and if applicable its Design-Build Team should be shortlisted.

1. Describe the project elements that would be necessary to successfully design and construct this project. Some specific aspects of design and construction that are of particular importance for the Town and should be included in this description are:

a. Approach for the planting of restored stream channel and riparian corridor, with specific focus on plant species, type and size selection to provide year-round color and aesthetic appeal to project.

b. Approach for invasive species management and removal.

c. Approach for working with adjacent landowners, including developers, to coordinate design and construction activities with existing activities and consideration for future development plans.

d. Approach to developing the maintenance plan for the Project including prior project experiences lessons learned with maintenance plan development and implementation.

2. Describe the key success factors as you see it.

3. Provide a schedule of milestones of when project elements will be met.

4. The Design-Build Team will describe any innovative and cost control measures that will benefit the Town.

3.2.6 Safety Program and Safety Performance Each Proposer shall submit the safety program and safety performance information requested below. If the Proposer is a consortium, a joint venture, LLC or a partnership, each participating party or firm of such consortium, joint venture, LLC, or partnership shall provide the safety program and safety performance information.

A. Complete the Proposer Safety Performance Questionnaire, SOQ Form 9. Please note, Proposers with an Experience Modification Rate (EMR) higher than 1.0 may be disqualified as a Proposer for the Project.

### 3.2.7 Financial Information

A. Each Proposer shall submit the financial information requested below in Section B.1. through B.4. and C and include such information in this Section, except where specifically noted in bold font. If the Proposer is a consortium, a joint venture, LLC or a partnership, each participating party or firm of such consortium, joint venture, LLC, or partnership shall provide the requested financial information required by this section.

B. Please furnish for the Proposer, the following financial information listed below. If any of this information is not provided, the reason for its omission shall be described.

1. Evidence of the ability of the Proposer to meet the bonding requirements described in the RFQ. Letter(s) of Intent in the form required by the RFQ from the Surety or Sureties must be included with the SOQ Transmittal Letter.

2. Evidence of the ability of the Proposer to meet the insurance requirements described in the RFQ. Letter(s) of Intent in the form

required by the RFQ from the insurance company must be included with the SOQ Transmittal Letter.

3. A summary narrative that describes the Proposer's financial condition and resources in sufficient detail to demonstrate the Proposer's ability to perform the Services for this Project. Completion and submission of SOQ Form 5 - Financial Resources Data.

4. Completion of SOQ Form 6 – one (1) “Bank Credit Reference Form” by bank providing services to the Proposer.

#### C. Direct Financial Questions

1. The purpose of this section is to elicit information pertaining to unfavorable circumstances or events that have the potential to adversely impact the Proposer's ability to honor its contractual commitments in the provision of the Services. To the extent that any of these questions are answered in a manner that indicates that any of these unfavorable circumstances or events have occurred, it is the responsibility of the Proposer to describe the unfavorable circumstance or event and provide sufficient information to demonstrate that the unfavorable circumstance or event will not adversely impact the Proposer's ability to honor its contractual commitments in the provision of the Services. Responses to these questions are for Proposer and any predecessor name(s) of Proposer.

a. Material Adverse Changes in Financial Position. Within the last three years, describe any material, historical, existing or any known anticipated changes in financial position of the Proposer including any material changes in the mode of conducting business, mergers, acquisitions, takeovers, joint ventures or divestitures.

b. Bankruptcy. Has the Proposer ever declared bankruptcy or filed for protection from creditors under state or federal proceedings? If so, when and describe the impact it would have on the ability to undertake this Project.

c. Liabilities and/or Potential Liabilities. List and briefly describe any pending or past legal proceedings within last three years and judgments or any contingent liabilities in which the Proposer or any parents, affiliates and subsidiaries of the Proposer was or is a party that could adversely affect the Proposer's financial position or ability to undertake this Project.

d. Completion of Contracts. Within the last three years has the Proposer failed to complete any contract or has any contract been terminated due to alleged poor performance, default or litigation?

e. Violation of Laws. Has the Proposer been convicted of any criminal conduct or been found in violation of any federal, state, or local statute, regulation or court order concerning antitrust, public contracting, employment discrimination or prevailing wages? If so, describe the circumstances.

f. Violation of Regulatory Compliance. Has the Proposer been cited for a violation of any federal, state, or local statute, regulation for regulatory environmental compliance? If so, describe the circumstances.

g. Debarred from Bidding. Has the Proposer been debarred or are under consideration for debarment on public contracts by the federal government or by any governmental entity in North Carolina or any other state? If so, describe the circumstances. Is the decision under review or was it upheld by formal legal and/or grievance process?

h. Contractor Refusal. Has Proposer ever refused to construct or to provide materials defined in the contract documents for any project?

i. Proposer Release. Has Proposer been released from a bid or proposal in the past three years?

j. Litigation. Has Proposer been involved in litigation involving owners for construction projects that have been filed within last three years or that are currently outstanding?

k. Claims. Provide a summary of significant claims incidences (claim is 3% or more of the contract amount) over the past three years that Proposer has had involving owners for construction projects.

**Town of Smithfield**

MEMORANDUM OF UNDERSTANDING FOR THE  
ADMINISTRATION AND PROCEDURES OF THE  
*Smithfield Agreement* ENVIRONMENTAL  
ENHANCEMENT GRANT PROGRAM

This Memorandum of Understanding (“MOU”) of the administration and procedures of the *Smithfield Agreement* Environmental Enhancement Fund Grant Program (“EEG”) is hereby received and acknowledged on this the 10<sup>th</sup> day of March 2020 by Town of Smithfield, (“Grantee”), a North Carolina Municipal corporation.

**WITNESSETH**

**WHEREAS**, on 25 July 2000, the Attorney General of North Carolina (“NCAG”) and Smithfield Foods, Inc. and its subsidiaries (“Smithfield”) entered into an agreement (“*Smithfield Agreement*”) which provided, *inter alia*, that Smithfield would provide funds to be administered by the Attorney General from which funds would be paid out to projects which enhance the environment of the State (“Grant Funds”); and,

**WHEREAS**, Smithfield has paid over the Grant Funds, as settlor, into a private trust account held for the purposes described above and as described in the *Smithfield Agreement*; and,

**WHEREAS**, these Grant Funds were provided by Smithfield with the intent and desire to have the Grant Funds held in trust by a private third-party fiduciary (“Trustee”); and

**WHEREAS**, it is the desire of the NCAG to comport with all applicable and relevant statutes in the discharge of the Attorney General’s duties under the *Smithfield Agreement*; and,

**WHEREAS**, the Grant Funds will be used to enhance the environment of the entire State, including eastern North Carolina, to obtain environmental easements, construct or maintain wetlands, and such other environmental purposes as the NCAG deems appropriate; and,

**WHEREAS**, the NCAG is empowered to designate organizations or trusts to receive payments from the Grant Funds for the purpose of environmental enhancement; and,

**WHEREAS**, the NCAG, in his capacity under the *Smithfield Agreement*, has sought to identify programs, with consultation from other applicable interested parties, as submitted under the Request for Proposals, dated July 8, 2019; and,

**WHEREAS**, the Grantee’s proposal has been designated for funding from the Grant Funds by the NCAG, as provided for in the *Smithfield Agreement*; and,

**WHEREAS**, the NCAG has designed EEG to administer environmental grants awarded under the *Smithfield Agreement*;

**NOW THEREFORE**, Grantee acknowledges its understanding of the following terms and conditions for the administration of the Environmental Enhancement Grant Program and the procedures by which Grant Funds are distributed as specified and described in detail below.

### **I. Memorandum Documents and Attachments**

#### **A. Grant Documents**

The Grant Administration and Procedure Documents shall consist of the following:

- |   |              |
|---|--------------|
| (1) This Memorandum   |              |
| (2) General Terms and Conditions                                  | Attachment A |
| (3) Grantee's original proposal and proposal update if applicable | Attachment B |
| (4) Project line item budget and budget narrative                 | Attachment C |
| (5) Notice of Conditions  | Attachment D |
| (6) Reimbursement Procedure                                       | Attachment E |
| (7) Schedule of Required Reports                                  | Attachment F |

#### **B. Entire Understanding**

These documents describe and constitute the entire grant administration and procedure process and supersede all prior oral or written statements.

#### **C. Electronic Documents**

This MOU and attachments are offered to Grantee by the NCAG as electronic documents. Grantee accepts the MOU and attachments as electronic documents and will give these electronic documents the same force as paper documents.

### **II. Precedence Among Grant Documents**

In the event of a conflict between or among the terms of the Grant Documents, the terms in the Grant Document with the highest relative precedence shall prevail. The order of precedence shall be the order of documents as listed in Part I. A., above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence. If there are multiple Amendments to the Understanding, the most recent amendment shall have the highest precedence and the oldest amendment shall have the lowest precedence.

### **III. Effective Period**

This Project shall begin on 1 March 2020 and shall terminate after 36 months on 28 February 2023. Within three months before the termination date of the grant, Grantee may send a written request to the NCAG for a no cost extension of time. The NCAG may grant or deny Grantee's request, at its sole discretion. Extensions of time shall be made through a written amendment as provided for in the General Terms and Conditions as described in Attachment A. Reasonable expenses related to the Project incurred before the start date in this paragraph may be allowable at the discretion of the NCAG upon written request by the Grantee.



#### **IV. Grantee's Proposal**

Grantee's Proposal shall consist of the Grant Project as described in Attachment B. The Proposal shall be completed in accordance with the approved budget in Attachment C. Grantee may submit requests for reimbursement to the NCAG for the costs it has expended to complete the Grant Project as described in Attachment B.

#### **V. NCAG's Discretion to Direct Disbursement of Funds**

The NCAG shall have the sole discretion to direct the Trustee to disburse to the Grantee in the manner and in the amounts specified in the Memorandum of Understanding for the amounts and purposes as described in Attachments B and C. The total amount that may be directed in disbursement to the Grantee per this MOU shall not exceed \$100,000.00 (One hundred thousand dollars).

#### **VI. Conditions Precedent**

Grantee acknowledges that full and complete compliance with the terms described in the Notice of Conditions, Attachment D, is a condition precedent to any disbursement of any Grant Funds to Grantee.

#### **VIII. Interest in Funds**

Grantee denies, waives, or releases any interest, legal or equitable, created by contract, statute, or common law, which Grantee may have or Grantee may be found to have in the Grant Funds, as held by Trustee. If, upon the completion of the Grant Project, Grantee does not submit requests for disbursement, which total to the amount listed in paragraph V of this memorandum, Grantee has no expectation nor will Grantee request disbursement for any other expenditure not described in Attachments B or C.

#### **IX. Payment Provisions**

Grantee acknowledges and understands that the payment of any Grant Funds to Grantee per any Request for Reimbursement made by Grantee under this MOU are subject to the disbursement procedure as described in Grant Disbursement Procedures, Attachment E. Upon completion of the Grant Project, the Grantee shall complete a final accounting report, as described in Attachment F, within 60 days of the Grant Project completion date. If Grantee does not to complete the Grant Project, Grantee must notify NCAG and may submit a final report and request for reimbursement. The NCAG does not accept, attempt to undertake, or acknowledge any liability, obligation, or duty to Grantee by or upon the Grantee's submission of a Request for Reimbursement to the NCAG.

### **X. Party Designee**

All notices permitted or required to be given by one Party to the other and all questions about Grant Procedures from one Party to the other shall be addressed and delivered to the other Party's Designee. The contact information for the Parties' respective initial Party Designees are set out below. Either Party may change any information in this part by giving timely written notice to the other Party.

- A. For the NCAG:
- Sarah G. Zambon  
Assistant Attorney General  
N.C. Department of Justice
- If Delivered Electronically: eeg@ncdoj.gov
- If Delivered by USPS: P.O. Box 629  
Raleigh NC 27602-0629
- If Delivered by Courier: 114 W Edenton St  
Raleigh NC 27603
- B. For the Grantee:
- Stephen Wensman  
Planning Director
- If Delivered Electronically: stephen.wensman@smithfield-nc.com
- If Delivered by USPS: P. O. Box 761  
Smithfield, NC 27577
- If Delivered by Courier: P. O. Box 761  
Smithfield, NC 27577

### **XI. Outsourcing**

Grantee certifies that it has identified to the NCAG all jobs related to the Grant Project that have been outsourced to other countries, if any. Grantee will notify the NCAG upon the outsourcing of any position during the period of the Grant Project.

### **XII. Severability**

Any portion of this MOU is necessarily severable from any other conditions or procedures therein. No part of this Memorandum of Understanding is to be construed to be in violation of any law or regulation, State or federal. If any part of this MOU is interpreted to be invalid or unenforceable, the remaining provisions of this Memorandum are unaffected and survive any such determination.

### **XIII. Read and Understood**

Each party acknowledges that it has read and understands this Memorandum of Understanding and all attached Grant Documents.

### **XIX. Signature Warranty**

The undersigned represent and warrant that they are authorized on behalf of their principals to assent to the understanding of the procedures contained herein.

IN WITNESS WHEREOF, the Grantee and the NCAG have executed this Memorandum of Understanding in duplicate originals, with one original being retained by each party.

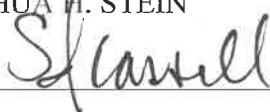
**Town of Smithfield**

By: 

Name: Michael Scott  
Title: Town Manager

Dated 2-10-2020


**NORTH CAROLINA ATTORNEY  
GENERAL**

JOSHUA W. STEIN  
By: 

Name: Shannon Cassell  
Title: Special Counsel to the Chief Deputy  
Attorney General

Dated 3.25.2020

**ATTEST**

By: 

Name: Shannan Parrish  
Title: Town Clerk

Dated 3-10-2020

[CORPORATE SEAL]



## Attachment A

### General Terms and Conditions

#### DEFINITIONS

Unless indicated otherwise from the context, the following terms shall have the following meanings in this and attached documents. If the rule or statute that is the source of the definition is changed by the adopting authority, the change shall be incorporated herein.

