
AGENDA
TOWN COUNCIL OF THE TOWN OF TARBORO, NC
REGULAR MEETING HELD AT 7:00 PM, MONDAY, SEPTEMBER 13,
2021
IN THE COUNCIL ROOM, TOWN HALL, TARBORO, NC

1. MEETING CALLED TO ORDER BY THE MAYOR

PLEASE TURN CELL PHONES OFF

2. INVOCATION

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA BY COUNCIL

5. PRESENTATION BY COUNCIL

(1) Proclamation to Memorialize 9/11

6. REQUESTS AND PETITIONS OF CITIZENS

(Five minute time limit per person)

7. TOWN MANAGERS RECOMMENDATIONS

Consent Items

- (1) Approve minutes of the August 9, 2021 regular meeting.
- (2) 2021 Tax Levy Adjustment
- (3) Tax Collector's Report

Action Items

- (4) InfinityLink Broadband Service
- (5) Ward Redistricting Update and Information
- (6) Resolution for Consideration of Annexation
- (7) Field of Honor Request - Tarboro Rotary Club
- (8) Special Event - Brewgrass Festival - Request for Co-Sponsorship
- (9) Re-appropriations from FY20-21 to FY21-22
- (10) Appointment for September - Historic District Commission
- (11) Appointment for September - Planning Board & Zoning Commission
- (12) Appointment for September - Tarboro-Edgecombe Arts Commission
- (13) Appointment for October - Edgecombe County Tourism Development Authority
- (14) Appointment for October - Parking Authority
- (15) Appointment for October - Redevelopment Commission
- (16) Appointment for October - Tarboro Main Street Façade Committee

8. OTHER REPORTS

- A. Town Manager
- B. Town Attorney
- C. Council Members

9. ADJOURNMENT



Proclamation
"A Day to Remember"

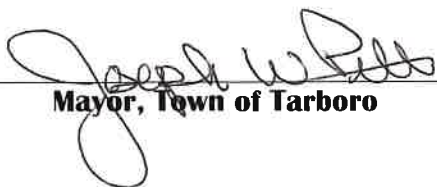
WHEREAS, the unprovoked attacks of September 11, 2001, upon America by foreign terrorists have thrust the United States, and other countries, into a war it never envisioned, militarily or diplomatically; and
WHEREAS, the challenges facing all the civilized people of the world as they relate to the war on terrorism will not end until those fanatics responsible are eliminated or brought to justice; and
WHEREAS, America is fully committed to ensuring our freedoms remain unfettered and sovereign for all generations, now and forever; and
WHEREAS, world opinion needs to remain focused upon the eradication of these inhuman acts perpetrated around the globe; and
WHEREAS, one way to accomplish this is to NEVER FORGET that those innocent victims did not die in vain; and
WHEREAS, America can fight back by reminding the world that the deaths of these people will always be remembered and that they will be forever loved; and
WHEREAS, a noble and appropriate way to accomplish this is through the annual celebration of their living; and
WHEREAS, this commemoration should be conducted each September 11th throughout the land to include:

- **The promotion of global peace and goodwill;**
- **The demonstration of America's resolve and perseverance to win the war on terrorism;**
- **The advancement of responsible citizenship;**
- **The encouragement of patriotism and love of country; and**
- **The poignant remembrance of those innocent victims who died September 11th, as heroes, one and all; now therefore be it**

RESOLVED, as the mayor of the Town of Tarboro, I am issuing this proclamation to memorialize those men, women, and children who lost their lives; and be it further
RESOLVED, that this proclamation be publicized for all to see and know that the citizens of Tarboro remember with eternal respect those, whose lives were suddenly, without cause and pointlessly taken from them on September 11, 2001.
May they forever rest in peace and abide in our memories.

Respectfully submitted and approved, on this 13th day of September, 2021.





Mayor, Town of Tarboro

**MINUTES OF A REGULAR MEETING OF THE TOWN COUNCIL OF THE
TOWN OF TARBORO, HELD AT 7:00 PM ON MONDAY, AUGUST 9, 2021 IN THE
COUNCIL ROOM, TOWN HALL, TARBORO, NORTH CAROLINA**

MEMBERS PRESENT

Councilman Woodard, Mayor Pro Tem
Councilman Taylor
Councilman Burnette
Councilman Brown
Councilman Jenkins
Councilmember Jordan
Councilmember Bynum
Councilman Mayo

MEMBERS ABSENT

Mayor Pitt

ALSO PRESENT

Troy Lewis, Town Manager
Leslie Lunsford, Town Clerk
Chad Hinton, Town Attorney

1. MEETING CALLED TO ORDER BY THE MAYOR

2. INVOCATION

Councilman Taylor.

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA BY COUNCIL

Agenda approved as presented.

John Jenkins made a motion, which was seconded by Leo Taylor and Passed, Motion.

5. REQUESTS AND PETITIONS OF CITIZENS

None.

6. TOWN MANAGERS RECOMMENDATIONS

Consent Items

Consent Items approved as presented.

Deborah Jordan made a motion, which was seconded by Sabrina Bynum and Passed, Motion.

- (1) Approve minutes of the July 12, 2021 regular meeting.

- (2) Tax Collector's Report
- (3) Taxes - Preliminary Report & Annual Settlement of Tax Collector

Action Items

(4) Battery Energy Storage System Project

Council authorized staff to work with UtilityEngineering, LLC to develop a request for Proposals from companies to install up to a 4.5 MW Battery Energy Storage System on Tarboro's electric distribution system.

Leo Taylor made a motion, which was seconded by John Jenkins and Passed, Motion.

(5) Bid Award - Knuckle Boom Trucks

Council awarded both contracts to Amick Equipment Company, Inc. and authorized appropriate staff to execute the necessary contracts and/or procurement documents.

John Jenkins made a motion, which was seconded by Leo Taylor and Passed, Motion.

(6) Appointment for August - Planning Board & Zoning Commission

No action taken.

(7) Appointment for August - Historic District Commission

No action taken.

(8) Appointment for August - Tarboro-Edgecombe Arts Commission

No action taken.

7. OTHER REPORTS

A. Town Manager

- (1) ElectriCities Annual Conference - August 16-18, 2021

Troy Lewis reminded Councilmembers about the ElectriCities Annual Conference, August 16-18, 2021

B. Town Attorney

Chad Hinton expressed his appreciation to Council for allowing him to attend the recent Municipal Attorney's Conference.

C. Council Members

Councilman Woodard - requested that Council invite a judge and magistrate to come speak with Councilmembers about crime activity in the area. He also addressed concerns of speeding on Lincoln Road.

Councilman Taylor - encouraged staff to continue to collect outstanding property taxes. He also requested staff look into spending Powell Bill funds on speed bumps to reduce speeding in neighborhoods. Councilman Taylor requested a red flashing light at the four-way stop sign on Pine Street.

Councilman Mayo - discussed the Town's uniform policies. Councilman Mayo made a motion, which was seconded by Councilman Jenkins and passed unanimously that all uniform policies be set by management.

Councilmember Jordan - requested information on houses becoming a nuisance,

Councilman Jenkins - none.

Councilmember Bynum - thanked Detectives Womack and Richardson on their work to solve a recent murder case.

Councilman Burnette - none.

Councilman Brown - agrees with inviting a judge and magistrate to speak to Council.

(1) Councilman Mayo - Uniform Policies

8. ADJOURNMENT

Meeting adjourned.

Deborah Jordan made a motion, which was seconded by Sabrina Bynum and Passed, Motion.



*Town of Tarboro, North Carolina
Mayor and Council Communication*

Subject: 2021 Tax Levy Adjustment

Date: 9/13/2021

Memo Number: 21-59

On August 6, 2021, the tax receipts and tax scroll, as shown on the attached Schedule of 2020 Tax Levy and as follows, were delivered to and subsequently verified by the Tax Collector:

Receipt Numbers 1 through 5,913

Valuation

Real \$589,095,361

Personal \$222,141,483

Total Valuation \$811,236,844

Taxes Billed for Collection

Ad Valorem \$3,326,071.77

Late Listing Penalty 5,431.88

Total Taxes \$3,331,503.65

In accordance with the N.C. General Statutes (G.S. 105-321), the Town Council shall issue an order, a copy of which shall be entered into its minutes, to the Tax Collector directing her to collect the taxes charged in the tax records and receipts. The order of collection shall have the force and effect of a judgment and execution against the taxpayers' real and personal property.

It is recommended that Council:

1. Charge the Tax Collector with the 2021 tax receipts 1 through 5,913 in the amount of \$3,331,503.65 and
2. Authorize the Mayor to execute the attached Order directing the Tax Collector to collect the 2021 taxes as set forth in the tax receipts,
3. Approve the Schedule of 2021 Tax Levy in the amount of \$3,331,503.65.

ATTACHMENTS:

Description	Upload Date	Type
2021 Tax Levy Adjustment	9/8/2021	Cover Memo
Order to Collect	9/8/2021	Cover Memo
Tax Memo	9/8/2021	Cover Memo

TOWN OF TARBORO, NORTH CAROLINA
 SCHEDULE OF 2021 TAX LEVY
 SEPTEMBER 13, 2021

VALUATIONS

	Real	Personal	Public Service Companies	Dog Tax	Total
Initial Billing August 13, 2021	589,095,361	222,141,483	0	0	811,236,844
After list:	0	0	0	0	0
Less Releases:	0	0	0	0	0
	589,095,361	222,141,483	0	0	811,236,844
Balance as of September 13, 2021	589,095,361	222,141,483	0	0	811,236,844

TAX CALCULATIONS

	Real, Personal, & Pub. Ser. Co.	Late Listing Penalty	Auto Tax	Dog Tax	Total
Initial Billing August 13, 2021	3,326,071.77	5,431.88	0.00	0.00	3,331,503.65
After list:	0.00	0.00	0.00	0.00	0.00
Less Releases:	0.00	0.00	0.00	0.00	0.00
	3,326,071.77	5,431.88	0.00	0.00	3,331,503.65
Balance as of September 13, 2021	3,326,071.77	5,431.88	0.00	0.00	3,331,503.65

ORDER

2021 TAX LEVY

STATE OF NORTH CAROLINA

TOWN OF TARBORO

TO THE TAX COLLECTOR OF THE TOWN OF TARBORO:

You are hereby authorized, empowered and commanded to collect the taxes set forth in the tax records filed in the Office of the Collector of Revenue and in the tax receipts delivered to you, in the amounts and from the taxpayers likewise set forth. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the Town of Tarboro, and this Order shall be full and sufficient authority to direct, require and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with the law.

Witness my hand and official seal, the 13th day of September, 2021.

Mayor, Town of Tarboro

ATTEST:

Town Clerk

M E M O R A N D U M

TO: Troy Lewis, Town Manager

FROM: Leslie M. Lunsford, Tax Collector

The 2021 ad valorem taxes have been billed with the tax bills and tax scroll delivered to the Tax Collector on August 6, 2021.

The following information regarding the billing of property taxes and the tax scroll is submitted below.

RECAP OF 2021 TAX LEVY SCROLL

Pages

Pages 1 to 782

Receipt Numbers

1 through 5,913

Valuation

Real	\$589,095,361
Personal	<u>222,141,483</u>
Total Valuation	\$811,236,844

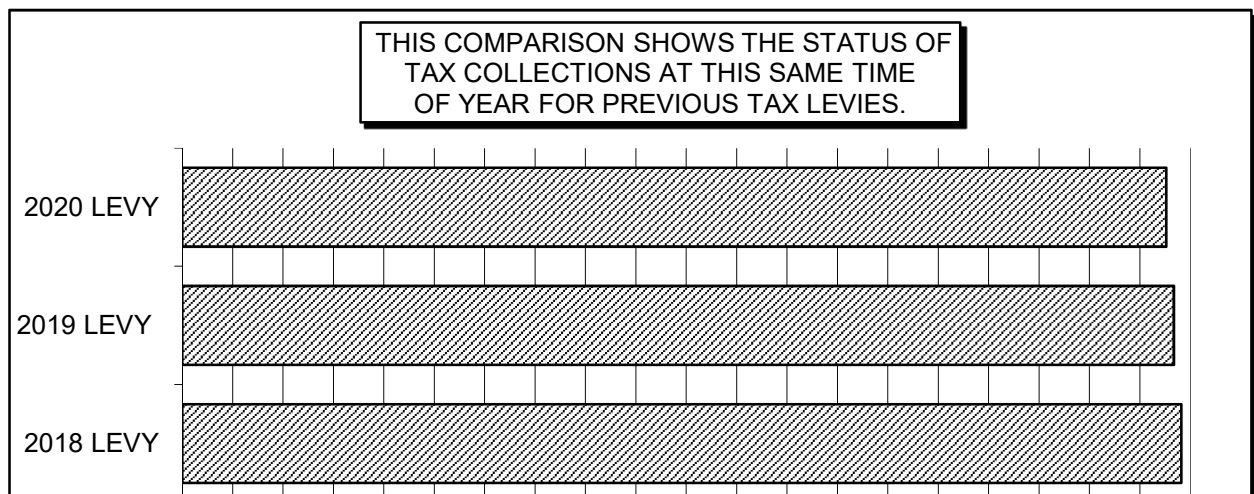
Taxes Billed for Collection

Ad Valorem	\$3,326,071.77
Late Listing Penalty	<u>5,431.88</u>
Total Taxes	\$3,331,503.65

TOWN OF TARBORO, NORTH CAROLINA
TAX COLLECTOR'S REPORT
For the Year Ended August 31, 2021

Levy Year	Current Fiscal Year Charges	COLLECTIONS		Uncollected Balance	Collected Percentage
		This Month	Fiscal Year-To-Date		
2021	3,331,503.65	206,386.02	206,386.02	3,125,117.63	1.07%
2020	3,332,912.81	6,811.55	3,382,872.39	91,254.73	98.00%
2019	107,185.89	395.75	69,917.09	37,664.55	98.84%
2018	53,197.48	122.40	31,848.79	21,471.09	99.34%
2017	23,861.41	0.00	8,260.50	15,600.91	99.52%
2016	19,318.84	216.70	4,680.49	14,855.05	99.55%
2015	15,540.44	0.00	2,711.98	12,828.46	99.62%
2014	12,033.85	0.00	2,571.25	9,462.60	99.72%
2013	9,279.68	0.00	1,302.56	7,977.12	99.77%
2012	7,909.33	0.00	949.56	6,959.77	99.81%
2011	4,969.36	0.00	441.53	4,527.83	99.87%
Prior	10,912.25	0.00	731.45	10,180.80	-
Subtotal	<u>6,928,624.99</u>	<u>213,932.42</u>	<u>3,712,673.61</u>	<u>3,357,900.54</u>	
		<u>763.80</u>	<u>35,562.52</u>	<== Interest on Taxes	
Net Tax Collections ==>		214,696.22	3,748,236.13		
		<u>0.00</u>	<u>390.00</u>	<== Beer & Wine Licenses	
TOTAL COLLECTED ==>		<u>214,696.22</u>	<u>3,748,626.13</u>		

prepared by: Leslie M. Lunsford, Collector of Revenue





Town of Tarboro, North Carolina Mayor and Council Communication

Subject: InfinityLink Broadband Service

Date: 9/13/2021

Memo Number: 21-60

In an effort to address insufficient broadband options for the citizens of Tarboro, Town staff has been involved in discussions with alternative vendors that are willing and capable of providing sufficient broadband services in this area. The most responsive vendor, capable of meeting requested parameters has been InfinityLink Communications (InfinityLink). InfinityLink proposes to provide advanced fiber to home/business infrastructure capable of fast internet (up to 10 Gigabites per second), voice, and video services throughout the town. A representative from InfitnityLink Communications will be present to inform Council about the proposed system. Attached are draft right-of-way and pole attachment agreements outlining proposed terms for all parties, subject to final negotiation.

It is recommended that Council review the attached agreements and be prepared to make final recommendations for negotiations with InfinityLink Communications on constructing a fiber-optic communications system in Tarboro using Town poles and rights-of-way.

ATTACHMENTS:

Description	Upload Date	Type
Draft Master Right-of-Way Agreement	9/7/2021	Cover Memo
Draft Pole Attachment Agreement	9/7/2021	Cover Memo

Master Right Of Way Encroachment and Network Development Agreement

THIS AGREEMENT made and entered into this the ____ of _____, ____ (the “Effective Date”) by and between the **Town of Tarboro**, a municipal corporation created under the laws of the State of North Carolina, whose address is _____, party of the first part and hereinafter referred to as the “**Town**”, and **NfinityLink Communications, Inc.**, d/b/a InfinityLink Communications, a North Carolina Corporation, party of the second part, and hereinafter referred to as “**InfinityLink**.”

W I T N E S S E T H

WHEREAS, to foster innovation and stimulate economic growth, the Town desires to expand the availability of state-of-the-art communications services for Town residents and businesses by way of private investment in the “next generation” fiber-to-the-premises networks (“FTTP Network”), capable of delivering services with service capability speeds up to 10 Gigabit per second in its jurisdiction and surrounding areas; and

WHEREAS, InfinityLink desires to deploy and operate a FTTP Network in the Town’s jurisdiction to meet the standards of such an ultra-high speed network, and to thereby make a long-term commitment in the local market and use that network to provide industry-leading broadband Internet access, video programming, voice and other communications services to residential, business and governmental customers; and

WHEREAS, InfinityLink believes it is well-positioned to deploy such a fiber-based network to provide services to the citizens of the Town; and

WHEREAS, this Agreement is accordingly intended to establish the framework under which InfinityLink will construct and deploy its FTTP Network in the Town and access the Town’s right of ways, pursuant to all applicable local and other legal requirements (“the Project”); and

WHEREAS, InfinityLink is willing to invest its capital to complete the Project subject to receiving certain assurances from the Town regarding the procedures that will govern the Project; and

WHEREAS, the Town is willing to provide InfinityLink with such assurances as more particularly set forth in this Agreement;

WHEREAS, in order to carry out the Project, InfinityLink desires to encroach upon the public rights of way of the public streets within the corporate limits of the Town for the installation, operation, and maintenance of its communications Facilities; and

WHEREAS, it is to the material advantage of InfinityLink and the Town to effect this encroachment, and the Town, in the exercise of authority conferred upon it by North Carolina General Statute § 160A-296, is willing to permit the encroachment within specific locations within the Town public rights of way of the public streets within the corporate limits of Town, subject to the terms and conditions of this Agreement and the provisions of the Town’s Code of Ordinances provided, however, that InfinityLink performs and abides by the covenants and agreements herein contained; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be bound, hereby enter this Agreement as set forth below:

Definitions

For the purposes of this Agreement the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Communications Services means any retail communications service offered and provided by InfinityLink through its Facilities, including but not limited to broadband Internet access service, voice service, and video service.

