



**Town of Holden Beach
Board of Commissioners
Public Hearing/Regular Meeting**

**Tuesday, September 19, 2023
5:00 PM**

**Holden Beach Town Hall
Public Assembly**



**TOWN OF HOLDEN BEACH
BOARD OF COMMISSIONERS' PUBLIC HEARING/REGULAR MEETING
HOLDEN BEACH TOWN HALL – PUBLIC ASSEMBLY
TUESDAY, SEPTEMBER 19, 2023 - 5:00 P.M.**

PUBLIC HEARING: Concerning the Approval of the Execution and Delivery of an Installment Financing Contract in a Principal Amount Not to Exceed \$5,000,000 to Finance the Upfit of the Town's Sewer Lift Station #2

REGULAR MEETING:

1. Invocation
2. Call to Order/ Welcome
3. Pledge of Allegiance
4. Agenda Approval
5. Approval of Minutes
 - a. Minutes of the Public Hearing/Regular Meeting of August 15, 2023
(Pages 1 - 6)
6. Public Comments on Agenda Items
7. Police Report – Lieutenant Frank Dilworth
(Pages 7 - 15)
8. Inspections Department Report – Inspections Director Evans
(Pages 16 - 18)
9. Discussion and Possible Award of Contract for Upfit of Sewer Lift Station #2 – Assistant Town Manager Ferguson
(Pages 19 - 79)
10. Discussion and Possible Amendment to the Contract Between the Town and Southern Disaster Recovery, LLC – Public Works Director Clemmons
(Pages 80 - 81)
11. Discussion and Possible Action on Regulations for Removing Sand From the Beach – Mayor Holden
(Pages 82 - 85)
12. Public Comments on General Items
13. Town Manager's Report

14. Mayor's Comments

15. Board of Commissioners' Comments

16. Adjournment

* Visit <https://www.facebook.com/holdenbeachtownhall/> to watch the livestream of the meeting. Public comments can be submitted to heather@hbtownhall.com prior to 12:00 p.m. on September 19, 2023.



**TOWN OF HOLDEN BEACH
BOARD OF COMMISSIONERS
PUBLIC HEARING/REGULAR MEETING
TUESDAY, AUGUST 15, 2023 – 5:00 P.M.**

The Board of Commissioners of the Town of Holden Beach, North Carolina met for a Public Hearing/Regular Meeting on Tuesday, August 15, 2023 at 5:00 p.m. in the Town Hall Public Assembly. Present were Mayor J. Alan Holden; Mayor Pro Tem Rick Smith; Commissioners Page Dyer and Gerald Arnold; Town Manager David W. Hewett; Town Clerk Heather Finnell; Assistant Town Manager Christy Ferguson; Inspections Director Tim Evans; Public Works Director Chris Clemmons; Police Chief Jeremy Dixon; Lieutenant Frank Dilworth; Finance Officer Daniel McRainey; and Town Attorney Rick Green. Commissioner Brian Murdock was unable to attend the meeting.

PUBLIC HEARING: FINAL APPLICATION FOR THE BLOCK Q RESTROOM FACILITY AS PART OF THE 2023 – 2024 PUBLIC BEACH AND WATERFRONT ACCESS GRANT

Assistant Town Manager Ferguson explained the Board reviewed the pre-application for the grant for Block Q several months ago. The Town was invited to submit a final application. It is due by August 28th. The site plan previously was approved by the Board in the past. During the pre-application process, the Board asked if the deed restrictions would apply to the entire property or only the parts of the property where the grant funding would pertain. That would include the bathroom, the parking lot connected to the bathroom and the landscaping on that side that is in the grant application. They said the Town could do that. If you look on GIS, it looks like it would involve 232NF004, 232NF003 and 232NF002. That would not need to be defined in the application. It would come along when we file the deed restrictions if the Town gets the grant.

No public comments were made.

Mayor Holden closed the public hearing at 5:02 p.m.

REGULAR MEETING

Mayor Holden asked for a moment of silence and then called the meeting to order. He announced Commissioner Murdock was under the weather and unable to attend the meeting.

PLEDGE OF ALLEGIANCE

AGENDA APPROVAL

Mayor Holden asked the Board to consider moving item 11 to 8a and removing item 12, unless someone would like to take over Commissioner Murdock's item.

Motion by Commissioner Arnold to accept the changes; second by Commissioner Dyer. The amended agenda was unanimously approved.

APPROVAL OF MINUTES

Motion by Mayor Pro Tem Smith to approve the minutes for our regular meeting and the public hearing on July 18th; second by Commissioner Dyer; approved by unanimous vote.

PUBLIC COMMENTS ON AGENDA ITEMS

Comments submitted online are posted on the Town's website.

Clayton Robinson provided the reasons he would like to change the hours of Section 94.06: Placing Obstructions on the Beach.

Tracey Thomas said she hopes someone will explain how it turned into a \$5 million loan application. She asked the Board to not be rushed into making a decision.

Tom Myers read his written comments (hereby incorporated into the minutes).

Brent Shaver suggested looking at things like the improvements to Sailfish Park when looking into identifying sources for funding the lift station.

POLICE REPORT – CHIEF DIXON

- July was a busy month. Went over numbers. The biggest issue we saw was an increase of criminal incident reports, which include B&Es, larcenies. They took a total of 23. Officers did an amazing job of tracking down leads and working the cases as they could. They closed out seven of the cases. We have 16 open. We really need an investigator. They are doing what they can with the resources available. Also saw an increase in parking complaints and violations.
- Something that came to their attention is the fine for prohibited vehicles on the strand. The fine is \$50. He suggested the Town may want to look at increasing that fine. Sunset Beach and Ocean Isle both have \$100 fines.

Mayor Pro Tem Smith has noticed this past month that officers have been more diligent with responding to LSV violations, especially when children are involved. They are doing a good job of weighing out how to respond.

INSPECTIONS REPORT – INSPECTIONS DIRECTOR EVANS

- Went over the numbers. It is very busy. People's rentals are slowing down so they are now preparing to make repairs. Numerous lots have been sold; permits will be issued.
- When the world fell apart between 2008 – 2011 last time, Holden Beach held steady. Seeing a trend and thinks it will continue to hold steady.

DISCUSSION AND POSSIBLE ACTION ON IDENTIFYING ADDITIONAL SOURCES OF FUNDING FOR SEWER LIFT STATION

Mayor Holden reassured the public that the commissioners are aware of the concerns the public has. If you look in the past, there seems to be an ebb and flow of needs for funds for various projects. It comes in bunches. The Board and staff are continuously seeking funding and making contacts with the powers to be in Washington and Raleigh. The state's budget has not passed yet. We have done a lot of communication with our state and federal representatives and have some things we are hopeful of. All the money is not going to be borrowed. We need to have multiple avenues of funding in case things get worse. He said if you have a credit card with a \$25,000 limit, it doesn't mean you borrow \$25,000 on your credit card just because you have the ability to do that. Mayor Holden explained we are trying to have a source to cover our needs if we have to. Please don't think that just because we have the ability to go get money, that we are going to do it. In the near future, the state budget will be passed. Mike McIntyre and our Washington contacts that represent us have some things going on as well to provide some funds for us. Mayor Holden is asking people to understand that just because funds may be available, we are not planning on using all the money that is available. He asked the public to hang in there.

DISCUSSION AND POSSIBLE ACTION ON THE FINAL APPLICATION FOR THE BLOCK Q RESTROOM FACILITY AS PART OF 2023 – 2024 PUBLIC BEACH AND WATERFRONT ACCESS GRANT (BLOCK Q)

Assistant Town Manager Ferguson said she covered most of the information during the public hearing. It is a reimbursement grant. We would pay for it up front and get reimbursed by the state. The deed restrictions are for 25 years. She read an email from the state confirming that you can limit the deed restrictions to only the parcels that have improvements through grant funding.

Motion by Mayor Pro Tem Smith to instruct staff to submit the application for the Public Beach and Waterfront Access Grant before the August 28th deadline; second by Commissioner Arnold; approved by unanimous vote.

DISCUSSION AND POSSIBLE ACTION ON RESOLUTION 23-11, RESOLUTION AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO

Assistant Town Manager Ferguson stated the resolution was prepared by our bond attorney. The bond attorney and the financial advisor are on standby if the Board would like to contact them. The resolution is necessary in our process of documents that have to go to the Local Government Commission (LGC) to obtain financing for Sewer Lift Station 2. The required public hearing notice is

also in the packets. The public hearing date has been updated to September 19th in the documents provided tonight since a quorum of the Board was not available on September 12th. The Notice to the Joint Legislative Committee needs to go out today. Assistant Town Manager Ferguson explained the not to exceed amount of \$5 million is the ceiling. That is for the worst-case scenario. The engineer is saying it would not be out of the ballpark to have the bids come in at \$4.5 million or more. It is also a strained bid climate. This is a limit. We cannot go back a second time to the LGC. The Town doesn't intend it to be a \$5 million number, but we do not know until the bids come in. Assistant Town Manager Ferguson explained at the last meeting the Board was under the impression that we were going to cut off the grant. We talked to the EPA. The ball was in their court, we had done everything we could. We said while we are running this calendar, we will let them play catchup, maybe the trains will align. We did not tell them we didn't want the money and we are still running both trains simultaneously and hoping they will come in by our deadline. The \$5 million gives the Town flexibility and is the prudent choice when we talked to our financial advisors. It doesn't take into account any of the cash on hand the Board would like to apply. This is a maximum number. She provided an example of a credit card limit. The \$5 million is if the grant doesn't come through, the bid climate is high and if the Board can't use cash on hand. Staff doesn't think the Town will need to use that much, but we won't know until bids are awarded. Assistant Town Manager Ferguson said to take action the Board would need to approve Resolution 23-11, as well as Exhibit A to set the public hearing and direct the town manager to notify the Joint Legislative Committee of the Town's intentions through execution of Attachment 3. She explained the LGC understands we are still trying to get the EPA grant and they hope to see it come through, but they know we need wiggle room in case it doesn't come through in time. She said we are basically proceeding at our own risk, following our own construction and financial calendars. If the EPA catches up, hopefully we can recoup some of the money. On Friday we were advised the Town doesn't need a full NEPA review.

Commissioner Arnold said it seems like we are in the deadline business, whether we want to be or not. In order to get the process started, we need to approve the application and other appropriate documents. He thinks it has been very well explained tonight. Looking at the success we had in the past, he knows the Town will make our best effort.

Motion by Commissioner Arnold that we get started with it, process it and go forward; second by Commissioner Dyer.

Mayor Pro Tem Smith said he is still having trouble with not being able to receive over \$2.5 million. He asked at what point the Town loses hope of having the funding available to us. Assistant Town Manager Ferguson said we will continue to try to push to try to get the money.

The motion passed by a 2-1 vote, with Commissioners Dyer and Arnold voting for the motion and Mayor Pro Tem Smith voting in the negative.

Assistant Town Manager Ferguson reminded the Board the public hearing is September 19th.

PUBLIC COMMENTS ON GENERAL ITEMS

Beverly Compton provided information on Candidate's Night.

Tracey Thomas doesn't buy into the analogy of a credit card. That is what a savings account is for and she thinks that is how the Town should be running their budget.

TOWN MANAGER'S REPORT

- Canal Dredging in Harbor Acres – we are setting up for a winter event, dredging of some selective areas. There are some high spots in there. Since it is a relatively small-scale project, it is probably going to be a bucket dredge operation, instead of a traditional hydraulic pipeline dredge. Our engineer is developing those specs.
- Lockwood Folly Inlet Crossing and Bend Widener Dredging Project – The Corps is going to be paying for about 80,000 cubic yards of sand. There is another 60,000 in the bend widener. The Town through the long-term MOA, along with Brunswick County helping out a little, is going to fund the \$535,000 project for the bend widener sand. All the sand together is about 140,000 cubic yards. It will be placed on the east end in the area of Amazing Grace back to the Winding River Clubhouse area. The state picks up 75% of the \$535,000 and the town and the county will split the residual 75/25%. For about \$100,000, we will receive 140,000 cubic yards of sand on the east end. Those funds have already been transferred. It will be a wintertime project. Hopefully that will dovetail nicely with the private firm's dredging through the Civil War historic district earlier this June.
- Ocean Boulevard Resurfacing and Bike Lane Project – based on the latest meeting with DOT from the contractor, the survey work for that project will begin as soon as September 11th, with construction starting in November. The GSATS Committee meets Friday and the project manager should be there so we can get more details.

MAYOR'S COMMENTS

- On GSATS Committee, doesn't have anything different than what was just reported on the resurfacing and bike paths.
- There are a couple of hurricanes out there. We are at the end of the summer. Be ready and be reassured the Town will do its best to do what's best for the Town to protect properties. We are as prepared as we can be.
- Warned people about the heat.
- Don't forget buses as school starts. Hard to believe the summer has almost ended. Looking forward to the fall weather.

BOARD OF COMMISSIONERS' COMMENTS

Mayor Pro Tem Smith

- Thanked staff, Inspections Director Evans, Town Manager Hewett and everybody for moving forward with the ADA work. Seems to be coming along nicely. Doesn't know how anyone can expect it to get done quickly if you don't get started. Thinks work they have done seems to be a cohesive effort to get this taken care of. It is appreciated.
- We are blessed with the miracle of being able to find four divers 60 miles offshore. It was a traumatic Sunday evening. Thank goodness they were highly qualified divers. If it wasn't for the

actions of the Navy and Coast Guard, they wouldn't be back on Starfish today. We are blessed to have such wonderful equipment that could be deployed that quickly.

Commissioner Dyer

- Thanked everyone for attending the meeting.
- Appreciates the staff, all they have done. We have a lot going on. Appreciates them helping move forward on some of these projects.
- Heat index has been terrible for humans. Keep in mind that animals need to be cool. Bring them inside, watch the asphalt and sand. If you aren't walking barefoot on it, you don't need to let them walk barefoot on it. Stay hydrated, safe and have a wonderful Labor Day.

Commissioner Arnold

- Agreed it was a blessing. It was a miracle to rescue all of them.
- Appreciates the staff. We do have deadlines we need to meet. You go through your best thinking, give your best hunches and expertise and we make the best judgement calls we can make. Thanked everyone for that effort.
- Respects everybody's opinions.
- Thanks for coming.