- (1) **“Grantee”** means a non-profit entity receiving Grant Funds; a party above signed to the Understanding hereto; and a 501(c)3 corporation under the IRS code. The definition in N.C. Gen. Stat. § 143-6.2(b) shall apply to this Understanding only to the extent permissible under the *Smithfield Agreement*.
- (2) **“Party”** or **“Parties”** means the NCAG or Grantee.
- (3) **“Grant Funds”** means funds directed by the NCAG to be disbursed from the *Smithfield Agreement* Environmental Enhancement Fund held by Trustee.
- (4) **“NCAG”** means the Attorney General of North Carolina, acting solely in his official capacity in the discharge of its duties under the *Smithfield Agreement*.
- (5) **“Project”** or **“Grant Project”** means the undertaking described in the proposal, as modified by the Attachments to this Memorandum. The Project shall consist of the proposal, attached hereto as Attachment B and the Line Item Budget and Budget Narrative, attached hereto as Attachments C.
- (6) **“Grant Procedure”** or **“Procedure”** means the entirety of the processes, forms, and actions described by the Memorandum.
- (7) **“Request for Reimbursement”** means the information submitted by Grantee describing the expenses incurred during the completion of the Project as described by Attachment B submitted to the NCAG for payment.
- (8) **“Disbursement”** means the payment over of grant funds by the trustee to the grantee upon the direction of the NCAG.
- (9) **“Smithfield Agreement”** means the Agreement dated July 25, 2000 between the NCAG and Smithfield Foods, Inc., *et al.*
- (10) **“Trustee”** means PNC Bank or any other fiduciary or successor institution which holds Grant Funds as per the *Smithfield Agreement*
- (11) **“Audit”** means an examination of records or financial accounts to verify their accuracy.
- (12) **“Financial Assistance”** means assistance that non-State entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance.
- (12) **“Financial Statement”** means a report providing financial statistics relative to a given part of an organization's operations or status.
- (13) **“Grant”** means financial assistance provided by an agency, grantee, or subgrantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or subgrantee during the performance of the grant.
- (14)
- (15) **“Single Audit”** means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
- (16) **“State Funds”** means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are subgranted to other organizations.
- (17) **“Memorandum”** or **“MOU”** means the entirety of this “Memorandum of Understanding for the Administration and Procedures of the *Smithfield Agreement* Environmental Enhancement Grant Program” including all attachments included in Section I.A. “Grant Documents” above.

#### RELATIONSHIPS OF THE PARTIES

**Independent Contractor:** The Grantee is and shall be deemed to be an independent contractor in the performance of the Project and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or shall secure at its own expense, all personnel required in performing the services described in the Project. Such employees shall not be employees of, or have any individual contractual relationship with, the NCAG.

**Subcontracting:** The Grantee shall be responsible for the performance of all of its subgrantees.

**Subgrantees:** The Grantee has the responsibility to ensure that all subgrantees, if any, provide all information necessary to permit the Grantee to comply with the standards set forth in this Memorandum.

**Assignment:** No assignment of the Grantee's Project or the Grantee's disbursements hereunder shall be permitted. However, upon written request approved by the NCAG, the NCAG may direct the Trustee to:

- (A) Forward disbursement directly to any person or entity designated by the Grantee, or
- (B) Include any person or entity designated by Grantee as a joint payee on the disbursement.

In no event shall such approval and action obligate the State or the NCAG to anyone. Grantee shall remain responsible for fulfillment of all obligations to third-parties.

**Beneficiaries:** Except as herein specifically provided otherwise, the terms, administrative procedures, and conditions described in this Memorandum of Understanding shall be presumed to be acknowledged and accepted by any successor to the Parties. It is expressly understood and agreed that the terms and conditions of this Memorandum, and all rights of action relating to the enforcement of any rights related to any action which may result from this Memorandum, shall be strictly reserved to the NCAG and the named Grantee. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the NCAG and Grantee that any such person or entity, other than the NCAG or the Grantee, receiving services or benefits as a result of any actions taken as a result of the Memorandum shall be deemed an incidental beneficiary only.

#### INDEMNITY AND INSURANCE

**Indemnification:** The Grantee agrees to indemnify and hold harmless the NCAG, the State of North Carolina, and any of their officers, agents and

employees, from any claims of third parties arising out of any act or omission of the Grantee in connection with the performance of the Project.

**Insurance:** During the term of the Project, Grantee shall maintain adequate insurance coverage. Adequate insurance coverage is commercial insurance of such type and with such terms and limits as may be reasonably associated with the Project. As a minimum, adequate insurance has the following coverage and limits:

- (A) **Worker's Compensation** - As required by the laws of North Carolina and as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Grantee's employees who are engaged in any work pursuant to the Project. If any work is sublet, the Grantee shall require the subgrantee to provide the same coverage for any of his employees engaged in any work on the Project.
- (B) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
- (C) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles used in completion of the Project. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$25,000.00 medical payment.

The Grantee may meet its requirements of maintaining adequate specified coverage and limits by demonstrating to the NCAG that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the NCAG. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Grantee shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Understanding. The limits of coverage under each insurance policy maintained by the Grantee shall not be interpreted as limiting the grantee's liability and obligations.

#### DEFAULT AND TERMINATION

**Termination of the Grant Process:** Upon successful completion of the Project or the NCAG's determination that Grantee is unlikely to complete the Project within the time described in Attachments B and C, the NCAG will cease to direct the Trustee to issue payment to Grantee upon Grantee's submission of requests for disbursement. The NCAG will notify the Grantee upon making this determination.

**Waiver of Default:** Waiver by the NCAG of any default or breach in compliance with the procedures described in this Memorandum by the Grantee shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of the Memorandum unless stated to be such in writing, signed by an authorized representative of the NCAG and the Grantee and attached to the Memorandum.

**Availability of Funds:** The parties to this Memorandum agree and understand that the payment of the disbursements per this Memorandum is dependent and contingent upon and subject to the availability of Grant Funds held by Trustee.

**State Funds:** The Grantee acknowledges that Grant Funds are the sole source of funding for this MOU; State Funds make up no part of the MOU's funding of this project.

**Force Majeure:** Neither party shall be deemed to be in default of any duty or obligation which might arise under this Memorandum if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**Survival of Promises:** All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties which might arise under this Memorandum shall survive the Project expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statutes of limitation.

#### INTELLECTUAL PROPERTY RIGHTS

**Copyrights and Ownership of Deliverables:** All deliverable items produced pursuant to this Memorandum are the exclusive property of the NCAG. The Grantee shall not assert a claim of copyright or other property interest in such deliverables.

**Federal Intellectual Property Bankruptcy Protection Act:** The Parties agree that the NCAG shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365 (n) and any amendments thereto.

#### COMPLIANCE WITH APPLICABLE LAWS

**Compliance with Laws:** The Grantee shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

**N.C.G.S. § 133-32 AND Executive Order 24:** N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of this memorandum, Grantee attests, for its entire organization and its employees or agents, that it is not aware that any such gift has been offered, accepted, or promised by any employees of its organization.

**Equal Employment Opportunity:** The Grantee shall comply with all federal and State laws relating to equal employment opportunity.

#### CONFIDENTIALITY

**Confidentiality:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Grantee under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the NCAG. The Grantee acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this Understanding.

#### OVERSIGHT

**Access to Persons and Records:** The State Auditor shall have access to persons and records resulting from this Memorandum.

**Record Retention:** Records shall not be destroyed, purged or disposed of without the express written consent of the NCAG. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions

have been resolved, whichever is longer. If the Project is subject to federal policy and regulations, record retention may be longer than five years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Memorandum has been started before expiration of the five-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period described above, whichever is later.

#### MISCELLANEOUS

**Choice of Law:** The validity of this Memorandum and any of its terms or provisions, as well as any rights and duties of the Parties, are governed by the laws of North Carolina. The Grantee, by signing this Memorandum, agrees and submits, solely for matters arising out of or concerning this Memorandum, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this Memorandum and all transactions and agreements relating to or arising out of it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

**Amendment:** This Memorandum may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the NCAG and the Grantee. The Grant Process is subject to modification

at any time by the NCAG, upon notice to the Grantee. The Project is subject to modification only with the NCAG's prior written approval

**Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Understanding violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Understanding shall remain in full force and effect.

**Headings:** The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

**Time of the Essence:** Time is of the essence in the performance of the Project.

**Sovereign Immunity:** The State, by action or inaction of the NCAG, through the Environmental Enhancement Grant Program's Administration or Procedures, does not waive its sovereign immunity as to Grantee or any other individual or group.

**Certification Regarding Collection of Taxes:** The Grantee certifies that it and all of its affiliates (if any) collect all required taxes.

**Travel and Meal Expenses:** Disbursement to the Grantee for travel mileage, meals, lodging and other travel expenses incurred in the performance of the Project shall be reasonable and supported by documentation. State rates should be used as guidelines. International travel shall not be reimbursed under the Project.

**Advertising:** The Grantee shall not use the award of this Grant as a part of any news release or commercial advertising without the prior approval of the NCAG.

**Attachment B**



NORTH CAROLINA ATTORNEY GENERAL'S  
ENVIRONMENTAL ENHANCEMENT GRANT PROGRAM  
2019 GRANT CYCLE

## GRANT APPLICATION FORM

**All Grant Proposal Materials must be received by 11am on Tuesday September 24, 2019**

*Instructions: Please complete all sections and submit this application form as the cover of the written grant proposal.*

*No incomplete applications will be considered.*

Section I: General Information

Applicant	Organization	Town of Smithfield
	Contact Person	Steven Wensman
	Contact Address	P.O. Box 761 350 Market St., Smithfield, NC 27577
	Telephone	919.934.2116 ext. 1114
	E-mail	<a href="mailto:Stephen.wensman@smithfield-nc.com">Stephen.wensman@smithfield-nc.com</a> ;
Project	EEG Program Area	Check one: <input type="checkbox"/> Land acquisition <input type="checkbox"/> Research, planning, education <input checked="" type="checkbox"/> Construction, remediation, restoration
	Project Title	Spring Branch Community Restoration Project
	Total Project Budget	\$552,000
Grant Request	Amount Requested	\$200,500

Section II: Project Technical Information

<p>Project Goals (<i>please limit summary of goals to this space</i>): Flood attenuation; Reduce nutrient pollution; Stream, floodplain, and wetland restoration; Greenway extension; Create educational opportunities; Enhance riparian buffer; Enhance the benthic and fish habitats and communities.</p>
<p>Results Benchmarks/ Measurement Rubrics (<i>please be specific</i>): Complete stream restoration and wetland restoration Design; Complete 401/404 permitting requirements; Restore approximately 500 linear feet of Spring Branch; Create/restore approximately 0.75 acres of emergent wetland</p>
<p>Projected Project Start Date: Jan 1, 2020</p>
<p>Period of Time for the Project: Approx. 15 months for design/construction, monitoring for 5 yrs.</p>
<p>Period of Time for the Grant: 3 years</p>

Section III: Project Cost Information

<p>Other Project Funding Sources (<i>indicate source, amounts requested / committed</i>):</p> <p>FEMA - \$250,000 for land already purchased</p> <p>Johnston County Tourism/Town of Smithfield - \$72,000</p> <p>Howell Woods Environmental Learning Center - \$25,000 (in estimated monitoring costs for 5 years)</p> <p>Community of Smithfield – Approx. \$5,000 for site planting (volunteers)</p>
--

Section IV: Organization Management and Organizational Information

<p>Organization Type: Municipality – Town of Smithfield</p>
<p>Current Assets: \$ 11,662,061 _____</p>
<p>Current Fund Balance: \$ 8,127,523 _____</p>
<p><i>Total Applicant Expenditures for the last three completed fiscal years:</i></p> <p>FY 2018 _ \$ 11,725,675 _____</p> <p>FY 2017 _ \$ 13,985,600 _____</p> <p>FY 2016 _ \$ 12,896,209 _____</p>
<p>Have you previously received a grant award from the EEG Program? If yes, please list the date(s) and project name(s).</p> <p>No</p>
<p>Have you previously submitted a grant proposal to the EEG Program? If yes, please list the date(s) and project name(s).</p> <p>No</p>
<p>Did you receive any funds from the State of North Carolina in the past 12 months? If so, please list the sources, dates, and amounts.</p> <ul style="list-style-type: none"> <li>• Yes, North Carolina Department of Agriculture and Consumer Services Grant in the amount of \$148,890 for removal of stream debris from Hurricane Matthew awarded January 1, 2017 and terminating December 31, 2019.</li> </ul>
<p>Did you receive any funds from any other grant awards in the past 12 months? If so, please list the sources, dates, and amounts.</p> <ul style="list-style-type: none"> <li>• Spring-Branch stormwater wetland facility repairs due to Hurricane Matthew funded through FEMA.</li> </ul>

Section V: Agreement and Certification

Certification: The undersigned hereby do certify that they have read the attached proposal, including all appendices and exhibits, and that the information provided therein is correct and complete. The undersigned do hereby attest that any funds granted pursuant to this proposal will be used exclusively for charitable, scientific, education, conservation, environmental enhancement, or other tax-exempt public purposes. The undersigned do hereby certify that they understand that the requests attached and submitted to the Attorney General are subject to the North Carolina Public Records Act.

This the 24 day of September 2019.

Applicant Organization: Town of Smithfield

By: Town of Smithfield

Name: Stephen Wensman

Title: Planning Director

By: Town of Smithfield

Name: Michael Scott

Title: Town Manager

All Grant Proposal Materials must be received by 11 am on Tuesday September 24, 2019.



350 East Market Street  
Smithfield, NC 27577  
P 919.934.2116  
F 919.934.1134



**NORTH CAROLINA ATTORNEY GENERAL'S  
ENVIRONMENTAL ENHANCEMENT GRANT PROGRAM**

# **SPRING BRANCH COMMUNITY RESTORATION PROJECT**

**SEPTEMBER 24, 2019**

TOWN OF SMITHFIELD - SPRING BRANCH COMMUNITY RESTORATION PROJECT

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## **TOWN OF SMITHFIELD - SPRING BRANCH COMMUNITY RESTORATION PROJECT EXECUTIVE SUMMARY**

The Spring Branch Community Restoration Project (SBCRP) is located within the Town of Smithfield, Johnston County, North Carolina. The SBCRP would provide enormous environmental benefits for the Town of Smithfield, the Neuse River Basin and the State of North Carolina. The proposed project will be designed to restore approximately 500 linear feet of Spring Branch and create/restore approximately 0.75 acres of emergent wetland. The project will provide flood attenuation, decreasing flooding of residents downstream of the project site; improve water quality, decreasing nutrient laden suspended sediment into the Neuse River, contributing to the reduction of deadly algal blooms in the Pamlico Sound, and dramatically improve habitat for aquatic flora and fauna within Spring Branch.

The project will create a focal point for the community of Smithfield by incorporating a greenway within the project site; allow for the expansion of the existing community garden on site; and provide educational opportunities for students from preschool to college.

The project is in line with the Town of Smithfield's Comprehensive Growth Management Plan, The Town of Smithfield's Transportation Plan, the North Carolina Resilient Redevelopment Plan, and the Neuse Stormwater Rule.

The Town of Smithfield is asking for **only 36%** of the funds needed to complete the project. The land is currently owned by the Town of Smithfield which, based on current fair market price, reduces the cost of the project by approximately \$250,000. The Johnston County Visitor's Bureau has agreed to fund the Greenway to be built at the project site. The Greenway is planned to be connected to the Neuse River Trail Greenway and The Mountains to Sea Trail. This contribution will further reduce costs of the project by an estimated \$72,000. The Town of Smithfield along with other community partners, will provide volunteers to install trees at the site, which will eliminate the need to hire a landscaping contractor. Finally, the Howell Woods Environmental Learning Center from the Johnston County Community College will monitor the site for 5 years to ensure the site is functioning as designed, eliminating the monitoring costs of the project.