Facilities includes, without limitation, fiber optic cables, conduits, converters, splice boxes, cabinets, handholds, manholes, vaults, equipment, surface location markers, appurtenances, and related facilities to be located by InfinityLink in the Public Rights of Way of the Town and used or useful for the provision of communications services it is authorized by law to provide via the FTTP Network.

FTTP Network (or Network) means a Fiber To The Premises Network utilizing a combination of XGSPON and GPON technology providing voice, video programming, and broadband Internet access services with service capability speeds up to 10 Gigabit per second to all residents and businesses within the corporate limits of the Town.

NCDOT means North Carolina Department of Transportation.

Law means any local, state or federal legislative, judicial or administrative order, certificate, decision statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirement, as amended, now in effect or subsequently enacted or issued during the term of this Agreement, including, but not limited to, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 70, codified at 47 U.S.C., and all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the North Carolina Utilities Commission pursuant thereto.

Market Area means all residents and business locations within the corporate limits of the Town of Tarboro, which shall include any additional areas annexed by the Town after the Effective Date.

Premises means a residence, commercial building, multi-dwelling unit (MDU), or buildable lot that can be feasibly and reasonably served by the Network.

Public Rights Of Way or Public Way means the surface, the airspace above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway or utility easement hereafter held by the Town or other public rights of way which shall entitle the Town and InfinityLink to the use thereof for the purpose of installing and maintaining Facilities owned by InfinityLink. No reference herein to the "public way" shall be deemed to be a representation or guarantee by the Town that its title to any property is sufficient to permit its use for such purpose, and InfinityLink shall, by its use of such terms, be deemed to gain only such rights to use property in the Town as the Town may have the undisputed right and power to give or as granted by Federal or State law.

State means the State of North Carolina.

1. **InfinityLink Commitments**

1.1. Design and Construction of the Network.

1.1.1 Network Description. InfinityLink shall complete all necessary design work, and deploy and operate a FTTP Network that provides the Communications Services to all residents and businesses within the Market Area.

1.1.2 Service Offerings. InfinityLink will initially provide the following minimum voice, video programming, and broadband Internet access services and pricing (which rates and speeds, after the initial offering, may change from time to time):

1.1.2.1 Residential Services.

(1) Residential Internet Pricing:

- a. 50Mbps/50Mbps: \$40.00/Month
- b. 250Mbps/250Mbps: \$60.00/Month
- c. 500Mbps/500Mbps: \$70.00/Month
- d. 1Gbps/1Gbps: \$80.00/Month
- e. 10Gbps/10Gbps: \$400.00/Month

(2) Residential Phone Pricing:

- a. Unlimited Home Phone ONLY: \$35.00/Month
- b. Unlimited Home Phone w/Internet: \$20.00/Month

(3) Residential Television Pricing:

- a. Expanded Basic (including channels 2-99, 602-699, and 901-950): \$82.25/Month.
- b. Digital Basic (same as Expanded Basic plus channels 100-190): \$95.00/Month.
- c. HBO: \$18.00/Month
- d. Cinemax: \$15.00/Month
- e. Starz: \$15.00/Month
- f. ShowTime: \$15.00/Month

(4) Residential Television Equipment Pricing:

- a. DTA (Digital Terminal Adapter): \$5.00/Month
- b. TiVo Whole-Home DVR: \$15.00/Month
- c. TiVo Mini: \$7.00/Month

(5) Additional Optional Residential Services:

- a. Equipment Maintenance (Includes wiring): \$6.00/Month

1.1.2.2 Business Services.

(1) Commercial Standard Internet Services:

- a. "Business Bundle" (Includes 50Mbps/50Mbps Internet and 1 analog telephone line): \$80.00/Month
- b. 250Mbps/250Mbps: \$80.00/Month
- c. 500Mbps/500Mbps: \$125.00/Month
- d. 1Gbps/1Gbps: \$225.00/Month
- e. 10Gbps/10Gbps: \$750.00/Month

(2) Commercial Dedicated Internet Services:

- a. Available on a per-quote basis depending on customer needs

- (3) Commercial Phone (Unlimited Nationwide Long Distance included, international billed per minute):
 - b. Analog Line: \$35.00/Month
 - c. Hosted Voice per extension: \$50.00/Month for <10, \$35.00/Month for >10.
 - a. Toll Free Number Charge: \$10.00/Month plus \$0.03/minute usage from US-48, \$0.50/minute from Alaska, \$0.05/minute from Canada, \$0.10/minute from Puerto Rico or Guam, \$0.75/minute from payphones
- (4) Commercial Equipment:
 - a. Optical Networking Terminal (modem): \$10.00/Month
 - b. Managed Firewall: \$50.00/Month
 - c. Managed Switch: \$15.00/Month
- (5) Additional Optional Commercial Services:
 - d. Microsoft 365 Business Basic: \$5.00/User/Month
 - a. Microsoft 365 Business Standard: \$12.50/User/Month
 - b. Microsoft 365 Business Premium: \$20.00/User/Month

1.2 Financing. InfinityLink will bear all costs for deployment of the FTTP Network, including design, engineering, construction, equipment and insurance. InfinityLink will also bear all costs associated with the maintenance of the FTTP Network.

1.3 Network Construction. InfinityLink will deploy and construct the Network in the Market Area in compliance with all applicable local and other regulatory and permitting requirements and processes, and any other Applicable Standards. Applicable Standards means and includes all applicable rules and regulations and engineering and safety standards governing the installation, maintenance, and operation of Network facilities and the performance of all work in public and private rights of way, and includes the most current versions of National Electric Safety Code (“NESC”); the National Electrical Code (“NEC”); the regulations of the Federal Communications Commission (“FCC”); the Occupational Safety and Health Administration (“OSHA”); provisions of the Town’s, county’s, or State of North Carolina’s building, construction, zoning, and safety codes; and agreements, rules and regulations relating to permits for occupation of public rights of way; each of which is incorporated by reference in to this Agreement, and/or other reasonable safety, engineering, architectural or aesthetic requirements of the Town, state or federal authority having jurisdiction over such facilities.

1.4 Construction Methods. Traditional infrastructure used for wireless and wireline network deployment shall be used, including, but not limited to, conduit, fiber, poles, rack space, nodes, buildings, facilities, central office locations and available land. InfinityLink intends to deploy the Network primarily by attaching to the Town’s existing utility infrastructure via separate pole attachment agreement, but may, subject to the Town’s consent which shall not be unreasonably withheld, use other construction techniques such as: (i) directional boring; (ii) trenching, (iii) plowing, or (iv) fiber attached to buildings or aerial structures.

1.5 Network Deployment.

1.5.1 Schedule. The Network will be deployed and Communications Services made available by InfinityLink throughout the Market Area. InfinityLink will diligently endeavor, in keeping with commercially reasonable efforts, to complete the Project and provide the Services contemplated hereunder throughout the entire Market Area within 36 months of the commencement of physical construction in the Town. For the avoidance of doubt, the service commitment by InfinityLink is to pass with its Network and make its Services available to every Premises within the Market Area within 3 years. InfinityLink will keep the Town and the public apprised throughout the construction of the FTTP Network and identify the specific neighborhoods or

geographic areas where InfinityLink plans to initiate construction at least 30 days before commencing construction. InfinityLink will provide Communications Services in areas where construction has been completed via the FTTP Network on an ongoing as-requested basis, for customers who satisfy and agree to customer terms and conditions for the Communications Services. InfinityLink will also provide ad hoc updates from time to time and upon request concerning, among other matters, demand thresholds required for residential neighborhoods, efforts to assess and increase demand, and deployment status.

1.5.2 Use of Subcontractors. Construction and other work related to the FTTP Network may be completed by independent contractors and representatives engaged by InfinityLink. If so, InfinityLink shall be responsible for all negligent acts or omissions of its independent contractors that occur in the Town's rights-of-way or on other Town property or infrastructure when performing work on behalf of InfinityLink, or to the extent stricter standards exist within any applicable ordinance, in compliance with the Town's ordinances, policies and procedures. Notwithstanding the use of any subcontractor(s), InfinityLink shall remain entirely responsible for the performance of its obligations under this Agreement, and InfinityLink shall be responsible for actions of its subcontractors in connection with this Agreement. InfinityLink shall ensure that any subcontractor is properly insured, licensed, and otherwise compliant with all Applicable Standards and applicable law.

1.5.3 E-Verify. InfinityLink, and all subcontractors, will comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, "Verification of Work Authorization," and will provide documentation or sign affidavits or any other documents requested by the Town demonstrating such compliance.

1.5.4 Pole Attachments. Most utility poles located in the Market Area are owned by the Town, and InfinityLink shall be obligated to enter into a pole attachment agreement with the Town before making any attachments thereto. Similarly, InfinityLink shall be obligated to enter into a pole attachment agreement with any other third party owner of poles to which it desires to attach in the Market Area. Additionally, InfinityLink acknowledges that it will have to obtain separate permits for any county or state controlled right-of-way. If requested, the Town agrees to cooperate with InfinityLink's efforts to gain access to rights-of-way owned and controlled by the N.C. Department of Transportation or other third-parties. Any unauthorized Facilities or FTTP Network components will be promptly removed by InfinityLink at its sole expense.

1.5.5. Utility Poles. InfinityLink is prohibited from installing any new utility poles within the Town's Public Rights of Way while carrying out this Agreement, except as allowed in Part 3E, Art. 19 of Chapter 160A of the North Carolina General Statutes, as amended or recodified.

1.5.6. Borings. InfinityLink will use commercially reasonable efforts to restore property within three (3) business days of the boring, subject to factors beyond InfinityLink's reasonable control. Consideration will be given to the amount of restoration needed with each boring and InfinityLink will endeavor to conduct borings in a manner which requires the least amount of restoration (e.g. when appropriate using streets and sidewalks for equipment rather than lawns, etc.). After boring under the street / curb and sidewalks, InfinityLink will inspect for any heaving that may have occurred from the boring process and repair the same. In addition, all activities in the right of way of the Town shall comply with the provisions of this Agreement, right of way permits, and the ordinances of the Town, and in the event of any conflict between the provisions thereof and this Agreement, the provisions of this Agreement shall prevail.

1.5.7 Franchise. InfinityLink acknowledges that it will obtain a statewide cable television service franchise from the North Carolina Secretary of State prior to providing communications services in the Town and InfinityLink agrees to comply with the requirements set forth therein.

1.5.8. Operations. InfinityLink will provide personnel in the Town to perform installation, repair and maintenance services for all fiber services, and shall have a customer service branch with 24/7 availability to its customers in the Town.

1.5.9 Network Management. InfinityLink agrees that it will undertake commercially reasonable efforts to manage and maintain its FTTP Network in the Town, including monitoring and maintaining the FTTP Network according to generally accepted engineering standards in the communications industry, implementing system improvements meeting or exceeding industry standards, ensuring that the FTTP Network remains an up-to-date communications facility, and taking reasonably necessary steps to ensure optimum FTTP Network reliability.

1.5.10. Town Service. Upon request by the Town, InfinityLink will provide the Town with a basic IPTV cable connection at any Town owned building that is occupied by Town employees on a regular basis. There will be no charge for the basic IPTV service and no installation fee provided the installation does not require any special construction.

2. Town Support and Commitments.

2.1 Project Liaison and Contacts. The Town shall designate staff that will facilitate communications between InfinityLink and Town staff and officials, and will coordinate between municipal departments regarding the Project.

2.2 Town Business. The Town will provide InfinityLink with an opportunity to obtain any of the Town's phone, video, Internet and other fiber services currently being provided by third parties upon terms reasonably acceptable to both Parties and in accordance with all applicable laws and ordinances including, but not limited to, any RFP and bidding requirements.

2.3 Permit Processing and Inspections.

2.3.1 Permit Processing. Parties will use their best efforts to conduct, within 30 days after this Agreement is signed and prior to construction of the FTTP Network, a pre-construction conference to review and to plan for the construction to be undertaken by InfinityLink. The Town agrees to provide diligent and expeditious review and determinations of all applications for permits submitted by InfinityLink and will attempt, based on the nature and size of the work being permitted and any applicable legal requirements (including need for governing board approval), to approve or respond within thirty (30) days from the date of the submission of the request, in connection with constructing and deploying the FTTP Network, including requests for any approvals necessary for construction, maintenance or other work within Town's right of ways and easements or related to access to Town's assets or infrastructure, all in accordance with all applicable regulations and ordinances and the Town's standard processes and practices generally made available to all third parties. Aside from fees due under the Town's pole attachment agreement, InfinityLink will not be required to pay any fees for the right-of-way permits or obtain any additional permits from the Town to install aerial and underground facilities in the Town controlled right-of-way during the InfinityLink initial buildout of the FTTP Network.

2.3.2 Inspections. In order to facilitate and ensure continuity and efficiency of inspections, the Town will designate inspectors and supervisors with the collective authority to inspect all construction for the FTTP Network, maintenance and related work in connection with each applicable permit to be issued by the Town to InfinityLink. The Town will ensure that all such inspections are completed in an expeditious manner in

accordance with applicable ordinances and the Town's processes and practices made available to all third parties.

2.4. Solicitation. The Town agrees to permit InfinityLink to conduct door-to-door consultative sales in the Town between the hours of 9 AM and the later of 7 PM or sunset. All such sales shall be conducted in accordance with applicable laws and Town ordinances. See Chapter 17, Article VIII of the Town Code (entitled Peddlers and Solicitors). Prior to performing any door-to-door consultative sales, InfinityLink will obtain a solicitation permit from the Tarboro Police Department.

2.5 Non-Discriminatory Practices. As to its non-discriminatory practices concerning the FTTP Network during the Term of the Agreement and as permitted under applicable law, it is the Town's policy to treat broadband Internet service providers in the Market Area, including InfinityLink, in a competitively neutral and non-discriminatory way as to benefits, concessions, accommodations, and other rights that the Town extends to providers of comparable broadband Internet services, depending on their availability and the similarity of services involved.

2.6 Project Announcement. The parties will cooperate on one or more joint publicity and public relations initiatives related to the announcement of construction of the FTTP Network (the "Public Announcement"). Neither party shall, prior to any such public announcements, issue any press releases or make any official public announcements related to the FTTP Network or the terms and conditions or existence of this Agreement without the other party's prior written consent. For purposes of this provision, references related to the FTTP Network in agendas or similar documents do not constitute public announcements nor shall any releases of information in response to requests for public information under any applicable public records inspection requirements.

3. Right Of Way Access

3.1 Use of Public Rights of Way. For the purpose of installation, operation and maintenance of its FTTP Network, InfinityLink may erect, install, construct, repair, replace, reconstruct and retain in, under, upon, across and along the public streets and ways within the corporate limits of the Town such Facilities as are necessary to the operation of the FTTP Network, provided, however, that, subject to applicable Law, InfinityLink shall comply with all design, construction, safety, and performance provisions contained in this Agreement and other applicable local codes and ordinances. InfinityLink accepts the Town right-of-way "as is" and "where is" and assumes all risks related to the use.

3.2 Location of Public Rights of Way and Existing Utilities. It is the responsibility of InfinityLink to determine the location of the public rights of way and utilities located therein and to show the same on construction plans. InfinityLink shall notify other utility owners and provide protection and safeguards to prevent damage or interruption to existing facilities and to maintain accessibility to existing utilities. Cost to repair, restore, or relocate existing facilities due to this encroachment shall be the responsibility of InfinityLink. To the extent applicable, InfinityLink agrees to fully comply with Underground Utility Safety and Damage Prevention Act, Article 8A of Chapter 87 of the NCGS.

3.3 Use of Areas Outside the Public Rights of Way. This Section 3 and Section 4 hereof only cover the encroachment over and upon the public rights of way maintained by the Town within the corporate limits of the Town. InfinityLink shall secure all necessary easements, permits, permission, or approval for encroachment or other use of property outside the Town maintained right of ways and the constructions plans submitted by InfinityLink pursuant to **Section 4.3** shall indicate any such areas on which InfinityLink intends

to construct the FTTP Network. Upon request, InfinityLink shall provide to the Town documentation of the above mentioned easements, permits, permissions and encroachments or use of properties outside the public rights of way maintained by the Town. The Town neither promises nor contracts to obtain or acquire easements or rights of way for the construction, installation, maintenance or operation of InfinityLink's Facilities.

3.4 Police Powers. InfinityLink's rights are subject to the police powers of the Town to adopt and enforce ordinances for the health, safety and welfare of the public to the extent allowed by law. InfinityLink shall comply with all applicable general laws and ordinances enacted by the Town pursuant to that power (for instance, Town's noise ordinance).