ADJOURNMENT

Motion to adjourn by Mayor Pro Tem Smith at 5:59 p.m.; second by Commissioner Arnold; approved by unanimous vote.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk



Holden Beach Police Department

110 Rothschild St
Holden Beach, NC 29162
www.hbtownhall.com

Phone: 910-842-6707
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Calls For Service (August '23)

Printed on September 7, 2023

Descriptions	Totals	
911 Hang Up (911HU)	1	1
Administrative Call	1	1
Alarm (SIG45 Signal 45)	17	17
Animal Control Call	8	8
Assist Other Agency (EMS); Domestic Disturbance (10-82 x82)	1	1
Assist Other Agency (EMS); Fight in Progress (10-40 x40)	1	1
Attempt to Locate (ATL)	16	16
Breaking and Entering in Progress (10-62 x62)	4	4
Breathing Problems [Delta]	1	1
Burns or Scalds [Bravo, Need Fire]	1	1
Call By Phone (10-21Law x21L)	15	15
Careless & Reckless (C&R)	3	3
Careless & Reckless (C&R); Call By Phone (10-21Law x21L)	1	1
Chase or Pursuit (10-43 x43); Stopping Vehicle (10-61 x61)	1	1
Chest Pain or Discomfort [Delta]	2	2
Coastal Water Rescue [Delta]	1	1
Coastal Water Rescue (Multiple) [Delta]	1	1
Commercial or Industrial Fire Alarm [Charlie]	1	1
Crime in Progress (10-64 x64)	1	1
Debris in Roadway	1	1

Descriptions	Totals	
Disabled Motorist (10-87 x87)	4	4
Disturbance or Disorderly Subject	6	6
Disturbance or Disorderly Subject; Assist Other Agency (EMS)	1	1
Disturbance or Disorderly Subject; Warrant Service (Signal 62 SIG62)	1	1
Domestic Disturbance (10-82 x82)	5	5
Drunk Driver (10-55 x55)	1	1
Falls [Alpha]	1	1
Falls [Alpha]; Good Intent Call (Fire)	1	1
Falls [Bravo]	1	1
Falls [Bravo]; Assist Other Agency (Fire)	1	1
Fight in Progress (10-40 x40)	1	1
Fireworks	3	3
Gas Leak or Odor [Charlie]	1	1
Give Subject a Ride (10-5 x5)	1	1
Hemorrhage [Bravo]	1	1
Improperly Parked Vehicle (10-70 x70)	21	21
Information or Message Delivery (10-14 x14)	1	1
Intoxicated Person (10-56 x56)	1	1
Investigation (Law)	3	3
Keys In Vehicle or Lockout	3	3
Lost or Found Property	11	11
Medical Alarm [Bravo]; Alarm (SIG45 Signal 45); Assist Other Agency (Fire)	1	1
Meet with Complainant (10-83 x83)	18	18

Descriptions	Totals	
Meet with Complainant (10-83 x83); Call By Phone (10-21Law x21L)	1	1
Missing or Abandoned Person	3	3
Missing or Abandoned Person; Assist Other Agency (Fire)	1	1
Missing or Abandoned Person; Good Intent Call (Fire)	1	1
Noise Complaint	8	8
Open Door	5	5
Sick Person [Alpha]	1	1
Sick Person [Charlie]	1	1
Single Residential Fire Alarm [Bravo]	2	2
Special Check - Business - Residence (10-79 x79)	417	417
Special Operations Assignment (Signal 55 SIG55)	4	4
Stopping Vehicle (10-61 x61)	21	21
Stroke or TIA [Charlie]	1	1
Suspicious Vehicle or Subject (10-60 x60)	7	7
Suspicious Vehicle or Subject (10-60 x60); Attempt to Locate (ATL)	1	1
Take Written Report (10-92 x92)	7	7
Take Written Report (10-92 x92); Call By Phone (10-21Law x21L)	1	1
Traffic Accident (Property Damage Only 10-50PD x50PD)	5	5
Traffic Incident ACN [Bravo]	1	1
Traffic Incident [Bravo]	1	1
Trespassers	2	2
Unconscious or Fainting [Alpha]	1	1
Unconscious or Fainting [Delta]	3	3

Descriptions	Totals	
Unknown Problem [Delta]	1	1
Water or Sewer Problems	2	2
Welfare Check	4	4
	1	1
Totals	669	669



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HRPD Monthly Report (August '23)

Printed on September 7, 2023

Reported	Case Number	Address	Offenses	Disposition
08/01/23 13:16	HBP23-00086	DURHAM ST	90-95(D)(4) - POSSESS MARIJUANA UP TO 1/2 OZ; 20-141(B) - SPEEDING; 90-113 - MARIJUANA PARAPHERNALIA	Closed - Cleared By Arrest
08/01/23 16:40	HBP23-00087	303 OCEAN BLVD E	14-127 - Damage to Property; 14-54(B) - BREAKING OR ENTERING (M)	Investigator Requested
08/03/23 00:44	HBP23-00088	875 OCEAN BLVD W	14-190.5A(B) - DISCLOSE PRIVATE IMAGES/ADULT	Closed - Leads Exhausted
08/07/23 10:00	HBP23-00089	431 OCEAN BLVD W	14-90 - EMBEZZLEMENT	Investigator Requested
08/09/23 00:27	HBP23-00090	146 BRUNSWICK AVE	14-56 - ATTEMPT BREAK/ENTER MOTOR VEH	Investigator Requested
08/10/23 15:03	HBP23-00091	139 SEAGULL DR	14-54(B) - ATT BREAK OR ENTER BLDG (M)	Closed - Juvenile/No Custody
08/10/23 20:52	HBP23-00092	1097 OCEAN BLVD W	14-33 - ASSAULT/AFFRAY	Closed - Juvenile/No Custody
08/11/23 12:34	HBP23-00093	147 OCEAN BLVD E	14-72(B) - LARCENY OF A FIREARM - KEEP; 14-56 - BREAK OR ENTER A MOTOR VEHICLE	Investigator Requested
08/14/23 10:14	HBP23-00094	110 ROTHSCHILD ST	14-72 - LARCENY; receiving stolen goods or possessing stolen goods	Closed - Leads Exhausted
08/17/23 20:15	HBP23-00095	301 OCEAN BLVD E	14-33(A) - SIMPLE AFFRAY; 14-33(A) - SIMPLE AFFRAY	Closed - Resolved by Parties
08/18/23 20:02	HBP23-00096	727 OCEAN BLVD W	14-33(A) - SIMPLE AFFRAY	Closed - Resolved by Parties

Reported	Case Number	Address	Offenses	Disposition
08/19/23 10:10	HBP23-00097	108 ROTHSCHILD ST	14-72(A) - MISDEMEANOR LARCENY; 14-56 - BREAK OR ENTER A MOTOR VEHICLE	Closed - Unfounded
08/19/23 12:15	HBP23-00098	887 OCEAN BLVD W	14-159.12 - FIRST DEGREE TRESPASS (ENTER/REMAIN); 14-54(B) - BREAKING OR ENTERING (M)	Closed - Resolved by Parties
08/21/23 10:28	HBP23-00099	AVE A / OCEAN BLVD	14-113.13 - FINANCIAL CARD FRAUD (M)	Closed - Leads Exhausted
08/21/23 14:46	HBP23-00100	1026 OCEAN BLVD W	14-72(A) - MISDEMEANOR LARCENY; 14-56 - BREAK OR ENTER A MOTOR VEHICLE	Investigator Requested
08/23/23 11:40	HBP23-00101	117 FRIGATE DR	14-127 - Damage to Property; 14-56 - BREAK OR ENTER A MOTOR VEHICLE	Investigator Requested
08/24/23 11:02	HBP23-00102	165 HIGHPOINT ST	14-72(B) - LARCENY OF A FIREARM - KEEP	Closed - Unfounded
08/26/23 02:11	HBP23-00103	112 CONCH ST	14-56 - BREAK OR ENTER A MOTOR VEHICLE	Investigator Requested
08/31/23 12:56	HBP23-00104	114 SAND DOLLAR DR	14-113 - IDENTITY THEFT	Closed - Unfounded

Total Records: 19



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State Citation (August '23)

Printed on September 7, 2023

Date	Defendant	Statutes/Charges
08/01/23	SHELTON, LOGAN CHASE	20-141(B) - SPEEDING; 90-113 - MARIJUANA PARAPHERNALIA; 90-95(D)(4) - POSSESS MARIJUANA UP TO 1/2 OZ
08/01/23	ROBLERO, OMAR	20-129(G) - BRAKE/STOP LIGHT EQUIP VIOL; 20-7(A) - NO OPERATORS LICENSE
08/11/23	VASQUEZ, JUAN ORTIZ	20-150(E) - UNSAFE PASSING YELLOW LINE; 20-7(A) - NO OPERATORS LICENSE
08/15/23	JOHNSON, CHRISTOPHER SCOTT	20-28(A) - DWLR
08/21/23	MILLER, ELSON D	20-135.2(A) - FAIL TO WEAR SEAT BELT; 20-7(A) - NO OPERATORS LICENSE

Total Records: 5

LSV = 2



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Ordinance Violations (August '23)

Printed on September 7, 2023

Date	Defendant	Citation/Warning	Ordinance
08/01/23	FERGUSON, SAVANNAH	Citation	Parking - Non-LSV in LSV Only Area
08/01/23	BLUE SAIL BEACH OUTFITTER, LLC	Citation	Parking - Right-of-Way Violation
08/01/23	LLC, SUNFUN	Citation	Parking - Right-of-Way Violation
08/02/23	MONTGOMERY, VICKI	Citation	Parking - Non-LSV in LSV Only Area
08/07/23	FREULER, ANNA	Warning-Compliant	Parking - Roadway/Travel Lane
08/18/23	FOSTER, HUNTER	Warning-Compliant	Parking - Right-of-Way Violation
08/19/23	PANZARELLA, BRIANNE	Warning-Compliant	Parking - Right-of-Way Violation
08/20/23	RIOJAS, LIZETH	Warning-Compliant	Parking - Roadway/Travel Lane
08/20/23	DELUCA, LUKE	Warning-Compliant	Parking - Roadway/Travel Lane
08/20/23	GRASTY, SHARON	Warning-Compliant	Parking - Right-of-Way Violation
08/20/23	FORTUNY, BRENT	Citation	Parking - Roadway/Travel Lane
08/22/23	BARNES, BOBBY	Citation	Parking - Handicap Violation
08/24/23	Pv Holding Corp, Bank of America	Warning-Compliant	Parking - Right-of-Way Violation
08/24/23	KITINOJA, REIS	Warning	Parking - Right-of-Way Violation
08/26/23	TICE, CHRISTOPHER	Citation	Parking - Roadway/Travel Lane
08/26/23	KETH, TERRY	Citation	Parking - Roadway/Travel Lane
08/26/23	DUHAN, ANDERSON	Citation	Parking - Roadway/Travel Lane
08/27/23	COLLINS, KIMBERLY	Warning	Parking - Handicap Violation
08/28/23	SUTTON, TIMOTHY	Warning-Compliant	Parking - Right-of-Way Violation
08/28/23	PITTMAN, BENJAMIN	Warning-Compliant	Parking - Right-of-Way Violation

Date	Defendant	Citation/Warning	Ordinance
08/28/23	CONNELL, MICHAEL	Warning-Compliant	Parking - Right-of-Way Violation

Total Records: 21

LSV = 2

CONSTRUCTION TYPE REPORT

TOWN OF HOLDEN BEACH

08/07/2023 TO 09/07/2023

2023-2024

Constru Type	Sta	Description	Date Applied	Permit class/ Number	Occupan Group	Valuation(\$	Permit Fees (\$)
Add	10	Additions	08/15/2023	BP-019357	G1	8,000.00	175.00
Add	10	Additions	08/23/2023	BPCL-019388	G1	24,013.00	341.12
Add	10	Additions	08/25/2023	BP-019397	G1	40,000.00	485.00
Add	10	Additions	08/25/2023	BP-019398	G1	24,448.65	345.04
Subtotal for Additions:					4	\$96,461.65	\$1,346.16
Btype1	10	New Construction/General	08/18/2023	BPCL-019369	G1	18,400.00	225.00
Btype1	10	New Construction/General	08/21/2023	BPCL-019373	G1	23,900.00	340.10
Btype1	10	New Construction/General	08/23/2023	BPCL-019392	G1	16,460.00	273.14
Btype1	10	New Construction/General	08/25/2023	BPCL-019395	G1	15,000.00	260.00
Btype1	10	New Construction/General	08/25/2023	BPCL-019396	G1	85,000.00	890.00
for New Construction/General:					5	\$158,760.00	\$1,988.24
Decks	10	Decks	08/17/2023	BP-019365	G1	19,700.00	202.30
Decks	10	Decks	08/18/2023	BP-019367	G1	27,000.00	268.00
Decks	10	Decks	08/18/2023	BP-019371	G1	5,000.00	175.00
Subtotal for Decks:					3	\$51,700.00	\$645.30
Elect	13	Electrical	08/09/2023	EL-019344	G1	3,000.00	175.00
Elect	13	Electrical	08/11/2023	EL-019351	G1	3,234.79	100.00
Elect	10	Electrical	08/11/2023	EL-019352	G1	2,700.00	100.00
Elect	10	Electrical	08/22/2023	EL-019380	G1	1,000.00	100.00
Elect	13	Electrical	08/22/2023	EL-019382	G1	2,500.00	100.00
Elect	13	Electrical	08/22/2023	EL-019383	G1	2,000.00	100.00
Elect	10	Electrical	08/22/2023	EL-019384	G1	1,000.00	100.00
Elect	10	Electrical	08/22/2023	EL-019385	G1	2,500.00	100.00
Elect	13	Electrical	08/29/2023	EL-019400	G1	1,500.00	100.00
Elect	10	Electrical	09/05/2023	EL-019409	G1	2,500.00	100.00
Elect	13	Electrical	09/05/2023	EL-019411	G1	1,200.00	100.00
Elect		Electrical			24		
Subtotal for Electrical:					35	\$23,134.79	\$1,175.00
Fence	10	FENCE	08/21/2023	BP-019377	G1	13,430.00	145.87
Subtotal for FENCE:					1	\$13,430.00	\$145.87
Mech	13	Mechanical	08/07/2023	MEC-019338	G1	8,500.00	100.00
Mech	13	Mechanical	08/08/2023	MEC-019340	G1	12,000.00	100.00
Mech	13	Mechanical	08/08/2023	MEC-019341	G1	3,629.00	100.00
Mech	10	Mechanical	08/14/2023	MEC-019353	G1	5,492.00	100.00
Mech	13	Mechanical	08/14/2023	MEC-019354	G1	7,200.00	75.00