The Town of Smithfield believes the SBCRP fulfills the purpose of the North Carolina Attorney General's Office Environment Enhancement Grant Program by constructing wetlands, and restoring and protecting impaired, degraded surface waters. The Town of Smithfield is requesting **\$200,500** to complete the SBCRP.

### **PROJECT DESCRIPTION AND TECHNICAL SPECIFICATIONS**

#### **Project Goals and Objectives**

- Provide flood attenuation,
- Reduce nutrient pollution from Spring Branch into the Neuse River,
- Stream, floodplain, and wetland restoration/creation
- Create a focal point for the residents of Smithfield through the greenway extension, while creating educational opportunities,
- Enhance the riparian buffer,
- Floodplain reconnection,
- Installation of in-stream structures, cover and natural gravel channel material to enhance the benthic and fish habitats and communities

The SBCRP will be the first phase of connecting this area of Smithfield with the Neuse River Walk and Buffalo Creek Greenway, which eventually will connect to the Mountains to Sea Trail. The Town of Smithfield (the Town) believes that creating this amenity within a distressed portion of the town will stimulate investment and revitalization in the community and create momentum for stream corridor protection along Spring Branch.

### **Environmental benefits from the project**

The environmental benefits of the project along the Spring Branch tributary have the potential to improve ecological and geomorphic conditions for not only the site but also downstream and into the Neuse River by reducing suspended sediment loads and reducing peak discharge that can cause flooding and erode downstream channel boundaries. The site will also provide energy dissipation of erosive flood flows, reduce erosive shear stresses, reduce channel incision, increase infiltration and groundwater recharge, and store suspended sediment. The project will create wetland features within the floodplain, enhancing the riparian buffer. Installation of in-stream structures and natural gravel channel material will provide instream cover that will also enhance the benthic and fish habitats and communities.

### **Description of project activities in detail, including individuals, organizations, or contractors responsible for project completion**

If selected to receive this grant, the Town will select a contractor through the Town's procurement process. A qualified firm will be chosen to provide engineering and design. The selected design consultant will go through the following process:

- Preliminary Site Investigation
  - The Consultant will review all pertinent readily available existing data including:
    - Previously collected data on Spring Branch, previously completed hydrologic modeling for Spring Branch, investigate existing private utility easements on the project site, Johnston County Soil Survey, NRCS aerial photography, NWI mapping, USGS quadrangle mapping, Town of Smithfield storm utility information, and topographic survey information
- Agency and Stakeholder Coordination
  - The design team anticipates coordinating with the residents of Smithfield, the Town, the Johnston County Visitor's Bureau, Johnston County Community College, United States Army Corps of Engineers (USACE), and North Carolina Department of Environmental Quality (NCDEQ) throughout the design process. This will include a public meeting to gain community input and gain support for the project. We also anticipate two (2) independent design meetings with the USACE and NCDEQ.
- Stream Channel Surface Hydrology
  - Hydrology estimates, including storm discharges and times of concentration will be developed for the designed channel length identified for the site based upon existing and ultimate land use conditions. The hydrology estimates will be performed using GISHydro 2000; results will be calibrated and regional curve and existing gage data (if available) will be reviewed.
- Subsurface and Wetland Hydrology Evaluation
  - Soil pit surveys will be conducted on-site to evaluate existing soils and groundwater levels. Based on these investigations piezometers/groundwater wells may be installed at the site to further determine the groundwater levels and likely contribution of groundwater hydrology to

the wetlands. If installed, the groundwater wells will be equipped with HOBO water level loggers for continuous monitoring of groundwater elevations. The wells will be monitored monthly to download data collected at each site and to confirm water surface elevations collected at each well.

- Detailed Geomorphic Measurements
  - A detailed site assessment will be performed on the project and reference reach sites. The detailed assessment will involve measurements of channel geometry (plan, profile, and cross section), channel substrate (pebble counts and bulk samples), bank stability (bank height, bank slope, materials, vegetation), and in-channel and riparian habitat. Critical items to be obtained during the detailed site assessments include:
    - Longitudinal profile surveys (including bed surface, water surface, and indicators) – *Assumed 1 – 250 foot profile at each site*
    - Channel cross-sections (including field indicators, active channel and break lines) – *Assumed 4 sections at each site*
    - Pebble counts (at riffle features) – *Assumed 2 – 200 count pebble counts*
    - Detailed site sketches – *Assumed one (1) sketch at each site*
    - Bulk samples – *Assumed two (2) bulk samples at each site*
    - Habitat investigation details – *Assumed one (1) at each site*
    - Photographs – *Assumed ten (10) photograph locations at each site*
    - Locating sampling locations with GPS – *Assumed one point for endpoints of cross sections and profiles*
    - Channel plan form characteristics (radius of curvature, etc.) – *Assumed one (1) per profile at each site.*
- Design discharge determinations
  - A critical aspect of channel design is design discharge determination. These efforts will be based upon the previous verified hydrologic models on Spring Branch and further analysis. Each method of discharge determination, described below, will be scaled for the drainage area of the site. To comprehensively evaluate a range of design discharges, the chosen consultant will determine four estimates of channel forming flows:
    - $Q_{\text{eff}}$  – effective discharge (the discharge that transports the most sediment over time)
    - $Q_{\text{ri}}$  – the recurrence interval discharges based on hydrology modeling (1.5 to 2 year recurrence intervals)
    - $Q_{\text{fi}}$  – discharge based upon observed field indicators (benches, slope breaks, depositional or erosional features, etc.), and
    - $Q_{\text{rc}}$  – discharges determined from regional curves.
- Fluvial Geomorphic Data Analysis
  - Data collected during the fluvial geomorphic surveys will be processed and evaluated using at-a-section modeling software using continuity and roughness relationships (likely Manning's) such as Bentley FlowMaster®, The Reference Reach Spreadsheet (Mecklenburg 2004), Rivermorph® or created spreadsheets. Items to be evaluated will include, but are not limited to:
    - Slopes (bed features, water surface, and flow indicators); velocities; hydraulic geometry values (width, depth, cross-sectional area, hydraulic radius, etc); channel roughness (modified Limerinos relationship); shear velocity; stream bed composition (surface and subsurface); bar sediment distributions; Froude number;



critical shear stresses for bed sediments; supply and hydraulically limited sediments (Whiting and King 2000); bank materials, condition, and stability; design discharges; typical riparian vegetative communities for the region; habitat requirements of resident/target species; Rosgen classification; geomorphic variables and ratios (plan and profile).

- Generate 60% (Semi-Final) Design
  - Coordinate field survey of the SBCRP with the contracted survey team. Provide instruction on detailed topographic and planimetric survey as well as preparation of digital terrain model (.dtm) surfaces and files. Perform site visit to QA/QC provided survey. Finalize digital terrain model and generate working cross-section and profile files.
  - Generate 60% plans to include the following additional work and details: sediment and erosion control plan, sequence of construction and details; landscaping / planting plans and details; geometric details for proposed grading; modifications to existing details; other drainage details as needed; maintenance of traffic and parking details to facilitate construction access and staging.
  - Complete hydraulic evaluation of existing conditions surface with HEC-RAS. Verify Existing Conditions Hydrology and Hydraulics Report performed by Jewel Engineering.
  - Develop vertical, horizontal and cross-sectional geometry to establish proposed grading plan. Utilize InRoads® to complete proposed surface. Will likely involve the design of 2-4 cross-sectional templates depicting riffle, pool and transition sections. Development of vertical geometry will be based upon estimated facet slope information on pool, glide, riffle and run features coupled with a tractive force estimation of feature and overall reach slope. Process will be iterative pending verification of hydraulic analysis to insure anticipated flow conditions, shear stresses and water surfaces are achieved.
  - Continue to refine Sediment and Erosion Control plan including approximate site LOD, recommended staging and stockpile areas, maintenance of stream flow and construction access locations.
  - Begin analysis of hydraulics of the proposed surface. Assist grading design with assessment of proposed hydraulic conditions.
  - Complete an in-house constructability review to analyze proposed construction access, sequence of construction, construction details, specifications, in-stream structure design, and channel grading plan evaluations.
  - Prepare a Nationwide 27 and Pre-Construction Notification (PCN) for impacts to waters of the US and Neuse Buffer, as required, based on project impacts.
  - Develop specifications for all proposed work.
  - Develop a cost estimate.
  - Address any Agency comments related to permits submitted for impacts to natural resources as required.
  - Attend a 60% progress meeting with Town of Smithfield to discuss the design, and address any comments or questions. Meeting minutes will be prepared, and subsequently distributed via email and hard copy, to all interested parties. These will include a compilation of all written comments received following the 60% plan submittal.
- Generate 90% (Final) Design
  - Address comments received at 60% and incorporate them into the 90% plans.
  - Prepare final design plans along with a bid book cover sealed by a North Carolina Registered Professional Engineer.

- Finalize Sediment and Erosion Control plan including site LOD, staging and stockpile areas, maintenance of stream flow, sequences of construction and construction access locations.
- Finalize grading plan, addressing any conflicts with floodplain water surfaces or utility impacts. Cut and annotate final cross-sections at 25-foot intervals and at critical stations (transitional or structure locations).
- Finalize specifications for all proposed work.
- Prepare final cost estimate.
- Finalize Nationwide 27, PCN, agency coordination efforts, and receive permit approval.
- Attend a Final Review progress meeting with the Town of Smithfield, to discuss any remaining design comments. Distribute Meeting Minutes and Final Progress Report as noted above.
- Attend the formal Final Review meeting. Discuss any remaining design comments. Distribute Meeting Minutes and Final Progress Report as noted above.
- 100% Design
  - Plan Refinement - Address any remaining design.
  - Submit a complete Bid Package.
- Post Advertisement Services
  - Attend Pre-bid Meeting and progress meetings during construction; provide meeting minutes to Town of Smithfield.
  - Preparation of Addendum Plans to address any plan changes and design comments associated with the original scope of work, not completed at 100% Design.

#### **List of Deliverables**

- Computerized and itemized project design schedule with information on anticipated submittals and milestone dates throughout the project
- 60% Design Plans
- Meeting minutes from 60% design meeting
- Specifications and updated cost estimate
- Nationwide 27 and PCN with impact plates for impacts to waters of the US and Neuse River Basin buffer
- Final cost estimate and general and special provisions
- Final design plans
- 100% Design Plans
- SWM approval/waiver
- Addendum Plans, if necessary

The Town will then select a construction contractor through the Town's procurement process. A qualified firm will be chosen to provide construction services.

#### **Geographic location of the project, including the county and the area or communities to be served by the proposed project**

The Project site is located within the Town of Smithfield, Johnston County. The project area is an economically distressed area. This area is approximately three (3) blocks from downtown. With the EEG grant, the Town is hoping to stabilize the neighborhood and offer an amenity that will attract investment into the area and create a connection to downtown.

## How the proposal meets the objectives of the EEG Program

This project meets the EEG grant program qualifications by establishing, constructing wetlands, restoring and protecting impaired, degraded surface waters. The proposed project will incorporate stream, floodplain, and wetland restoration efforts along Spring Branch between the 5<sup>th</sup> and 6<sup>th</sup> street crossings reducing nutrient and sediment runoff, increasing flood retention, re-establishing historic functions thus improving water quality within the Neuse River. The proposed project will be the first phase in building a greenway connecting this area with the Neuse River Walk and Buffalo Creek Greenway and the Mountains to Sea Trail. The project will also include a public education piece showing the importance of restoration by re-establishing historic functions through re-connecting natural waterways.

## Identify any monetary or nonmonetary partners or community involvement

The SBCRP will have multiple community partners and involvement. They include:

- Johnston County Visitors Bureau – contributing approximately \$72,000 for design and construction of the greenway at the Site.
- Johnston County Community College, Howell Woods Environmental Learning Center – Have agreed to provide monitoring of the site, while also providing educational opportunities for surrounding schools.
- The Community of Smithfield – Will be involved in the planning and planting of the project site, making this a project a true community project.
- River Keepers – will be contacted for guidance for tasks needed at the site,
- Smithfield Park and Public Works departments – will complete any maintenance needed at the site.
- Smithfield community garden – is currently on-site and will be expanded based on conceptual design.

## Description of how the proposal addresses North Carolina's current environmental needs

The proposed project will decrease the amount of nitrogen and phosphorus pollution being contributed from the Spring Branch Watershed. Spring Branch empties into the Neuse River which has had a continual problem with nutrient pollution. Nutrient pollution has led to chronically low oxygen level within one of the most important aquatic nursery systems in the world – the Pamlico Sound. The Neuse River within the Town of Smithfield is being proposed as Critical Habitat for the proposed endangered species protection of the Carolina Madtom and the Neuse River waterdog.

## RESULTS MEASUREMENTS

### Performance measurements to be used

Performance measurements collected at the site will include reference photos, plant survival rates, and channel stability analysis. Stream monitoring will include development of channel cross-sections and substrate on riffles and pools. Data to be presented in graphic and tabular format will include 1) cross-sectional area, 2) bankfull width, 3) average depth, 4) maximum depth, 5) width-to-depth ratio, 6) bank height ratio, and 7) entrenchment ratio. Longitudinal profiles will not be measured routinely unless monitoring demonstrates channel bank or bed instability. Nitrogen and Phosphorus may be monitored or estimated based on sediment deposition within the wetlands.

Wetlands will be delineated each year to demonstrate proper hydrology, soils and vegetation at the created wetlands. 10 x 10 meter vegetation plots will be established and an average density of 200 planted stems per acre will be maintained at the end of 5 years or the site will be replanted.

### **Organizations responsible for measuring project results**

With direction from the Town of Smithfield, The Howell Woods Environmental Learning Center has agreed to conduct annual site monitoring and the Town of Smithfield will include the monitoring results in the annual report required to the Department of Justice (DOJ).

### **Expected outcomes of the project, include benchmarks and milestones**

The Town has taken steps to create a Stormwater Management Action Plan to comply with the Neuse River Basin Nutrient Sensitive Waters Management Strategy. The Stormwater portion of this strategy is known as the Neuse Stormwater Rule (NSR). The NSR requires Smithfield develop and implement programs to protect the Neuse River and other surface receiving waters by reducing nitrogen discharges. This project was identified within the Stormwater Management Action Plan as a project to comply with the NSR.

The timeline from grant issuance to construction completion is approximately 14 months. This timeframe falls well within the 36 months the EEG requires the funds to be used. This schedule can also account for certain issues that may come up and delay the project. The Town has identified four areas of potential obstacles to the project and are discussed below:

- Procurement Process
  - The proposed project will include two separate procurements. The first will be for design and permitting. The procurement process is outlined below:
    - Prepare a Request for Qualifications bid package.
    - Advertise the project in the newspaper and on the Town's website.
    - Receive the qualification packages from submitting engineering firms.
    - Selection team will review the submittals.
    - Short list and interview (optional).
    - Select design firm based on qualifications.
    - Negotiate a fee proposal.
    - Present the fee proposal to the Town Council for approval.
    - Upon Council approval, execute contract and begin work.
  - The second phase will be the construction phase. This phase will follow the formal bidding process as defined by G.S. 143-129. The procurement process is outlined below:
    - Advertise for bids in the newspaper and on the Town's website.
    - Pre-bid meeting (optional)
    - Receive bids and publicly open them (minimum of 3 bids)
    - Announce an apparent low bidder.
    - Review low bid to assure the bidder has met all of the bid requirements.
    - Present the low bid to the Town Council for approval.
    - Issue Notice of Award.
    - Receive executed contract, payment and performance bonds and COI from contractor.
    - Execute the contract.
    - Issue Notice to Proceed.