3.5 InfinityLink's Encroachment into Public Rights Of Way: Except as may be explicitly provided herein, this Agreement does not: i) convey any right, title or interest in the Public Rights Of Way; ii) divest the Town of any interest in the Public Rights of Way; or iii) constitute any warranty of the Town's title or legal interest in the Public Rights of Way.

4. Construction And Technical Standards

4.1 Compliance with Construction and Technical Standards. InfinityLink shall construct, install and maintain its Facilities in an orderly and skillful manner and in a manner consistent with all laws, Town ordinances, construction standards, current and future technological standards and governmental requirements, which standards are incorporated by reference herein.

4.2 Tree Trimming Plan for Overhead Lines. After approval by the Town of the Facilities, InfinityLink shall submit to the Town a tree trimming plan if required by the Director of Public Works for review and approval.

4.3 Approval of Construction Plans. Prior to the construction of any portion of the FTTP Network in the Market Area or placement or installation of any part of InfinityLink's Facilities within Town maintained public rights of way, InfinityLink shall first submit to the Director of Public Works or designee, a Construction Plan prepared and sealed by a North Carolina licensed Professional Engineer. The plan shall include a concise description of the Facilities proposed to be erected or installed, specifications, engineering drawings, and detailed plans indicating the proposed location of all such Facilities and their location referenced from public rights of way, street section, all existing above and below ground structures, and existing utilities. Where applicable, the construction plans shall show where the FTTP Network is being constructed on private property and/or across right of ways from third parties. Upon approval of the plans, the Town will issue a permit which shall become part of this Agreement.

4.4 Pole Attachment. InfinityLink shall provide the Town with written verification of InfinityLink's right to attach to poles from the poles' owner for all poles to be utilized by InfinityLink where sufficient clearance for attachment is available, and the locations where InfinityLink's Facilities are attached to such existing poles shall be shown on the construction plan drawings.

4.5 Identification of Facilities. All above ground structures shall be marked to identify the owner of the structure and emergency contact for the same.

4.6 Approval from NCDOT, Railroad, and Piedmont Natural Gas. InfinityLink shall provide to the Town as part of the construction plan submittal copies of approved encroachment agreements from the NCDOT where NCDOT right of ways are involved, from the appropriate Railroad Company where the railroad

right of way crossings are involved, and from Piedmont Natural Gas when crossing the high pressure cross-county gas supply main.

4.7 ADA Compliance. InfinityLink shall comply with the ADA Standards for Accessible Design.

4.8 Approvals Required. No placement or installation of any part of InfinityLink's Facilities shall be commenced by any person until construction permits and written approval has been issued by the Director of Public Works; provided further, that such permits and approval shall not be unreasonably withheld and action thereon shall be taken within a reasonable period of time as allowed by law.

4.9 Record Drawings. Within sixty (60) days after the completion of any construction activities of the Facilities within the encroachment areas, InfinityLink shall provide to the Director of Public Works copies of the record drawings, being two (2) printed copies along with a PDF file of the same, and a digital version compatible with ESRI GIS software.

4.12 Requirement for Underground Installations. All installations shall be underground in those areas of the Town where all utilities serving the area are underground at the time of installation. In areas where other utility facilities are above ground at the time of installation, InfinityLink may install its service above ground on such facilities. All cables shall be in a conduit installed by directional bore where possible. The conduit shall be parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. Open cut of paved street sections will not be permitted. At such time as all utilities and cable serving the area are required to be placed underground by the Town or are placed underground, InfinityLink shall likewise place its services underground without cost to the Town, except and unless the Town has agreed to pay to relocate the facilities of another service provider in the same geographic area (e.g., pursuant to a relocate project for which the Town has received grant funds).

4.13 Applicable Standards. InfinityLink shall at all times comply with the (1) applicable Federal, State and local regulations; and (2) the standards as set forth in this Agreement.

4.14 Interference with Persons, Improvements, Public and Private Property and Utilities. InfinityLink's Facilities shall be located, erected and maintained so that such system shall:

4.14.1 Not endanger or interfere with the health, safety or lives of persons;

4.14.2 Not interfere with the utilization of the right of way by the Town or the Town's facilities;

4.14.3 Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction, repair or removal;

4.14.4 Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction, repair or removal; and

4.14.5 Not obstruct, hinder or interfere with any gas, electric, water or other utilities, cable, telecommunication or telephone facilities located within the Town.

4.15 Excavation and Work in Public Streets and Right of Ways; Application; Restoration; Damage.

- 4.15.1 With respect to underground installations, InfinityLink shall install the conduit for the cable by directional boring if possible, or by trenching or plowing if directional boring is not feasible. InfinityLink may excavate or disturb pavement, curb, gutters, sidewalks, driveways, or other surfacing in or on any street, right-of-way, or public place as necessary for directional boring. Open cutting of the paved street section is not permitted. Manholes and handholes shall not be visible in residential areas unless approved by the Director of Public Works who may require a route change. If authorized in writing by the Director of Public Works, sidewalks may be excavated for the placement of manholes and handholes.
- 4.15.2 Excavations or borings made by InfinityLink under the public streets, rights-of-way or public places of the Town, pursuant to this Agreement, shall be made in compliance with the ordinances and regulations of the Town in effect at the time of such excavation.
- 4.15.3 Prior to any excavation in or boring under the public streets or rights-of-way of the Town, InfinityLink shall notify all utilities that may be affected by such excavation in or boring under the street, rights-of-way or property upon which the work is to be done, and the nature of the work to be performed. Additionally, the services of North Carolina One-Call may be used to notify its member utilities.
- 4.15.4 In situations deemed by InfinityLink to constitute an emergency involving a danger to the public health, safety and welfare, InfinityLink shall notify the Director of Public Works of the nature and the location of the potential hazard.
- 4.15.5 During the installation, repair or removal of InfinityLink's Facilities in or on any street, right of way or public place, InfinityLink agrees to provide at all times proper signs, signal lights, flagmen, barricades, and other warning devices for the protection of pedestrian and vehicular traffic.
- 4.15.6 InfinityLink shall exercise due care in the operation, installation, alteration, repair or removal of its Facilities. If any utility or property of the Town, real or personal, is damaged, impaired or destroyed as a result of either the negligent or intentional acts of InfinityLink or its employees, or the negligent acts of its agents or persons operating under its direction, supervision or control, InfinityLink shall be liable to the Town for such damages, including but not limited to the cost to repair or replace the utility or property.
- 4.15.7 Restoration
- 4.15.8.1 Immediately after InfinityLink installs or repairs its Facilities within an existing street or vehicular access, InfinityLink shall backfill and complete pavement restoration in accordance with the Town's requirements. Unless permanent resurfacing is to be placed immediately, temporary bituminous resurfacing, a minimum of two inches thick or as otherwise specified, shall be placed and properly maintained by InfinityLink. Alternatively, InfinityLink may temporarily backfill and plate the trench. The plates if located in the street shall be installed flush with the surrounding pavement and secured by applying

either hot or cold mix asphalt around the perimeter of the plate. At no time shall the plates be placed in such a manner that causes a traffic hazard to vehicles, pedestrians, cyclists and other non-vehicular traffic.

4.15.8.2. InfinityLink shall restore and replace landscaping including landscaping behind the back of curb or in non-traffic areas that have been destroyed, disturbed, or damaged by such work in accordance with the Town's specifications within 10 days. All landscaping restorations shall be done with like materials (i.e. Bermuda grass shall be repaired or replaced with Bermuda sod; zoysia grass shall be repaired/replaced with zoysia sod, etc.)

4.15.8.3. In order to ensure compliance with this Section 4.15.8, the Director of Public Works or any other designee of the Town Manager may conduct an on-site or remote inspection.

4.15.8 If the installation, alteration, repair or removal of the Facilities in or on any street, right of way or public place requires the temporary removal of bricks, grates, trees or other property or materials belonging to the Town, InfinityLink shall, until such materials are reinstalled, and in the exercise of due care, store said property or materials in a safe place satisfactory to the Town to minimize the risk of damage or theft.

4.15.9 InfinityLink shall preserve and protect all trees and shrubbery located within the streets, rights of way, and public places of the Town from damage by InfinityLink. InfinityLink shall comply with the regulations of the Town concerning the preservation and protection of trees and shrubs. InfinityLink shall pay to the Town the cost of treating, removing and replacing any tree or shrub on the streets, rights-of-way and public places of the Town which has been damaged or destroyed as a result of the work of InfinityLink.

4.15.10 Whenever the Town, or NCDOT, or their successors or assigns, within the exercise of reasonable police power, for the benefit of the public safety, plan to widen, modify, close, relocate, grade or regrade any public street, sidewalk, or other public way, in, along, under or across, which InfinityLink shall have installed any of its Facilities, it shall be the duty of InfinityLink, upon reasonable notice by the proper authority, and at no cost to the Town or NCDOT to remove or relocate as necessary its Facilities; provided, however, that in the event the Town elects to compensate a third party service provider for removing or relocating facilities in the same geographic area, then InfinityLink shall be entitled to compensation on the same terms.

4.15.11 InfinityLink shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its lines to permit the moving of buildings. The expense of such temporary removal, raising or lowering of lines shall be paid by the person requesting the same, and InfinityLink shall have the authority to require such payment in advance. InfinityLink shall be given not less than fifteen (15) working days advance notice to arrange for such temporary line changes.

4.15.12 Any damage to InfinityLink's encroaching structure caused by the Town's use of its rights of way for construction or maintenance work in the ordinary course of its

business, shall be borne by InfinityLink except where such damage is caused by the sole negligence or willful misconduct of the Town.

4.15.13 Removal and Abandonment.

4.15.13.1 If this Agreement is terminated and if InfinityLink has no other legal right to keep its Facilities in place, InfinityLink agrees to promptly vacate and remove its below-ground Facilities at its own expense, provided that the Director of the Department of Public Works may, at that time, agree in writing, upon the written request of InfinityLink to allow abandonment of some or all of its below-ground Facilities in place.

4.15.13.2 Restoration of Property. In removing its Facilities, InfinityLink shall not excavate or disturb pavement, curb, gutters, sidewalks, driveways, or other surfaces in or on any street, right-of-way or public place. InfinityLink shall, in a timely fashion and to the Town's satisfaction, refill, at its own expense, any excavation and boring that shall be made by it and shall leave all public ways and places in as good a condition or better as that prevailing prior to InfinityLink's removal of its Facilities without affecting the electrical, television, telephone or other telecommunication cable, wires or attachments or the utilities. The Town shall inspect and approve the condition of the public ways and public places and cables, wires, attachments, and poles after removal. The liability, indemnity, insurance, performance bond and letter of credit as provided herein shall continue in full force and effect during the period of removal until full compliance by InfinityLink with the terms and conditions of this paragraph and this Agreement.

4.15.13.3 Restoration by Town; Reimbursement of Costs. In the event of a failure by InfinityLink to complete any work required by 4.15.13.2 above in a timely fashion, or any other work required by Town ordinance within the time as may be established and to the satisfaction of the Town, the Town may cause such work to be done and InfinityLink shall reimburse the Town the cost thereof within fifteen (15) days after receipt of an itemized list of such costs or the Town may recover such costs through the performance bond provided by InfinityLink. The Town shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

4.15.13.4 Should any removal or abandonment of Facilities in place be approved by the Director of Public Works, InfinityLink shall thereafter apply for and obtain any necessary permits.

5. Emergency Contacts

5.1. Coordination of Emergency Events: In case of an emergency, Town will act to protect the public health and safety of its citizens and to protect public and private property, notwithstanding any provision in this Agreement. In the event addressing the emergency impacts InfinityLink's Facility Equipment, the Town will make every reasonable effort to coordinate its emergency response with InfinityLink.

5.2. Notice of Changes: InfinityLink will keep emergency contact information current, and provide the Director of Public Works with information as to changes within a reasonable time.

5.3 Response to Network Emergency: In case of a network emergency, InfinityLink may access its Facilities without first obtaining a permit to disturb the Town right-of-way provided InfinityLink has conducted network trouble-shooting and diagnostic tests and has reasonably identified the point or points of network failure or malfunction. While acting under this provision to address a network emergency, InfinityLink shall conduct its activities within the Town right-of-way in such a manner as to protect public and private property. InfinityLink will make every reasonable effort to coordinate its emergency response with the Town. To that end, prior to entering the Town right-of-way, InfinityLink will contact the Director of Public Works and give notice to Town of the network emergency and an estimated time period to address the situation.

6. Assignment and Transfer Of Ownership Or Control

6.1 Assignment. No assignment of the rights and obligations granted hereunder or transfer of ownership or control of the Facilities shall occur unless approved by the Town. A transfer of ownership or control of the Facilities shall comply with all applicable Federal, State and Local Laws. InfinityLink shall promptly notify the Town of its intent to assign this Agreement or transfer ownership or control of the Facilities and shall provide the Town with a true copy of all the documents relating to such assignment or ownership transfer. The transferee is required to accept this Agreement and all of its terms, provisions, and any amendments at the time of transfer. Performance bond and letter of credit, insurance are required from the transferee before the transfer is complete. Notification to the Town shall be as outlined herein. Notwithstanding anything herein to the contrary, InfinityLink shall be permitted to assign this Agreement and transfer ownership and control of its Facilities to any other entity with which it is affiliated through ownership (for example, a corporate parent, a subsidiary, or a subsidiary of a corporate parent) providing that such other entity undertakes all the obligations of InfinityLink under this Agreement.

6.2 Grant of Third Party Rights. Notwithstanding any provision in this Agreement to the contrary, the Town agrees and acknowledges that InfinityLink shall have the right to grant to third parties indefeasible rights of use and/or a right to use its Facilities, which are subject to the rights that have been granted to InfinityLink under this Agreement and that such actions by InfinityLink shall not constitute a transfer of ownership or control of the Facilities or require the prior approval by the Town.

7. Performance Bond, Letter Of Credit, Insurance, and Indemnification.

7.1 Performance Bond or Letter of Credit.

7.1.1 Within ten days following approval of this Agreement by the Council, InfinityLink shall deliver to the Town:

- a) Letter of credit issued by a federally-insured banking institution and payable at a branch located in Tarboro, North Carolina in the amount of one hundred thousand dollars (\$100,000) or
- b) Performance bond issued by a surety licensed in North Carolina in the amount of \$100,000.

The form and content of the bond or letter of credit shall be approved by the Town. The bond or letter of credit shall be a security fund. Failure to timely obtain, file and maintain said bond or letter of credit shall constitute a substantial violation of this Agreement.

7.1.2 The security fund shall serve as security for:

- a) The faithful performance by InfinityLink of all the terms and conditions of the Agreement;
- b) Any expenditure, damage or loss incurred by the Town occasioned by InfinityLink's unexcused or uncured failure to comply with all lawful rules, regulations, orders, permits and other directives of the Town issued pursuant to this Agreement; and
- c) The payment by InfinityLink of all liens and taxes, and all damages, claims, costs or expenses which the Town has been compelled to pay or incur by reason of any act or default of InfinityLink, and all other payments due the Town from InfinityLink pursuant to this Agreement.
- d) The costs and expenses incurred by the Town as a result of InfinityLink's abandonment of the Facility at any time during the term of the Agreement or any extension thereto; or Town's performance of work that InfinityLink should have performed, or

7.1.3 If InfinityLink fails to repay to the Town any damages, costs or expenses which the Town shall be compelled to pay by reason of any act or default of InfinityLink in connection with this Agreement, the Town may then demand payment from the security fund.

7.1.4 The letter of credit shall be issued to the Town and shall be made payable upon a draft submitted by the Town and accompanied by the written statement of an appropriately authorized official for the Town that payment is due the Town under the terms of this Agreement as a result of a default by InfinityLink. The Town shall be the beneficiary under the performance bond. InfinityLink shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any other purpose. During the term of the Agreement, the letter of credit shall be maintained in the amount of one hundred thousand dollars (\$100,000), or the performance bond shall be maintained in the amount of one hundred thousand dollars (\$100,000).

7.1.5 The Town, with the approval of Council, may, in its discretion, decrease the amount of or eliminate the security fund in consideration of the financial stability of InfinityLink.

7.1.6 If InfinityLink fails to pay the Town any fees, penalties, claims, liens or liquidated damages owed to the Town after 30 days' written notice to pay to the Town, specifying the amount owed and the nature of amount owed, the Town may remedy such failure by InfinityLink by demand on the security fund (bond or letter of credit).

7.1.7 In the event that amounts are withdrawn by the Town pursuant to this Section, InfinityLink shall restore the security fund to the amount it was prior to the Town's claim within 10 business days of notification by the Town of its withdrawal against the security fund.

7.1.8 In the event, InfinityLink proposes construction activities which represent a level of construction activity or restoration for which the Town, in its sole reasonable and good faith discretion deems InfinityLink's existing security fund to be inadequate security, the Town may direct InfinityLink to post such additional security as the Town deems appropriate. Such additional security shall be maintained until Town notifies InfinityLink that it is no longer necessary.

7.1.9 The rights reserved to the Town with respect to the security agreement fund are in addition to

all other rights of the Town, whether reserved by this Agreement, or authorized by law, and no action, proceeding or exercise of a right with respect to such a bond shall affect any other right the Town may have except to the extent payment satisfies a Town claim.

7.1.10 The security fund shall contain the following endorsement: *“It is hereby understood and agreed that this instrument shall not be cancelled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the Town, by registered mail, from a surety of written notice of such an intention to cancel or not to renew.”*

7.1.11 The initial security fund shall be for a period not less than 3 years. In the event that time period does not cover the construction phase of the FTTP Network, plus an additional 12 months, InfinityLink shall renew the bond not less than 30 days prior to its expiration and provide a copy of the renewal to the Town.

7.2 Insurance.

7.2.1 All Certificates of Insurance must be furnished before work begins. A Certificate of Insurance (COI) must be issued by an authorized representative of the insurance carrier(s). Certificates of Insurance must have the Insurance Company name and NAIC number clearly identified.