Mech	13	Mechanical	08/15/2023	MEC-019358	G1	4,995.00	100.00
Mech	10	Mechanical	08/16/2023	MEC-019363	G1	4,713.00	100.00
Mech	10	Mechanical	08/17/2023	MEC-019364	G1	12,300.00	200.00
Mech	13	Mechanical	08/17/2023	MEC-019366	G1	3,149.94	100.00
Mech	10	Mechanical	08/18/2023	MEC-019370	G1	7,502.00	100.00
Mech	10	Mechanical	08/21/2023	MEC-019372	G1	15,152.00	200.00
Mech	13	Mechanical	08/21/2023	MEC-019374	G1	6,710.00	100.00
Mech	10	Mechanical	08/21/2023	MEC-019376	G1	8,823.00	100.00
Mech	10	Mechanical	08/22/2023	MEC-019379	G1	9,406.00	100.00
Mech	10	Mechanical	08/22/2023	MEC-019381	G1	8,600.00	100.00
Mech	10	Mechanical	08/22/2023	MEC-019386	G1	8,200.00	100.00
Mech	10	Mechanical	08/23/2023	MEC-019391	G1	7,400.00	100.00
Mech	10	Mechanical	08/24/2023	MEC-019394	G1	5,075.00	100.00
Mech	10	Mechanical	08/29/2023	MEC-019401	G1	5,610.00	100.00
Mech	10	Mechanical	08/30/2023	MEC-019402	G1	5,500.00	100.00
Mech	10	Mechanical	08/31/2023	MEC-019406	G1	9,955.00	100.00
Mech	10	Mechanical	08/31/2023	MEC-019408	G1	6,668.00	100.00
Mech	10	Mechanical	09/05/2023	MEC-019413	G1	3,995.00	100.00
Mech	10	Mechanical	09/06/2023	MEC-019415	G1	5,967.00	100.00
Subtotal for Mechanical:					24	\$176,541.94	\$2,575.00
Plumb	13	Plumbing	08/10/2023	PL-019349	G1	2,500.00	100.00
Subtotal for Plumbing:					1	\$2,500.00	\$100.00
Pools	10	Swimming Pools	08/30/2023	SP-019403	G1	50,000.00	1,855.00
Pools	10	Swimming Pools	08/30/2023	SP-019404	G1	28,600.00	1,532.40
Pools	10	Swimming Pools	08/30/2023	SP-019405	G1	35,000.00	540.00
Subtotal for Swimming Pools:					3	\$113,600.00	\$3,927.40
Remod	10	Renovation/Repair	08/10/2023	BPM-019345	G1	30,000.00	0.00
Remod	10	Renovation/Repair	08/10/2023	BP-019350	G1	12,500.00	137.50
Remod	10	Renovation/Repair	08/14/2023	BPCL-019355	G1	8,200.00	125.00
Remod	10	Renovation/Repair	08/14/2023	BULKHE-019356	G1	8,000.00	125.00
Remod	10	Renovation/Repair	08/16/2023	BP-019359	G1	3,500.00	125.00
Remod	13	Renovation/Repair	08/16/2023	BP-019360	G1	12,350.00	247.30
Remod	10	Renovation/Repair	08/21/2023	BP-019375	G1	190,000.00	2,135.00
Remod	10	Renovation/Repair	08/22/2023	BP-019387	G1	54,830.00	518.47
Remod	10	Renovation/Repair	08/23/2023	BP-019390	G1	13,000.00	442.00
Remod	10	Renovation/Repair	08/25/2023	BP-019399	G1	80,000.00	745.00
Remod	10	Renovation/Repair	09/05/2023	BP-019410	G1	285,000.00	7,215.00
Subtotal for Renovation/Repair:					11	\$697,380.00	\$11,815.27
SFC	10	Single Family Constructio	08/10/2023	BP-019348	G1	700,000.00	20,487.96
SFC	10	Single Family Constructio	08/18/2023	BP-019368	G1	275,000.00	10,351.04
SFC	10	Single Family Constructio	08/23/2023	BP-019389	G1	600,000.00	8,778.13

SFC	10	Single Family Constructio	09/06/2023	BP-019414	G1	650,000.00	9,756.12
SFC	10	Single Family Constructio	09/06/2023	BP-019416	G1	375,000.00	5,226.17
SFC	10	Single Family Constructio	08/31/2023	BP-019407	G1	400,000.00	8,961.38
for Single Family Constructio:					6	\$3,000,000.00	\$63,560.80
Zoning	13	ZONING	08/08/2023	Zoning-019339	G1	50.00	50.00
Zoning	13	ZONING	08/16/2023	Zoning-019361	G1	50.00	50.00
Zoning	13	ZONING	08/16/2023	Zoning-019362	G1	50.00	50.00
Zoning	13	ZONING	08/21/2023	Zoning-019378	G1	50.00	50.00
Zoning	13	ZONING	08/24/2023	Zoning-019393	G1	50.00	50.00
Subtotal for ZONING:					5	\$250.00	\$250.00
GRAND TOTAL:					74	\$4,333,758.38	\$87,529.04

INSPECTIONS DEPT. FROM 8/07/23-9/07/23

ACTIVE NEW HOME PERMITS = 28

OTHER ACTIVE PERMITS= 175

PERMITS ISSUED OVER \$30,000 = 28 (AMOUNT INCLUDED IN ACTIVE TOTAL)

SUBSTANTIAL IMPROVEMENTS OVER \$100,000= 3

PERMITS ISSUED WAITING PICK UP = 18

TOTAL PERMITS = 221

PERMITS IN REVIEW= 2

PERMITS SUBMITTED INCOMPLETE = 20

ZONING PERMITS ISSUED = 7

CAMA PERMITS ISSUED= 5

PERMITS SERVICED FOR INSPECTIONS (FROM 7/10-8/07)= 87

TOTAL INSPECTIONS MADE=437



Date: September 6, 2023

To: Mayor Holden and Board of Commissioners
Town Manager-IN TURN

From: Christy Ferguson, Assistant Town Manager

Re: Public Hearing and Possible Action on Sewer Lift Station #2 Contract

The attached bid documents (Attachment 1), from T.A. Loving in the amount of \$4,311,700 are for the board's consideration. The first bid opening was held on August 17th at which time there were no bids. The second bid opening was held August 30, 2023 and T.A. Loving was the only respondent. A public hearing is being held on the proposed installment financing contract to finance the upfit of the lift station. Town staff is working closely with our financial advisor, DEC Associates, to formulate the best financing options for the town; realizing the EPA grant may still come through. Those terms will be finalized, and it is anticipated the board would review them at the October board meeting. Documents in the packet are draft documents and would be finalized to use bank specific language and with outlined terms for that meeting. Current plans based on ongoing discussions are to finance \$2,731,324 and pay go \$2,000,000 from town cash. The remainder of the loan amount above the \$4.3 million covers engineering, the skid for the system, and cost of issuance. If the board does not act on the contract this evening, the next time the project can be presented to the Local Government Commission is the January/February meeting based on audit requirements. If the board decides to accept the construction bid, 2 CFR requirements would be added to the contract by the town to align with EPA procurement guidelines.

Attachment 1: Construction Bid Documents
Attachment 2: Installment Financing Contract
Attachment 3: Deed of Trust

Note: Contract execution is contingent on LGC approval.

Attachment 1

BID FORM

**Town of Holden Beach
Vacuum Pump Station No. 2
Holden Beach, North Carolina**

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ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

**Town of Holden Beach
110 Rothschild Street
Holden Beach, North Carolina 28462**

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Advertisement and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for **90 days** after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>		<u>Addendum, Date</u>
<u>1</u>	<u>B</u>	<u>08/10/23</u>
<u>2</u>	<u>B</u>	<u>08/11/23</u>
<u>3</u>	<u>B</u>	<u>08/15/23</u>

- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder’s safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.

- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER’S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

- 5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

**SINGLE PRIME CONTRACT
FOR THE
TOWN OF HOLDEN BEACH – VACUUM SEWER STATION #2 MODIFICATIONS**

BASE BID

PART A – ARCHITECTURAL AND GENERAL CONSTRUCTION

The Bidder will furnish all equipment, labor, materials, tools and supervision to complete all Architectural and General Construction for the complete renovation of the existing Vacuum Pump Station #2 including all demolition, reinforced concrete, above ground structure and all other items shown on the Drawings and/or included in the Specification for the Lump Sum Price of:

Two Million One Hundred Thirty Seven Thousand Dollars and
Four Hundred Dollars & $\frac{100}{100}$ Cents (\$ 2,137,400.⁰⁰).

TOTAL PART A

\$ 2,137,400.⁰⁰

PART B – ELECTRICAL CONSTRUCTION

The Bidder will furnish all equipment, labor, materials, tools and supervision to complete all Electrical Construction for the complete renovation of the existing Vacuum Pump Station #2 including all electrical demolition, grouting and filling all recessed boxes and conduit openings called for, and all new electrical gear, conduit, cable, system controls, and all other items shown on the Drawings and/or included in the Specifications. Work shall also include all Electrical Construction required to provide electrical service for the Owner's existing temporary vacuum pump skid at Vacuum Pump Stations #2, #3, & #4 as shown on the Drawings for the Lump Sum Price of:

Seven Hundred Fifty Nine Thousand Dollars and
Four Hundred Dollars & $\frac{100}{100}$ Cents (\$ 759,400).

TOTAL PART B

\$ 759,400

PART C – STATION PIPING AND EQUIPMENT MODIFICATIONS

The Bidder agrees to furnish all labor, materials, equipment, tools and supervision and all else necessary to provide, construct, erect and place into operation one (1) duplex vacuum pump system; one (1) temporary duplex vacuum pump system; all piping, valves, fitting and removal of the existing vacuum pump system and controls for the Lump Sum Price of:

Six Hundred Eighty Five Thousand Dollars and _____
Two Hundred Dollars Cents (\$ 685,400).

TOTAL PART C \$ 685,400

PART D – SITE WORK

The Bidder will furnish all labor, materials, equipment, tools and supervision and all else necessary to perform all outside site work to include demolition, fencing, retaining walls, media filter bed, drives, piping, fittings, valves, hatches, and site restoration and all other items as shown on the Drawings and/or included in the Specifications for the Lump Sum Price of:

Seven Hundred Twenty Nine Thousand Dollars and _____
Five Hundred Cents (\$ 729,500).

TOTAL PART D \$ 729,500

TOTAL BASE BID PARTS A-D \$ 4,311,700

**TOWN OF HOLDEN BEACH
VACUUM PUMP STATION #2
ADDITIONAL INFORMATION REQUIRED**

PROPOSED MAJOR SUPPLIERS:

Pleasant Mount Welding - Metals

PROPOSED SUBCONTRACTORS:

Jessie E Myers - Building

Melton Electric - Electrical

National Erectors - Reinforcing Steel

Jimmy Norris Heating & Air - HVAC

PROJECT REFERENCES:

City of Raleigh Public Utilities Department

Johnston County Public Utilities

Fayetteville Public Works Commission

Cape Fear Public Utility Authority

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
- ✓A. Required Bid security;
 - ✓B. Identification of Minority Business Participation Form
 - ✓C. Either Affidavit A – Listing of Good Faith Efforts or Affidavit B – Intent to Perform Contract with Own Workforce, as appropriate.
 - ✓D. List of Proposed Subcontractors;
 - ✓E. List of Proposed Suppliers;
 - ✓F. List of Project References,
 - ✓G. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;

ARTICLE 8 – DEFINED TERMS

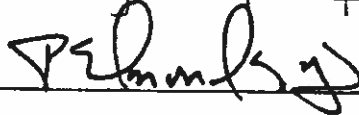
8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

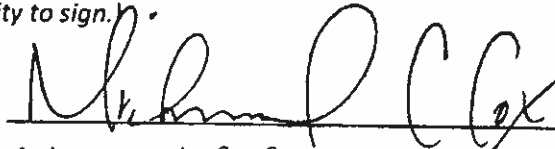
T. A. Loving Company

By:
[Signature]



[Printed name] T. C. Edmondson, III, PE; President/CEO
(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature]



[Printed name]

Michael C. Cox

Title:

Assistant Secretary

Submittal Date:

August 30, 2023

Address for giving notices:

P.O. Drawer 919

Goldsboro, NC 27533

Telephone Number:

919-734-8400

Fax Number:

919-736-2148

Contact Name and e-mail address:

T. C. Edmondson, III, PE

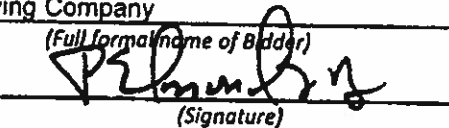
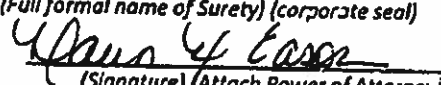
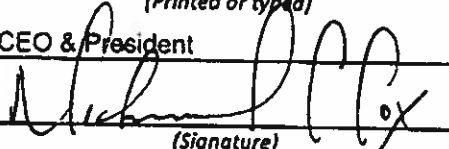
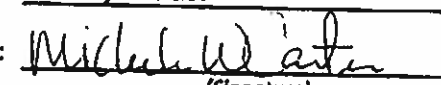
tedmondson@taloving.com

Bidder's License No.:

325

(where applicable)

BID BOND (PENAL SUM FORM)

Bidder Name: T. A. Loving Company Address (principal place of business): 400 Patetown Road Goldsboro, NC 27533-0919	Surety Name: Travelers Casualty and Surety Company of America Address (principal place of business): One Tower Square Hartford, CT 06183
Owner Name: Town of Holden Beach Address (principal place of business): 110 Rothschild Street Holden Beach, NC 28462	Bid Project (name and location): Vacuum Pump Station No. 2 Bid Due Date: August 30, 2023
Bond Penal Sum: 5% Five Percent of Amount Bid Date of Bond: August 30, 2023	
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	
Bidder T. A. Loving Company _____ (Full formal name of Bidder)	Surety Travelers Casualty and Surety Company of America _____ (Full formal name of Surety) (corporate seal)
By:  _____ (Signature)	By:  _____ (Signature) (Attach Power of Attorney)
Name: <u>T.C. Edmondson III, PE</u> _____ (Printed or typed)	Name: <u>Dawn D. Eason</u> _____ (Printed or typed)
Title: <u>CEO & President</u> _____	Title: <u>Attorney-in-Fact</u> _____
Attest:  _____ (Signature)	Attest:  _____ (Signature)
Name: <u>Michael C. Cox</u> _____ (Printed or typed)	Name: <u>Michele W. Carter</u> _____ (Printed or typed)
Title: <u>Asst. Secretary</u> _____	Title: <u>Witness</u> _____
Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.	

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation will be null and void if:
 - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2. All Bids are rejected by Owner, or
 - 3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety, and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond will be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.



Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies") and that the Companies do hereby make constitute and appoint Dawn D Eason of North Carolina their true and lawful Attorney(s)-in-Fact to sign, execute seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed this 21st day of April 2021



State of Connecticut

City of Hartford ss

By Robert L. Raney
Robert L. Raney, Senior Vice President

On this the 21st day of April, 2021, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer

IN WITNESS WHEREOF I hereunto set my hand and official seal

My Commission expires the 30th day of June, 2026



Anna P. Nowik
Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity or writing obligatory in the nature of a bond, recognizance or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority, and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary of each of the Companies do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect

Dated this 30 day of August, 2023



Kevin E. Hughes
Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

Identification of Minority Business Participation

1. T. A. Loving Company

(Name of Bidder)

do hereby certify that on this project, we will use the following minority business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work type	*Minority Category
National Erectors; 910-618-9200	Resteel	I
2373 Kenric Dr.; Lumberton, NC 28360		

*Minority categories: Black, African American (B), Hispanic (H), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (D)

The total value of minority business contracting will be (\$) 19,000.00

State of North Carolina AFFIDAVIT A Listing of Good Faith Efforts

County of Wayne

(Name of Bidder)

Affidavit of T.A. Loving Company

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

- 1 - (10 pts) Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2 --(10 pts) Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3 (15 pts) Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 - (10 pts) Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 - (10 pts) Attended prebid meetings scheduled by the public owner.
- 6 - (20 pts) Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors
- 7 - (15 pts) Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8 - (25 pts) Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- 9 - (20 pts) Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible
- 10 - (20 pts) Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands

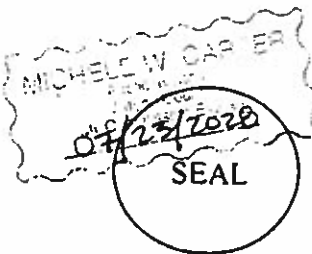
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

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

Date: Aug. 30, 2023 Name of Authorized Officer: T.C. Edmondson III, PE

Signature: [Handwritten Signature]

Title: President/CEO



State of North Carolina, County of Wayne
Subscribed and sworn to before me this 30th day of August 2023
Notary Public Michele W. Capner
My commission expires 07/23/2028

Expiration Date

12/31/2023

License No.

325

North Carolina

Licensing Board for General Contractors

This is to Certify That:

T. A. Loving Company

Pipeline Utilities, Inc.

Goldsboro, NC

is duly registered and entitled to practice

General Contracting

Limitation: Unlimited

Classification: Unclassified

until

December 31, 2023

when this Certificate expires.

Witness our hands and seal of the Board.

Dated, Raleigh, N.C.

01/01/2023

This certificate may not be altered.



Lisa Leroy
Chairman

C. Frank Wiener
Secretary-Treasurer

September 8, 2023

Town of Holden Beach
110 Rothchild Street
Holden Beach, North Carolina 28462

Attention: Mr. David Hewett
Town Manager

SUBJECT: Recommendation of Award Letter
Vacuum Pump Station #2
Holden Beach, North Carolina
PN# 20-030.1

Dear Mr. Hewett:

We have reviewed the bid received for the Holden Beach Vacuum Pump Station #2 Project and hereby recommend the following award:

T. A. Loving Company
Post Office Box 919
Goldsboro, North Carolina 27533
Telephone: 919-734-8400
Base Bid Amount \$4,311,700.00

Attached for review is a copy of the Certified Bid Tabulation for the Project. We have determined this Bid to be complete and responsive to the scope of work presented and specified in the Project plans, specifications and contract documents.

Should you have any questions regarding this recommendation, please do not hesitate to contact this office.


Respectfully,

A handwritten signature in blue ink that reads "Thomas D. Dienes".

Thomas D. Dienes, P.E.

TDD

Enclosure: As stated.

BID TABULATION		
PROJECT OWNER: TOWN OF HOLDEN BEACH PROJECT DESCRIPTION: VACUUM SEWER PUMP STATION #2 MODIFICATIONS BID OPENING DATE: AUGUST 30, 2023 @ 2:00 P.M. ENGINEER: GREEN ENGINEERING, P.L.L.C		
CONTRACTOR		<u>T.A. Loving Company</u>
<u>PART A - ARCHITECTURAL AND GENERAL CONSTRUCTION</u>		
<u>Item</u>	<u>Description</u>	<u>Lump Sum</u>
1.	The Bidder will furnish all equipment, labor, materials, tools and supervision to complete all Architectural and General Construction for the complete renovation of the existing Vacuum Pump Station #2 including all demolition, reinforced concrete, above ground structure and all other items shown on the Drawings and/or included in the Specification for the Lump Sum Price of:	\$2,137,400.00
TOTAL CONSTRUCTION - PART A		\$2,137,400.00
<u>PART B - ELECTRICAL CONSTRUCTION</u>		
<u>Item</u>	<u>Description</u>	<u>Lump Sum</u>
1.	The Bidder will furnish all equipment, labor, materials, tools and supervision to complete all Electrical Construction for the complete renovation of the existing Vacuum Pump Station #2 including all electrical demolition, grouting and filling all recessed boxes and conduit openings called for, and all new electrical gear, conduit, cable, system controls, and all other items shown on the Drawings and/or included in the Specifications. Work shall also include all Electrical Construction required to provide electrical service for the Owner's existing temporary vacuum pump skid at Vacuum Pump Stations #2, #3, & #4 as shown on the Drawings for the Lump Sum Price of:	\$759,400.00
TOTAL CONSTRUCTION - PART B		\$759,400.00
<u>PART C - STATION PIPING AND EQUIPMENT MODIFICATIONS</u>		
<u>Item</u>	<u>Description</u>	<u>Lump Sum</u>
1.	The Bidder agrees to furnish all labor, materials, equipment, tools and supervision and all else necessary to provide, construct, erect and place into operation one (1) duplex vacuum pump system; one (1) temporary duplex vacuum pump system, all piping, valves, fitting and removal of the existing vacuum pump system and controls for the Lump Sum Price of:	\$685,400.00
TOTAL CONSTRUCTION - PART C		\$685,400.00
<u>PART D - SITE WORK</u>		
<u>Item</u>	<u>Description</u>	<u>Lump Sum</u>
1.	The Bidder will furnish all labor, materials, equipment, tools and supervision and all else necessary to perform all outside site work to include demolition, fencing, retaining walls, media filter bed, drives, piping, fittings, valves, hatches, and site restoration and all other items as shown on the Drawings and/or included in the Specifications for the Lump Sum Price of:	\$729,500.00
TOTAL CONSTRUCTION - PART D		\$729,500.00
TOTAL ALL CONSTRUCTION PARTS A-D		\$4,311,700.00
<p>I, THOMAS D. DIENES, P.E., HEREBY CERTIFY THAT THIS BID TABULATION IS A TRUE AND CORRECT REPRESENTATION OF THE BIDS RECEIVED FOR THIS PROJECT ACCORDING TO THE BEST OF MY KNOWLEDGE AND BELIEF.</p>		
		<p style="font-size: 1.5em; font-weight: bold;">9/8/23</p> <p>NC Firm License No. P-0115</p>
<p style="font-size: 1.5em; font-family: cursive;">Thomas D. Dienes</p> <p>THOMAS D. DIENES, P.E.</p>		

Attachment 2

PARKER POE DRAFT 09/12/2023

INSTALLMENT FINANCING CONTRACT

between

TOWN OF HOLDEN BEACH, NORTH CAROLINA
as the Town

and

[BANK]
as the Bank

Dated: [DATE], 2023

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INSTALLMENT FINANCING CONTRACT

THIS INSTALLMENT FINANCING CONTRACT, dated [DATE], 2023 (the “*Contract*”), by and between the **TOWN OF HOLDEN BEACH, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina (the “*Town*”) and [BANK], a [national banking association existing under the laws of the United States of America] (the “*Bank*”);

WITNESSETH:

WHEREAS, the Town has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, to enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property; and

WHEREAS, the Bank desires to advance certain funds to enable the Town to finance the upfit of the Town’s Sewer Lift Station #2 for the Town’s utilities systems (the “*Project*”); and

WHEREAS, the Town desires to obtain such advance from the Bank pursuant to the terms and conditions hereinafter set forth; and

WHEREAS, the obligation of the Town to make Installment Payments, as hereinafter defined, and other payments required under Section 3 hereof shall constitute a limited obligation payable solely from currently budgeted appropriations of the Town and shall not constitute a pledge of the faith and credit of the Town within the meaning of any constitutional debt limitation or as otherwise prohibited by the North Carolina Constitution; and

WHEREAS, the Town has received approval of this Contract from the North Carolina Local Government Commission; and

WHEREAS, the Town has held a public hearing with respect to the Contract providing for the financing of the Project; and

WHEREAS, in order to further secure the obligations of the Town hereunder, the Town has executed the Deed of Trust, as hereinafter defined, to a trustee named therein, for the benefit of the Bank; and

WHEREAS, no deficiency judgment may be rendered against the Town in any action for breach of a contractual obligation under this Contract, and the taxing power of the Town is not and may not be pledged in any way, directly or indirectly or contingently, to secure any money due under this Contract; and

WHEREAS, the Bank and the Town each have duly authorized the execution and delivery of this Contract;

NOW, THEREFORE, for and in consideration of the premises and of the covenants hereinafter contained, and other valuable consideration, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

For purposes of this Contract, in addition to the terms defined above, the following terms have the meanings specified below unless the context clearly requires otherwise:

1.1 “*Board of Commissioners*” means the Board of Commissioners of the Town of Holden Beach, North Carolina.

1.2 “*Deed of Trust*” means the Deed of Trust, Security Agreement and Fixture Filing dated as of the date hereof from the Town to the deed of trust trustee named therein securing its obligations hereunder.

1.3 “*Default Rate*” means the rate of interest applicable to the Loan Amount as shown on **Exhibit A** plus []% per annum.

1.4 “*Determination of Taxability*” means the circumstance of the interest portion of Installment Payments hereunder becoming includable for federal income tax purposes in the gross income of the Bank as a consequence of any action, inaction, error or omission of the Town. A Determination of Taxability shall be evidenced by (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest portion of one or more Installment Payments made under this Contract is includable for federal income tax purposes in the gross income of the Bank, which notice or notification is not contested by either the Town or the Bank, or (ii) a determination by a court of competent jurisdiction that the interest portion of any Installment Payment is includable for federal income tax purposes in the gross income of the Bank thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Town to the effect that the interest portion of any Installment Payment is includable for federal income tax purposes in the gross income of the Bank.

1.5 “*Environmental Laws*” means any federal, state or local law, rule, regulation, permit, order or ordinance relating to the protection of the environment or human health or safety now or hereafter in effect, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. Section 9601, *et seq.*) (together with the regulations promulgated thereunder, “*CERCLA*”), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, *et seq.*) (together with the regulations promulgated thereunder, “*RCRA*”), the Oil Pollution Act of 1990 (33 U.S.C. Section 2701, *et seq.*) (together with the regulations promulgated thereunder, “*OPA*”), the Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. Section 11001, *et seq.*) (together with the regulations promulgated thereunder, “*Title III*”), the Clean Water Act, as amended (33 U.S.C. Section 1321, *et seq.*) (together with the regulations promulgated thereunder, “*CWA*”), the Clean Air Act, as amended (42 U.S.C. Section 7401, *et seq.*) (together with the regulations promulgated thereunder, “*CAA*”) and the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601 *et seq.*) (together with the regulations promulgated thereunder, “*TSCA*”), and any state or local similar laws and regulations and any so-called local, state or federal “*superfund*” or “*superlien*” law.

1.6 “*Hazardous Materials*” means any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, asbestos or any materials containing asbestos or petroleum, petroleum hydrocarbons, or any other substance or material as defined by (or for purposes of) any federal, state or local environmental law, ordinance, rule or regulation including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

as amended (42 U.S.C. sections 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. sections 1801 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. sections 9601 *et seq.*), and the regulations adopted and publications promulgated pursuant thereto. Hazardous Materials shall not include materials typically used in the type of public facilities such as the facilities that are on the Mortgaged Property, provided such materials are properly handled and contained in accordance with applicable federal and state laws.

1.7 “*Installment Payments*” means those payments made by the Town to the Bank as described in Section 3 of this Contract and in the Payment Schedule.

1.8 “*LGC*” means the Local Government Commission of North Carolina established pursuant to Chapter 159 of the North Carolina General Statutes.

1.9 “*Loan Amount*” means \$[AMOUNT], as described in **Exhibit A** hereto, which will be advanced by the Bank to enable the Town to finance the Project.

1.10 “*Loan Payment Schedule*” means the document labeled “*Payment Schedule*” attached hereto as **Exhibit A** and incorporated herein by reference, which describes the Town’s Installment Payments related to the Loan Amount.

1.11 “*Mortgaged Property*” means the site on which the Project is located and related improvements thereon, as further identified in the Deed of Trust.

1.12 “*Net Proceeds*,” when used with respect to any proceeds from policies of insurance required hereunder or proceeds of any condemnation award arising out of the condemnation of all or any portion of the Mortgaged Property, means the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds.

1.13 “*Project*” means the upfit of the Town’s Sewer Lift Station #2 for the Town’s utilities systems located at 484 Ocean Boulevard West, Holden Beach, NC 28462.

1.14 “*Project Fund*” means the fund of that name created in Section 2 herein into which the Bank will deposit the Loan Amount.

1.15 “*Taxable Rate*” shall mean a rate which after the Determination of Taxability will result in the same after-tax yield to the Bank of the interest portion of Installment Payments as before the Determination of Taxability.

1.16 “*Tax Certificate*” shall mean the Town’s Tax Certificate dated the date of the execution and delivery of this Contract and related hereto.

1.17 “*Town*” means the Town of Holden Beach, North Carolina, a municipal corporation of the State, validly existing under and by virtue of the Constitution, statutes and laws of the State, acting through its Board of Commissioners.

SECTION 2. ADVANCE OF LOAN AMOUNT

The Bank agrees to advance the Loan Amount to the Town and the Town agrees to borrow the Loan Amount from the Bank to be applied in accordance with the terms and conditions of this Contract. There is hereby created a separate fund to be held by the Town designated as the “*Town of Holden Beach*”

2023 Installment Financing Project Fund.” On the date of the execution and delivery of this Contract, the Bank will cause the Loan Amount in the amount of \$[AMOUNT] to be transferred to the Town for deposit in the Project Fund to pay costs of the Project and costs of executing and delivering this Contract. The Town will use the funds in the Project Fund solely in accordance with the provisions of this Section 2 and the Tax Certificate. The Loan Amount may be invested pending disbursement. The Town shall pay any additional sums necessary to finance the Project and shall provide evidence of the payment of such additional sums to the Bank upon request. The Town will consult with its bond counsel regarding the disposition of any money remaining in the Project Fund after completion of the Project and, if so permitted by the Code, such amount will be used for any lawful purpose.