- Bidding for the project
- The town could receive bids over what they have been granted by the DOJ. If this were to occur
  - The project would be modified to complete a portion of the original project.
  - The Town would search for alternative funding sources to close the gap
- Town Council's approvals
  - Depending on the schedule of meetings for the Town of Smithfield Town Council, the schedule may be affected by delays in certain approvals for the project. As stated above and shown in attachment 2, The Town has ample cushion within the timeline to account for any delays to Town Council approvals.
- Public Disagreement/Controversy
  - Public disagreement/controversy is not anticipated, but could be a possibility. The Town of Smithfield will have public meetings to inform and include the public in the project. With transparency and inclusion, the community will buy in to the project and the Town believes will support it.

Benchmarks and milestones include:

- Complete Stream Restoration and Wetland Creation/Restoration Design
- Complete 401 and 404 permitting requirements
- Restore approximately 500 linear feet of Spring Branch
- Create/restore approximately 0.75 acres of emergent wetland

The project will be maintained by the community and Town of Smithfield. The Town will investigate the possibility of using the site as a mitigation bank to create funds for potential future projects within the corridor and Town to further comply with the NSR.

#### **How the project will be evaluated upon completion**

The project will be evaluated through the annual monitoring performed at the site. The stability of the stream and wetland will be measured through geomorphological measurements of the stream. Vegetative success will be measured through vegetative monitoring and percent survival of species. Sediment load removal will be measured through taking sediment depth measurements that have been deposited within the created wetlands. A method will be determined to measure the nitrogen and phosphorus content to determine pollutant removal rates.

#### **Whether the project is sustainable or replicable in other parts of North Carolina and how**

This project would be easily replicated at sites that had similar environmental conditions as the project site. The design strategies being used by for project have 20 years plus of implementation and lessons learned experience from restoration projects completed within the state of North Carolina.

#### **Whether the project will be maintained after the grant is completed and if so, how**

The Town will maintain the site with the assistance of a consultant. The Town is in the process of creating a stormwater utility that would create a revenue stream for projects. A portion of the fees generated could be set aside each year for maintenance of the site. The Town will also direct volunteer community work days to assist in site maintenance.

### **Whether there is any additional public benefit to the project**

The SBCRP is expected to be an amenity for the community of Smithfield and an educational opportunity for students from preschool to college. The site will also be connected to the Neuse River Trail Greenway and the Mountain to Sea Trail, creating an area within the downtown of Smithfield with aquatic flora and fauna and a place of tranquility in the middle of a highly urban area.

### **PROJECT COSTS AND BUDGET**

#### **Amount of funding requested**

The amount being requested for this project is **\$200,500** dollars. This price will include the design, permitting, construction, materials, and administration. The land has previously been purchase by the Town defraying the cost by \$250,000 for the 1.68 acres of land (based on current fair market price). The Town will also be organizing a volunteer planting of the site to reduce planting costs. The Johnston County Visitor's Bureau has stated they will support funding to complete the greenway at the site further reducing the costs of the site by an additional \$72,000. The Town will also be asking for in-kind donations from the public to help with the project as well to assist with the cost of maintenance. The Howell Woods Environmental Learning Center from Johnston Count Community College with direction from the Town will monitor the site annually, eliminating those costs.

#### **Define or describe how the project may be leveraged with other projects or funding**

In December 2016, the North Carolina General Assembly established the North Carolina Resilient Redevelopment Planning (NCRRP) program as part of the 2016 Disaster Recovery Act (Session Law 2016-124). The purpose of the program is to provide a roadmap for community rebuilding and revitalization assistance for the communities that were damaged by the hurricane (Matthew). The program empowers communities to prepare locally driven recovery plans to identify redevelopment strategies, innovative reconstruction projects, and other needed actions to allow each community not only to survive but also to thrive in an era when natural hazards are increasing in severity and frequency. The proposed project hits one of the goals of the NCRRP. The goal included "implementing the Spring Branch Storm water Improvement Project to increase capacity and properly handle flow in this area." The Town will leverage this to potentially secure additional funds from the state to complete this project.

Another potential source of funding may be through the establishment of a mitigation bank through the North Carolina Interagency Review Team. This would require additional steps in the project planning process, but could potentially provide an additional \$325,000 from mitigation credits generated from the site for future projects and maintenance. This is still being assessed at this time.

#### **Prospective budget (Successful applicants are required to submit an itemized budget before grant funds disbursement)**

The project was estimated to cost approximately \$552,000 if started completely from scratch. **66%** of project has or will be funded through existing assets, in-kind donations, volunteer work, or matching funds. The \$200,500 would be broken down with the following:

- Site engineering/technical/existing site condition analysis/design - \$48,500
- Permitting - \$4,500
- Construction - \$83,000
- Construction Materials - \$46,000

- Construction Administration - \$18,500

## **ORGANIZATIONAL STRUCTURE AND MANGEMENT**

### **Brief history of the organization**

The Town of Smithfield was incorporated in 1777, and has an estimated population of 12,669. Smithfield is the county seat of Johnston County and is situated along the Neuse River.

### **Current projects**

Spring-Branch stormwater wetland facility repairs due to Hurricane Matthew funded through FEMA.

### **Mission statement, goals, and objectives - N/A**

### **Qualifications for the proposed project / Previous similar projects**

The Town has not chosen a contractor at this moment in time, but the selected contractor will have qualifications similar or equal to McCormick Taylor. McCormick Taylor was the original designer of PB-85, which is the project that the SBCRP is being modeled after. Their staff has been the lead designer for over 150,000 linear feet of stream and over 200 acres of wetland restorations. McCormick Taylor also manages the entire portfolio of projects.

### **Description of organization's methodology or approach to the proposed project**

The proposed restoration design for the SBCRP includes the following stream restoration and Wetland Creation/restoration efforts:

- Increase flood attenuation, store nutrient laden suspended sediment, floodplain/wetland creation, reduce channel incision, and infiltration and groundwater recharge
- Channel creation to provide energy dissipation of erosive flood flows, reduce erosive shear stresses, and reduce bank erosion and instream sedimentation
- Enhancing the riparian buffer, through riparian plantings
- Installation of structures, and adding natural bed material, providing instream cover, and enhancing the benthic and fish habitats and communities.

### **Previous experience in applying for, obtaining, and managing grants**

The Town has had the following previous experience with grants:

- Clean Water Management Trust Fund Grant in the amount of \$660,000 to address stormwater discharges to Spring Branch in the Neuse River Basin. The project constructed a 4.5 acre off-line stormwater wetland with a greenway and educational component connecting the existing town greenway. This grant was awarded in 11/18/2003 and terminated in Spring 2006 at the completion of the project.
- USDA grant for wayfinding signs in the amount of \$99,256 awarded in 10/01/2018, ending September 30, 2020.
- Golden Leaf Foundation grant to prepare the Smithfield Stormwater Management Action Plan in the amount of \$69,886, awarded on 10/05/17 and closed out on 7/29/19
- North Carolina Department of Agriculture and Consumer Services Grant in the amount of \$148,890 for removal of stream debris from Hurricane Matthew awarded January 1, 2017 and terminating December 31, 2019.

**Attachment C**



### NCAG EEG Budget with Funding Source

Phase 1 (Stream and Wetland)				
Category	Line Item	Description	Budgeted	Funding Source
	Total		<b>\$ 200,500.00</b>	
Personnel				
	1103	Engineering/Technical	\$ 24,250.00	EEG
Project Admin				
	2401	Design	\$ 24,250.00	EEG
	2402	Permitting	\$ 4,500.00	EEG
Project Labor				
	3001	Construction	\$ 83,000.00	TOS
	3002	Admin	\$ 17,000.00	TOS
	3002	Admin	\$ 1,000.00	EEG
Project Materials				
	4200	Materials	\$ 46,000.00	EEG
Phase 2 (Greenway and amenities)				
Category	Line Item	Description	Budgeted	
	Total		<b>\$ 72,000.00</b>	
Personnel				
	1103	Engineering/Technical		
Project Admin				
	2401	Design	\$ 10,000.00	TOS
	2402	Permitting		
Project Labor				
	3001	Construction	\$ 12,000.00	TOS/JCVB
	3002	Admin		
Project Materials				
	4200	Materials	\$ 50,000.00	TOS/JCVB

EEG      NCAG EEG  
TOS      Town of Smithfield  
JCVB      Johnston County Visitor's Bureau





## Attachment D

### Notice of Conditions

- I. **The following are conditions precedent to the disbursement by the NCAG of any Grant Funds to Grantees at any time under the Environmental Enhancement Fund Grant Program. The NCAG will not disburse any funds under the MOU until Grantee shall provide the NCAG with documentation describing the following:**
  - A. Grantee has been determined to be a tax-exempt organization by the U.S. Internal Revenue Service
    - (1) Grantee shall submit a copy of the IRS determination letter confirming Grantee's tax-exempt status;
  - B. Grantee is a non-profit corporate entity recognized by the State of North Carolina.
    - (1) Grantee shall submit a copy of the Articles of Incorporation and Bylaws of the Grantee, together with any amendments thereto, or such other organizational documents as the NCAG deems necessary to verify that the Grantee is a non-profit corporation whose primary purpose is to promote the research, study, protection and/or conservation of natural, recreational, or historic resources, plant and animal life thereon and lands with significant open space, scenic, natural, cultural, recreational and historic values, and;
    - (2) Grantee shall submit a copy of the Certificate of Existence issued by the Office of the Secretary of State of North Carolina;
  - C. Grantee's designees have the authority to bind Grantee as to the knowledge of the procedures contained herein.
    - (1) Grantee shall submit a certified copy of corporate resolutions authorizing the officers of the Grantee to execute and complete the Project as described in this Understanding;
  - D. Grantee has a written conflict of interest policy.
    - (1) Grantee shall submit a copy of Grantee's policy addressing conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of Grant funds and shall include actions to be taken by Grantee or the individual, or both to avoid conflicts of interest and the appearance of impropriety.
  - E. Grantee has adequate insurance coverage.
    - (1) Grantee shall maintain, at its own cost, adequate insurance coverage as described in Attachment A.
  - F. Proof of the availability of matching funds, if required by the NCAG for Grant approval.

- (1) Grantee shall provide reasonable documentation of the availability of matching funds, to the determination of the NCAG.
- G. Timeliness of Submission of Quarterly Reports to the NCAG.
  - (1) Grantee shall be timely in the submission of all reports as described in Attachment F of the Memorandum of Understanding.
- II. The NCAG shall make the sole and final determination as to the sufficiency to which the Grantee has met the above conditions precedent.
- III. Grantee has the duty to inform the NCAG of any changes to the above conditions which may occur during the MOU's distribution period.

## Attachment E

### Grant Fund Disbursement Procedure

Grantee acknowledges that all funds paid to Grantee as shall be disbursed by Trustee under the direction of the NCAG upon the submission and approval of an electronic request for disbursement, submitted by Grantee with supporting documentation, in conformance with the Projected Budget materials, Attachment C. Upon review and approval, the NCAG shall direct the Trustee to pay Grantee for all expenditures incurred by Grantee in the completion of the Project. The NCAG shall not disburse funds to Grantee unless the request for reimbursement complies with the following:

- I. Request for Reimbursement
  - A. Grantee may submit requests for reimbursement monthly by email to EEG@ncdoj.gov. Requests shall be in spreadsheet form in a Microsoft Excel compatible format.
  - B. Supporting documents shall accompany each reimbursement request in PDF.
  - C. Requests made after the 15th of the month can be reimbursed no sooner than the end of the following month.
  - D. Upon the NCAG's determination, the NCAG shall direct the Trustee to disburse Grant Funds to Grantee. The NCAG retains the sole and final discretion as to the disbursement's amount and manner.
  - E. If the NCAG determines that some or all of a request for reimbursement should not be paid, the NCAG shall provide notice to the Grantee of the determination and the reasons for the determination. The Grantee may request a new determination by the NCAG and may submit additional supporting materials. Any decision to provide a new determination or any consideration of additional supporting materials is within the sole discretion of the NCAG.
  - F. Upon disbursement by the Trustee to Grantee, Grantee has full control and interest in the money paid.
- II. Projected Budget
  - A. Expenditure Compliance
    - (1) All expenditures described in the request for reimbursement shall conform with the projected budget materials contained in Attachment C.
    - (2) All expenditures described in the request for reimbursement shall be related to the Grant Project.
  - B. Modifications
    - (1) Grantee shall submit requests for modification of the Projected Budget to the NCAG in writing within 30 days of the anticipated date that the additional funds would be expended by Grantee.

- (2) Grantee shall submit a request for modification of the Projected Budget for all changes in the projected line item budget for any which totals the lesser of \$2,500 or 25% of the line item amount.

C. Reserve Fund

- (1) A minimum of 10% of the total grant award shall be allocated into a reserve fund. -

III. Reasonability of Expenditures

- A. All expenditures contained in the request for reimbursement must be reasonable.
- B. The NCAG solely shall have discretion to determinate an expenditure's reasonability.

IV. Supporting Materials

- A. Each expenditure shall be accompanied with appropriate supporting materials, which shall include invoices, receipts, or other materials.
- B. Supporting documentation for professional services shall include the professional's name, an hourly salary rate, and an itemized list of services provided to Grantee.
- C. Supporting documentation for labor may be calculated at a percentage of work completed or hourly.
- D. Meals and travel are reimbursed at the State of NC rate or the actual cost, whichever is lower. Any meal reimbursement must include the names of the individuals eating and the location, date, and time of the meal. If the NCAG determines, at its own discretion, that the supporting materials for a food or travel reimbursement are insufficient, the NCAG may choose to exclude those expenses and ask the Grantee to resubmit its request for the next reimbursement period.

V. Final Payment Upon Completion

- A. The Grantee acknowledges that a sum equal to ten percent (10%) of the total amount of the Grant Funds will not be disbursed until the completion of the Grant Project, including the Grantee's submission to the NCAG of a final report on the Project.

VI. Approval of Budget Modifications

- A. All requests for modification of the materials contained in, Attachment C, including the line item budget and budget narrative must be submitted in writing.
- B. The NCAG solely shall have the discretion to approve any requests to modify Grantee's projected budget.

This Memorandum is intended to describe the administration and disbursement procedure related to the Project described in Attachment B for the duration described in the Memorandum. The NCAG has no obligation to seek additional funds, approve future grant requests or provide other support to the Grantee, except as herein provided.