7.2.2 InfinityLink shall immediately advise the Town of any litigation arising out of this Agreement that may develop that would affect this insurance.

7.2.3 Neither the provisions of this section nor any damages recovered by the Town hereunder, shall be construed to limit the liability of InfinityLink under the Agreement or for damages.

7.2.4 InfinityLink shall provide at least 30 days’ prior written notice to Town of cancellation or non-renewal of any required coverage that is not replaced.

7.2.5 All insurance policies provided under the provisions of this Agreement shall be written by companies authorized to do business in the State of North Carolina and approved by the State Commissioner of Insurance.

7.2.6 InfinityLink shall include the Town as an Additional Insured to the General Liability and Automobile Liability policies including those of its subcontractors while working hereunder.

7.2.7 InfinityLink shall at all times during the Term of this Agreement maintain the following policies of insurance:

7.2.7.1 Commercial General Liability:

Limits:

Each Occurrence:	\$1,000,000
General Aggregate Limit	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000

The form of coverage must be the ISO CG 00 01 policy or equivalent as approved by the State of North Carolina Department of Insurance. Certificates evidencing ongoing completed operations coverage shall be provided for at least two years following the termination or expiration of this Agreement.

7.2.7.2 Commercial Automobile Liability:

Limits: \$1,000,000 combined single limit.

The Town must be added as an Additional Insured on the Commercial Auto Liability policy.

7.2.7.3 Workers' Compensation Insurance:

Limits:

Workers Compensation: Statutory for the State of North Carolina

Employers Liability: Bodily Injury by Accident \$1,000,000 each accident

Bodily Injury by Disease \$1,000,000 policy limit

Bodily Injury by Disease \$1,000,000 each employee.

Workers Compensation must include all employees.

7.2.7.4 Umbrella Liability

An Umbrella or excess Liability policy covering General Liability, Automobile Liability and Employers Liability with a minimum limit of \$4,000,000 is required. InfinityLink may use any combination of primary and excess to meet required total limits.

7.2.8 Notwithstanding the forgoing, InfinityLink may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event InfinityLink elects to self-insure its obligation under this Agreement to include Town as an additional insured, the following conditions apply: (i) Town shall promptly and no later than thirty (30) days after notice thereof provide InfinityLink with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide InfinityLink with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Town shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of InfinityLink; and (iii) Town shall fully cooperate with InfinityLink in the defense of the claim, demand, lawsuit, or the like.

7.3 Indemnification

7.3.1 To the maximum extent allowed by law, InfinityLink shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of InfinityLink or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (1) InfinityLink shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to the Town.

7.3.2 Definitions. As used in subsections 7.3.1 above, "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements,

and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement). “Indemnitees” means Town its officers, officials, independent contractors, agents, and employees, excluding InfinityLink.

7.3.3 Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

7.4.4 Survival. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of InfinityLink under this Agreement.

8. Confidentiality.

8.1.1 Confidential Documents. “Confidential Documents” as used in this Agreement shall mean any and all records or other documents, whether stored or exchanged by the parties in hard copy or electronically, that contain information that are designated by either party as Confidential Documents and qualify as “trade secrets” as defined in G.S. 66-152(3). Such documents may include, but is not limited to, business plans, business forecasts, research, financial information, customer lists, sales and merchandising efforts, marketing plans, design or engineering details and specifications. Documents shall in no event qualify as Confidential Documents if: (i) their relevant contents are publicly available prior to this Agreement or becomes publicly available without a breach by the receiving party; (ii) they are subject to inspection under the public records laws of the State of North Carolina and not within an exception to disclosure, (iii) rightfully received by the receiving party from third parties without accompanying confidentiality obligations; (iv) already in the receiving party’s possession and was lawfully received from sources other than the disclosing party; (iv) independently developed by the receiving party; or (vi) approved by the disclosing party for release.

8.1.2 Duties Regarding Confidential Documents. Through the term of this Agreement, and in order to achieve the objectives of this Agreement, one party may have to provide the other with access to documents it considers to be Confidential Documents. In such case, documents shall be treated as confidential pursuant to this subparagraph if: (i) they in fact qualify as Confidential Documents under subparagraph 9.1.1 above, (ii) the disclosing party communicates in writing to the other party that it considers the information to be Confidential before, or at the time of the disclosure, and (iii) the documents are prominently labeled as confidential by the disclosing party at submission to the other party. In such event, the party which receives any Confidential Documents from the other party agrees to treat the same as confidential and shall not divulge, directly or indirectly, to any other person, firm, corporation, association or entity, for any purpose whatsoever, such documents, without the prior written consent of the disclosing party, except as required by law and except as provided in the paragraph below. The receiving party may, however, disclose Confidential Documents to its employees, agents and contractors on a need-to-know basis.

8.1.3 Records Requests. If the Town receives a public records request to produce documents which InfinityLink has labeled “confidential,” “trade secret” or another equivalent designation, the Town shall make an initial determination as to whether the Confidential Documents, in whole or in part, are subject to public inspection and promptly notify InfinityLink of such initial determination. Within ten (10) calendar days of the

receipt of such notice, InfinityLink must notify the Town whether it agrees with the Town's initial determination and, if not, notify the Town in writing which Confidential Documents, or parts thereof, are not subject to public inspection. The Town will then make a final determination as to whether the Confidential Documents, or parts thereof, are subject to public inspection under applicable laws and will promptly notify InfinityLink of its final determination. The Town will allow InfinityLink, if it disagrees with the final determination, three (3) calendar days after notice to obtain injunctive relief to prevent disclosure of the subject information before the Town releases the information. If such justification is not provided with the notice to withhold materials, InfinityLink acknowledges that the notice shall be void and deemed of no effect and that the Town may release the information without any resulting liability to InfinityLink. Further, if InfinityLink does not seek appropriate injunctive or other judicial action or relief to prevent the disclosure of the materials within this three (3) calendar day period, the Town may release the information pursuant to the public records request without any resulting liability to InfinityLink. Nothing in this Agreement shall prevent a party from disclosing Confidential Documents received from the other party if such disclosure is required by a court of competent jurisdiction or otherwise required by law. Finally, if the Town decides not to release information that it deems to be entitled to an exception from any applicable public records laws (including if due to InfinityLink's seeking injunctive relief), then InfinityLink shall indemnify and hold the Town harmless from all attorneys' fees and other costs associated with such decision.

8.1.4 Upon termination of this Agreement for any reason, each party agrees, to the extent permitted by law, to promptly deliver to the other party all Confidential Documents of the other party then in such party's possession.

9. Representations and Warranties; Limitation of Liability.

9.1 Representations. Each party represents that (i) it has the requisite right and authority to enter into this Agreement; (ii) this Agreement has been duly authorized, executed, and delivered and constitutes a valid and binding obligation enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, moratorium, and other laws of general application affecting the enforcement of creditors' rights; (iii) that entering into or performing its obligations under this Agreement shall not breach or contravene any obligation to any third party; and (iv) there are no actions, suits, proceedings or investigations pending, or to the knowledge of the Party, threatened against or affecting the Party of any of its properties, assets or businesses in any court or before or by any governmental authority that could, if adversely determined, reasonably be expected to have a material adverse effect on the Party's ability to perform its obligations under this Agreement. The parties each agree to comply with all applicable laws and regulations and Town policies as they may be amended from time-to-time. For purposes hereof, the term "applicable laws and regulations" means any applicable constitution, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by the appropriate government authorities and all amendments thereto from time to time.

9.2 Limitation of Liabilities. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY UNDER THE TERMS OF THIS AGREEMENT, OR ANY AGREEMENT ENTERED PURSUANT TO THIS MASTER AGREEMENT, FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES, PARENT COMPANIES AND AFFILIATES, AND THEIR RESPECTIVE TRUSTEES, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM.

10. Default. Either party may terminate this Agreement due to a Default (as defined below) by the other party by providing written notice to the defaulting party, provide that (i) such Default is incapable of remedy; or (ii) such Default is capable of remedy and the defaulting party fails to remedy such Default within thirty (30) days of receipt of notice from the other party. A party will be in Default under this Agreement if (i) such party materially breaches a term or provision of this Agreement; (ii) such party becomes insolvent or ceases to operate as a going concern; (iii) a petition under any of the bankruptcy laws is filed by or against such party and, if involuntary, is not dismissed within sixty (60) days after it is filed; (iv) such party makes a general assignment for the benefit of creditors; (v) a receiver, whether temporary or permanent, is appointed for the property of such party or any part thereof; or (vi) InfinityLink fails to provide any Network services to Town residential end-users within two years of the Agreement’s Effective Date.

11. Remedies. If InfinityLink shall default in the performance of any of the covenants or conditions of this Agreement, or if the Facilities of InfinityLink shall, by reason of improper maintenance or other cause, interfere with or become a source of danger, or be likely to interfere with or became a source of danger, to the street, utility system, or facilities of the Town, or other party utilizing the Town’s right of way, and InfinityLink fails to remedy such default, interference, or dangers or improper condition within thirty (30) days after written notice from the Town to do so, this Agreement shall automatically terminate at the expiration of such thirty (30) day period and InfinityLink, upon written notice by the Town, shall forthwith remove such Facilities from the Town’s right of way(s) and restore said right of way(s) to the condition existing prior to the construction of any of InfinityLink’s Facilities thereon. In default thereof, the Town may at its election either take such action as is necessary to require removal of any Facilities by InfinityLink or remove the same and restore the condition of said right of way(s) at the expense of InfinityLink. Provided, however, in an emergency necessitating in the judgment of the Town immediate repair, maintenance or removal of the Facilities, InfinityLink, upon request of the Town, shall do such requisite work or shall remove the Facilities, and if InfinityLink fails to do so immediately after such request, the Town may do such requisite work or effect such removal at the expense of InfinityLink.

12. Notices.

Except as otherwise provided herein, all notices from InfinityLink to the Town pursuant to this Agreement shall be to the Town Manager or his/her designee as follows:

Town of Tarboro

Attention: Town Manager

And to InfinityLink

With a copy to

InfinityLink shall maintain with the Town a telephone number and an address for service of notices by mail. InfinityLink shall be required to advise the Town of such addresses and telephone numbers and any changes thereof.

13. Failure To Enforce This Agreement, No Waiver Of The Terms Thereof. Neither the Town nor InfinityLink shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

14. Severability

14.1 Invalidity. If any term, condition or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on InfinityLink and the Town.

14.2 Court Action. Notwithstanding anything to the contrary, in the event that any court, agency, commission, legislative body or other authority of competent jurisdiction (i) declares any section, deemed by the Town to be material, invalid, in whole or in part, or (ii) requires InfinityLink either to (a) perform any act which is inconsistent with any section deemed by the Town to be material; or (b) cease performing any act deemed by the Town to be material, the Town shall so notify InfinityLink and the Town and InfinityLink shall, in good faith, renegotiate that term or those terms of this Agreement.

15. Survival. The provisions in Section 7.3, Section 8 and Section 9 of this Agreement shall survive and remain in effect after this Agreement is terminated. Also, any encroachment, license, attachment or other agreements that the parties enter into pursuant to this Agreement will remain in effect and shall expire by their own terms.

16. Independent Contractors. The parties are independent contractors. Nothing in this Agreement creates or implies, or shall be construed to create or imply, any agency, association, partnership, or joint venture between the parties and neither Party will be liable for the payment or performance of any debt, obligations, or liabilities of the other Party, unless expressly assumed in writing.

17. Reservation of Police Powers. This Agreement does not alter the terms or conditions of any approval, permit or decision granted or made by the Town, nor does it affect the general police powers of the Town and does not relieve InfinityLink of any obligations under the Town laws, policies, or regulations and does not constitute an approval, permit or decision by the Town. Nothing in this Agreement shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Town in a manner not permitted by law.

18. No Exclusivity. Except as expressly stated otherwise in this Agreement, nothing in the Agreement shall be construed as precluding the Town from entering into similar agreements with any other Services provider or precluding any such party from providing Communications Services in the Market Area.

19. No Third-Party Beneficiaries. No rights or privileges of either Party hereto shall inure to the benefit of any other person or entity, and no such other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

20. Further Agreements. The Parties may negotiate and enter into additional agreements to effectuate the purpose of this Agreement.

21. Joint Drafting. The Parties acknowledge that this Agreement has been drafted jointly by the parties and agree that this Agreement will not be construed against either party as a result of any role such party may have had in the drafting process.

22. Governing Law and Jurisdiction. This Agreement and any action related to this Agreement will be governed by the laws of the State of North Carolina, excluding that body of law controlling conflict of laws and any application of the United Nations Convention on the International Sale of Goods. Any action, hearing, suit or proceeding arising out of or relating to this Agreement must be brought in the courts of the State of North Carolina, or if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of North Carolina. Venue for State court actions shall be Edgecombe County. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding and waives any objection it may now have or hereafter have to venue or to convenience of forum. The parties agree that it is their mutual intent that this Agreement conforms to applicable local, state, and federal law regulating the covenants and obligations contained in this Agreement.

23. Dispute Resolution. Except as otherwise specifically provided in this Agreement, all disputes, disagreement, or controversies arising in connection with this Agreement will first be resolved through good faith negotiations in order to reach mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then either party may seek resolution by exercising any rights or remedies available to either party at law or equity.

24. Rights Cumulative, Specific Performance. All rights and remedies given to the Town and InfinityLink by this Agreement shall be in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the Town and InfinityLink, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Agreement or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the Town and InfinityLink and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. The Parties shall be entitled to specific performance of the terms hereof in addition to any other remedy at law or in equity, including monetary damages, that may be available to each.

25. Entire Agreement; Amendment; Signatures. The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof. This Agreement supersedes any prior agreements or understandings between the parties. This Agreement constitutes the entire Agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by authorized representatives of both parties. This Agreement is for the exclusive benefit of their parties, their successors and permitted assigns. There are no third party beneficiaries to this Agreement. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate

originals as of the day and year first above written.

TOWN OF TARBORO

By: _____
Joe W. Pitt, Mayor

ATTEST

_____, Town Clerk

NFINITYLINK COMMUNICATIONS, INC.

DRAFT

By: _____
Name and title

PRE-AUDIT CERTIFICATION:

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

Finance Director

Account Number _____

Project Code (if applicable) _____

RECOMMENDED:

_____, Public Works Director

DRAFT

**State of North Carolina
County of Edgecombe**

I, _____, a Notary Public of said County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that she is the Town Clerk of the Town of Tarboro, a municipal corporation, and that by authority duly given and as the act of the Town of Tarboro through and by the Town Council, its governing body, the foregoing instrument was signed in its name by the Mayor, Joe W. Pitt, sealed with corporate seal, and attested by herself as its Town Clerk.

WITNESS my hand and Notarial Seal, this the ____ day of _____, 20__.

_____, Notary Public

(Print or Type Name of Notary Here)

My Commission Expires: _____

State of _____

County of _____

I, _____ a notary public in and for the aforesaid county and state, certify that _____, personally (1) appeared before me this day, (2) stated that he or she is a **title of signer** of **NfinityLink Communications, Inc.**, a Corporation organized and existing under the laws of the State of North Carolina, (3) acknowledged that the foregoing Agreement with the Town of Tarboro carries on in the usual way the Corporation's business, and (4) acknowledged the due execution of the contract on behalf of the Corporation.

WITNESS my hand and Notarial Seal, this the ____ day of _____, 20__.

_____, Notary Public

(Print or Type Name of Notary Here)

My Commission Expires: _____

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CONTRACT NO. _____

POLE ATTACHMENT AGREEMENT

Between

Town of Tarboro__

AND

_____NfinityLink Communications, Inc. dba InfinityLink
Communications_____

THIS AGREEMENT made and entered into as of _____, 20__ (“Contract Date”), between City of_____, North Carolina, hereinafter “Owner”, a municipal corporation under the laws of the State of North Carolina, and _____, hereinafter “Licensee” and with Owner and Licensee collectively referred to as the “Parties.”

W I T N E S S E T H

WHEREAS, Owner in the furnishing of its services, constructs, maintains, and operates equipment on Poles (as defined hereinafter) in the State of North Carolina.

WHEREAS, Licensee proposes to design, install, operate and maintain a system and associated appliances (“System” or “Attachments” or “Facilities”) to furnish Fiber to the Premises services utilizing the Owner’s electric distribution Poles to place its Facilities, including wireline communications cables and System equipment; and,

WHEREAS, Owner is willing to permit, to the extent it may lawfully do so and on the terms hereinafter set forth, the attachment, when in its judgment, such use will not interfere with its own service requirements, including considerations of safety and economy.

AGREEMENT

In consideration of the facts stated above, the mutual covenants and agreements of the parties, and other valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, IT IS AGREED:

I. DEFINITIONS:

For the purposes of this Agreement, the following terms and phrases shall have the following meanings:

- A. "Actual Costs" means all costs of Owner including engineering, labor, overtime, overhead, material, transportation, equipment, loading, interest and administrative costs, not limited in any way by any Estimated Cost. Actual Costs are payable subsequent to work being done by Owner. Owner will provide documentation of such costs at Licensee's request.
- B. "Attachment" or "Facility" means a wireline or other associated System equipment/facility of Licensee affixed to an Owner Pole. For purposes of permitting and prior authorization, such term applies whether the Attachments are placed directly on Owner's Poles or are overlashed onto existing communications wires on the Poles. Equipment that is adjacent to Owners Poles that utilize Owner's Right-of-Way or Easements shall be considered an attachment.
- C. "Communications Space" means the portion of an Owner Pole available for the attachment of Licensee's System, per Owner's specifications, the upper portion of which is designated for wireline Attachments and the lower portion for other System devices. Certain of Licensee's facilities, per Owner's specifications, may extend above the Communications Space for the sole purpose of obtaining power.
- D. "Encroachment" means the use of Pole space by one party that was reserved for the use of another party, but shall not include risers.
- E. "Engineer" means a Professional Engineer currently licensed by the State of North Carolina.
- F. "Estimated Cost" means Owner's projected costs, including engineering, labor, overtime, overhead, material, transportation, equipment, loading, interest and administrative costs and which is payable prior to any work by Owner.