SECTION 3. INSTALLMENT PAYMENTS AND OTHER PAYMENTS

3.1 *Amounts and Times of Installment Payments and Other Payments.* Subject to the provisions of Section 13 hereof, the Town shall repay the Loan Amount in installments as provided in **Exhibit A** to this Contract. Each installment shall be deemed to be an Installment Payment and shall be paid in the amount and at the time set forth in the Loan Payment Schedule except as provided herein. Such Installment Payments shall be sufficient in the aggregate to repay the Loan Amount together with interest thereon at a per annum rate equal to the rate per annum described in **Exhibit A** hereto (subject to the adjustment provisions set forth in Section 14.2 hereof). A portion of each Installment Payment is interest.

Interest on the Loan Amount is based upon a 360-day year, with twelve (12) thirty (30) day months. The amortization schedule is based on all payments being received by the Bank on the scheduled due date. Interest shall continue to accrue on any payment that is not paid when due until such payment is made; provided that, for any Installment Payment that is not paid within ten (10) days of when due, interest shall accrue until paid at the Default Rate.

3.2 *Place of Payments.* All payments required to be made to the Bank hereunder shall be as may be directed by the Bank or its assignee.

3.3 *Abatement of Installment Payments.* Subject to Section 13 hereof, there shall be no abatement or reduction of the Installment Payments or other payments by the Town for any reason, including but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or contingent) arising out of or related to the Mortgaged Property. The Town assumes and shall bear the entire risk of loss and damage to the Mortgaged Property from any cause whatsoever, it being the intention of the parties that the Installment Payments and other payments shall be made in all events unless the obligation to make such Installment Payments and other payments is terminated as otherwise provided herein.

3.4 *Prepayment of Installment Payments.* [The Town may prepay the Loan Amount in whole or in part, in multiples of \$5,000, at its option before its maturity from any funds that may be available for such purpose on any interest payment date on or after _____, 20__ at a prepayment price equal to 100% of the outstanding principal amount to be prepaid, together with accrued interest and any additional payments due to the date of prepayment, without prepayment penalty.

Any prepayment under this Section will be done with at least forty five (45) days prior written notice to the Bank and such notice shall specify the amount of the prepayment which is to be made. Any prepayment notice may state that the prepayment to be effected is conditioned upon the receipt by the Bank on or prior to the prepayment date of moneys sufficient to pay the prepayment price and that if such moneys are not so received such notice shall be of no force or effect and such prepayment shall not be made. Any partial prepayment of principal shall be applied to the Loan Amount in inverse order of the Installment Payments.]

SECTION 4. NATURE OF CONTRACT

This Contract is an installment contract pursuant to Section 160A-20 of the General Statutes of North Carolina and a security agreement pursuant to Article 9 of Chapter 25 (the “*Uniform Commercial Code - Secured Transactions*”) of the General Statutes of North Carolina.

SECTION 5. RESPONSIBILITIES AND COVENANTS OF THE TOWN

5.1 ***Maintenance, Care and Use.*** The Town shall use the Mortgaged Property or cause the Mortgaged Property to be used in a careful and proper manner, in compliance with all applicable laws and regulations, and shall take no action to adversely affect the Mortgaged Property, and shall take all reasonable action to preserve the Mortgaged Property in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, including, without limitation, at its sole cost and expense, to repair and maintain the Mortgaged Property, and to replace any part of the Mortgaged Property as may from time to time become worn out, lost, stolen, destroyed or damaged or unfit for use. Any and all additions to or replacements of the Mortgaged Property and all parts thereof shall constitute accessions to the Mortgaged Property and shall be subject to all terms and conditions of this Contract and the Deed of Trust.

5.2 ***Inspection.*** The Bank shall have the right upon reasonable prior notice to the Town to enter into and upon the Mortgaged Property to inspect the Mortgaged Property or any part thereof during normal business hours.

5.3 ***Encumbrances.*** Except as permitted by the Deed of Trust, the Town shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Mortgaged Property, or the rights of the Town and the Bank therein, except with the prior written consent of the Bank.

5.4 ***Utilities.*** The Town shall pay or cause to be paid, when due, all charges for utility services used in connection with the Mortgaged Property. There shall be no abatement of the Installment Payments on account of interruption of any such services.

5.5 ***Taxes.*** The Town shall pay or cause to be paid, when due, any and all taxes levied by any governmental body as a result of the Town’s ownership, possession, or use of the Mortgaged Property.

5.6 ***Risk of Loss.*** Subject to the provisions of Section 13 hereof, the Town shall bear all risk of loss to and condemnation of the Mortgaged Property. In the event of loss or damage to the Mortgaged Property, the Town shall either (a) continue to make the Installment Payments due hereunder and repair, reconstruct and restore the applicable portion of the Mortgaged Property to the satisfaction of the Bank, or (b) with the written consent of the Bank, prepay in full the principal components of the outstanding Installment Payments. To the extent the Town receives Net Proceeds in connection with such loss or damage, the Town shall expend such Net Proceeds in accordance with Section 7.2 hereof.

5.7 ***Performance by the Bank of the Town’s Responsibilities.*** Any performance required of the Town or any payments required to be made by the Town may, if not timely performed or paid, be performed or paid by the Bank, and, in that event, the Bank shall be immediately reimbursed by the Town for such payments and for any costs and expenses, legal or otherwise, associated with the payments or other performance by the Bank, with interest thereon at a per annum rate equal to the Default Rate.

5.8 ***Financial Statements.*** [The Town agrees that it will furnish to the Bank its audited financial statements within 270 days of the end of each fiscal year (which may be provided by making such

audited financial statements available electronically on a public website), and shall permit the Bank or its agents and representatives to inspect the Town's books and records and make extracts therefrom at its own expense during regular business hours and in a manner which will not disrupt the normal business routine of the Town. The Town will also provide to the Bank a copy of its annual budget, as adopted, within 30 days of its adoption. The Town shall furnish to the Bank additional information at such reasonable times as the Bank may reasonably request.]

5.9 Environmental Covenants. To the best of the Town's knowledge, the Mortgaged Property is not now and has not ever been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials and no Hazardous Materials have ever been installed on the Mortgaged Property. The Town covenants that the Mortgaged Property shall be kept free of Hazardous Materials and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in connection with the normal construction, maintenance and operation of the Mortgaged Property and in compliance with all Environmental Laws. The Town shall not cause or permit as a result of any intentional or unintentional act or omission on the part of the Town or any lessee, tenant, subtenant, licensee, guest, invitee, employee, agent or contractor, the installation of Hazardous Materials on the Mortgaged Property or a release of Hazardous Materials onto the Mortgaged Property or suffer the presence of Hazardous Materials on the Mortgaged Property, except in connection with the normal construction, maintenance and operation of the Mortgaged Property and in compliance with all Environmental Laws. The Town shall comply with and ensure compliance by all sublessees, tenants, subtenants, licensees, guests, invitees, employees, agents and contractors with all applicable federal, state and local laws, ordinances, rules and regulations with respect to Hazardous Materials and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations. The Town has not received any notice from any governmental agency, entity or any other person who receives any notices from any governmental agency, entity or any other person with regard to Hazardous Materials on, from or affecting the Mortgaged Property. In the event the Town does receive any such notices, the Town shall immediately notify the Bank. The Town, at no expense to the Bank, shall conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to comply with all applicable Environmental Laws.

5.10 Special Tax Covenants. The Town covenants with respect to the Loan Amount that: (a) it will make no use of the money advanced by the Bank (the "*Proceeds*") which would cause this Contract to be an "*arbitrage bond*" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "*Code*"), or the Treasury Regulations promulgated thereunder; (b) so long as this Contract remains in effect, the Town will comply with the requirements of the Code and the applicable Treasury Regulations promulgated thereunder and will not take or omit to take any action which will cause the interest paid or payable under this Contract to be includible in the gross income of the registered owner hereof; (c) the Project shall be used exclusively for essential governmental purposes of the Town and no use shall be made of the proceeds or of the Project, directly or indirectly, which would cause this Contract to be a "*private activity bond*" within the meaning of Section 141 of the Code other than a "*qualified 501(c)(3) bond*" within the meaning of Section 145(a) of the Code; (d) no part of the payment of principal or interest under this Contract is or shall be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof; (e) no portion of the proceeds shall be used, directly or indirectly, in making loans the payment of principal or interest with respect to which are to be guaranteed, in whole or in part, by the United States or any agency or any instrumentality thereof; and (f) the Town shall not lease or otherwise make any of the Project available to any entity if such lease or other availability would cause the interest portion of the Installment Payments to be included in the gross income of the Bank under the Code for income tax purposes.

The Town shall file on or before its due date IRS Form 8038-G. The Town shall not take or omit to take any action that may cause a loss of the federal, state or local tax-exempt status of this Contract or the interest thereon.

5.11 ***Appropriations of Payments.*** (a) The Town reasonably believes that funds sufficient to make all Installment Payments during the term of this Contract can be obtained.

(b) The Town Manager shall include in the initial proposal for each of the Town's annual budgets the amount of all Installment Payments coming due during the fiscal year to which such budget is applicable. Notwithstanding that the Town Manager includes an appropriation for Installment Payments in a proposed budget, the Town may terminate all its obligations hereunder by not appropriating sufficient funds to make the scheduled Installment Payments. In the event the Board of Commissioners determines not to appropriate in its budget an amount sufficient to pay all Installment Payments coming due in the applicable fiscal year, the Board of Commissioners shall adopt a resolution specifically deleting such appropriation from the proposed budget for that fiscal year. Such resolution shall state the reasons for such deletion, shall be adopted by a vote identifying those voting for and against and abstaining from the resolution, and shall be recorded in the minutes of the Board of Commissioners. A copy of such resolution shall be promptly sent to the Bank. Such failure to appropriate shall constitute an Event of Default.

(c) If the amount equal to the Installment Payments which will be due during the next fiscal year has not been appropriated by the Town in its budget, the Town Manager shall deliver to the Bank, within ten (10) days after the adoption of the Town's budget for such fiscal year, but not later than fifteen (15) days after the start of such fiscal year, a certificate stating that the Town did not make such appropriation.

SECTION 6. DEED OF TRUST

6.1 ***Deed of Trust.*** In order to secure its obligations hereunder, the Town shall deliver to the Bank the Deed of Trust. The Town has granted a security interest in the Mortgaged Property. The Town shall cause to be filed, at the Town's expense, financing statements and other related documents that are necessary under Article 9 of Chapter 25 (the "*Uniform Commercial Code - Secured Transactions*") of the General Statutes of North Carolina to perfect a first lien security interest in the personal property that is part of the Mortgaged Property by filing and to maintain that first lien security interest in perfected form.

6.2 ***Liens.*** The Town shall not directly or indirectly create, incur, assume or suffer to exist any lien, charge, security interest, encumbrance or claim on or with respect to the Mortgaged Property except as otherwise permitted herein, in the Deed of Trust or by the Bank. The Town shall promptly, at its own expense, take such action as may be necessary to duly discharge any such lien, security interest, charge, encumbrance or claim if the same shall arise at any time. The Town shall reimburse the Bank for any expense incurred by it in order to discharge or remove any such lien, security interest, encumbrance or claim.

SECTION 7. INSURANCE AND UNFORESEEN LOSSES

7.1 ***Insurance.*** The Town shall obtain and maintain, or cause to be obtained and maintained, at its expense, at all times until termination of this Contract a policy of insurance covering the Mortgaged Property and providing the insurance protection described in this Section. The Town shall maintain or cause to be maintained at its own expense fire, casualty, public liability, property damage and theft insurance, and such other insurance in such amounts and with such deductibles, if permitted, as required by the Bank from time to time. The Mortgaged Property shall be insured in an amount at least equal to the total replacement value or the Loan Amount, whichever is less. Insurance shall be maintained with a generally recognized

and responsible insurance company or companies licensed to do business in North Carolina. If requested by the Bank, the Town shall deliver to the Bank the policies of insurance or duplicates thereof or other evidence satisfactory to the Bank of such insurance coverage. In no event shall the Town voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Mortgaged Property without the written consent of the Bank.

In lieu of policies of insurance written by commercial insurance companies meeting the requirements of this Section, the Town may maintain a program of self-insurance or participate in group risk financing programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs.

Each insurance policy obtained pursuant to this Section shall (1) name the Town as an insured and the Bank as sole loss payee and an additional insured, as their respective interests may appear, and (2) unless unavailable from the insurer, provide that such policy shall not be cancelled or modified in any way adverse to any insured party without at least 30 days' prior written notice to each insured party named therein. The Town shall have the right to receive the proceeds from any insurance maintained pursuant to this Section, subject, however, to the limitations of this Section 7.

If any buildings, fixtures or other improvements are located on any portion of the Mortgaged Property that is located in a special flood hazard area according to the Federal Emergency Management Agency ("*FEMA*"), then the Town must maintain, or cause to be maintained, a flood insurance policy on the Mortgaged Property. If at any time during the term of this Contract, such portion of the Mortgaged Property is classified by FEMA as being located in a special flood hazard area, flood insurance will be mandatory. Should this occur, federal law requires the Bank to notify the Town of the reclassification. If, within forty-five (45) days of receipt of notification from the Bank that any portion of the Mortgaged Property has been reclassified by the FEMA as being located in a special flood hazard area, the Town has not provided sufficient evidence of flood insurance, the Bank is mandated under federal law to purchase flood insurance on behalf of the Town, and any amounts so expended shall immediately become an obligation of the Town under this Contract, shall bear interest at the rate specified in this Contract, and payment thereof shall be secured by the Deed of Trust.

7.2 Damage or Destruction. (a) The Town shall notify the Bank immediately in the event (i) of any damage to or destruction from fire or other casualty of any portion of the Mortgaged Property or (ii) that a material defect in the construction of the Mortgaged Property becomes apparent, if the Town determines in good faith that such damage, destruction or loss will cost more than \$250,000 to repair, replace and restore.