## **Attachment F**

### **Grantee Reporting**

Grantee's full and timely compliance with this Attachment is a Condition Precedent to Disbursement as described in Attachment D. Grantee shall fully and timely submit the following to the NCAG:

#### **I. Quarterly Reports**

A. Grantee shall send a quarterly report to the NCAG on the first day of January, April, July and October of each year until the Project is completed or the NCAG determines that the Grantee will fail to complete the Project. No reimbursement requests will be reviewed or submitted for payment unless there is a quarterly report for the most recent quarter.

#### **B. Requirements**

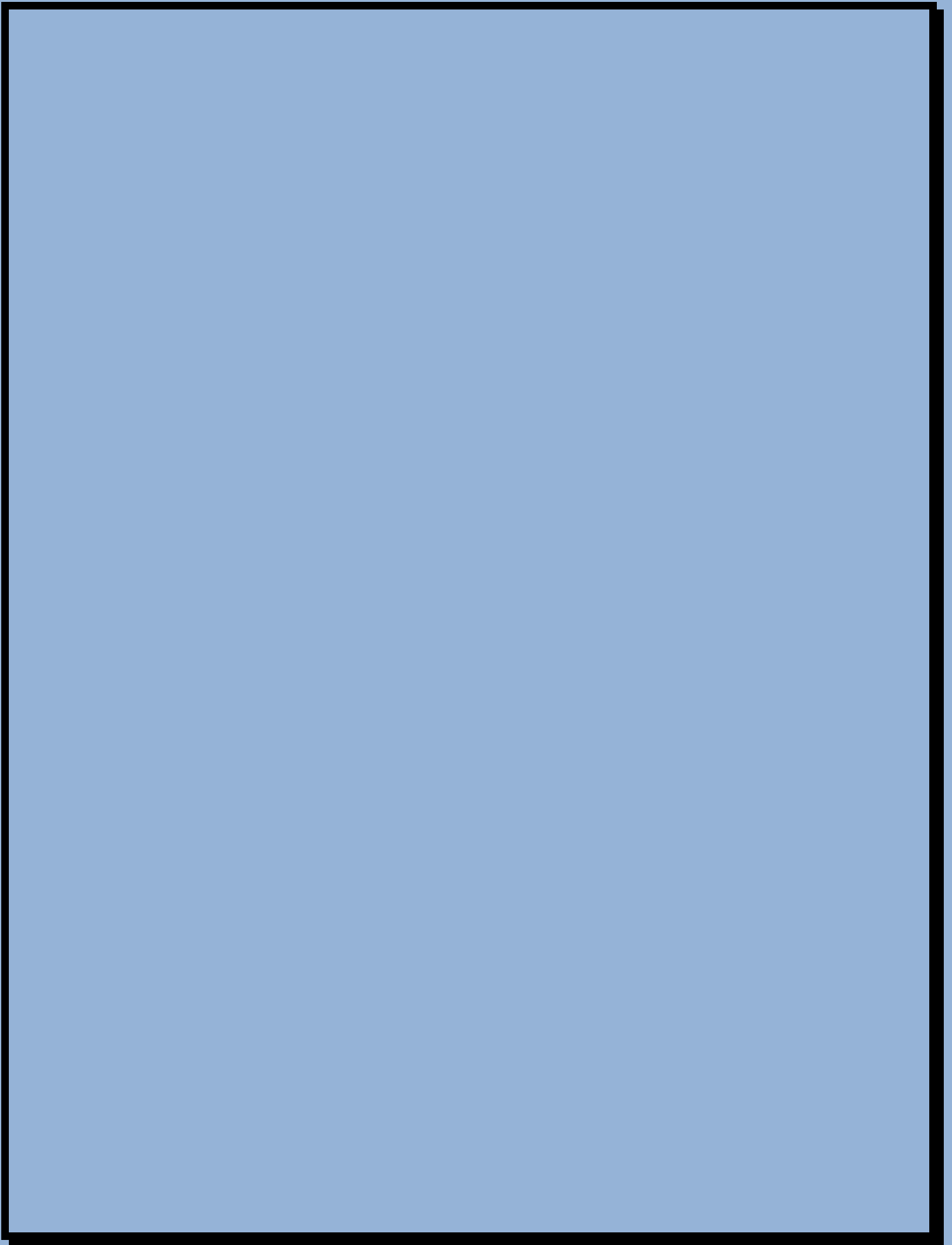
- (1) Total Expenditures to Date
- (2) Estimated Date of Project Completion
- (3) Estimated Overruns/Underruns
- (4) Summary of Project Activities Completed to Date

#### **II. Final Report**

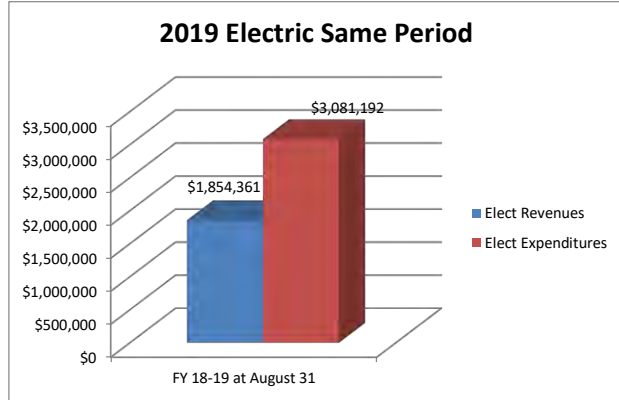
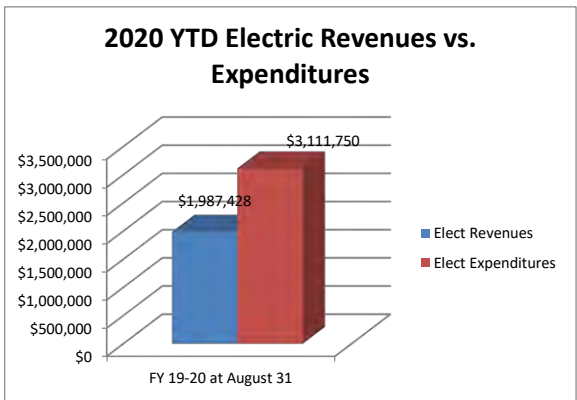
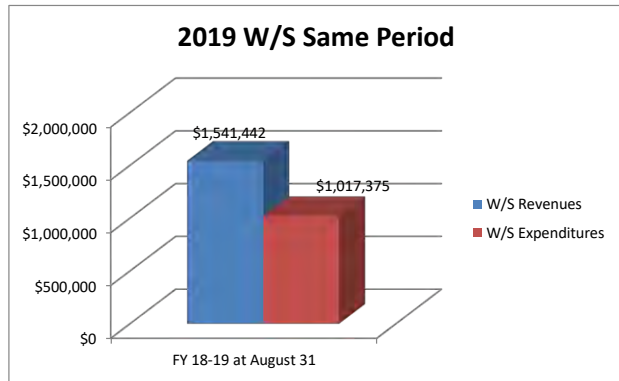
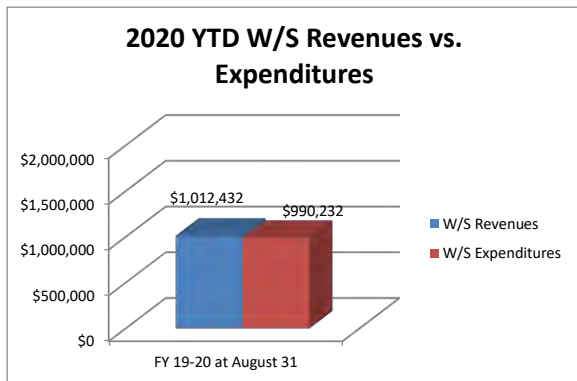
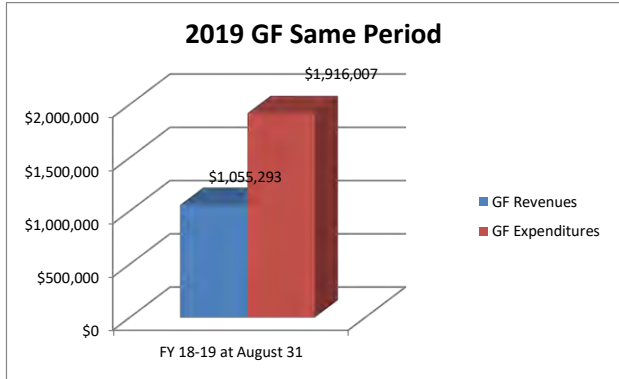
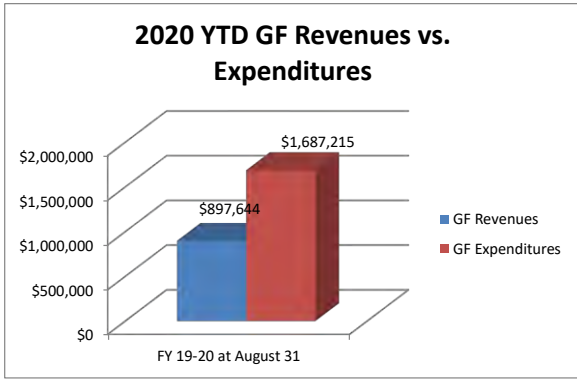
A. Grantee shall submit a final report detailing the work completed by Grantee for the duration of the Grant period. This report should include, as relevant, a narrative of work completed, an estimate of environmental impact, applicable benchmarks and whether they were met, multimedia documentation, a final accounting of all EEG monies spent, and any other reasonably relevant materials, as determined by the NCAG, necessary to document the completeness of the project. The 10% reserve fund shall not be reimbursed to the Grantee until the final report is received and approved.



# Financial Report



## Town of Smithfield Revenues vs. Expenditures



**TOWN OF SMITHFIELD**  
**MAJOR FUNDS FINANCIAL SUMMARY REPORT**  
**August 31, 2020**  
**Gauge: 2/12 or 16.67 Percent**

<b>GENERAL FUND</b>				
	Frequency	Actual to Date FY '19-20	Budget FY '20-21	Actual to Date FY '20-21
<b>Revenues</b>				
Current & Prior Year Property Taxes	Monthly	\$ 411,745	\$ 6,450,000	\$ 65,553
Motor Vehicle Taxes	Monthly	107,297	575,000	107,967
Utility Franchise Taxes	Quarterly	-	975,000	-
Local Option Sales Taxes	Monthly	-	2,147,000	-
Aquatic and Other Recreation	Monthly	157,409	585,000	11,464
Sanitation (Includes Penalties)	Monthly	141,192	1,351,300	142,833
Grants		58,727	13,000	451,445
All Other Revenues		178,923	1,358,308	118,382
Loan Proceeds		-	-	-
Transfers (Electric and Fire Dist.)		-	261,614	-
Fund Balance Appropriated		-	1,020,500	-
Total		\$ 1,055,293	\$ 14,736,722	\$ 897,644
<b>Expenditures</b>				
		Actual to Date FY '19-20	Budget FY '20-21	Actual to Date FY '20-21
General Gov.-Governing Body		\$ 55,739	\$ 448,130	\$ 52,960
Non Departmental		230,039	863,780	190,822
Debt Service		190,426	920,953	211,469
Finance		12,183	133,015	12,254
Planning		69,015	324,642	43,417
Police		471,334	4,036,009	470,397
Fire		234,481	2,779,863	254,733
EMS		-	-	-
General Services/Public Works		65,903	545,716	69,060
Streets		62,436	484,705	57,044
Motor Pool/Garage		13,247	95,215	12,842
Powell Bill		4,382	274,315	3,630
Sanitation		141,933	1,330,260	148,076
Parks and Rec		176,209	905,630	86,476
SRAC		183,173	1,115,890	72,831
Sarah Yard Center		5,507	76,610	1,204
Contingency		-	401,989	-
Appropriations/Contributions		-	-	-
Total		\$ 1,916,007	\$ 14,736,722	\$ 1,687,215

YTD Fund Balance Increase (Decrease)

- -

**WATER AND SEWER FUND**

<b>Revenues</b>	<b>Actual to Date</b>	<b>Budget</b>	<b>Actual to Date</b>
	<b>FY '19-20</b>	<b>FY '20-21</b>	<b>FY '20-21</b>
Water Charges	\$ 320,244	\$ 2,872,930	\$ 333,568
Water Sales (Wholesale)	200,971	\$ 1,800,000	\$ 103,019
Sewer Charges	494,418	4,370,000	539,422
Penalties	-	50,000	7,800
Tap Fees	2,350	4,500	6,275
Other Revenues (Includes Penalties for FY18-19)	23,459	39,400	22,348
Grants	500,000	-	-
Loan Proceeds	-	-	-
Fund Balance Appropriated	-	-	-
<b>Total</b>	<b>\$ 1,541,442</b>	<b>\$ 9,136,830</b>	<b>\$ 1,012,432</b>

<b>Expenditures</b>	<b>Actual to Date</b>	<b>Budget</b>	<b>Actual to Date</b>
	<b>FY '19-20</b>	<b>FY '20-21</b>	<b>FY '20-21</b>
Water Plant ( <b>Less Transfers</b> )	\$ 288,302	\$ 2,059,102	\$ 319,271
Water Distribution/Sewer Coll ( <b>Less Transfers</b> )	646,016	4,606,590	587,904
Transfer to General Fund	-	-	-
Transfer to W/S Capital Proj. Fund	-	1,500,000	-
Debt Service	83,057	611,133	83,057
Contingency	-	360,005	-
<b>Total</b>	<b>\$ 1,017,375</b>	<b>\$ 9,136,830</b>	<b>\$ 990,232</b>

**ELECTRIC FUND**

<b>Revenues</b>	<b>Actual to Date</b>	<b>Budget</b>	<b>Actual to Date</b>
	<b>FY '19-20</b>	<b>FY '20-21</b>	<b>FY '20-21</b>
Electric Sales	\$ 1,802,747	\$ 16,300,000	\$ 1,930,104
Penalties	18,974	100,000	13,442
All Other Revenues	32,640	164,000	43,882
Grants	-	-	-
Loan Proceeds	-	-	-
Fund Balance Appropriated	-	-	-
<b>Total</b>	<b>\$ 1,854,361</b>	<b>\$ 16,564,000</b>	<b>\$ 1,987,428</b>

<b>Expenditures</b>	<b>Actual to Date</b>	<b>Budget</b>	<b>Actual to Date</b>
	<b>FY '19-20</b>	<b>FY '20-21</b>	<b>FY '20-21</b>
Administration/Operations	\$ 318,645	\$ 2,455,830	\$ 407,811
Purchased Power - Non Demand	932,856	12,615,420	817,931
Purchased Power - Demand	1,270,113	-	1,350,727
Purchased Power - Debt	192,696	-	192,696

Debt Service	342,585	342,586	342,585
Capital Outlay	24,297	35,000	-
Contingency	-	331,664	-
Transfers to Electric Capital Proj Fund	-	695,000	-
Transfer to Electric Capital Reserve	-	-	-
Transfers to General Fund	-	88,500	-
Total	<u>\$ 3,081,192</u>	<u>\$ 16,564,000</u>	<u>\$ 3,111,750</u>