- G. "Shared User" means a party, other than Owner or Licensee, which may attach to Owner's Poles, including parties to a Shared Use or Joint Use Agreement.
- H. "Licensee's Expense" means Licensee's obligation to pay Owner's Actual Costs as defined in the Agreement.
- I. "Make-Ready" means all work, as reasonably determined by Owner, required to accommodate the Licensee's Attachment and/or to comply with all applicable engineering specifications and standards for the use of Owner's Poles. Such work includes, but is not limited to, design, engineering, supervision, administration, installation, inspection, repair and/or maintenance associated with the design, installation, rearrangement of Owner or Shared User equipment, operation and maintenance of such facilities.
- J. "Permit" means written authorization of Owner for Licensee to make, or maintain, Attachments to specific Poles pursuant to the requirements of the Agreement.
- K. "Pole" means a pole owned by Owner that is capable of supporting Attachments for Licensee's System and that may be further described and/or restricted within this Agreement.
- L. "Rearranging" means the reconstruction or relocation of Attachments on the same Pole.
- M. "Supply Space" means the portion of an Owner Pole reserved for its own use, primarily facilities used in the distribution of power by Owner as noted in Exhibit A.
- N. "System" means that portion of the Licensee's system consisting of all communications cables, wires, fibers, lines, splices, relays, video/optical devices, appliances, sensors, amplifiers, illumination sources, wireless devices, and associated equipment or facilities designed and constructed for the purpose of capturing, distributing, receiving, transmitting, amplifying, or producing electronic and/or video/optical signals and for providing power to such facilities.
- O. "Transferring" means the relocation of Attachments from one Pole to another.

II. SCOPE OF AGREEMENT:

- A. Upon receipt of a Permit and subject to the provisions of this Agreement, Licensee shall have a revocable and nonexclusive license authorizing Licensee to install and maintain Attachments to Owner's Poles. Nothing in this Agreement shall be construed as compelling Owner to grant Licensee the right to attach to any specific Pole or as granting Licensee any right to attach Licensee's Attachments to any specific Pole until an appropriate Permit is issued.
- B. Licensee and Owner agree to be bound by all provisions of this Agreement and of the Permit(s) issued pursuant to this Agreement.
- C. The parties agree that Owner will issue a Permit(s) to Licensee only when Owner determines, in its sole judgment, that (i) it has sufficient capacity to accommodate the requested Attachments, (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all applicable standards and specifications. The parties further agree that any access to Owner's Poles made available to Licensee pursuant to this Agreement is subject to Owner's reserve capacity, which may be reclaimed by Owner for future electric service use, including the attachment of communications lines for internal Owner operational requirements.
- D. No use, however lengthy, of any of Owner's facilities, and no payment of any fees, charges or other compensation required under this Agreement, shall create or vest in Licensee any easements or other ownership or property rights of any nature in any portion of such facilities. After issuance of any Permit, Licensee shall be and remain a Licensee. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of Owner's rights to the Owner facilities.
- E. Licensee is obligated to obtain all necessary certification, permitting, and franchising from Federal, state and local authorities prior to making any Attachments.
- F. The parties agree that this Agreement does not in any way limit Owner's right to locate, operate and maintain its Poles in the manner that it believes will best enable it to fulfill its own service requirements.
- G. Nothing in this Agreement shall be construed to require Owner to install, retain, extend, or maintain any Pole for use by the Licensee when such Pole is not needed for Owner's own service requirements.

- H. Nothing in this Agreement shall limit, restrict, or prohibit Owner from fulfilling any agreement or arrangement regarding Poles into which Owner has previously entered, or may enter in the future, with Shared Users and other licensees not parties to this Agreement.
- I. This Agreement shall only apply to Poles associated with the distribution of electric power and not to any other Owner facilities, absent express written concurrence from Owner. System facilities are not permitted on Owner's metal, decorative, or underground-fed street light poles.
- J. Nothing in this Agreement shall be construed to require Owner to allow Licensee to use Owner's Poles after the termination of this Agreement.
- K. Licensee agrees that this Agreement is limited to the uses specifically stated above in the Recitals and any other use shall be considered a breach of this Agreement.
- L. Licensee acknowledges that, as applicable, it must separately obtain electric service from Owner in order to provide electric supply to Licensee's Attachments.
- M. Electric service shall be governed by the current Owner's Electric Service Policy and any additional Service Agreements executed between the parties.
- N. Permanent electric service to Licensee's System facilities may require an electric service provided through Owner's electric meter socket and appropriate current-limiting disconnect device.
- O. Energy usage shall be billed per Owner's applicable rate schedule for general power services. System facilities requiring electric power may be metered or billed at a flat rate at Owner's discretion.

III. PROTECTION, INDEMNITY AND LIMITATION OF LIABILITY:

- A. **Qualifications:** Licensee shall ensure that all employees, agents and contractors of Licensee used to install or maintain the Attachments are appropriately qualified and trained to work on and in the vicinity of electric distribution facilities.

- B. **Assumption of Risk:** To the fullest extent permitted by law, Licensee expressly assumes responsibility for determining the condition of all facilities of Owner to be worked on by its employees, agents, contractors or subcontractors, including without limitation, Poles to be climbed on or worked on. To the fullest extent permitted by law, Licensee assumes all risks (including, without limitation, risks arising from Owner's sole negligence, but excepting the intentional misconduct of Owner or its officers, employees or agents) related to the construction, operation and maintenance of its Attachments on Owner's facilities.
- C. **Damage to Facilities:** Owner reserves to itself, its successors and assigns, the right to maintain its Poles and to operate its facilities thereon and therein in such manner as will best enable it to fulfill its own service requirements. Owner shall exercise reasonable precaution to prevent damage to, or interference with the operation of the Attachments of Licensee, but Owner shall not be liable for any damage to Licensee or any interference which may arise out of the use of Owner's Poles. Licensee shall exercise special precautions to avoid damage to facilities of Owner or of other authorized users of said Poles and to avoid interference with Owner's safe and efficient operation of its electric distribution system. Licensee hereby assumes all responsibility for any and all damage to or interference with facilities of said Owner or other authorized users arising out of or caused by the erection, maintenance, installation, presence use or removal of Licensee's Facilities (excepting the intentional misconduct of Owner or its officers, employees or agents). Licensee shall make an immediate report to the particular owner of the facilities affected by the occurrence of any damage and hereby agrees to reimburse such owner for the expenses incurred in making the necessary repairs and replacement. Licensee shall notify Owner promptly in case of such damage to any of Owner's facilities.
- D. **Safety Precautions:** Licensee shall take all steps necessary to protect persons and property against injury or damage that may result from the presence, installation, use, maintenance or operation of Licensee's Attachments. Should any such injury or damage occur despite such steps, Licensee shall make an immediate report to Owner of such injury or damage, and Licensee hereby assumes all responsibility for any and all such injuries or damage to the fullest extent permitted by law (including, without limitation, risks arising from Owner's sole negligence, but excepting the intentional misconduct of Owner or its officers, employees or agents).
- E. **Indemnification and All Other Liability:** Licensee shall indemnify, defend, protect, and save harmless Owner and its officers, agents, and employees from and against any and all costs, damages, claims, losses and court costs, liabilities, causes of actions, demands, judgments, decrees, proceedings, and expenses of any nature (including, without limitation, reasonable attorney fees, disbursements and actual

costs) directly or indirectly suffered by or claimed against Owner, directly or indirectly, based on, arising out of or resulting from, in whole or in part, the acts or omissions of Licensee, its officers, agents, employees, contractors (and their subcontractors), successors, or assigns. Licensee shall, at its own expense, defend Owner and its officers, agents and employees against any and all such claims, actions and demands and shall indemnify Owner and its officers, agents and employees for all costs and expenses it may incur in connection therewith, including, without limitation, reasonable attorney fees. If Licensee refuses to undertake the defense of a claim described in this section, then Owner, its officers, agents and employees shall have the right to take all actions they deem necessary and appropriate to defend the claim, and shall be reimbursed by Licensee for all costs incurred in defending such claim as provided above in this section, including, without limitation, reasonable attorney fees.

- F. **Liability Insurance:** Licensee shall carry and keep in full force and effect from and after the date hereof and at all times during the Term broad-form commercial general liability insurance with limits as are reasonably required by the Owner from time to time, but initially in an amount of Two Million Dollars (\$2,000,000) for each occurrence. Such insurance coverage shall include contractual liability coverage insuring Licensee's indemnities under this Agreement. Said commercial general liability and property damage insurance policies and any other insurance policies carried by Licensee shall (i) be issued by insurance companies reasonably satisfactory to Owner; (ii) designate, as additional named insured, the Owner; (iii) be written as primary policy coverage and not contributing with or in excess of any coverage which Owner may carry; (iv) provide for thirty (30) days' prior written notice to Owner of any cancellation or other expiration of such policy; and (v) contain contractual liability coverage insuring performance by Licensee of the indemnity provisions of this Agreement. In addition, all property damage insurance policies shall contain an express waiver of any right of recovery (by subrogation or otherwise) by the insurance company against Owner. Licensee shall deliver to Owner either a copy of each such policy of insurance or a certificate evidencing the coverage required hereunder. Renewal certificates shall be provided by Licensee on an annual basis. Neither the issuance of any insurance policy required hereunder nor the minimum limits specified herein with respect to Licensee's insurance coverage shall be deemed to limit or restrict in any way Licensee's liability under this Agreement.
- G. **Waiver of Recovery:** Each party hereby waives any and every right or cause of action for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom said other party may be responsible), which loss or damage is covered by valid and collectible fire, extended coverage, "All Risk" or similar policies, to the extent that such loss or damage is recovered under said insurance policies. Written

notice of the terms of said mutual waivers shall be given to each insurance carrier and said insurance policies shall be properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers.

- H. **Protection Against Claims For Improper System:** In the event that any claim, demand or liability is made or asserted against Owner by any third party based upon allegations that material transmitted over Licensee's System results in infringement of copyright, libel or slander, illegal use, or unauthorized use thereof or other similar claims, Licensee shall indemnify, defend and hold harmless Owner and its agents and representatives from any and all such claims, demands, lawsuits and liability, including payment of Owner's legal fees.

- I. **Indemnification For Patent Infringement:** In the event that any claim, demand or liability is made or asserted against Owner by any third party based upon allegations that the System violates any patent laws, then, and in such event, Licensee shall indemnify, defend and hold harmless Owner and its agents and representatives of and from any, and all such claims, demands, lawsuits and liability, including the payment of Owner's legal fees.

- J. **Non-Waiver of Indemnification:** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by Owner of any applicable common law, statutory or constitutional limits on municipal liability available to Owner. No indemnification provision contained in this Agreement under which Licensee indemnifies Owner shall be construed in any way to limit any other indemnification provision contained in this Agreement.

- K. **Limitation of Liability:** Owner reserves to itself, its successors and assigns, the right to maintain its Poles and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements. Owner shall not be liable to Licensee for any interruption to service of Licensee or for interference, however caused, with the operation of the cables, wires and appliances of Licensee, arising in any manner out of the use of Owner's Poles hereunder, including any effects undesirable to Licensee which the presence, breakdown, operation, maintenance, alterations of, or additions to, the lines and other facilities of Owner or those jointly using Owner's Poles may have upon the Attachments or the transmissions of Licensee, even if the cause of such effects may be attributable to negligence (including, to the fullest extent permitted by law and without limitation, Owner's sole negligence) on the part of Owner or its agents.

- L. **Disclaimer of All Warranties:** Owner makes no warranties under this AGREEMENT and specifically disclaims and excludes all implied warranties,

including the implied warranties of merchantability and fitness for a particular purpose. Owner further specifically disclaims any warranty or representation regarding the condition and safety of Owner's distribution Poles or other facilities.

- M. Cumulative Remedies: The rights, protections and remedies afforded Owner under the provisions under this Article and under other provisions of this Agreement are cumulative and not exclusive.

IV. PERMITS, LICENSES AND RIGHTS-OF-WAY:

- A. In order to construct, place and maintain its System, Licensee is solely responsible for obtaining from various Federal, State, County and local authorities and private entities all necessary permits, licenses, rights-of-way, franchise agreements and property easements. The cost of such permits, licenses, rights-of-way, franchise agreements and property easements shall be borne by Licensee.
- B. Owner does not represent or warrant that any of its rights-of-way, easements or other similar rights entitle Licensee to access the property underlying Owner's distribution Poles or other facilities. Licensee shall use its best efforts to obtain such permits, licenses, rights-of-way, franchise agreements and property easements. Upon request, Licensee shall provide to Owner copies of all such permits, licenses, rights-of-way, franchises, agreements and property easements. Licensee shall continue to maintain all such required authorizations and consents during the term of this Agreement.
- C. Nothing in this Agreement shall operate to impose any obligation or responsibility on Owner for Licensee's failure to obtain all necessary permits, licenses, rights-of-way, franchise agreements and property easements, and Licensee shall indemnify and hold harmless Owner, its directors, officers and employees, from and against any and all claims and demands including any attorney and/or legal fees or costs incurred by Owner which result from claims of governmental bodies, owners of property, or others that in any way result from Licensee not having a sufficient right or authority for placing and maintaining Attachments on Owner's Poles.

V. NON-EXCLUSIVE:

- A. Owner grants Licensee non-exclusive rights for its Attachments on Poles. Owner does not suggest, imply or guarantee that Licensee will have sole occupancy of a Pole.

- B. The space available on a Pole for Licensee's proposed Attachments may be limited by previously-authorized attachment permits and Shared-Use or Joint-Use Agreements with third parties. Absence of the physical presence of a third-party attachment is not an indication of space availability.
- C. Nothing in this Agreement shall limit, restrict, or prohibit Owner from utilizing the Communications Space on Poles for its own System facilities.

VI. ATTACHMENT AND INSTALLATION PROCEDURES:

No attachment, placement or installation shall be made by Licensee on any Poles before written permission is received from Owner. The procedure and forms to be used in making application and receiving permission for attachment, placements or installations shall be as provided for as described in this Agreement. Such permission shall not be unreasonably withheld, conditioned or delayed. In addition to any application fees, Licensee shall pay Owner for any Estimated Costs incurred, as herein defined.

VII. CODES, RULES, AND STANDARDS:

Licensee's facilities, in each and every location, shall be erected and maintained in accordance with the requirements and specifications of the latest revision of the *National Electrical Safety Code* ("NESC"), as the same may be amended from time to time, the *National Electrical Code* ("NEC"), the regulations of the Occupational Safety and Health Act ("OSHA"), *North Carolina Department of Transportation* ("NCDOT") and in compliance with any rules or orders now in effect or that may hereafter be issued by Owner or other authority having jurisdiction. Licensee's Attachments shall be made in accordance with Exhibit A and any revisions which may be made to that Exhibit by Owner. Licensee further agrees that its Facilities will meet the specifications, standards, and requirements of Owner's electric construction standards and electric service policy, as may be applicable.

VIII. OVERHEAD APPLICATION REQUIREMENTS:

- A. Before making Attachments to any Poles, including the overlashing of existing Attachments, Licensee shall make application and receive a Permit therefore, with respect to each Pole in the form of Exhibit B.

- B. The method and location of installation of Attachments on Poles must first be approved by Owner. Such approvals shall not be unreasonably withheld, conditioned or delayed. Licensee shall furnish Owner with a construction drawing indicating the location of and specifying the type of Attachment to be installed with a target date for completion. Authorized Pole Attachments under this Agreement are restricted to the designated locations indicated in Exhibit A, and shall not be placed within the power supply space, except as shown for electric service to System facilities.
- C. The Licensee shall remit a non-refundable application fee contained in Exhibit E to accompany each Permit application. This fee may be adjusted no more frequently than annually to reflect changes in the engineering, administrative and processing costs of Owner in reviewing permit applications.
- D. There [**may**] be an additional Pole Attachment Fee for Licensee to overlash its own Attachments. Licensee shall indicate on its application for overlashing the projected sag of the conductors resulting from the additional weight of the proposed cables or wires and shall make request for Make Ready work when such sag will necessitate additional clearance on Owner's poles or from the facilities of other Shared Users to meet mandated separation between facilities or clearance over the ground. Overlashed Attachments shall be deemed Attachments for all purposes under this Agreement except for the purpose of calculating the Pole Attachment Fees. Overlashing of Licensee's facilities by any third-parties (whether affiliated or otherwise) is prohibited absent a separate License Agreement with Owner.
- E. After Licensee has completed Make-Ready work and attaching to Owner's poles, Licensee's Engineer shall provide a letter stating that the installation has been completed and complies with NESC, NEC, OSHA, and NCDOT codes.
- F. Owner will at intervals not exceeding five (5) years perform an actual inventory of the Pole Attachments in all or in part of the territory covered by this Agreement, for the purpose of checking and verifying the number of Poles on which Licensee has Attachments. Such field check shall be made jointly by both parties and shall be at Licensee's Expense.
- G. Notwithstanding any other remedies available to Owner, if through an inventory or other means, Owner discovers that Licensee has made Pole Attachments, including overlashing, without first obtaining a Permit from Owner, in the absence of evidence to the contrary that is satisfactory to Owner, the Attachment shall be treated as having existed for a period beginning on the effective date of this Agreement or the date of the last pole inventory, whichever is shorter, and Licensee shall immediately pay the

fee for each such Attachment, at the appropriate rate for each year and for any portion of a year contained in such period. No act or failure to act by Owner with regard to said fee or said unlicensed use shall be deemed as a ratification of the unlicensed use, and if any Permit for an Attachment should be subsequently issued, said Permit shall not operate retroactively or constitute a waiver by Owner of any of its rights under this Agreement.