(b) If any portion of the Mortgaged Property is damaged or destroyed as provided herein, to an extent that the Town determines in good faith that the cost of repairing, replacing and restoring such damage or destruction will exceed \$250,000, then the Town shall deposit the Net Proceeds as may be requested or directed by the Bank and shall, within 90 days after the date such damage or destruction occurs, elect one of the following two options by giving notice of such election to the Bank, and the Bank, or the Town with the consent of the Bank, shall disburse such Net Proceeds in accordance with the option so elected:

(i) **Option A – Repair and Restoration.** The Town may elect to repair, reconstruct and restore that portion of the Mortgaged Property so lost, damaged or destroyed. If the Town elects this Option A, then the Town shall proceed forthwith to repair, reconstruct and restore the applicable portion of the Mortgaged Property to substantially the same condition as had existed prior to the event causing such damage or destruction, with such alterations and additions as the Town may determine to be necessary or desirable and as will not impair the capacity or character

of the applicable portion of the Mortgaged Property for the purposes for which it had been used prior to such damage or destruction or is intended to be used. So long as no Event of Default has occurred and is continuing under this Contract, the Bank, upon receipt of a request made by the Town, shall apply so much as may be necessary of such Net Proceeds (or permit the Town to apply such Net Proceeds) to payment of the cost of such repair, reconstruction and restoration, either on completion thereof or as the work progresses. Any such request may provide for Net Proceeds to be paid directly to third-party vendors or to be paid to the Town for reimbursement of costs incurred in such repair, replacement or restoration. If such Net Proceeds are not sufficient to pay in full the cost of such repair, replacement and restoration, the Town shall, subject to Section 5.11, pay so much of the cost thereof as may be in excess of such Net Proceeds. The Town shall not by reason of the payment of such excess cost be entitled to any (A) reimbursement from the Bank, or (B) abatement or diminution of the Installment Payments.

(ii) **Option B – Prepayment of Installment Payments.** Pursuant to Section 3.4 hereof or otherwise with the written consent of the Bank, the Town may elect to have the Net Proceeds of insurance payable as a result of such loss, damage or destruction, together with other money provided by the Town, applied to the prepayment of Installment Payments. Notwithstanding anything to the contrary, in the event that the Town elects to make partial prepayment under this Option B, the Town shall first provide to the Bank a certificate signed by the Town Manager to the effect that (A) the Mortgaged Property has been restored to its condition prior to the damage, or (B) such damage will not impair the Town's use of the Mortgaged Property for its intended purposes.

(c) If the Town determines in good faith that such cost will not exceed \$250,000, the Town shall (1) retain the Net Proceeds with respect to such damage or destruction, (2) forthwith repair, reconstruct and restore the Mortgaged Property so damaged or destroyed to substantially the same condition as it had existed prior to the event causing such damage or destruction, and (3) apply Net Proceeds retained by it to the payment or reimbursement of the costs of such repair, replacement and restoration. If such Net Proceeds are not sufficient to pay in full the cost of such repair, replacement and restoration, the Town shall, subject to Section 5.11, pay so much thereof as is in excess of such Net Proceeds.

7.3 Condemnation; Loss of Title. (a) In the case of a taking of all or any part of the Mortgaged Property or any right therein under the exercise of the power of eminent domain or any loss of all or any part of the Mortgaged Property because of loss of title thereto, or the commencement of any proceedings or negotiations which might result in such a taking or loss, the party upon whom notice of such taking is served or with whom such proceedings or negotiations are commenced or who learns of a loss of title shall give prompt notice to the other. Each such notice shall describe generally the nature and extent of such condemnation, taking, loss, proceedings or negotiations. All obligations of the Town under this Contract (except obligations to make Installment Payments when due) shall terminate as to the portion of the Mortgaged Property as to which there is a loss of title or which is condemned or taken when such loss of title is finally adjudicated or when title thereto vests in the party condemning or taking the same, as the case may be (hereinafter referred to as the "*Takings Date*"). The Town shall pay over to the Bank (and hereby irrevocably assigns, transfers and sets over to the Bank) all right, title and interest of the Town in and to any Net Proceeds (up to the amount of its outstanding obligations hereunder) payable as to any such loss of title, condemnation or taking during the term of this Contract.

(b) In the event of any such loss of title, condemnation or taking, the Town shall deliver the Net Proceeds from the condemnation proceeding to the Bank, and, within 90 days after the Takings Date for such proceeding, elect either or both of the following two options by giving notice of such election to the Bank, and the Bank shall disburse the Net Proceeds in accordance with the option so elected:

(i) **Option A – Restoration.** The Town may elect to have the Net Proceeds as to such loss of title, condemnation or taking used to restore the applicable portion of the Mortgaged Property as to which there has been a loss of title, condemnation or taking to substantially its condition prior to such loss of title, condemnation or taking. So long as no Event of Default has occurred and is continuing under this Contract, the Bank, upon receipt of a request made by the Town, shall apply so much as may be necessary of such Net Proceeds to payment of the cost of such restoration, either on completion thereof or as the work progresses. If such Net Proceeds are not sufficient to pay in full the cost of such restoration, the Town shall, subject to Section 5.11, pay so much of the cost thereof as may be in excess of such Net Proceeds. The Town shall not, by reason of the payment of such excess cost, be entitled to any (A) reimbursement from the Bank, or (B) abatement or diminution of the Installment Payments.

(ii) **Option B – Prepayment of Installment Payments.** Pursuant to Section 3.4 hereof or otherwise with the written consent of the Bank, the Town may elect to have the Net Proceeds payable as to any such loss of title, condemnation or taking, together with other money provided by the Town, applied to the prepayment of the Installment Payments. Notwithstanding anything to the contrary, in the event that the Town elects to make partial prepayment pursuant to this Option B, the Town shall first provide to the Bank a certificate signed by the Town Manager to the effect that such loss of title, condemnation or taking has not impaired the Town's use of the Mortgaged Property for its intended purpose.

(c) The Bank shall, at the expense of the Town, cooperate fully with the Town in the contest of any prospective or pending condemnation proceedings or in any contest over title with respect to the Mortgaged Property or any part thereof and shall, to the extent it may lawfully do so, permit the Town to litigate, at the expense of the Town, in any such proceeding in the name and on behalf of the Bank. In no event shall the Bank voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceedings, or proceedings as to title, with respect to the Mortgaged Property or any part thereof without the consent of the Town.

SECTION 8. WARRANTIES AND REPRESENTATIONS OF THE TOWN

The Town warrants and represents to the Bank (all such representations and warranties being continuing) as follows:

(a) The Town is a municipal corporation organized under the laws of the State of North Carolina and has all powers necessary to enter into the transactions contemplated by this Contract and to carry out its obligations hereunder;

(b) This Contract and all other documents relating hereto, have been duly and validly authorized, approved, executed and delivered by the Town, and the performance by the Town of its obligations under such documents has been approved and authorized under all laws, regulations and procedures applicable to the Town, including, but not limited to, compliance with all applicable public meeting and bidding requirements, and the transactions contemplated by this Contract and all other documents relating hereto constitute a public purpose for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina, and, assuming due authorization, execution and delivery hereof by the Bank, constitute valid, legal and binding obligations of the Town, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by general principles of equity or by bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and as those other laws may be further limited by the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended;

(c) No approval or consent is required from any governmental authority with respect to the entering into or performance by the Town of this Contract and the transactions contemplated hereby, or, if any such approval is required, it has been duly obtained, including any applicable approval of the LGC as evidenced by the Secretary's certificate hereon;

(d) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best of the Town's knowledge, threatened, against or affecting the Town challenging the validity or enforceability of this Contract or any other documents relating hereto, or the performance of the Town's obligations hereunder, and compliance with the provisions hereof, under the circumstances contemplated hereby, does not and will not in any material respect conflict with, constitute on the part of the Town a breach of or default under, or result in the creation of a lien or other encumbrance on any property of the Town (except as contemplated herein) pursuant to any agreement or other instrument to which the Town is a party, or any existing law, regulation, court order or consent decree to which the Town is subject;

(e) No liens or encumbrances exist on the Mortgaged Property other than the Deed of Trust and any encumbrances permitted under this Contract and the Deed of Trust;

(f) A resolution relating to the performance by the Town of this Contract and the transactions contemplated hereby has been duly adopted, is in full force and effect, and has not been in any respect amended, modified, revoked or rescinded; and

(g) The Project is essential to the proper, efficient and economical operation of the Town and the delivery of its service, provide an essential use, and permit the Town to carry out public functions that it is authorized by law to perform.

SECTION 9. INDEMNIFICATION

To the extent permitted by law, the Town will indemnify and hold harmless the Bank and the LGC and its respective affiliates and its partners, directors, officers, employees, agents and advisors from and against all losses, claims, damages, liabilities and expenses arising out of or relating to the transactions contemplated by this Contract, the Town's use of the Loan Amount and Project, including the Mortgaged Property, including, but not limited to, reasonable attorneys' fees (including the allocated cost of internal counsel) and settlement costs (excluding acts of gross negligence or willful misconduct of an indemnified party as determined by a court of competent jurisdiction). This indemnification shall survive and continue for the benefit of all such persons or entities.

SECTION 10. DISCLAIMER OF WARRANTIES

10.1 ***No Representations by the Bank.*** The Town acknowledges that it has inspected or caused to be inspected the Project and found the Project to be satisfactory and acknowledges and agrees that it selected the Project based upon its own judgment and disclaims any reliance upon any statements or representations made by the Bank with respect thereto.

10.2 ***Disclaimer By the Bank.*** THE BANK MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECT.

SECTION 11. DEFAULT AND REMEDIES

11.1 **Definition of Event of Default.** The Town shall be deemed to be in default hereunder upon the happening of any of the following events of default (each, an “*Event of Default*”):

(a) The Town shall fail to make any Installment Payment when due or fail to pay any other sum hereunder within ten (10) days after such payment is due; or

(b) The Town shall fail to budget and appropriate money sufficient to pay all Installment Payments coming due in any fiscal year of the Town, or deletes from its duly adopted budget any appropriation for such purpose; or

(c) The Town shall fail to perform or observe any term, condition or covenant of this Contract other than as referred to in clauses (a) or (b) of this Section or shall breach any warranty by the Town herein or therein contained, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Town by the Bank, unless the Bank shall agree in writing to an extension of such time prior to its expiration; or

(d) Proceedings under any bankruptcy, insolvency, reorganization or similar litigation shall be instituted by or against the Town, or a receiver, custodian or similar officer shall be appointed for the Town or any of its property, and such proceedings or appointments shall not be vacated or fully stayed after the institution or occurrence thereof; or

(e) Any warranty, representation or statement made by the Town herein or in any other document executed or delivered in connection herewith is found to be incorrect or misleading in any material respect on the date made; or

(f) An attachment, levy or execution of a security interest or lien, except for the lien and security interest of the Bank or any encumbrances permitted by Section 5.3, is levied upon or with respect to the Mortgaged Property.

11.2 **Remedies on Default.** Subject to Section 13 hereof, upon the occurrence of any Event of Default, the Bank may exercise any one or more of the following remedies as the Bank in its sole discretion shall elect:

(a) Declare the entire principal amount of the Installment Payments and all accrued interest and other charges immediately due and payable without notice or demand to the Town;

(b) Proceed by appropriate court action to enforce performance by the Town of the applicable covenants of this Contract or to recover for the breach thereof;

(c) Exercise all the rights and remedies of a secured party or creditor under the Deed of Trust, Uniform Commercial Code of the State of North Carolina and the general laws of the State of North Carolina with respect to the enforcement of the security interest granted or reserved hereunder and under the Deed of Trust, including, without limitation, to the extent permitted by law, take possession of any collateral without any court order or other process of law and without liability for entering the Mortgaged Property and sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of the Town, and apply the proceeds of any such sale, lease, sublease or other disposition, after deducting all costs and expenses, including court costs and attorneys’ fees, incurred with the recovery, repair, storage and other sale,

lease, sublease or other disposition costs, toward the balance due under this Contract and, thereafter, shall pay any remaining proceeds to the Town;

(d) Take possession of any proceeds of the Mortgaged Property, including Net Proceeds; or

(e) Pursue any other remedy available at law or equity to the Bank.

11.3 **Further Remedies.** All remedies of the Bank are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy. Subject to Section 13 hereof, the Town agrees to pay to the Bank all court costs and reasonable attorney fees incurred by Bank in enforcing the Bank's rights and remedies under this Contract.

SECTION 12. ASSIGNMENT

12.1 **Assignment by the Town.** The Town agrees not to sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Contract or the Mortgaged Property (except for the lien and security interest of the Bank or as permitted by Section 5.3) without the Bank's prior written consent, which consent shall not be unreasonably delayed, conditioned or denied.

12.2 **Assignment by the Bank.** (a) The Bank may, at any time and from time to time, assign all or any part of its interest in the Mortgaged Property or this Contract, including, without limitation, Bank's rights to receive Installment Payments payable to Bank hereunder or thereunder, in accordance with this Section 12.2. Any assignment made by the Bank or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Bank pursuant to this Contract. The Bank or its assignees may assign or reassign all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract, or making this Contract part of a pool of obligations without the consent of the LGC, so long as such assignment or reassignment is to (i) a bank, insurance company or similar institution or any other entity approved by the LGC; or (ii) a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in the Contract, provided such certificates are sold only to a bank, insurance company or similar financial institution or other entity approved by the LGC. Notwithstanding the foregoing, unless to an affiliate controlling, controlled by or under common control with Bank, no assignment or reassignment of the Bank's interest in the Contract shall be effective unless and until the Town shall receive notice of such assignment or reassignment disclosing the name and address of each such assignee.

(b) The Town further agrees that the Bank's interest in this Contract may be assigned in whole or in part (subject to the limitations on assignment contained in Section 12.2(a)) upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Contract, provided the Town receives notice of such assignment and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Contract a written record of each assignment and reassignment of such certificates of participation.

(c) The Town agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the Town and the LGC, and the Town shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the Town shall thereafter make all payments in accordance with the notice to the assignee

named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

(d) The Bank represents and warrants that it is familiar with federal and North Carolina legislation, rules and regulations as to limitations upon the public distribution of securities that have not been registered under the Securities Act of 1933, as amended, and that it is entering into this Contract for its own account and has no present intention of making any sale or other distribution of this Contract in violation of such legislation, rules or regulations. The Bank represents that it is familiar with the operations and financial condition of the Town, based upon information furnished to the Bank by the Town, and has made such inquiries as it deems appropriate in connection with the Loan Amount.

SECTION 13. LIMITED OBLIGATION OF THE TOWN

NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE TOWN WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE OF NORTH CAROLINA. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE TOWN FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; PROVIDED, HOWEVER, ANY FAILURE OR REFUSAL BY THE TOWN TO APPROPRIATE FUNDS, WHICH RESULTS IN THE FAILURE BY THE TOWN TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBTVIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE TOWN IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS CONTRACT, AND THE TAXING POWER OF THE TOWN IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEY DUE UNDER THIS CONTRACT.

No provision of this Contract shall be construed to pledge or to create a lien on any class or source of the Town's money other than money in the account of the Town held at the Bank and related to this Contract. To the extent of any conflict between this Section and any other provision of this Contract, this Section shall take priority.

SECTION 14. TAX-EXEMPT INTEREST RELATED TO THE LOAN AMOUNT

14.1 *Intent of Parties.* It is the intention of the parties hereto that the interest portion of the Installment Payments paid by the Town to the Bank under this Contract related to the Loan Amount shall be tax-exempt under Section 103 of the Code.