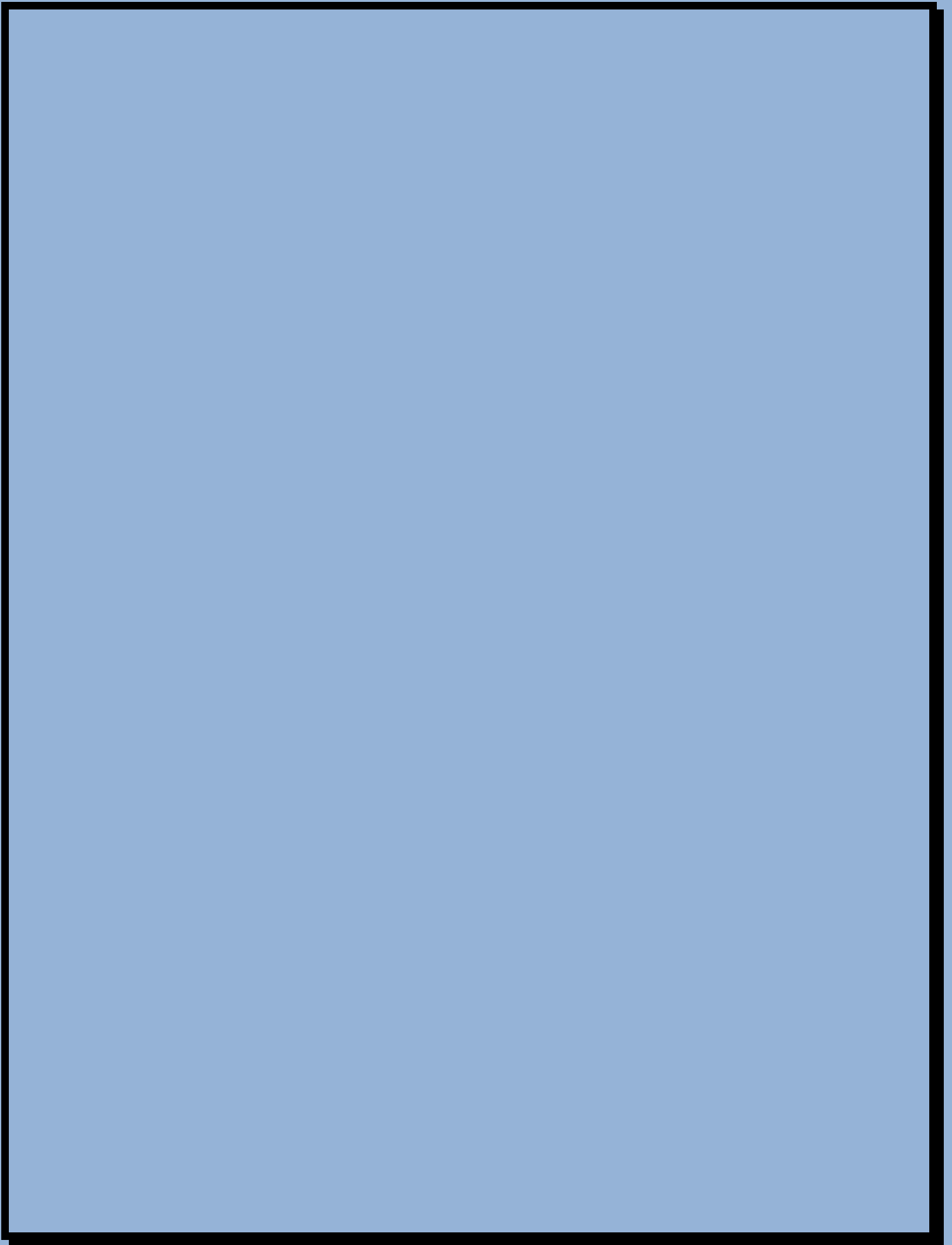
**CASH AND INVESTMENTS FOR APRIL**

General Fund (Includes P. Bill)	11,929,560		
Water and Sewer Fund	8,576,987		
Electric Fund*	9,489,679		
JB George Endowment (40)	134,197		
Water Plant Expansion (43)	2,559,774		
Booker Dairy Road Fund (44)	457,896		
Capital Project Fund: Wtr/Sewer (45)	868,254		
Capital Project Fund: General (46)	1,140,338		
Capital Project Fund: Electric (47)	748,347	1st CITIZENS	28,905,299
FEMA Acquisitions and Elevations	550	NCCMT	2,385,640
Firemen Relief Fund (50)	97,121	KS BANK	3,695,211
Fire District Fund (51)	92,574	UNITED COMM	1,290,135
General Capital Reserve Fund (72)	181,008	PNC BANK	-
Total	<u>\$ 36,276,285</u>		<u>\$ 36,276,285</u>

\*Plug

**Account Balances Confirmed By Finance Director on 9/23/2020**

# Department Reports







# Staff Report

Department Report: Annual Economic Development Update

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## Update

In July 2017, upon request of Economic Development Liaison Tim Kerigan along with Rocky Lane of Sanford Holshouser, Council approved to continue to engage the Scope of Work with Sanford Holshouser for Implementation of the Strategic Economic Development Update Action Items that originally began in August 2016.

Since August of 2016, the Town has been able to make steady progress on implementing the identified action **items from the Town's Economic Development Strategic Plan that was updated in 2014.**

Attached is a list of mentionable activities for August/September 2020.

## Action Requested

No action requested.

## Smithfield Economic Development Implementation Activities AUG/SEP20

1. Partnership with JCED/Product Inventory - Tim, Stephen and Rocky met with Chris Johnson to discuss several matters.
  - a. Chris discussed the town's response to a recent RFI. Chris had requested information on water and sewer rates to be included in a response to a RFI he had recently received from the Economic Development Partnership of NC (EDPNC). Chris was complementary on the town's quick response to his request. He discussed the project in broad terms as he was under an NDA from the company. A site in West Smithfield Industrial Park was submitted.
  - b. Competitive Position - Chris has developed a matrix that shows a side by side comparison, in various areas of the municipalities in the county. He recommended that the town develop its own matrix to get a clear sense of its position, vis-à-vis the other Johnston County municipalities. Rocky will develop the matrix using a hypothetical project for benchmarking purposes.
  - c. Incentives - Chris gave an overview of the county's incentive policies. The county applies this policy to all competitive projects. However, on larger deals such as the Novo Nordisk project, they have been willing to expand on those levels. Chris inquired as to the town's policy. In the past, the town has mirrored the county's offering, as it did for the Penn Compression expansion. Chris said that he needs a clear understanding of the town's policy because on occasion he has to respond very quickly and does not have time to check with Smithfield, and the other municipalities. Tim and Rocky will work on this and get something back to Chris.
  - d. Product - West Smithfield. A large, well-experienced industrial developer has made an offer on a large portion of the West Smithfield Industrial Park. The offer is contingent on the results of the developer's due diligence, which is underway. This could bring great potential to the town as the developer's past projects have been successful in attracting companies and their corresponding capital investment and jobs.
  - e. Chris gave a brief update on economic development activity in the county.
2. Grant Funding – CDBG CV – The town is working with Skip Green of Skip Green and Associates to prepare a grant application for a Community Development Block Grant targeted to assisting companies in their recovery from the negative effects of the shut down brought on by the COVID 19 pandemic. The grant application will provide funding to support multiple projects. Rocky will contact Skip Green to discuss the project and offer to assist as needed.
3. Product – Tim, Stephen, and Rocky discussed the recent sale of the old Walmart building. The building was purchased by a group including Waiel Mohamad.



**FINANCE DEPARTMENTAL REPORT FOR AUGUST, 2020**

**SUMMARY OF ACTIVITIES FOR MAJOR FUNDS (10,30,31):**

Daily Collections/Property Taxes/Other.....	\$ 3,669,956
Franchise Tax.....	0
Sales & Use Tax.....	227,547
Powel Bill.....	<u>0</u>
<b>Total Revenue</b>	<b>\$ 3,897,503</b>

Expenditures: General, Water, and Electric.....\$ 5,789,197

**FINANCE:**

- Compiled and submitted monthly retirement report on 8/31/2020
- Issued 64 purchase orders
- Processed 630 vendor invoices for payment and issued 342 accounts payable checks
- Prepared and processed 2 regular payrolls and remitted federal and state payroll taxes on 8/7 and 8/21/2020
- Issued 0 renewal privilege licenses for beer and wine sales.
- Sent 0 past due notices for delinquent privilege license
- Issued 0 peddler license
- Sent 0 notices for grass cutting
- Collected \$0 in grass cutting invoices. Total collected to date is \$8,436
- Processed 9 NSF Checks/Fraudulent Cards (Utility and SRAC)
- Bad debt calendar year-to-date collections total \$27,991.94 (EMS = \$6,259.27; SRAC = \$4,414.82; Utility= \$17,317.85; and Other = \$0).
- Invoiced 1 grave opening for a total of \$700.00
- Invoiced Johnston Community College for Police Security
- Earned \$1,249.34 in interest from FCB and paid 0 in fees on the central depository account
- Paid \$8,516.82 in credit/debit/Tyler card fees, but earned \$7,540.03 in convenience fees

**FINANCE DIRECTOR**

- Attended Town Council Meeting on August 4, 2020
- Attended Department Head Meetings on August 3 and 18, 2020
- Requested Loan proceeds From BBT (aka Truist Bank) for Hook Lift Truck loan and closed out escrow account on AUGUST 11, 2020.
- Completed LGC Survey on August 27, 2020
- Prepared for Auditors visit in September, 2020
- Placed approximately 105 utility accounts from cycle 2 on payment plan due to COVID19
- Contacted FCB about setting up e-receivables for lock box service. This will allow customers to pay utility bill through their bank via direct deposit to the Town. Payments would get posted approx. 7 days sooner.



# Planning Department Development Report

Wednesday, September 23, 2020

**Project Name:** **Town of Smithfield**  
**Request:** Amends Articles 3, 4, 5, 6 and 7  
**Location:**  
**Tax ID#:** **PIN#:**  
**Project Status:**  
**Notes:** Allows for Conditional Zoning

<b>Text Amendment 2020-03</b>	
Submittal Date:	10/1/2020
Planning Board Review:	10/1/2020
Board of Adjustment Review:	
Town Council Hearing Date:	11/10/2020
Approval Date:	

**Project Name:** **Town of Smithfield**  
**Request:** Amends Table of Permitted Uses and Activities  
**Location:**  
**Tax ID#:** **PIN#:**  
**Project Status:**  
**Notes:** Allows for Columbarias accessory to places of worship

<b>Text Amendment 2020-04</b>	
Submittal Date:	10/1/2020
Planning Board Review:	10/1/2020
Board of Adjustment Review:	
Town Council Hearing Date:	11/10/2020
Approval Date:	

**Project Name:** **Lee Street Single Family Dwelling**  
**Request:** Single Family Dwelling of Property in a B-2 zoning district  
**Location:** 602 East Lee Street  
**Tax ID#:** 15036038 **PIN#:** 169306-48-8706  
**Project Status:** First Review Complete  
**Notes:**

<b>Special Use 2020-09</b>	
Submittal Date:	9/4/2020
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	10/6/2020
Approval Date:	

**Project Name:** **Historic Smithfield Foundation**  
**Request:** Freedman House Variance to front building setback  
**Location:** 308 North Fourth Street  
**Tax ID#:** 15013053 **PIN#:** 169419-52-6462  
**Project Status:** First Review Complete  
**Notes:** Board of Adjustment Public Hearing set for 9/24/2020

<b>BOA 2020-06</b>	
Submittal Date:	8/27/2020
Planning Board Review:	
Board of Adjustment Review:	9/24/2020
Town Council Hearing Date:	
Approval Date:	

Project Name: **Johnston Health Services**  
 Request: 5,370 Sq ft addition to Hospital Complex  
 Location 512 North Brightleaf Boulevard  
 Tax ID#: 15010058 PIN#: 169416-82-0969  
 Project Status  
 Notes:

<b>Site Plan 0202-09</b>	
Submittal Date:	8/24/2020
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	9/4/2020

Project Name: **Ambit Plumbing**  
 Request: Contractor with outdoor storage  
 Location 100 Rock Pillar Road  
 Tax ID#: 5J08017E PIN#: 167500-94-9799  
 Project Status In Second Review  
 Notes:

<b>Site Plan 2020-08</b>	
Submittal Date:	8/11/2020
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	

Project Name: **Daycare Center**  
 Request: Daycare Center @ existing place of worship  
 Location 720 Second Avenue  
 Tax ID#: 15066010 PIN#: 169311-57-2189  
 Project Status First Review Complete  
 Notes:

<b>Special Use 2020-09</b>	
Submittal Date:	7/3/2020
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	9/1/2020
Approval Date:	9/1/2020

Project Name: **Twin Oaks Subdivision**  
 Request: 20 lot subdivision  
 Location Will Drive  
 Tax ID#: 15J11008M PIN#: 160300-46-0287  
 Project Status Approved  
 Notes: TC review scheduled for 8/4/2020

<b>Subdivision 2020-02</b>	
Submittal Date:	6/5/2020
Planning Board Review:	7/9/2020
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	8/4/2020

Project Name: **Smithfield Living Facility**  
 Request: 83 Unit Assisted Living Facility  
 Location Kellie Drive  
 Tax ID#: 14075022D PIN#: 260405-09-8645  
 Project Status **Approved**  
 Notes:

<b>Site Plan 2020-07</b>	
Submittal Date:	6/5/2020
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	9/10/2020

Project Name: **JCC Engineering Building**  
 Request: 46,365 square foot educational facility  
 Location 245 College Road  
 Tax ID#: 15K10199F PIN#: 159308-87-5887  
 Project Status **Approved**  
 Notes:

<b>Site Plan 2020-06</b>	
Submittal Date:	5/19/2020
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	8/24/2020

Project Name: **Twin Creeks Cluster Subdivision**  
 Request: SUP to allow for a 28 lot cluster subdivision  
 Location Galilee Road  
 Tax ID#: 15109011B PIN#: 167300-56-5565  
 Project Status **Second Review Complete**  
 Notes: To allow for the use of the cluster subdivison provisions

<b>Special Use 2020-01</b>	
Submittal Date:	5/1/2020
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	6/2/2020
Approval Date:	6/2/2020

Project Name: **Tru Hotel**  
 Request: 4 Story Hotel  
 Location 167 South Equity Drive  
 Tax ID#: 15008046c PIN#: 260417-10-4438  
 Project Status **Approved**  
 Notes: Under Construction

<b>Site Plan 2020-04</b>	
Submittal Date:	4/29/2020
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	6/1/2020

Project Name: **Burger King**  
Request: Building Remodel / Drive Thru Reconfiguration  
Location 1932 East Market Street  
Tax ID#: 15L11001C PIN#: 260305-09-9223  
Project Status **Approved**  
Notes: Under Construction