IX. [INTENTIONALLY OMITTED]:

X. REARRANGEMENT AND RELOCATION OF POLE ATTACHMENTS AND POLE REPLACEMENT (“MAKE READY WORK”):

- A. Should any Pole or Poles to which Licensee desires to make Attachments be deemed inadequate by either Licensee or Owner to support the additional facilities in accordance with the specifications herein, Licensee shall indicate on Exhibit B the Make Ready work requested to rearrange, transfer, or replace Owner’s facilities as necessary to provide adequate space or Poles for its Attachments.
- B. In the event that Licensee requests Make Ready work and Owner agrees to perform such work, Owner shall prepare a cost estimate for Make Ready work. When a request has been approved and Owner has received payment for the Estimated Cost, Owner will proceed with the Make Ready work.
- C. Licensee shall reimburse the owner or owners of other facilities attached to Owner Poles for any expense incurred by them for rearranging or transferring such facilities in order to accommodate Licensee's facilities.
- D. In the event that Owner chooses to have Licensee perform Make Ready work, Licensee, upon completion of the work, shall provide a letter sealed by an Engineer stating that the installation has been completed and complies with NESC, NEC, OSHA and NCDOT codes.
- E. Licensee shall maintain appropriate clearances, as determined by Owner in accordance with applicable legal, operational and contractual requirements, on all Poles with all Shared Users on all Poles.

XI. ANCHOR ATTACHMENTS:

- A. Licensee shall, at its own expense and to the satisfaction of Owner, place guys and anchors to sustain any unbalanced loads caused by Licensee's Attachments. When, in unusual circumstances, Licensee determines that it is necessary or desirable for it to attach its guys to anchors owned by Owner, it may make application to do so in a manner similar to that outlined in Article IX above for application to make Pole Attachments. In such circumstances, all the provisions of this Agreement that are applicable to Poles shall also be separately applicable to anchors. In the event that any anchor to which Licensee desires to make Attachments is inadequate to support the additional facilities in accordance with the aforesaid specifications, Owner will notify Licensee of the changes necessary to provide an adequate anchor, together with the Estimated Cost thereof to Licensee. Licensee will compensate Owner in advance for the Estimated Cost for changing the anchor.
- B. For anchors in place to which Licensee wishes to attach, Licensee shall pay to Owner a one-time installation fee as set forth in Exhibit D upon initial installation only, for the use of each of Owner's anchors to which attachments are made.

XII. INSTALLATION OF GROUNDS:

When Owner is requested by Licensee to install grounds or make connections to Owner's electric system neutral, Licensee shall reimburse Owner for the Actual Costs for initial installation, any maintenance, removal or relocation within 30 days of work being completed.

XIII. POLES NOT ALLOWED TO BE SHARED:

Upon notice from Owner to Licensee that the use of any Pole is forbidden by municipal authorities or property owner, the Permit covering the use of such Pole shall immediately terminate and the cables, wires and appliances of Licensee shall be removed from the affected Pole within fourteen (14) days.

XIV. REMOVAL OF ATTACHMENTS FOR OVERHEAD TO UNDERGROUND CONVERSION:

Upon notice from Owner to Licensee that Owner's electric system is to be converted from overhead to underground in a specified area and the Poles will be removed, the Permit covering the use of said Poles shall immediately terminate on the date on which overhead

service terminates and the cables, wires and appliances of Licensee shall be removed from the affected Poles within thirty (30) days thereafter.

XV. [INTENTIONALLY OMITTED]

XVI. REMOVAL OF ATTACHMENTS:

- A. Licensee may at any time remove its Attachments from any Pole of Owner, but shall give Owner written notice within fourteen (14) days of such removals in the form of Exhibit C. No refund of any Pole attachment fee will be due on account of such removal.
- B. When Licensee desires to transfer its Attachments from an existing alignment of Owner's Poles to a new alignment, notice of removal in the form of Exhibit C and an application for Attachment to the new poles shall be submitted along with the appropriate Permit Application Fee for processing by Owner.
- C. After Licensee has completed the installation to Owner's poles, Licensee's Engineer shall provide a letter stating that the installation has been completed and complies with NESC, NEC, OSHA, and NCDOT codes.

XVII. ELECTRICAL DESIGN SPECIFICATIONS:

- A. Separation of communication and electrical conductors shall be as stipulated in the *National Electrical Safety Code* and as per Owner's construction standards.
- B. Licensee shall not circumvent nor impair Owner's corrosion mitigation measures.
- C. Licensee cable shall be compatible with Owner's facilities so as not to damage any facilities of Owner by corrosion or otherwise. Licensee shall be liable to Owner for any damages occasioned by such corrosion or otherwise.

XVIII. PHYSICAL DESIGN SPECIFICATIONS:

- A. All System facilities shall be located and installed per Exhibit “A” in addition to complying with the applicable codes and other requirements specified in this Agreement. Except as noted, wireline System facilities shall be located in the Communication Space on Owner’s poles, hereby defined to be 18 ft. to 21 ft. above the ground, with a minimum separation of 40” to the nearest current-carrying conductor or electric component located in the power space, with the exception that a 12” separation below the drip loop of a street light may be allowed.

- B. In addition to code requirements, all System facilities not mounted to the Pole itself shall maintain a minimum clearance above ground that meets all applicable codes from the authority having jurisdiction. Pole-mounted facilities must be securely attached to the Pole itself, not to any Owner equipment or street light arm. There shall be no more than a combined total of a) two (2) System risers or b) one (1) System riser and one (1) System device attached to any Pole by Licensee and other Shared Users. If Owner has a device in the communications space, then no System device may be placed on that Pole by Licensee.

- C. Licensee may not locate points of delivery for electric service on Owner’s poles or within the public right-of-way unless it owns that right-of-way or has a franchise agreement to utilize it.

- D. Cables, fibers, wires and similar signal-carrying System facilities passing by a Pole must be attached to that Pole in accordance with this Agreement.

- E. Risers for transition between overhead and underground distribution must be securely attached to the Pole per Owner’s construction standards. Owner may limit the number and specify the orientation of Licensee’s risers on a Pole.

- F. Excess cable or wire and splices, junction boxes, and similar appurtenances associated with the System shall be securely and neatly attached to Poles or the Licensee’s supporting strand; they shall not be left unsupported or swinging free. Conduit attached to Poles shall have sufficient straps or brackets to hold it securely to the Pole throughout its length. Clearances specified by the *NESC* and Owner’s construction standards must be maintained for all portions of Licensee’s System Facilities. Such Facilities may require rental of additional space at adjacent Poles to provide adequate clearances throughout the span.

- G. All wireline Attachments to the non-neutral side of a Pole must utilize stand-off brackets per Owner construction standards. No wireline Attachment may be made to the non-neutral side of a Pole without the specific written permission of Owner.

Applications for Attachment must clearly indicate if non-neutral-side Attachment is being requested.

- H. Licensee shall clearly identify its ownership of its System Facilities at each and every location with distinctive, durable, color-stable, tamper-, and weather-resistant labels or tags visible from the ground or manhole opening.

XIX. WORK RULES:

- A. Any leak detection liquid or device used by Licensee's agents, employees or contractors shall be of a type approved in writing by Owner.
- B. When Licensee, its agents, employees or contractors are working around any part of Owner's Poles located in the streets, alleys, highways, or other public rights-of-way or easements granted to Owner, the protection of persons and property shall be provided by Licensee in an adequate and satisfactory manner; Licensee shall be solely responsible for providing adequate barricades, warning lights, traffic cones, danger signs and other similar devices to protect all traffic, persons and property around the work area from danger.
- C. Owner's authorized representative shall have the authority to terminate Licensee's work operations around Owner's Poles if, in the sole discretion of Owner's authorized representative, any hazardous condition arises or any unsafe practice is being followed by Licensee's agents, employees or contractors. Said discretion shall not be unreasonably executed.

XX. EMERGENCY CONDITIONS:

In cases of emergency:

- A. Owner's work shall take precedence over any and all operations of Licensee.

- B. Owner may rearrange Licensee's Attachments and related Facilities at Licensee's expense when necessary to make maximum use of its electric system or to effect repairs.
- C. Licensee shall provide Owner a point(s) of contact for emergency and non-emergency twenty-four (24) hour service.

XXI. DECOMMISSIONING:

Owner may, in its sole judgment, remove any Poles not needed for its service requirements; and Licensee shall, upon written notification from Owner, remove its Attachments from such Poles within a reasonable period of time following notice thereof, not to exceed thirty (30) days.

XXII. INSTALLATION, MAINTENANCE AND RELOCATION OF FACILITIES:

- A. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and in thorough repair, and in a manner satisfactory to Owner and so as not to interfere with Owner's use of its facilities, or by other companies using said facilities, or interfere with the use and maintenance of facilities which may from time to time be placed thereon. Licensee shall, at its own expense, within fourteen (14) days of notification from Owner (unless in Owner's sole discretion safety, emergency, power supply, restoration efforts or construction schedules require Licensee to take corrective action within a shorter period), remove, relocate, replace, or renew its Attachments and facilities placed on said facilities, or transfer them to substitute facilities, or perform any other work in connection with the said Attachments and facilities that may be required by Owner.
- B. Should the Licensee fail to remove, relocate, replace or renew its facilities, fail to transfer its Attachments to the new pole or fail to perform any other work required of Licensee under Section A, immediately above (collectively, "Maintenance and Relocation"), after the date reasonably specified by Owner for such Maintenance and Relocation ("Maintenance and Relocation Date"), Owner will have the following rights, in addition to any other rights and remedies available under this Agreement:

1. The cost incurred by Owner to return to the job site to inspect the status of Licensee's work and, as applicable, the cost incurred by Owner to remove the old pole will be paid by the Licensee.
2. Owner may, at Licensee's sole risk and without warranty of any kind, perform such Maintenance and Relocation work, including the removal of Licensee's System, and Licensee shall, on demand, reimburse Owner for the full expenses thereby incurred. Owner may also abandon a Pole, or portion thereof, transferring responsibility for removing the abandoned facility to the Licensee.

The intent of this subsection is to ensure timely Maintenance and Relocation.

- C. Nothing in this Section shall operate to impose any liability upon Owner for any loss or injury arising directly or indirectly from Licensee's failure to conform to applicable technical requirements and specifications, and nothing in this Section shall operate to relieve or in any way limit Licensee's obligations to indemnify Owner under this Agreement.

XXIII. CHARGES FOR INCOMPLETE WORK:

In the event that a request for attachments made by Licensee is canceled, Licensee shall reimburse Owner for the Actual Costs incurred by Owner prior to receiving written notification of the cancellation plus any additional costs Owner incurs to remove Licensee's system from Poles.

XXIV. INSPECTION:

Owner reserves the right to inspect and/or verify each new installation or removal of Licensee and to make periodic inspections and verifications, as conditions may warrant, of that portion of Licensee's System that is attached to Owner's Poles. Such inspections and/or verifications, or the failure to make such, shall not operate to relieve Licensee of any responsibility or obligation or liability assumed under this Agreement; nor shall such inspections and/or verifications operate to impose any liability or responsibility on Owner for Licensee's Attachments. Owner's inspector shall have the right to stop the installation work of the Licensee until any violations of this Agreement have been rectified.

XXV. USE OF CONTRACTORS:

Licensee shall require its contractors (and, in turn, their subcontractors) to comply with the work rules and other operating requirements of Owner under this Agreement and with the insurance and indemnification obligations of Licensee under this Agreement as if each such contractor were the Licensee for purposes of this Agreement. Licensee shall ensure that Owner is an intended third party beneficiary of such requirements with enforceable rights against each such contractor, and that such rights are enforceable against each such contractor (and their subcontractors) in the same manner and to the same extent as Owner has such rights against Licensee under this Agreement. Without limitation of the other requirements of this Agreement, Licensee shall indemnify Owner for all liabilities, claims, demands and costs (including, without limitation, any attorneys' and/or legal fees or costs) arising from its failure to comply with the requirements of this Article.

XXVI. ASSIGNMENT OR TRANSFER RIGHTS OF INSTALLATION:

Licensee shall not assign, transfer, sublease or resell the rights of attachment hereby granted to it, or the rights to use facilities so attached to Owner's Poles without prior consent in writing of Owner, which consent shall not be unreasonably withheld. Failure of Licensee to give such notice and obtain Owner's consent shall be cause for termination of this Agreement. Owner agrees to provide written notification of its approval or disapproval of any request requiring consent within thirty (30) days of Licensee's notice.

XXVII. ADDITIONAL PROVISIONS:

- A. The failure of either party to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or conditions of this Agreement or the granting of an extension of time for performance shall not constitute the permanent waiver of any term or condition of this Agreement. This Agreement and each of its provisions shall remain at all times in full force and effect until modified by authorized parties in writing.
- B. Nothing herein will create a partnership or joint venture between the parties nor result in a joint communications service offering to the customers of either Licensee or Owner.
- C. Licensee shall not, without the prior written consent of Owner use any of its facilities attached to Owner's Poles for any purpose other than that provided in this Agreement. Whenever, in the reasonable judgment of Owner, Licensee has used its facilities for any purpose not authorized herein, Owner shall forthwith notify Licensee. Upon receipt of such notice, Licensee shall as promptly as practicable (and in no later than twenty-four (24) hours after receipt of such notice) cease such use complained of in the notice or produce to Owner evidence satisfactory to Owner that the complained of use is not inconsistent with the terms of this Agreement. Failure to do so or repeated unauthorized use shall constitute a default of Licensee's

obligations and, notwithstanding any other provision of this Agreement; Owner may at its option forthwith terminate this agreement.

- D. No subsequent agreement between Owner and Licensee concerning pole attachment arrangements shall be effective or binding unless it is made in writing by authorized representatives of the parties hereto and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein.
- E. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.
- F. The Parties acknowledge and agree that this Agreement constitutes the entire Agreement between Owner and Licensee, and supersedes all prior agreements and understandings, both oral and written, with respect to the subject matter hereof. This Agreement may not be modified or terminated excepted as provided herein.
- G. Licensee and Owner acknowledge and agree that all material terms and conditions of this Agreement, including but not limited to the compensation requirements specified in Articles III and, are essential and non-severable components of this Agreement, and that if any such material requirements are held to be unenforceable under applicable law, this Agreement shall thereupon terminate.
- H. Descriptive headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.

XXVIII. NOTICE:

Notices under this Agreement shall be in writing and delivered to the persons whose names and business addresses appear below or as otherwise provided for by proper notice hereunder and the effective date of any notice under this Agreement shall be the date of delivery of such notice, not the date of mailing.

If to Licensee: _____

With a copy to: _____

If to Owner: _____

Attention: _____

With a copy to: _____

Attention: _____

XXIX. RIGHTS:

Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by Owner, by contract or otherwise, to others not parties to this Agreement, to use any Poles covered by this Agreement; and Owner shall have the right to continue and extend such rights or privileges to subsequent licenses. The attachment privileges herein granted shall at all times be subject to such existing contracts and arrangements.

XXX. COMPENSATION:

- A. Licensee shall pay to Owner the Fees as specified in Exhibit D and as adjusted from time to time in accordance with Exhibit D. Said rentals shall be payable quarterly, in advance, on the first day of January, April, July, and October of each year during which this Agreement remains in effect.

- B. If Owner does not receive any fee or other amount owed within thirty (30) days after it becomes due, Licensee, upon receipt of ten (10) days written notice, shall pay a late charge to Owner, compounded daily from the date due until the date paid, at the rate of one percent (1.5%) per month on the balance of the unpaid amount.

XXXI. EXPENSES:

Licensee shall be responsible for reimbursing Owner for all expenses as stated throughout this Agreement. Such expenses shall include all engineering, labor, overtime and double time labor, material, transportation and equipment used for Licensee work to be inclusive of all loading, interest and administrative costs. Non-payment of an invoice shall constitute a default of this Agreement.

XXXII. TERM:

- A. This Agreement shall become effective on the Contract Date above written; and if not terminated in accordance with the provisions herein, shall continue in effect for a term of one (1) year from the Contract Date and shall thereafter automatically renew for subsequent one (1) year terms until terminated as provided herein. In addition to other termination rights provided elsewhere in this Agreement, either party may terminate the Agreement at any time by giving at least six (6) months prior written notice. Such termination in no way exempts payment for Pole attachments prior to the actual removal of all facilities. Upon termination of the Agreement in accordance with any of its terms, Licensee after receiving notice of intent to terminate shall, within a reasonable period of time not to exceed six (6) months, remove its cables, wires and appurtenances from all Poles of Owner. If not so removed, Owner shall have the right to remove them at Licensee's expense and without any liability therefore, and Licensee agrees to pay the Actual Costs thereof within thirty (30) days after it has received an invoice from Owner.

- B. Any of Licensee's System not removed by Owner upon termination of this contract shall become the property of Owner, which shall assume no liability for the interruption of service to parties served by the Licensee's System nor obligation for continued operation of said System.

XXXIII. UNAUTHORIZED ATTACHMENTS; SURVIVAL:

- A. Unauthorized Attachments to Poles shall immediately be submitted for permitting within fourteen (14) days of written notice by Owner. Such permitting shall be at the sole discretion of Owner but shall not unreasonably be withheld. All provisions of this Agreement shall be complied with and installation of unauthorized Attachments immediately suspended until permits have been duly obtained.