14.2 *Determination of Taxability.* If at any time there is a Determination of Taxability, the principal portion of the indebtedness of the Town to the Bank which is represented by the Installment Payments shall, from and after the Date of Taxability, as hereinafter defined, bear interest at the Taxable Rate payable from the Date of Taxability to such time as the Loan Amount matures or is prepaid or the Determination of Taxability is no longer in effect. In such event, the Town also shall be required to pay to the Bank all amounts, if any, which may be necessary to reimburse the Bank for any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America or the Department of Revenue of the State of North Carolina by reason of the Bank's failure to include the interest portion of the Installment Payments related to the Loan Amount (hereinafter called "*Interest*") in its gross

income for income tax purposes. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Bank. Installment Payment amounts shall be increased as a result of the applicability of the Taxable Rate. The Town shall pay to the Bank the Interest calculated at the Taxable Rate notwithstanding any transfer by the Bank or payment or prepayment by the Town prior to the date such Determination of Taxability was made.

The Date of Taxability shall mean the first date upon which Interest is included in the gross income of the Bank for federal income tax purposes as a result of a Determination of Taxability.

14.3 **Qualified Tax-Exempt Obligation.** The Town hereby designates the Installment Payments due under this Contract as a “*qualified tax-exempt obligation*” eligible for the exception from the disallowance of the deduction of interest by financial institutions allocable to the cost of carrying tax-exempt obligations in accordance with the provisions of Section 265(b)(3) of the Code. The Town does not reasonably anticipate issuing more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3), including all entities which issue obligations on behalf of the Town and all subordinate entities of the Town, during calendar year 2023 and will not designate more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3) during calendar year 2023.

In the event that the Installment Payments due under this Contract are no longer designated as a “*qualified tax-exempt obligation*” under the Code as a consequence of any action, inaction, error or omission of the Town, the Town shall be required to pay to the Bank all amounts, if any, which may be necessary to reimburse the Bank for any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America or the Department of Revenue of the State of North Carolina. The Town shall pay all such additional interest, additions to tax, penalties and interest to the Bank within sixty (60) days following demand by the Bank.

SECTION 15. MISCELLANEOUS

15.1 **Waiver.** No covenant or condition of this Contract can be waived except by the written consent of the Bank. Any failure of the Bank to require strict performance by the Town or any waiver by the Bank of any terms, covenants or conditions herein shall not be construed as a waiver of any other breach of the same or any other term, covenant or condition herein.

15.2 **Severability.** In the event any portion of this Contract shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Contract shall continue in full force and effect.

15.3 **Governing Law.** This Contract shall be construed, interpreted and enforced in accordance with the laws of the State of North Carolina, without regard to conflict of law principles.

15.4 **Notices.** Any and all notices, requests, demands, and other communications given under or in connection with this Contract shall be effective only if in writing and either personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, addressed to the address of the recipient as described below or by electronic mail with receipt of confirmation it was received, and shall be deemed to be received on the third day after the day it was deposited in the United States mail or on the day it was actually received, whichever is earlier.

Town: Town of Holden Beach, North Carolina
110 Rothschild Street

Holden Beach, North Carolina 28462
 Attention: Town Manager

Bank's Address: [BANK]
 [BANK ADDRESS]

15.5 **Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Contract.

15.6 **Entire Contract.** This Contract, together with the Exhibits and attachments hereto, constitutes the entire Contract between the parties and this Contract shall not be modified, amended, altered or changed except by written agreement signed by the parties.

15.7 **Binding Effect.** Subject to the specific provisions of this Contract, this Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

15.8 **Time.** Time is of the essence of this Contract and each and all of its provisions.

15.9 **Execution in Counterparts; Electronic Signatures.** This Contract may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. An executed copy of this Contract delivered by facsimile, email, or other electronic means will be deemed to have the same legal effect as delivery of a manual signed copy of this Contract. This Contract and related documents may be sent and stored by electronic means.

15.10 **E-Verify.** The Bank understands that "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with NCGS Section 64-25(5), as amended. The Bank uses E-Verify to verify the work authorization of its employees in accordance with NCGS Section 64-26(a), as amended. The Bank will require that any subcontractor that in uses in connection with the transactions contemplated by this Contract certify to such subcontractor's compliance with E-Verify.

15.11 **No Advisory Services.** The Town acknowledges and agrees that: (i) the transaction contemplated by this Contract is an arm's length, commercial transaction between the Town and the Bank in which the Bank is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the Town; (ii) Bank has not assumed any advisory or fiduciary responsibility to the Town with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether Bank has provided other services or is currently providing other services to the Town on other matters); (iii) the only obligations Bank has to the Town with respect to the transaction contemplated hereby expressly are set forth in this Contract; and (iv) the Town has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

15.12 **EMMA Filings.** The Town shall not file or submit, or permit the filing or submission, of all or any portion of the Contract or any related documents with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system (or any successor continuing disclosure vehicle) unless such documents or portion thereof to be so filed or submitted have been redacted to the extent required by the Bank for items such as signatures/names, account numbers, wire transfer and payment instructions and other similar data that could be construed as sensitive information, provided that such redactions would enable the Town to remain in compliance with its obligations under Rule 15c2-12 promulgated by the Securities and Exchange Commission.

15.13 ***Waiver of Jury Trial.*** To the extent permitted by applicable law, each of the Town and the Bank irrevocably and voluntarily waives any right it may have to a trial by jury with respect to any controversy or claim between the Town and the Bank, whether arising in contract or tort or by statute, including but not limited to any controversy or claim that arises out of or relates to the Contract, the Deed of Trust or any related document. This provision is a material inducement for the Bank's determination to advance the Loan Amount and for the parties to enter into the Contract. As of the date of the execution of this Contract, any provision in a contract requiring a party to the contract to waive its right to a jury trial is unenforceable pursuant to North Carolina General Statute §22B-10.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Town and the Bank have caused this Installment Financing Contract to be executed by their duly authorized officers as of the day and year first above written.

TOWN OF HOLDEN BEACH, NORTH CAROLINA

By: _____
David W. Hewett
Town Manager

ATTEST:

Heather Finnell
Town Clerk

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT,
DATED [DATE], 2023, BETWEEN [BANK]
AND THE TOWN OF HOLDEN BEACH, NORTH CAROLINA]

[BANK],
as Bank

By: _____
Name:
Title:

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT,
DATED [DATE], 2023, BETWEEN [BANK]
AND THE TOWN OF HOLDEN BEACH, NORTH CAROLINA]

This Contract has been approved under the provisions
of Section 159-152 of the General Statutes of North
Carolina, as amended.

By: _____
Sharon G. Edmundson
Secretary
Local Government Commission of North Carolina

EXHIBIT A
PAYMENT SCHEDULE

Installment Financing Contract Date: [DATE], 2023

Town: Town of Holden Beach, North Carolina

Loan Amount: \$[AMOUNT]

Interest Rate/Payment Terms

Fixed Rate

The interest rate is []% per annum fixed (subject to adjustment as provided in the Contract). Interest on the Loan Amount is based upon a [360-day year, with twelve (12) thirty (30) day months]. Interest is calculated and imposed on the unpaid balance of the Loan Amount based on the payment schedule below. The Loan Amount plus interest shall be repaid by the Town to the Bank as set forth on the Schedule attached hereto as Exhibit A-1. All remaining principal and accrued but unpaid interest shall be due and payable on [MATURITY DATE].

TOWN OF HOLDEN BEACH, NORTH CAROLINA

By: _____
David W. Hewett
Town Manager

EXHIBIT A-1
PAYMENT SCHEDULE
[BANK TO PROVIDE]

EXHIBIT B

INCUMBENCY AND AUTHORIZATION CERTIFICATE

In connection with the execution and delivery by the TOWN OF HOLDEN BEACH, NORTH CAROLINA (the "Town") of an Installment Financing Contract dated [DATE], 2023 (the "Contract") with [BANK] (the "Bank"), **WE DO HEREBY CERTIFY** that we are the duly appointed Town Manager and Town Clerk, respectively, of the Town of Holden Beach, North Carolina, and that we have custody of the official minutes and other pertinent records of that body.

WE FURTHER CERTIFY THAT:

(1) As of the date of this certificate, the persons named below are duly elected, qualified and acting incumbents of their respective offices of the Town and as such are familiar with its books and corporate records.

(2) The Town was duly established and at all times since its establishment the Town has continually exercised the powers given to cities by the Constitution and laws of North Carolina.

(3) The persons named below were authorized by a resolution of the Board of Commissioners of the Town passed in a regular meeting held on [_____, 2023], to execute and deliver on behalf of the Town the Contract and the Deed of Trust to evidence the obligation of the Town in connection with financing the Project (as defined in the Contract), together with all other documents and instruments required and contemplated by the Contract, and to carry out the terms of all of the foregoing, all under and pursuant to the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended. Such resolution was adopted at a meeting duly called and held on such date, at which meeting a quorum was present and acting throughout. Such resolution has not been amended, rescinded, terminated or otherwise revoked and is in full force and effect.

(4) No litigation of any kind is now pending or, to the best of our information, knowledge and belief, threatened to restrain or enjoin the execution or delivery of the Contract or the Deed of Trust, or in any manner questioning the proceedings and authority under which the Contract and the Deed of Trust have been executed and delivered, or affecting the validity of such documents.

(5) The Town has obtained the proper authorization to execute and deliver the Contract, the Deed of Trust and all related documents necessary to complete the transaction contemplated thereby.

(6) Each of the Contract and the Deed of Trust has been duly authorized, executed and delivered by the Town. Assuming the due authorization, execution and delivery of each such agreements by the Bank, each such agreement constitutes a legal, valid and binding agreement of the Town enforceable against the Town in accordance with its terms and is in full force and effect. Such obligation does not constitute a pledge of the faith and credit of the State of North Carolina or of any governmental unit of the State, including the Town. The rights and enforceability of the obligations of the Town under such agreements may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and (b) principles of equity, whether considered at law or in equity.

(7) Since June 30, 2022, there have been no material adverse changes in the business, properties, financial position or results of operations of the Town, whether or not arising from transactions in the ordinary course of business, and since such date, except in the ordinary course of business, the Town has not entered into any transaction or incurred any liability material as to the Town.

(8) The persons named below were on the date or dates of the execution of the Contract and the Deed of Trust and are on the date hereof the duly elected and qualified incumbents of the offices of the Town appearing to the right of their respective names and the signatures appearing to the right of their respective names are their true and genuine signatures.

NAME	TITLE	SIGNATURE
J. Alan Holden	Mayor	
David W. Hewett	Town Manager	
Daniel McRainey	Finance Officer	
Heather Finnell	Town Clerk	

IN WITNESS WHEREOF, we have duly executed this certificate on this _____ day of _____, 2023.

Town Manager
Town of Holden Beach, North Carolina

Town Clerk
Town of Holden Beach, North Carolina

EXHIBIT C

[TO BE PLACED ON LETTERHEAD]

OPINION OF COUNSEL TO THE TOWN

[DATE], 2023

[BANK]
[BANK LOCATION]

Town of Holden Beach
Holden Beach, North Carolina

Parker Poe Adams & Bernstein LLP
Charlotte, North Carolina

Re: Installment Financing Contract between the Town of Holden Beach, North Carolina (the "*Town*") and [BANK] (the "*Bank*")

I have acted as counsel to the Town, in connection with the authorization, execution and delivery by the Town of the Installment Financing Contract, dated [DATE], 2023 (the "*Contract*"), between the Bank and the Town. I have reviewed (1) the Constitution and laws of the State of North Carolina, (2) certain proceedings taken by the Board of Commissioners of the Town, (3) an executed copy of the Contract, (4) an executed copy of the Deed of Trust, Security Agreement and Fixture Filing dated [DATE], 2023 (the "*Deed of Trust*"), from the Town, as grantor, to the deed of trust trustee named therein, for the benefit of the Bank, and (5) such other information and documents as I have deemed relevant in order to render the opinions hereinafter expressed.

Pursuant to the Contract, the Bank has agreed to advance to the Town a Loan Amount of \$[AMOUNT]. The Town has entered into the Contract under the authority of the General Statutes and other laws of North Carolina, as amended, to finance (1) the upfit of the Town's Sewer Lift Station #2 for the Town's utilities systems (the "*Project*"). The Town has secured its obligations under the Contract by entering into the Deed of Trust, granting a lien on the real property on which the Project is located, and the improvements thereon, as more particularly described in Exhibit A of the Deed of Trust (the "*Mortgaged Property*"). All capitalized undefined terms used herein have the meanings given thereto in the Contract.

On the basis of the foregoing, I am of the opinion, under existing law, that:

1. The Town is a municipal corporation duly organized and existing under and by virtue of the Constitution, statutes and laws of the State of North Carolina, and has full legal right, power and authority to enter into and perform its obligations under the Contract and the Deed of Trust, to finance the Project, and to conduct its operations.

2. The Contract and the Deed of Trust (collectively, the "*Financing Documents*") have been duly authorized, executed and delivered by the Town and, assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding agreements of the Town, enforceable in accordance with their terms, except as such enforceability may be limited by applicable bankruptcy,

insolvency, reorganization, moratorium or other laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect, or by equitable principles.

3. The obligation of the Town to make payments under the Contract is a limited obligation of the Town payable solely from currently budgeted appropriations of the Town and does not constitute a pledge of the faith and credit of the Town within the meaning of any constitutional debt limitation, as more particularly described in the Contract.

4. All consents, approvals or authorizations of any governmental entity and all filings required on the part of the Town in connection with the authorization, execution and delivery of the Financing Documents and the consummation of the transactions contemplated thereby have been obtained and are in full force and effect.

5. To the best of my knowledge after reasonable investigation, the execution and delivery of the Financing Documents and compliance with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with, constitute on the part of the Town a breach of or default under, or result in the creation of a lien on any property of the Town (except as contemplated therein) pursuant to, any agreement or other instrument to which the Town is a party, or any existing law, regulation, court order or consent decree to which the Town is subject.

6. There is no action, suit, proceeding or governmental investigation at law or in equity before or by any court, public board or body, pending of which the Town has been served with a summons, summons and complaint or other notice of commencement, or, to the best of my knowledge after reasonable investigation, threatened against the Town challenging the validity of the Financing Documents or contesting the power and authority of the Town to execute and deliver the Financing Documents or to consummate the transactions contemplated therein.