<b>Site Plan 2020-05</b>	
Submittal Date:	4/29/2020
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	7/18/2020

Project Name: **Johnston County Detention Center**  
Request: Site Plan Approval  
Location 1071 Yelverton Grov Road  
Tax ID#: 15L11011 PIN#: 260300-67-6920  
Project Status **Approved**  
Notes: Under Construction

<b>Site Plan 2020-02</b>	
Submittal Date:	2/7/2020
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	7/14/2020

Project Name: **East River Phase II**  
Request: 32 lot division / Construction Plan Review  
Location Buffalo Road  
Tax ID#: 14075013 PIN#: 169520-80-3415  
Project Status **Approved**  
Notes: Under Construction

<b>Subdivision 2018-01</b>	
Submittal Date:	1/29/2020
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	4/20/2020

Project Name: **Johnston Animal Hospital**  
Request: Free Standing Facility  
Location 826 North Brightleaf Boulevard  
Tax ID#: 15005038 PIN#: 160413-02-5950  
Project Status **Approved**  
Notes: Site Plan Approved

<b>Site Plan 2020-01</b>	
Submittal Date:	1/7/2020
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	6/24/2020

Project Name: **Johnston Regional Airport FBO**  
 Request: FBO Hanger Addition  
 Location 3149 Swift Creek Road  
 Tax ID#: 15079017D PIN#: 168500-12-1015  
 Project Status **Approved**  
 Notes: Under Construction

<b>Site Plan 2019-04</b>	
Submittal Date:	5/22/2019
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	8/22/2019

Project Name: **Kamdon Ranch**  
 Request: 110 Lot Division  
 Location Swift Creek Road  
 Tax ID#: 15108020 PIN#: 167400-55-9495  
 Project Status **Approved**  
 Notes: Under Construction

<b>Subdivision 2019-02</b>	
Submittal Date:	4/5/2019
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	6/27/2019

Project Name: **Hampton Inn**  
 Request: Free Standing Hotel  
 Location 160 Towne Centre Place  
 Tax ID#: 15L11001G PIN#: 260305-08-5727  
 Project Status **Approved**  
 Notes: Under Construction

<b>Site Plan 2018-08</b>	
Submittal Date:	8/7/2018
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	3/28/2019

Project Name: **East River Phase 1**  
 Request: 40 lot division  
 Location 1899 Buffalo Road  
 Tax ID#: 14075013 PIN#: 169520-80-0490  
 Project Status **Approved**  
 Notes: Built Out

<b>Subdivision 2018-01</b>	
Submittal Date:	7/9/2018
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	2/12/2019



Project Name: **Tires and Wheels**

Request: Auto Repair

Location 2134 South Brightleaf Boulevard

Tax ID#: 15A61047D PIN#: 168320-91-1779

Project Status **Approved**

Notes: Under Construction

<b>Site Plan 2017-09</b>	
Submittal Date:	8/8/2017
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	3/8/2018



**Town of Smithfield**  
**Planning Department**  
**350 E. Market St Smithfield, NC 27577**  
**P.O. Box 761, Smithfield, NC 27577**  
**Phone: 919-934-2116**  
**Fax: 919-934-1134**

### Permit Issued for August 2020

			Permit Fees	Permits Issued
Zoning	Land Use		650.00	7
Site Plan	Minor Site Plan		\$225.00	6
Zoning	Sign		\$450.00	9
	Report Period Total:		\$1,325.00	22
	Fiscal YTD Total:		\$2,600.00	38

Z20-000121	Zoning	Sign	Jewelry Outlet	1025 Outlet Center Drive Dr
SP20-000055	Site Plan	Minor Site Plan	Single Family Dwelling	545 W Holding Street
Z20-000108	Zoning	Land Use	Tobacco Zone	901 S Brightleaf Blvd Ste 101
Z20-000119	Zoning	Sign	Tobacco Zone	901 S Brightleaf Blvd Ste 101
Z20-000109	Zoning	Building	Single Family Dwelling	27 Brookwood Dr
Z20-000110	Zoning	Land Use	Victoria's Secret	1025 Outlet Center Dr Suite
Z20-000123	Zoning	Sign	Victoria's Secret	1025 Outlet Center Dr Suite
Z20-000111	Zoning	Land Use	Cash Auto Rentals	528 W Market St
Z20-000112	Zoning	Sign	Cash Auto Rental	528 W Market St
SP20-000056	Site Plan	Minor Site Plan	Single Family Dwelling	117 Heritage Dr
SP20-000057	Site Plan	Minor Site Plan	Single Family Dwelling	312 Cloverdale Dr
SP20-000058	Site Plan	Minor Site Plan	Single Family Dwelling	1006 Chestnut Dr
SP20-000059	Site Plan	Minor Site Plan	Johnston Court Apartments	2264 Kay Drive
Z20-000113	Zoning	Land Use	CGB Diversified Services, Inc	1327 N Brightleaf Blvd
Z20-000114	Zoning	Sign	Food Lion	905 S Brightleaf Blvd
Z20-000115	Zoning	Sign	Alpha Signs & Lighting	1015 Outlet Center Dr
Z20-000116	Zoning	Sign	Carolina Electric Assemblers	132 Citation Lane
SP20-000060	Site Plan	Minor Site Plan	Single Family Dwelling	608 River Birch Ct
Z20-000117	Zoning	Land Use	The Holistic Company of	161 Venture Dr
Z20-000118	Zoning	Sign	The Holistic Company of	161 Venture Dr
Z20-000120	Zoning	Land Use	ABIL-OT,PLLC	101 E Market St Ste 3B
Z20-000122	Zoning	Land Use	Landings of Smithfield	200 Kellie Dr
Z20-000124	Zoning	Sign	Carolina Realty	1330 N Brightleaf Blvd



**TOWN OF SMITHFIELD  
POLICE DEPARTMENT  
MONTHLY REPORT  
MONTH ENDING August 31, 2020**

**I. STATISTICAL SECTION**

Month Ending August 31, 2020	August 2020	August 2019	Total 2020	Total 2019	YTD Difference
Calls for Service	1603	1666	12,072	13054	-982
Incident Reports Completed	136	125	952	1119	-167
Cases Closed	103	91	696	791	-95
Accident Reports	72	72	462	588	-126
Arrest Reports	89	97	596	768	-172
Burglaries Reported	6	3	35	45	-10
Drug Charges	26	21	205	270	-65
DWI Charges	8	5	49	51	-2
Citations Issued	110	126	1,049	1262	-213
Speeding	37	18	281	237	44
No Operator License	28	30	176	299	-123
Registration Violations	4	7	115	142	-27

**II. PERSONNEL UPDATE**

The police department currently has three vacant positions. One officer is on military leave with the National Guard. One conditional offer has been made for employment, waiting on completion of background investigation. Interviews are being conducted on potential new hires as applications are being turned in.

**III. MISCELLANEOUS**

Mandatory in-service training was continued in August, with most courses be completed on line. The Police Department participated in numerous drive by celebrations during the month due to COVID-19. Community events are still low due to the COVID-19.

### REPORTED UCR OFFENSES FOR THE MONTH OF AUGUST 2020

PART I CRIMES	August	August	+/-	Percent	Year-To-Date		+/-	Percent
	2019	2020		Changed	2019	2020		Changed
MURDER	0	0	0	N.C.	1	0	-1	-100%
RAPE	0	0	0	N.C.	1	1	0	0%
ROBBERY	1	2	1	100%	7	8	1	14%
Commercial	0	1	1	N.C.	2	2	0	0%
Individual	1	1	0	0%	5	6	1	20%
ASSAULT	0	0	0	N.C.	38	33	-5	-13%
* VIOLENT *	1	2	1	100%	47	42	-5	-11%
BURGLARY	3	7	4	133%	40	34	-6	-15%
Residential	2	6	4	200%	28	21	-7	-25%
Non-Resident.	1	1	0	0%	12	13	1	8%
LARCENY	40	43	3	8%	221	263	42	19%
AUTO THEFT	1	3	2	200%	11	10	-1	-9%
ARSON	0	2	2	N.C.	0	5	5	N.C.
* PROPERTY *	44	55	11	25%	272	312	40	15%
<b>PART I TOTAL:</b>	<b>45</b>	<b>57</b>	<b>12</b>	<b>27%</b>	<b>319</b>	<b>354</b>	<b>35</b>	<b>11%</b>
PART II CRIMES								
Drug	16	14	-2	-13%	202	165	-37	-18%
Assault Simple	4	3	-1	-25%	51	45	-6	-12%
Forgery/Counterfeit	6	1	-5	-83%	22	26	4	18%
Fraud	8	7	-1	-13%	54	52	-2	-4%
Embezzlement	0	0	0	N.C.	0	9	9	N.C.
Stolen Property	1	0	-1	-100%	6	3	-3	-50%
Vandalism	1	6	5	500%	46	40	-6	-13%
Weapons	0	0	0	N.C.	3	6	3	100%
Prostitution	0	0	0	N.C.	0	0	0	N.C.
All Other Sex Offens	0	0	0	N.C.	0	4	4	N.C.
Gambling	0	0	0	N.C.	0	0	0	N.C.
Offn Agnst Faml/Chld	0	0	0	N.C.	5	4	-1	-20%
D. W. I.	5	8	3	60%	57	49	-8	-14%
Liquor Law Violation	0	0	0	N.C.	6	8	2	33%
Disorderly Conduct	4	0	-4	-100%	15	0	-15	-100%
Obscenity	1	0	-1	-100%	1	0	-1	-100%
Kidnap	1	0	-1	-100%	3	0	-3	-100%
Human Trafficking	0	0	0	N.C.	0	0	0	N.C.
All Other Offenses	21	32	11	52%	256	180	-76	-30%
<b>PART II TOTAL:</b>	<b>68</b>	<b>71</b>	<b>3</b>	<b>4%</b>	<b>727</b>	<b>591</b>	<b>-136</b>	<b>-19%</b>
<b>GRAND TOTAL:</b>	<b>113</b>	<b>128</b>	<b>15</b>	<b>13%</b>	<b>1046</b>	<b>945</b>	<b>-101</b>	<b>-10%</b>

N.C. = Not Calculable



**Town of Smithfield  
Fire Department  
August 2020**

**I. Statistical Section**

Responded to	2020 Aug	Aug IN	Aug OUT	2019 Aug	2020 IN	2020 OUT	2020 YTD	2019 YTD
<b>Total Structure Fires Dispatched</b>	<b>13</b>	4	9	7	26	41	67	84
*Confirmed Structure Fires (Our District)*	1	1	0	1	15	0	15	21
*Confirmed Structure Fires (Other Districts)*	3	0	3	1	0	20	20	25
<b>EMS/Rescue Calls</b>	<b>119</b>	115	4	120	639	51	690	987
<b>Vehicle Fires</b>	<b>1</b>	0	1	0	5	5	10	5
<b>Motor Vehicle Accidents</b>	<b>16</b>	14	2	21	98	17	115	152
<b>Fire Alarms (Actual)</b>	<b>5</b>	5	0	1	38	3	41	63
<b>Fire Alarms (False)</b>	<b>22</b>	22	0	21	98	2	100	113
<b>Misc./Other Calls</b>	<b>47</b>	33	14	26	163	42	205	240
*Mutual Aid (Received)*	4	0	0	3	0	0	28	31
*Mutual Aid (Given)*	18	0	0	5	0	0	87	61
*Overlapping Calls (Calls at the same time)*	45	0	0	37	0	0	223	336
<b>TOTAL EMERGENCY RESPONSES</b>	<b>214</b>	190	24	191	1056	140	1196	1590

\* Denotes the breakdown of calls, these are not calculated into the totals \*  
**IN/OUT** denotes in and out of the Town, not outside the fire district. When we respond to another fire district (Mutual Aid), which is outside of our total fire district boundaries that is reported in (**Other Districts**).

	Aug	YTD
Fire Inspections/Compliance Inspections	26	174
Public Fire Education Programs	0	1
Children in Attendance	0	2
Adults in Attendance	0	2
Plans Review Construction/Renovation Projects	9	50
Fire Code Citations	0	0
Fire Lane Citations	0	0
Consultation/Walk Through	1	46
Re-Inspections	6	60

**II. Major Revenues**

	Aug	YTD
<b>Inspections</b>	<b>\$800.00</b>	\$6,025.00
<b>False Alarms</b>	<b>\$0.00</b>	\$1,700.00
<b>Fire Recovery USA</b>	<b>\$200.00</b>	\$992.00
<b>EMS Debt Setoff</b>	<b>\$0.00</b>	\$5,670.04

**Major Expenses for the Month:**

**III. Personnel Update:**

**IV. Narrative of monthly departmental activities:**

- Due to COVID-19 all special events were cancelled.
- We provided Firetruck Birthday drive-byes, Shiloh Church, Rand St. and Church St.

**Town of Smithfield  
Public Works Department  
Aug. 31, 2020**



180 Total Work Orders completed by the Public Works Department

4 Burials, at \$700.00 each = \$2,800.00

0 Cremation Burial, \$400.00 each = \$0.00

\$2,000.00 Sunset Cemetery Lot Sales

\$0.00 Riverside Extension Cemetery Lot Sales

471.96 tons of household waste collected

120 tons of yard waste collected

6.83 tons of recycling collected

## Appearance Commission August 2020 Monthly Report:

### Boat Ramp

- Fencing and picnic tables were installed at the picnic area.
- Currently receiving estimates for two sets of steps along the greenway.

**Next Appearance Commission meeting will be on October 20, 2020 at 5:00pm in Town Hall.**







**Town of Smithfield**  
**Public Works Appearance Division**  
**Cemetery, Landscapes, and Grounds Maintenance**  
**Buildings, Facilities, and Sign Division**  
**Monthly Report**  
**August 31, 2020**



**I. Statistical Section**

- 4 \_\_\_\_\_ Burials
- 8 \_\_\_\_\_ Works Orders – Buildings & Facilities Division
- 22 \_\_\_\_\_ Work Orders – Grounds Division
- 7 \_\_\_\_\_ Work Orders – Sign Division

**II. Major Revenues**

Sunset Cemetery Lot Sales:	\$2,000.00
Riverside Ext Cemetery Lot Sales:	\$0.00
Grave Opening Fees:	\$2,800.00
Total Revenue:	\$4,800.00

**III. Major Expenses for the Month:**

\$1,200.00 to Patrick's Tree Service to remove hazardous oak tree at 217 E Davis Street.

**IV. Personnel Update:**

None for the month

**V. Narrative of monthly departmental activities:**

The overall duties include daily maintenance on cemeteries, landscapes, right-of-ways, buildings and facilities. The Public Works Department safety meeting was on "Safety while operating a dump truck".

**Town of Smithfield  
Public Works Drainage/Street Division  
Monthly Report  
August 31, 2020**



**I. Statistical Section**

- a. All catch basins in problem areas were cleaned on a weekly basis
- b. Cut one nuisance property for Planning Dept
- c. 3 Work Orders – 355 Linear Feet of ditches were cleaned
- d. 10 Work Orders – 855lbs. of Cold Patch was used for 18 Potholes.
- e. Repaired 15x30 root damaged area in roadway on White Oak Dr.