- B. Unauthorized Attachments which are not subsequently permitted by Owner shall be removed within thirty (30) days of written notice by Owner. If not so removed, Owner shall have the right to remove them at Licensee's expense and without any liability therefore, and Licensee agrees to pay the Actual Costs thereof within thirty (30) days after it has received an invoice from Owner. Any of Licensee's unauthorized Attachments not removed by Owner shall become the property of Owner, which shall assume no liability for the interruption of service to parties served by the Licensee's System nor obligation for continued operation of said System.

- C. In addition to the provisions of this Article, a penalty as specified in Exhibit D shall be assessed Licensee for each unauthorized Attachment.

- D. Notwithstanding any termination or non-renewal of this Agreement or other provision in this Agreement to the contrary, the obligations (but not the rights) of Licensee under this Agreement shall apply to any unauthorized Attachment or other unauthorized use of Owner's system, facilities, or other property and shall continue to apply to any authorized Attachment or other authorized use for so long as Licensee continues to use Owner's system, facilities, or other property. All obligations, including but without limitation requirements for indemnification and obligations to pay fees and charges, which by their nature should survive termination of this Agreement, shall survive termination.

XXXIV. DEFAULT:

If Owner or Licensee shall fail to comply with any of the terms or provision of this Agreement, or default in any of its obligations under this Agreement and shall fail within thirty (30) days after written notice from the other party to correct such default or non-compliance, the party may, at its option, terminate this Agreement. In the event of such default, Owner shall be entitled to recover the full amount due under this Article plus any reasonable expenses or collection including attorneys' fees and court costs.

XXXV. JURISDICTION:

Any and all disputes arising out of this Agreement shall be governed, construed and enforced according to the laws of the State of North Carolina. All actions relating to the validity, construction, interpretation and enforcement of this Contract shall be instituted and litigated in the Courts of North Carolina, in accordance herewith the parties to this Contract submit to the jurisdiction of the courts of North Carolina, located in Edgecombe County, North Carolina.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

City/Town of _____, North Carolina

By _____

(Title)

Licensee:

APPROVED:

Attorney, _____

WITNESS:

ATTEST:

EXHIBIT LISTING

Exhibit A - Pole Attachment Specifications

Exhibit B - Pole Attachment Application

Exhibit C - Notice of Removal of Pole Attachment

Exhibit D - Fee Schedule

EXHIBIT A

(Owner's Pole Specification Drawing showing Supply Space, Communication Space and Clearances)

EXHIBIT B

Application

Valid for 180 days.

Date of Application: _____/____/____

Cable Company Assigned Permit or Reference Number: _____

Licensee # _____

Company Name

Company Address

City, State Zip

City of _____:

In accordance with the terms of Agreement dated _____, application is hereby made for license to make attachments to the following poles located in:

(City or Town - County and State)

Number of proposed **Attachments (not including "Overlashes")** to be made to Owner's Poles: _____

Number of proposed **Overlashes** to be made to Owner's Poles: _____

Number of proposed **Power Supplies** to be attached to Owner's Poles _____

Number of **"lift pole attachments"** or **"service drops"** being reported with this exhibit: _____

Number of **Other Attachments** not defined above to be attached to Owner's Poles: _____

Location of Attachments: _____

It is requested that the make-ready work be completed on or about _____, 20__

By: _____

Title: _____

Phone number _____

(Licensee) **PERMIT**

Permit granted _____/_____ 20____, subject to your approval of the following make-ready work at an estimated cost to you of \$_____, Payable in advance. Actual cost less this estimated cost will be payable within 60 days of completion of make-ready work described in the attached documents.

By _____

Title _____

Phone number: _____

(Owner)

The above charges for the changes and arrangements approved.

By _____

Title _____

(Licensee)

EXHIBIT C

Notice of Termination

Date of Notice: _____/____/____

Cable Company Assigned Permit or Reference Number: _____

Licensee: # _____

Company Name

Company Address

City, State Zip

City of _____:

In accordance with the terms of Agreement dated _____, application is hereby made for license to remove its attachments from the following poles located in:

(City or Town - County and State)

Number of **Attachments** to be removed: _____

Number of **Overlashes** to be removed: _____

Number of **Power Supplies** to be removed: _____

Number of **“lift pole attachments”** or **“service drops”** being removed with this exhibit: _____

Location of Attachments _____

By _____

Title _____

Phone number _____

(Licensee)

Removal of above referenced attachments is acknowledged _____ / _____ 20 _____

By _____

Title _____

Phone number: _____

(Owner)

EXHIBIT D

FEE SCHEDULE

I. Pole Attachment Fees:

- A. Pole Attachment Fee: Effective January 1 2021, the annual Pole Attachment Fee is \$10.00 for each foot of a single side of an Owner Pole required by an Attachment and its associated separation to meet *NESC* clearances and Owner Construction Standards. The attachment fee for a meter center and disconnect placed on an Owner Pole will be billed as three (3) feet. Other facilities attached to Poles will be billed based on the actual space encumbered by the equipment. There is no charge for the space occupied by risers.
- B. Adjustment to Initial Fee: On or before September 30, 2021, and on or before September 30 of each year thereafter, Owner shall establish and notify Licensee of the rate to become effective as of January 1 of the following year. All adjustments shall be made in accordance with the following rate calculation:

The Initial Fee and the subsequently adjusted Pole Attachment Fee (together, the “Fee”) shall be adjusted annually to equal the purchasing power of the previous year, except that in no event shall the amount of the Fee decrease in any year. The Fee shall be adjusted by any change in the index now known as the U.S. Department of Labor / Bureau of Labor Statistics / Consumer Price Index-All Urban Consumers / U.S. city average /All items / 1982-84=100. hereinafter referred to as the “Index”. The parties agree that the August 2020 Index is 259.918. If such Index shall be discontinued with no successor or comparable successor Index, the parties shall attempt to agree upon a substitute formula, if the parties are unable to agree upon a substitute formula, Owner may at its discretion adopt a widely used comparable formula.

- a. The first adjustment shall be made effective as of January 1, 2022 and shall be accomplished by multiplying the Initial Fee by a fraction, the numerator of which shall be the August 2021 Index, the denominator of which fraction shall be the August 2020 Index.
- b. All succeeding adjustments to the Fee shall be made annually effective January 1 of the succeeding year and shall be accomplished by multiplying the then current Fees by a fraction, the numerator of which shall be the then current August Index and the denominator of which fraction shall be the August Index from the prior year.

III. Anchor/Guy Attachment Fees:

- A. Anchor/Guy Attachment Fee: Effective January 1, 2021, the annual anchor attachment fee is \$10.00.
- C. Adjustment to Anchor Attachment: On or before September 30, 2021, and on or before September 30 of each year thereafter, Owner shall establish and notify Licensee of the rate to become effective as of January 1 of the following year. All adjustments shall be made in accordance with the following rate calculation:
- D. Service Drop Fee: Effective January 1, 2021, the annual service drop fee is \$10.00.

The Initial Fee and the subsequently adjusted Pole Attachment Fee (together, the “Fee”) shall be adjusted annually to equal the purchasing power of the previous year, except that in no event shall the amount of the Fee decrease in any year. The Fee shall be adjusted by any change in the index now known as the U.S. Department of Labor / Bureau of Labor Statistics / Consumer Price Index-All Urban Consumers / U.S. city average /All items / 1982-84=100. hereinafter referred to as the “Index”. The parties agree that the August 2007 Index is 207.917. If such Index shall be discontinued with no successor or comparable successor Index, the parties shall attempt to agree upon a substitute formula, if the parties are unable to agree upon a substitute formula, Owner may at its discretion adopt a widely used comparable formula.

- a. The first adjustment shall be made effective as of January 1, 2022 and shall be accomplished by multiplying the Initial Fee by a fraction, the numerator of which shall be the August 2021 Index, the denominator of which fraction shall be the August 2020 Index.
- b. All succeeding adjustments to the Fee shall be made annually effective January 1 of the succeeding year and shall be accomplished by multiplying the then current Fees by a fraction, the numerator of which shall be the then current August Index and the denominator of which fraction shall be the August Index from the prior year.

IV. Penalty for Unauthorized Use of Owner Facilities:

A. The Penalty Fees for unauthorized use of Owner facilities, effective January 1, 2021, are as follow:

Per pole \$_____

Per pole spanof overhead route to be overlashed.....\$_____

Per anchor/guy attachment.....\$_____

B. Adjustment to Initial Fees: On or before September 30, 2021, and on or before September 30 of each year thereafter, Owner shall establish and notify Licensee of the Penalties to become effective as of January 1 of the following year.

C. In addition to the Penalty above, an assessment for delinquent Pole Attachment shall be due Owner. The installation date for such calculations shall be set as the date of the most recent inventory of Attachments prior to the discovery of the unauthorized use.



Town of Tarboro, North Carolina Mayor and Council Communication

Subject: Ward Redistricting Update and Information

Date: 9/13/2021

Memo Number: 21-61

The Town of Tarboro, having a representative voting Ward structure, must evaluate existing wards based on the data provided by the 2020 Census to determine if any changes need to be made. To assist with this process, the Town entered into a contract for legal services with Tharrington Smith LLP. In that legal representatives with Tharrington Smith LLP are spread thin with redistricting representation state-wide, scheduling conflicts have resulted in partnerships with other legal firms to accomplish redistricting services in a timely manner. As such, going forward the Town of Tarboro will be represented by Marshall Hurley PLLC and demographer Blake Esselstyne in redistricting matters. Marshall Hurley will be present to give Council an update on the redistricting process and appropriate next steps to accomplish an accurate drawing of Ward boundaries before the filing deadline.



Town of Tarboro, North Carolina Mayor and Council Communication

Subject: Resolution for Consideration of Annexation

Date: 9/13/2021

Memo Number: 21-62

Municipal growth through annexation is essential to sound urban development and continued economic development and the North Carolina General Statues provide for annexation by municipalities according to certain legislative standards and with the provision of certain services. There are certain areas surrounded by Town limits which staff recommends for annexation.

The attached Resolution of Consideration for Annexation will begin the process of annexation according to the included timeline as established by General Statute, as mapped on Exhibit A.

It is recommended that Council approve the Resolution of Consideration.

ATTACHMENTS:

Description	Upload Date	Type
Exhibit B Timeline for Annexation	9/7/2021	Exhibit
Resolution for Consideration of Annexation	9/7/2021	Resolution Letter
Annexation Map	9/8/2021	Exhibit

Exhibit B

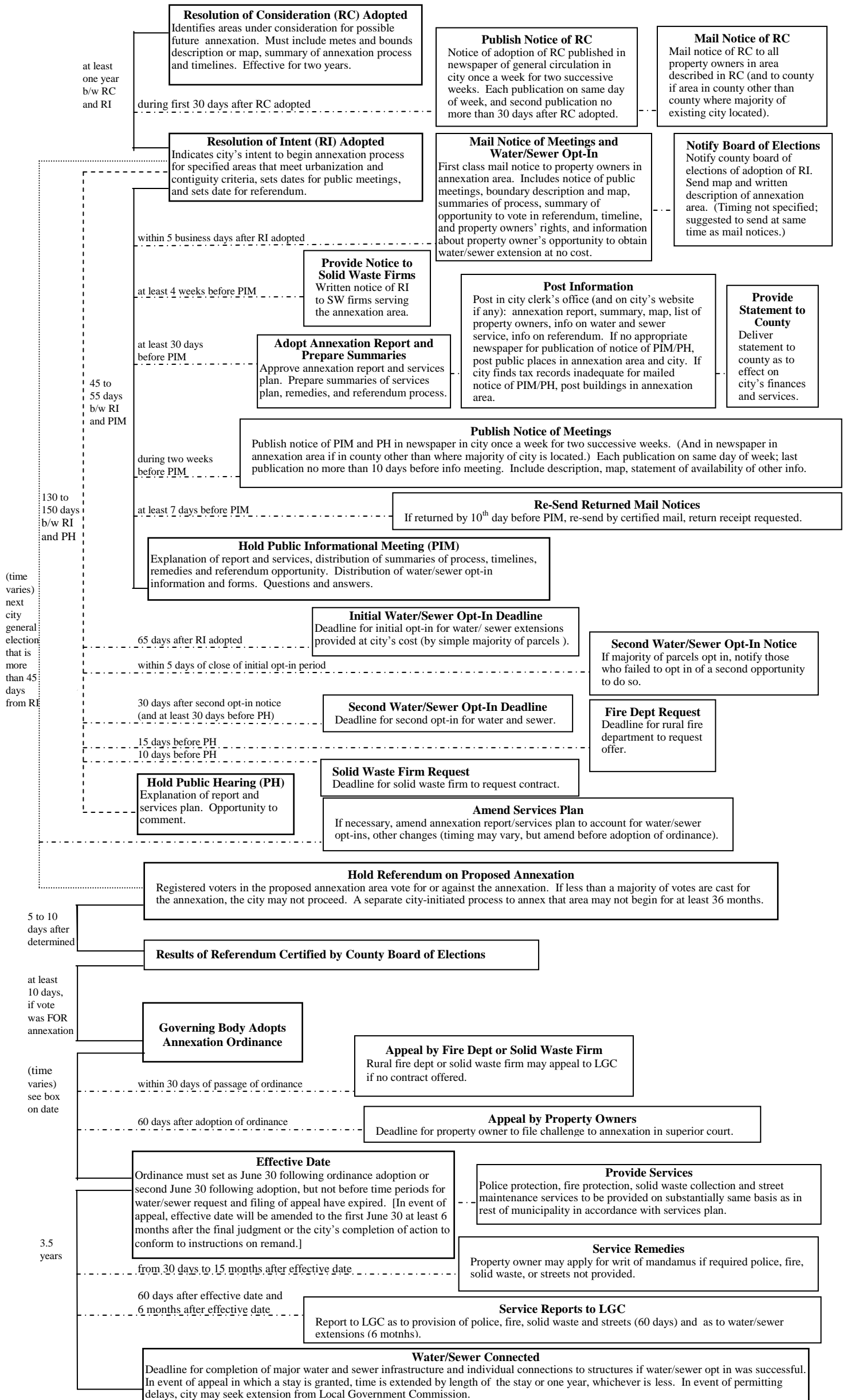
Resolution of Consideration Adopted by the Town of Tarboro on September 13th, 2021

The annexation process outlined in Part 7 of Article 4A of the North Carolina General Statutes is outlined in detail in Exhibit B-1 attached hereto. Each potential step in the annexation process as well as the timelines are outlined in Exhibit B-1. However, the process generally consists of the following:

- The process is begun by the adoption of a Resolution of Consideration. Once adopted, the Resolution must be published and mailed to property owners of real property located within the area under consideration for annexation. The Resolution of Consideration remains effective for a period of two (2) years after adoption.
- No sooner than one (1) year following adoption of the Resolution of Consideration, but within the 2-year effective period for the Resolution of Consideration, the Town Council must adopt a Resolution of Intent. This Resolution indicates the Town's intent to proceed with the annexation of some or all of the area described in the Resolution of Consideration. This Resolution must describe the boundaries of the area proposed for annexation, fix a date for a public informational meeting, fix a date for a public hearing on the question of annexation, and fix a date for the referendum on annexation. The date for the public informational meeting shall be not less than 45 days nor more than 55 days following the passage of the Resolution of Intent. The date for the public hearing shall not be less than 130 days nor more than 150 days following passage of the Resolution of Intent. The date of the referendum on annexation shall be set for the next municipal general election that is more than 45 days from the date of the Resolution of Intent.
- A notice of public informational meeting, public hearing and opportunity for water and sewer must be issued. This notice must be published and mailed within five (5) business days of the passage of the Resolution of Intent to the property owners of real property located within the area to be annexed.
- At least 30 days before the date of the public informational meeting, the Town Council must approve a report, as described in N.C.G.S. § 160A-58.53, setting forth plans to provide services to the area proposed for annexation. A summary of the report must be prepared for public distribution and the report and related materials must be posted in the office of the Town Clerk and on the Town's website.
- At the public informational meeting, a representative of the Town shall explain the report described in the preceding paragraph and explain the manner in which major municipal services shall be provided to the area to be annexed. Additional information regarding the annexation must be provided.

- At the public hearing, a representative of the Town shall explain the report described above and then property owners and residents of the area proposed to be annexed shall be given an opportunity to be heard.
- The next step in the process is a referendum to consider the question of annexation. Only registered voters of the proposed annexation area shall be allowed to vote on the referendum. A majority of the votes cast on the referendum must be in favor of annexation in order for the Town to proceed with annexation.
- Assuming the referendum approves the annexation, the Town Council, at a regular or special meeting held no sooner than the 10th day following the certification of the election, may adopt an ordinance extending the corporate limits of the municipality to include all or part of the area described in the notice of public hearing.
- Within 60 days following the adoption of the annexation ordinance, any property owner of real property located within the area described in the annexation ordinance may file a petition in Edgecombe County Court seeking review of the action of the Town Council.

Timeline for Municipality-Initiated Annexation



**A RESOLUTION IDENTIFYING THE AREA DESCRIBED WITHIN AS BEING UNDER CONSIDERATION FOR
ANNEXATION**

WHEREAS, municipal growth through annexation is essential to sound urban development and continued economic development in the Town of Tarboro; and

WHEREAS, the North Carolina General Statutes provide for annexation by municipalities according to certain legislative standards, and with the provision of certain services; and

WHEREAS, there are areas adjacent to the Town of Tarboro that may be eligible for annexation under the North Carolina General Statutes; and

WHEREAS, the Town Council is in the process of considering areas for possible annexation and plans to review those areas under consideration annually; and

WHEREAS, North Carolina General Statute 160A-55 provides that a Resolution of Consideration must be adopted by the Town Council at least one year prior to the Resolution of Intent to Annex in order to begin the Town-initiated annexation procedure and make it effective within a year after the date of passage of the annexation ordinance; and

WHEREAS, the effect of this resolution is also to adopt the boundaries as shown on the attached map;

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

SECTION I

That all areas described on Exhibit A (Resolution of Consideration Map 2021-1) are under consideration for annexation by the Town of Tarboro and the Attachment is incorporated herein by reference.