**II. Major Revenues**

None for the month

**III. Major Expenses for the Month:**

None for the month

**IV. Personnel Update:**

None for the month

**V. Narrative of monthly departmental activities:**

The Public Works Department safety meeting was on "Safety while operating a dump truck".

**Town of Smithfield  
Public Works Department  
August 2020 Drainage Report**

Location: Church Street, College Rd and MLK, Lee Street at RR, 808 Martin, 721 2<sup>nd</sup> Ave, Rand and Brogden, Blount Street, Riverside Drive, 2<sup>nd</sup> and Spring Branch, S 3<sup>rd</sup> beside travel odyssey, 5<sup>th</sup> and Church, 5<sup>th</sup> beside Police Dept, Woodall and SBL, 307 Woodall, Wellons, 665-739-808-845 NC Hwy 210, S 4<sup>th</sup> Street, Bridge Street, Johnston Street, Lot across from Water Plant, Operation Center, Old Belk's parking lot, Flowers Street, S Etna and E Market, Outlet Center Drive.

Starting Date: 8/3/2020  
Completion Date: 8/26/2020  
Description: Cut FEMA lots, town lots and right of ways.  
Man-hours: 60hrs.  
Equipment: New Holland tractor with bush hog, scag mowers plus hand tools.  
Materials: NA

Location: 208 Woodcrest.  
Starting Date: 8/6/2020  
Completion Date: 8/6/2020  
Description: Removed 30LF root damaged gutter area for positive drainage.  
Man-hours: 4hrs.  
Equipment: 420 Cat backhoe, 405 dump truck.  
Materials: 3 yards of 57 stone.

Location: 109 Campbell Street.  
Starting Date: 8/6/2020  
Completion Date: 8/6/2020  
Description: Cleaned ditch line in front of property for positive drainage. Removed tandem truck load of dirt.  
Man-hours: 2hrs.  
Equipment: 420 Cat backhoe, 405 dump truck.  
Materials: NA

Location: 310 S 7<sup>th</sup> Street.  
Starting Date: 8/7/2020  
Completion Date: 8/7/2020  
Description: Backfilled washout areas in right of way.  
Man-hours: 2hrs.  
Equipment: 420 Cat backhoe, 408 flat bed.  
Materials: Two yards of fill dirt.

Location: Dead End of Holding Street.  
Starting Date: 8/10/2020  
Completion Date: 8/10/2020  
Description: Moved dead end gate down the street due to new house being built.  
Man-hours: 4hrs.  
Equipment: 420 Cat backhoe, 408 flatbed new holland tractor.  
Materials: NA

Location: 5 Sherwood Ct.  
Starting Date: 8/10/2020  
Completion Date: 8/10/2020  
Description: Filled in sinking area around recent drainage line repair.  
Man-hours: 1hr.  
Equipment: Bobcat tractor.  
Materials: One bucket of fill dirt.

Location: 912 Second Ave.  
Starting Date: 8/11/2020  
Completion Date: 8/11/2020  
Description: Repaired damaged drain line in right of way.  
Man-hours: 3hrs.  
Equipment: 420 Cat backhoe, 412 pickup.  
Materials: Three 50lbs. bags of concrete, one yard of fill dirt.

Location: Wellons and SBL, Peedin Rd, 110 Caroline Ave, 230-250-270-275  
Equity Drive, Computer and Powell, 1202 North Street, 812 2<sup>nd</sup> Ave.  
Starting Date: 8/11/2020  
Completion Date: 8/28/2020  
Description: Repaired 18 potholes with Perma Patch asphalt.  
Man-hours: 2.25hrs.  
Equipment: 412 pickup.  
Materials: 14.25 bags of Perma Patch asphalt.

Location: East Smithfield Welcome Sign.  
Starting Date: 8/12/2020  
Completion Date: 8/12/2020  
Description: Pulled weeds and added new mulch to landscape bed.  
Man-hours: 10hrs.  
Equipment: 905, 312 plus hand tools.  
Materials: 8 yards of mulch.

Location: SBL and S Third Street.  
Starting Date: 8/14/2020  
Completion Date: 8/14/2020  
Description: Cut back limbs and vegetation blocking view of oncoming traffic.  
Man-hours: 1.5hrs.  
Equipment: 300,412 plus hand tools.  
Materials: NA

Location: E Market between 3rd and Front.  
Starting Date: 8/17/2020  
Completion Date: 8/17/2020  
Description: Cut back tree limbs from buildings.  
Man-hours: 1.5hrs.  
Equipment: 300 plus hand tools.  
Materials: NA

Location: Oakland Cemetery.  
Starting Date: 8/18/2020  
Completion Date: 8/18/2020  
Description: Cut up and removed fallen tree limb from path of cemetery.  
Man-hours: 1hrs.  
Equipment: 905, Dump trailer plus hand tools.  
Materials: NA

Location: S 7<sup>th</sup> and Circle Drive.  
Starting Date: 8/18/2020  
Completion Date: 8/28/2020  
Description: Cut back high shoulder and sloped to ditch for positive drainage.  
Man-hours: 2hrs.  
Equipment: 420 Cat backhoe, 408 flat bed.  
Materials: NA

Location: 38 White Oak Drive cul-de-sac.  
Starting Date: 8/19/2020  
Completion Date: 8/19/2020  
Description: Cut out 15ft x 30ft root damaged area from roadway and repaired with 9.5 B asphalt.  
Man-hours: 23.75hrs.  
Equipment: 420 Cat backhoe, 408 flat bed, 405 dump truck plus hand tools.  
Materials: 8.02 tons of 9.5B asphalt.

Location: 104 N Bright Leaf Blvd.  
Starting Date: 8/20/2020  
Completion Date: 8/20/2020  
Description: Cut nuisance property for Planning Dept.  
Man-hours: 2hrs.  
Equipment: 412, scag mower plus hand tools.  
Materials: Na

Location: Collier and MLK.  
Starting Date: 8/21/2020  
Completion Date: 8/21/2020  
Description: Repaired ruts in right of way.  
Man-hours: 1.5hrs.  
Equipment: 420 Cat backhoe, 412 pickup.  
Materials: Two yards of topsoil.

Location: Chestnut and Bingham.  
Starting Date: 8/24/2020  
Completion Date: 8/24/2020  
Description: Replaced faded stop sign with new 30 x 30.  
Man-hours: .5hrs.  
Equipment: 412 plus hand tools.  
Materials: 30 x 30 stop sign plus hardware.

Location: Hwy 70 West between Hill and Campbell.  
Starting Date: 8/26/2020  
Completion Date: 8/26/2020  
Description: Removed dead juniper shrubs from right of way island.  
Man-hours: 30hrs.  
Equipment: 420 Cat backhoe, 301 Knuckleboom plus hand tools.  
Materials: NA

Location: 706 Caswell Street.  
Starting Date: 8/27/2020  
Completion Date: 8/27/2020  
Description: Cleaned ditch bank in front of property for positive drainage.  
Man-hours: 2hrs.  
Equipment: 420 Cat backhoe, 408 flatbed plus hand tools.  
Materials: NA

Location: North and 7<sup>th</sup>.  
Starting Date: 8/28/2020  
Completion Date: 8/28/2020  
Description: Replaced damaged 35MPH sign.  
Man-hours: .5hrs.  
Equipment: 412 plus hand tools.  
Materials: 8ft u-channel pole, new 35MPH sign plus hardware.

Location: E Dundee between 5<sup>th</sup> and 6<sup>th</sup>.  
Starting Date: 8/28/2020  
Completion Date: 8/28/2020  
Description: Cut back 295LF of right of way ditch bank.  
Man-hours: 4hrs.  
Equipment: New Holland tractor with bush hog, 412 plus hand tools.  
Materials: NA





**Town of Smithfield  
Public Works Fleet Maintenance Division  
Monthly Report  
August 31, 2020**



**I. Statistical Section**

  0   Preventive Maintenances

  0   North Carolina Inspections

 30  Work Orders

**II. Major Revenues**

None for the month

**III. Major Expenses for the Month:**

Paid Alan Tye & Associates, LC \$585.00 for the annual inspections of the lifts in the shop.

**IV. Personnel Update:**

None for the month

**V. Narrative of monthly departmental activities:**

The Public Works Department safety meeting was on "Safety while operating a dump truck".

**Town of Smithfield**  
**Public Works Sanitation Division**  
**Monthly Report**  
**August 31, 2020**



**I. Statistical Section**

The Division collected from approximately 4,155 homes, 4 times during the month

- a. Sanitation forces completed 44 work orders
- b. Sanitation forces collected tons 471.96 of household waste
- c. Sanitation forces disposed of 60 loads of yard waste and debris at Spain Farms Nursery
- d. Recycled 0 tons of clean wood waste (pallets) at Convenient Site Center
- e. Town's forces collected 0 tons of construction debris (C&D)
- f. Town disposed of 0 scrap tires that was collected at Convenient Site Center
- g. Recycling forces collected 4.33 tons of recyclable plastic
- h. Recycled 2920 lbs. of cardboard material from the Convenient Site Center
- i. A total of 0 gals of cooking oil was collected at the Convenient Site Center
- j. Recycled 2200 lbs. of plastics & glass (co-mingle) from the Convenient Site Center

**II. Major Revenues**

- a. Received \$ 0 from Sonoco Products for cardboard material
- b. Sold 0 lbs. of aluminum cans for \$0
- c. Sold 1540 lbs. of shredder steel for \$53.90 to Omni Source
- d. Sold 600 lbs. of UBC for \$204.00 to Renew Recycling

**III. Major Expenses for the Month:**

Spain Farms Nursery was paid \$1,881.00 for disposal of yard waste and debris. Paid \$894.92 to Holland's fire and Fleet for repair of A/C truck 301. Paid \$2,361.00 to Old Dominion. for Repairs to Greenleaf box impeller, hose with bearings. Paid \$1,008.02 to Sutton Safety Shoes for Safety Shoes. Paid \$874.99 to Walker Automotive for radiator for Knuckle Boom #311

**IV. Personnel Update:**

No one hired for the month.

**V. Narrative of monthly departmental activities:**

The Public Works Department safety meeting was on "Safety while operating a dump truck".

Community Service Workers worked 0 hrs.



## MONTHLY REPORT FOR AUGUST, 2020

<b>PROGRAMS STATISTICS</b>	<b>August, 2020</b>		<b>August, 2019</b>	
NUMBER OF PROGRAMS	4		9	
TOTAL ATHLETICS PARTICIPANTS	23		235	
TOTAL NON/ATHLETIC PARTICIPANTS	0		1076	
NUMBER OF GAMES PLAYED	0		6	
TOTAL NUMBER OF PLAYERS (GAMES)	0		190	
NUMBER OF PRACTICES	10		34	
TOTAL NUMBER OF PLAYER(S) PRACTICES	86		716	
SYCC VISITS	12		252	
	<b>August, 2020</b>	<b>20/21 FY YTD</b>	<b>August, 2019</b>	<b>19/20 FY YTD</b>
PARKS RENTALS	25	35	28	73
USERS (PARKS RENTALS)	417	562	725	5515
<b>TOTAL UNIQUE CONTACTS</b>	<b>538</b>		<b>3,194</b>	
	<b>August, 2020</b>	<b>20/21 FY YTD</b>	<b>August, 2019</b>	<b>19/20 FY YTD</b>
PARKS AND RECREATION REVENUES	\$ 1,060.00	\$ 2,140.00	\$ 7,492.00	\$ 24,127.11
PARKS AND RECREATION EXPENDITURES (OPERATIONS)	\$ 50,452.00	\$ 86,475.00	\$ 63,455.19	\$ 113,485.55
PARKS AND RECREATION EXPENDITURE (CAPITAL OUTLAY EQUIP)	\$ -	\$ -	\$ -	\$ 62,723.00
SYCC EXPENDITURES	\$ 546.00	\$ 1,204.00	\$ 4,018.90	\$ 5,507.41

**Highlights**

Continued virtual program  
Tennis Ladder  
Drop in Pickleball



## SRAC MONTHLY REPORT FOR AUGUST, 2020

<b>PROGRAMS SATISTICS</b>	<b>August, 2020</b>		<b>August, 2019</b>	
NUMBER OF PROGRAMS	5		19	
TOTAL CONTACT WITH PROGRAM PARTICIPANTS	1865		3721	
	<b>August, 2020</b>	<b>20/21 FY YTD</b>	<b>August, 2019</b>	<b>19/20 FY YTD</b>
SRAC MEMBER VISITS	643	1302	4098	8939
DAY PASSES	0	0	1496	3606
RENTALS (SRAC)	0	1	63	106
USERS (SRAC RENTALS)	0	65	3420	6001
<b>TOTAL UNIQUE CONTACTS</b>	<b>2,508</b>		<b>12,735</b>	
	<b>August, 2020</b>	<b>20/21 FY YTD</b>	<b>August, 2019</b>	<b>19/20 FY YTD</b>
<b>FINANCIAL STATISTICS</b>				
SRAC REVENUES	\$ 3,943.00	\$ 11,038.00	\$ 69,057.43	\$ 133,196.19
SRAC EXPENDITURES	\$ 35,134.00	\$ 72,831.00	\$ 102,610.00	\$ 183,173.00
SRAC MEMBERSHIPS	2184		2819	

**Highlights**

Alligator Steps Swim Lessons (1600+ visits)  
 Group Fitness Classes on Miracle League Field  
 Pottery Camp



- **Statistical Section**

- Electric CP Demand 27,219 Kw relative to July's demand of 31,384 Kw.
- Electric System Reliability for was 99.995%, with five (5) recorded outage; relative to July's 99.986%.
- Raw water treated on a daily average was 3.608 MG relative to 4.356 MG for July; with maximum demand of 4.366 MG relative to July's 5.260 MG.
- Total finished water to the system was 102.727 MG relative to July's 123.003 MG. Average daily for the month was 3.314 MG relative to July's 3.968 MG. Daily maximum was 4.212 MG (August 27<sup>th</sup>) relative to July's 4.998 MG. Daily minimum was 2.651 (August 7<sup>th</sup>), relative to July's 3.187 MG.

- **Miscellaneous Revenues**

- Water sales were \$273,689 relative to July's \$249,089
- Sewer sales were \$444,161 relative to July's \$405,041
- Electrical sales were \$1,612,234 relative to July's sales of \$1,305,865
- Johnston County Water purchases were \$131,891 for 56.124 MG relative to July's \$222,599 for 94.723 MG.

- **Major Expenses for the Month**

- Electricity purchases were \$1,124,499 relative to July's \$1,239,889.
- Johnston County sewer charge was \$275,067 for 83.887 MG relative to July's \$204,496 for 62.671 MG.

- **Personnel Changes –**

- Joshua Willis was hired as a Utility Line Mechanic on August 17, 2020.