SECTION II

That a summary of the annexation process and timelines as required by N.C.G.S. 160A58.55(b) is attached hereto labeled Exhibit B.

SECTION III

That this Resolution and Map shall be on file in the Office of the City Clerk of the Town of Tarboro for viewing by citizens of the Town and surrounding area.

SECTION IV

That following adoption of this Resolution of Consideration, the Town Clerk or her designee is directed to publish notice of such adoption in the manner required by N.C.G.S. § 160A-58.55(b).

SECTION V

That the Town Clerk or her designee shall mail a copy of the Resolution of Consideration within thirty (30) days after the adoption of such Resolution by first class mail to the property owners of real property located within the area identified in Exhibit A as shown by the tax records of Edgecombe County.

SECTION VI

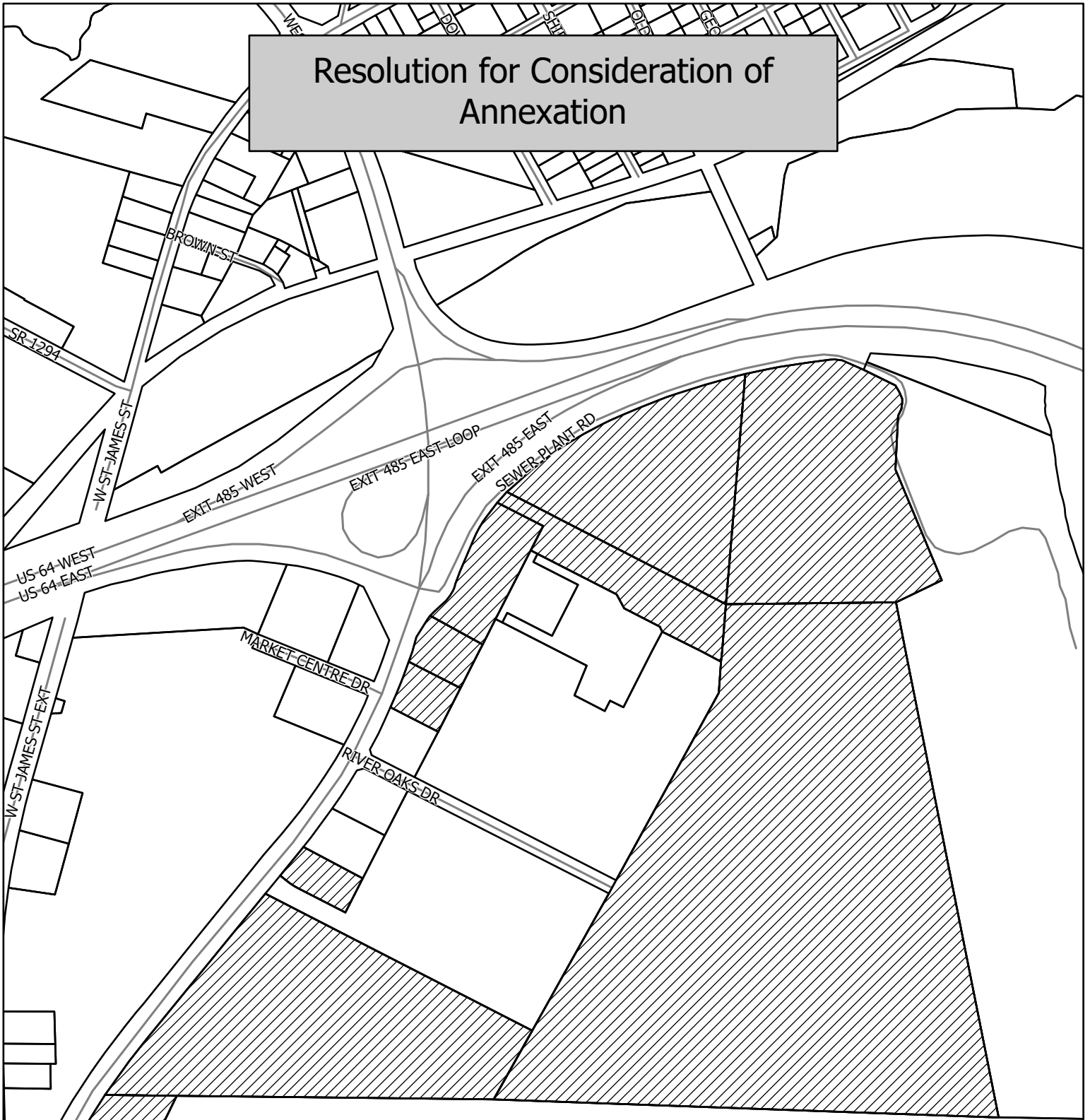
That this Resolution shall become effective immediately upon adoption.

Adopted by the Tarboro Town Council on this 13th day of September, 2021.

Joseph W. Pitt, Mayor

Leslie M. Lunsford, Town Clerk

Resolution for Consideration of Annexation



- Street Centerlines
- Edgemcombe County Parcels Outlines
- ▨ Parcels To Be Annexed

N

Map Created by
Chris Barbieri
Town of Tarboro
September 8, 2021

0 475 950
Feet



Town of Tarboro, North Carolina Mayor and Council Communication

Subject: Field of Honor Request - Tarboro Rotary Club

Date: 9/13/2021

Memo Number: 21-63

The Rotary Club of Tarboro is preparing to launch its second annual Field of Honor from November 4th-19th. The days surrounding Veterans Day were chosen as an appropriate time to honor members of our armed forces, first responders, and all who are or have been heroes in our lives.

Because of the local support and hard work of Rotary Club members and volunteers, the inaugural event enabled the Rotary Club of Tarboro to contribute over \$30,000 to local causes and charities including first responder scholarships and high school R.O.T.C. programs in the area. Last year 250 flags were displayed on the Town Common and many citizens expressed their appreciation for the display. This year 350 flags have been planned for display.

The Board of the Rotary Club of Tarboro would like to request that the Tarboro Town Council again allow the flags be displayed on the section of Town Common flanking Main Street on both sides so that both drivers and pedestrians may enjoy this visual display.

It is recommended that Council give the Tarboro Rotary Club permission to install flags on the Town Common from November 4th-19th, 2021 and to allow staff to grant permission for each coming year depending on any conflicts with other events, for a Field of Honor display as described above.



Town of Tarboro, North Carolina Mayor and Council Communication

Subject: Special Event - Brewgrass Festival - Request for Co-Sponsorship

Date: 9/13/2021

Memo Number: 21-64

Tarboro Development Corporation is requesting that the Town of Tarboro co-sponsor the Brewgrass Festival event to take place on Sunday, November 7, 2021 at Riverfront Park from 12pm to 5pm. TDC is asking the Town to provide the stage, trash cans, trash pickup afterwards, portable toilets, hand washing stations, security and the closure of River Road for the event.

It is recommended that Council agree to co-sponsor the Brewgrass Festival scheduled for November 7, 2021 from 12:00pm to 5:00pm by providing in-kind services and equipment as listed above.



Town of Tarboro, North Carolina Mayor and Council Communication

Subject: Re-appropriations from FY20-21 to FY21-22

Date: 9/13/2021

Memo Number: 21-65

As of June 30, 2021, there were a number of open items which were appropriated through the execution of a purchase order but not completed prior to the fiscal year end. These items cannot be absorbed in this year's budget and should be re-appropriated. All amounts to be re-appropriated were budgeted, available and unspent as of period ending June 30, 2021.

It is recommended that Council adopt the attached budget resolution.

ATTACHMENTS:

Description	Upload Date	Type
Budget Amendment - Re-appropriations	9/8/2021	Budget Amendment

BUDGET RESOLUTION

TOWN COUNCIL OF THE TOWN OF TARBORO

September 13, 2021

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TARBORO, NORTH CAROLINA, that the 2021-2022 Fiscal Year Budget be amended by amending Revenue and Expenditure line items as follows:

<u>Account Number</u>	<u>Account Name</u>	<u>Current Budget</u>		<u>Amount of Change</u>		<u>Revised Budget</u>
REVENUES - GENERAL FUND						
10-3991-0100	Fund Balance Appropriated	703,403	+	388,831	=	1,092,234
EXPENDITURES - GENERAL FUND						
10-4120-6200	Administration - Economic Development	106,400	+	49,788	=	156,188
10-4130-3300	Finance - Accounting - Department Supplies	9,000	+	2,316	=	11,316
10-4135-3300	Finance - Admin - Department Supplies	2,000	+	570	=	2,570
10-4140-3300	Finance - Collections - Department Supplies	4,000	+	1,390	=	5,390
10-4145-7400	Technology - CO Equipment	-	+	57,500	=	57,500
10-4260-1500	PW - Bldgs & Grounds - Maintenance & Repair	60,000	+	1,250	=	61,250
10-4260-7300	PW - Bldgs & Grounds - CO Improvements	133,500	+	7,500	=	141,000
10-4310-1600	Police - Maintenance & Repair- Equipment	25,200	+	1,451	=	26,651
10-4310-3300	Police - Department Supplies	52,000	+	6,781	=	58,781
10-4310-3600	Police - Uniforms	20,000	+	317	=	20,317
10-4310-3601	Police - Bullet Proof Vests	4,000	+	635	=	4,635
10-4310-7400	Police - CO Equipment	-	+	120,648	=	120,648
10-4340-1600	Fire Department - Maintenance & Repair- Equipm	35,000	+	2,006	=	37,006
10-4340-3300	Fire Department - Department Supplies	33,000	+	550	=	33,550
10-4340-3600	Fire Department - Uniforms	31,650	+	4,435	=	36,085
10-4340-7400	Fire Department - CO Equipment	169,900	+	53,905	=	223,805
10-4520-7400	PW - Streets - CO Equipment	12,600	+	50,000	=	62,600
10-4900-8305	Planning & Econ Dev - Storefront Improvement	10,000	+	5,000	=	15,000
10-4900-8306	Planning & Econ Dev - Marketing Tarboro	30,000	+	21,640	=	51,640
10-6125-3300	Parks & Rec - Pools - Department Supplies	20,950	+	743	=	21,693
10-6130-3301	Parks & Rec - Indian Lake - Athletic Supplies	43,150	+	406	=	43,556

REVENUES - ELECTRIC FUND

30-3991-0100	Fund Balance Appropriated	-	+	113,219	=	113,219
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EXPENDITURES - ELECTRIC FUND

30-7200-7400	Administration - CO Equipment	-	+	40,000	=	40,000
30-7210-1600	Operations - Maintenance & Repair Equipment	35,000	+	15,980	=	50,980
30-7210-3300	Operations - Department Supplies	35,000	+	1,000	=	36,000
30-7210-3302	Operations - Metering Supplies	30,000	+	5,300	=	35,300
30-7210-7300	Operations - CO Improvements	17,500	+	34,453	=	51,953
30-7210-9200	Operations - Maintenance - Substations	75,000	+	16,486	=	91,486

REVENUES - WATER & SEWER FUND

31-3991-0100	Fund Balance Appropriated	-	+	199,753	=	199,753
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EXPENDITURES - WATER & SEWER FUND

31-7100-7400	Administration - CO Equipment	24,974	+	27,761	=	52,735
31-7110-1600	Water Treatment - Maintenance & Repair	60,000	+	19,000	=	79,000
31-7110-3300	Water Treatment - Dept Supplies	354,000	+	43,181	=	397,181
31-7120-7300	Water Distribution - CO Improvements	306,500	+	56,000	=	362,500
31-7140-3300	Sewage Collection - Department Supplies	40,000	+	5,699	=	45,699
31-7150-1600	WW Pump Stations - Maintenance & Repair	35,000	+	48,112	=	83,112

REVENUES - SOLID WASTE FUND

32-3991-0100	Fund Balance Appropriated	-	+	60,000	=	60,000
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EXPENDITURES - SOLID WASTE FUND

32-7500-2100	Administration - Yard Waste Grinding	60,000	+	60,000	=	120,000
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REVENUES - STORMWATER FUND

33-3991-0100	Fund Balance Appropriated	-	+	128,430	=	128,430
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EXPENDITURES - STORMWATER FUND

33-7300-4300	Administration - Professional Services	15,000	+	26,850	=	41,850
33-7300-7300	Administration - CO Improvements	100,000	+	101,580	=	201,580

BE IT FURTHER RESOLVED that the Budget Officer is hereby authorized and directed to implement said budget as amended.



*Town of Tarboro, North Carolina
Mayor and Council Communication*

Subject: Appointment for September - Historic District Commission

Date: 9/13/2021

Memo Number: 21-66

After consideration, Brent Nash has decided to no longer serve on the Historic District Commission leaving a vacant position.

Charles Taylor is interested in serving on this board and his application is attached.

It is recommended that Council appoint an individual to fill the vacancy on the Historic District Commission at the September Council meeting.

ATTACHMENTS:

Description	Upload Date	Type
Tarboro Board Application	9/2/2021	Backup Material



Town of Tarboro

Application for Boards and Commissions

Please print or type the following information:

Name: Charles Taylor Daytime Telephone: 252-903-3032

Address: 509 Saint Patrick St Ward: 5 Zip Code: 27886

Email: chuckcharles22@gmail.com

Length of Residence in Tarboro: 33 years

Please indicate which board, commission, or committee on which you would like to serve:

Historical Society

Why would you like to serve? I live in the Historic District, have been through the process to obtain a permit, and value the point of view the board provides in keeping the District growing

Please describe how your education, work experience, and community activities are relevant to your selections: Lived all my life in Tarboro minus the 4 years in Chapel Hill. Own many properties of which I like to update & remodel myself. Enjoy construction & woodworking

Community Activities: Many years in the Alzheimers Walk, Cancer Run, coached soccer in Tarboro, fundraisers for ECC & Vidant Hospital

Employment History: Links @ Cotton Valley Highschool through College. The Governors Club in Chapel Hill. Chatham County Sheriff's Office. NC DMV License & Truck last 10 years

Education: Tarboro High Graduate, NC Wesleyan College with BA in Justice Studies recently promoted to Lieutenant

Are you currently a member of any state, federal, or local board, commission, or committee? If so, please list below: Licensed

Real Estate Broker-NC, NC Criminal Justice Training & Standards - Law Enforcement Advance Certificate

All information contained on this application is subject to public disclosure and will be reviewed by public officials. Attach any additional supporting documentation that is relevant to your qualifications to serve, i.e. resume, bio, etc.

Signature of Applicant: [Signature] Date: 8-11-21

All information contained on this application is subject to public disclosure and will be reviewed by public officials. Attach any additional supporting documentation that is relevant to your qualifications to serve, i.e. resume, bio, etc.

Submit Application by Mail to: Town of Tarboro or Fax to: 252-641-4254
Attn: Town Manager
P.O. Box 220
Tarboro, NC 27886



*Town of Tarboro, North Carolina
Mayor and Council Communication*

Subject: Appointment for September - Planning Board & Zoning Commission

Date: 9/13/2021

Memo Number: 21-67

The untimely death of Morris Mays has left a vacancy for Ward 6 on the Planning Board and Zoning Commission.

It is recommended that Council be prepared to appoint an individual to the Planning Board and Zoning Commission to represent Ward 6 at the September Council meeting.



Town of Tarboro, North Carolina Mayor and Council Communication

Subject: Appointment for September - Tarboro-Edgecombe Arts Commission

Date: 9/13/2021

Memo Number: 21-68

In December 2020, Council voted to enter into an Interlocal Agreement with Edgecombe County to create the Tarboro-Edgecombe Arts Commission. To date, Council has appointed Brandon Bunn, Lydia Hyslop, Rosena Ricks, Beverly Sessoms and Ryan Thorne to serve on this board.

It is recommended that Council appoint one (1) individual for a total of six (6) to the Tarboro-Edgecombe Arts Commission at the September Council meeting.



*Town of Tarboro, North Carolina
Mayor and Council Communication*

Subject: Appointment for October - Edgecombe County Tourism Development Authority

Date: 9/13/2021

Memo Number: 21-69

The three (3) year term for Raj Patel will expire in October 2021.

It is recommended that Council be ready to appoint an individual to fill the expired term on the Edgecombe County Tourism Development Authority at the October Council meeting.



*Town of Tarboro, North Carolina
Mayor and Council Communication*

Subject: Appointment for October - Parking Authority

Date: 9/13/2021

Memo Number: 21-70

The (5) five year terms for Jimmy Dupree and Carlton Jones will expire in October 2021.

Both Mr. Dupree and Mr. Jones are interested in serving another (5) five year term.

It is recommended that Council appoint individuals to fill the expired terms at the October Council meeting.



*Town of Tarboro, North Carolina
Mayor and Council Communication*

Subject: Appointment for October - Redevelopment Commission

Date: 9/13/2021

Memo Number: 21-71

The (5) five year terms for Jerry Spruell and Samuel Noble will expire in October 2021.

Mr. Spruell and Mr. Noble are interested in serving another (5) five year term.

It is recommended that Council appoint individuals to fill the expired terms at the October Council meeting.



*Town of Tarboro, North Carolina
Mayor and Council Communication*

Subject: Appointment for October - Tarboro Main Street Façade Committee

Date: 9/13/2021

Memo Number: 21-72

The 2-year term for the following individuals will expire in October 2021:

Sylvia Nash
Bret Broadwater
Maggie Gregg

All three individuals are interested in serving another term on the Tarboro Main Street Façade Committee.

It is recommended that Council appoint three individuals to fill the expired terms at the October Council meeting.