7. The Deed of Trust has been recorded in accordance with North Carolina law.

I am furnishing the opinions expressed above to you solely for your benefit and no other person is entitled to rely on such opinions without my prior written consent. Such opinions are not to be used, circulated, quoted or otherwise referred to for any other purpose without my prior written consent. This opinion is given as of the date hereof, and I disclaim any obligation to advise you of any change of law that occurs, or any facts of which I become aware, after the date of this opinion. The opinions expressed herein are limited to those matters expressly set forth, and no opinion is to be inferred or implied beyond the matters expressly so stated.

Respectfully submitted,

Richard F. Green, Esq.

EXHIBIT D**[TO BE PLACED ON LETTERHEAD]****OPINION OF SPECIAL COUNSEL**_____
[DATE], 2023[BANK]
[BANK LOCATION]Town of Holden Beach, North Carolina
Holden Beach, North Carolina***\$[AMOUNT]
 Installment Financing Contract
 between [BANK]
 and the Town of Holden Beach, North Carolina***

Ladies and Gentlemen:

We have acted as Special Counsel in connection with the execution and delivery of the Installment Financing Contract, dated [DATE], 2023 (the “*Contract*”), between [BANK] (the “*Bank*”), and the Town of Holden Beach, North Carolina (the “*Town*”), and have examined the record of proceedings relating thereto. Pursuant to the Contract, the Bank will advance an aggregate principal amount of \$[AMOUNT] to the Town, such principal advance representing the Loan Amount under the Contract. The Town has entered into the Contract to provide funds to finance the upfit of the Town’s Sewer Lift Station #2 for the Town’s utilities systems (the “*Project*”). The Town has secured its obligations under the Contract by entering into a Deed of Trust, Security Agreement and Fixture Filing dated [DATE], 2023 (the “*Deed of Trust*”), from the Town, as grantor, to the deed of trust trustee named therein, for the benefit of the Bank, granting a lien on the real property on which the Project is located, and the improvements thereon, as more particularly described in Exhibit A of the Deed of Trust. All capitalized undefined terms used herein have the meanings given in the Contract.

In such capacity, we have examined executed copies of the Contract, the Deed of Trust and such law, certified proceedings, instruments, opinions and other documents as we have deemed necessary to render the opinions hereinafter expressed. As to questions of fact material to the opinions hereinafter expressed, we have relied on representations of the Town contained in the Contract, the Deed of Trust and the related documents thereto, the certified proceedings and other certifications of public officials and others furnished to us, including certifications furnished to us by or on behalf of the Town and other matters contained therein, without undertaking to verify the same by independent investigation. We have also relied on the opinion of Richard F. Green, PLLC, as counsel to the Town, dated the date hereof, as to the due authorization, execution and delivery of the Contract and the Deed of Trust by the Town and any other matters set forth therein, without undertaking to verify the same by independent investigation. We have assumed the accuracy and truthfulness of all public records and of all certifications, documents, opinions and other proceedings examined by us that have been executed or certified by public officials acting within the scope of their official capacities and have not verified the accuracy or truthfulness thereof. We have

also assumed the genuineness of the signatures appearing on such public records, certifications, documents, opinions and proceedings.

On the basis of the foregoing, we are of the opinion, under existing law, that:

1. The Contract has been duly authorized, executed and delivered and constitutes a valid and legally binding obligation of the Town, enforceable against the Town in accordance with its terms.
2. The Deed of Trust has been duly authorized, executed and delivered and constitutes a valid and legally binding obligation of the Town, enforceable against the Town in accordance with its terms.
3. The interest component of the Installment Payments paid under the Contract is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal individual alternative minimum tax, although we observe that, for tax years beginning after December 31, 2022, the interest component of the Installment Payments paid under the Contract included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. The opinion set forth in the preceding sentence is subject to the condition that the Town complies with all requirements of the Internal Revenue Code of 1986, as amended (the "*Code*"), that must be satisfied subsequent to the initial execution and delivery of the Contract in order that the interest component of the Installment Payments paid under the Contract be, or continue to be, excludable from gross income for federal income tax purposes. The Town has covenanted to comply with all such requirements. Failure to comply with certain of such requirements may cause the interest component of the Installment Payments paid under the Contract to be included in gross income for federal income tax purposes retroactively to the date of the initial execution and delivery of the Contract. We express no opinion regarding other federal tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the Contract.
4. The interest component of the Installment Payments paid under the Contract is exempt from all present State of North Carolina income taxation.
5. The Town has designated the Installment Payments due under the Contract as a "*qualified tax-exempt obligation*" under Section 265(b)(3) of the Code, and in the case of certain financial institutions (within the meaning of 265(b)(5) of the Code), a deduction is allowed for 80% of that portion of such financial institutions' interest expense allocable to the interest portion of the Installment Payments paid in connection with the Contract.

The rights of the Bank under the Contract and the enforceability of the Contract and the Deed of Trust may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, liquidation, readjustment of debt, and other similar laws affecting creditors' rights and remedies generally, and by general principles of equity, whether such principles are considered in a proceeding at law or in equity.

Our services as Special Counsel in connection with execution and delivery of the Contract have been limited to rendering the opinions expressed above. We express no opinion relating to the financial resources of, or the creditworthiness of, the Town, or any other matters relating to an evaluation of the likelihood or the ability of the Town to make the Installment Payments under the Contract. This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur. We are furnishing the opinions expressed above to you solely for your benefit and the benefit of the Bank's permitted successors and assigns under the Contract (collectively, "*Assignees*"); provided, however,

such reliance by any such Assignee must be actual and reasonable under the circumstances existing at the time such Assignee becomes an Assignee, including any changes in law, facts or any other developments known to or reasonably knowable by such Assignee at such time. No other person is entitled to rely on such opinions without our prior written consent. Such opinions are not to be used, circulated, quoted or otherwise referred to for any other purpose without our prior written consent.

Very truly yours,

PARKER POE ADAMS & BERNSTEIN LLP

Prepared by: Scott E. Leo, Esq.
Bank of America Tower
Parker Poe Adams & Bernstein LLP
620 South Tryon Street, Suite 800
Charlotte, North Carolina 28202

Return to: Richard F. Green, Esq.
The Law Office of Richard F. Green, PLLC
2998 Holden Beach Rd SW
Holden Beach, North Carolina 28462

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

**DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING
(FUTURE ADVANCES)**

Pursuant to N.C. Gen. Stat. Section 160A-20

(COLLATERAL IS OR INCLUDES FIXTURES)

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (the “*Deed of Trust*”) is made and entered into this [DATE], 2023 by and between the **TOWN OF HOLDEN BEACH, NORTH CAROLINA**, a municipal corporation created under the laws of the State of North Carolina, whose address is 110 Rothschild Street, Holden Beach, North Carolina 28462 (hereinafter called the “*Grantor*”), and **[DEED OF TRUST TRUSTEE]**, whose address is [_____], as Trustee (hereinafter called the “*Trustee*”), for the benefit of **[BANK]** (hereinafter called the “*Beneficiary*”);

WITNESSETH:

WHEREAS, in accordance with the provisions of N.C. Gen. Stat. Section 160A-20, the Beneficiary has agreed pursuant to an Installment Financing Contract by and between the Beneficiary and the Grantor, dated of even date (hereinafter called the “*Contract*”), to lend to or for the benefit of the Grantor up to the principal sum of \$[AMOUNT];

AND WHEREAS, all principal sums to be advanced to or for the benefit of the Grantor and secured by this Deed of Trust shall be evidenced by the Contract, which Contract may contain provisions for the

adjustment of the interest rate, adjustments in the payments, extension or renewal of the term, among other things, the terms of which are incorporated herein by reference and the final payment date for which if not sooner paid and if payment thereof is not extended, is [MATURITY DATE];

AND WHEREAS, the Grantor is thereby, or shall hereafter become, indebted to the Beneficiary in an amount equal to the sum of all outstanding advances made under the Contract, as provided therein together with and payable with interest as, and at the rate or rates, specified in the Contract;

AND WHEREAS, the Grantor desires to secure the payment of the obligations under the Contract with interest and any extensions, renewals, modifications or amendments thereof, or substitutions or replacements therefore, in whole or in part, the payment of all other sums, with interest thereon, advanced in accordance with the Contract, or herewith, to protect the security of this Deed of Trust, or advanced to protect the rights of the Beneficiary hereunder or under the Contract, and to secure the performance of the covenants and agreements of the Grantor contained herein, by a conveyance of the lands and a grant of the security interests hereinafter described;

AND WHEREAS, all obligations of the Grantor hereunder are expressly made subject to the limitation of liability set forth in Section 15 of this Deed of Trust and Section 13 of the Contract.

NOW, THEREFORE, in consideration of the premises and in further consideration of the sum of One Dollar (\$1) paid to the Grantor by the Trustee, the receipt and sufficiency of which is hereby acknowledged, the Grantor has given, granted, bargained, and sold, and by these presents does give, grant, bargain, sell and convey unto the Trustee, its successors and assigns, the following described parcel of land and all improvements now or hereafter located thereon, lying and being in the Town of Holden Beach, State of North Carolina, and more particularly described as follows:

**SEE EXHIBIT A ATTACHED HERETO AND BY THIS
REFERENCE INCORPORATED HEREIN**

Such parcel of land together with all structures, buildings and other improvements (hereinafter called the "*Improvements*"), now or hereafter located thereon being hereinafter called the "*Mortgaged Property*."

TOGETHER WITH all fixtures, equipment and other articles of personal property acquired by the Grantor with funds advanced by the Beneficiary pursuant to the Contract, whether now owned or hereafter acquired, all personal property obtained in substitution or replacement therefore, and all personal property obtained in substitution or replacement for any portion thereof, and all proceeds of the foregoing (hereinafter called the "*Collateral*").

TO HAVE AND TO HOLD the Mortgaged Property and Collateral, with all the rights, privileges, and appurtenances thereunto belonging or appertaining to the Trustee, her heirs, successors and assigns, in fee simple forever, upon the trusts and for the uses and purposes hereinafter set out;

And the Grantor covenants with the Trustee that it is seized of the Mortgaged Property and Collateral in fee and has the right to convey the same in fee simple; that title is marketable and free and clear of all encumbrances except for the permitted encumbrances shown on **Exhibit B** and such other encumbrances as may be approved by the Beneficiary in writing as provided in the Contract; and that it will warrant and defend the title to the Mortgaged Property and Collateral against the lawful claims of all persons whomsoever.

THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST, that if the Grantor shall pay all obligations under the Contract in accordance with its terms, together with interest thereon, and any renewals, extensions, modifications, amendments, substitutions or replacements thereof in whole or in part, shall pay all sums advanced under the Contract or hereunder to protect the security of this Deed of Trust or the rights of the Beneficiary, together with interest thereon, and shall comply with all the covenants, terms and conditions of the Contract, this Deed of Trust and all other documents and agreements entered into in connection therewith and herewith, then this conveyance shall be null and void and may be canceled of record at the request and at the cost of the Grantor.

Section 1. Events of Default. The occurrence of any one or more of the following events shall constitute an "*Event of Default*" hereunder:

- (a) Failure by the Grantor to pay any principal component or interest component of the Installment Payments when due as required by the Contract or by this Deed of Trust; or
- (b) Failure by the Grantor to duly observe or perform after notice and lapse of any applicable grace period any other term, covenant, condition or agreement of this Deed of Trust; or
- (c) Any warranty of the Grantor contained in this Deed of Trust, proves to be untrue or misleading in any material respect; or
- (d) The occurrence of any "*Event of Default*" under the Contract.

Section 2. Remedies Upon Default. Upon the occurrence of an Event of Default, the Beneficiary and Trustee shall have the following rights and remedies:

- (a) The Beneficiary shall have the right, at its option, to declare all amounts payable under the Contract to be immediately due and payable, whereupon the same shall become immediately due and payable, regardless of the maturity date thereof.
- (b) On the application of the Beneficiary, if the Beneficiary shall have declared the outstanding principal balance under the Contract to be immediately due and payable, the Beneficiary may foreclose the lien of this Deed of Trust pursuant to the power of sale hereby granted or by judicial proceeding. The Trustee is hereby granted a power of sale and may sell the Mortgaged Property or such part or parts thereof or interest therein as the Beneficiary may select after first having given such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as then may be required by law and then having given such notice and advertised the time and place of such sale in such manner as then may be provided by law, and upon such sale and any resale and upon compliance with the law then relating to foreclosure proceedings, to convey title to the purchaser.

Upon such sale(s), the Trustee shall convey title to the purchaser in fee simple. The Beneficiary shall have the right to bid at any sale thereunder. The Trustee may require the successful bidder at any sale to deposit immediately with the Trustee cash or certified check in an amount not to exceed twenty-five percent (25%) of the bid, provided notice of such requirement is contained in the advertisement of the sale. The Trustee may reject the bid if the deposit is not immediately made, and thereupon the Trustee may declare the next highest bidder to be the purchaser. Such deposit shall be refunded in case a resale is had; otherwise, it shall be applied to the purchase price. If Collateral is sold hereunder, it need not be at the place of sale. The published notice of public sale, however, shall state the time and place where the Collateral may be inspected prior to sale.

In the event a proceeding to exercise the power of sale contained herein is begun but not completed, the Grantor shall pay all expenses incurred by the Trustee and a partial commission computed as follows: one-fourth of the hereinafter-specified commission prior to the Trustee's issuance of a notice of hearing on the right to foreclose and one-half of the hereinafter-specified commission after the issuance of such notice and prior to sale. Such expenses and partial commission may be paid by the Beneficiary on behalf of the Grantor but, in any event, shall be secured by this Deed of Trust.

The foregoing shall in no way be construed to limit the powers of sale or restrict the discretion the Trustee may have under the provisions of Article 2A of Chapter 45 of the General Statutes of North Carolina, as the same may be from time to time amended, or such other laws as the Beneficiary or Trustee may be proceeding under, including the laws relating to judicial foreclosure if such is determined to be either the necessary or appropriate process to follow in foreclosing on the lien of this Deed of Trust. Except as provided in Section 15 herein, each legal, equitable or contractual right, power or remedy of the Beneficiary or Trustee now or hereafter provided herein or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy. The exercise or beginning of the exercise of any one or more of such rights, powers and remedies shall not preclude the simultaneous or later exercise of any or all such other rights, powers and remedies and without limiting the foregoing, the Trustee may sell the Mortgaged Property and Collateral separately or together, as a whole or in parts or parcels, at one or more sales conducted at different times and places.

(c) The Beneficiary shall have the right to collect rents, issues, profits and revenues according to the terms of Section 7 hereof.

(d) The Grantor and the Beneficiary have contemporaneously entered into the Contract and upon the occurrence of an Event of Default thereunder, the Beneficiary shall be entitled to exercise such rights and remedies as are contained in such Contract. The Beneficiary shall have the right to the appointment of a receiver to collect the rents and profits from the Mortgaged Property and Collateral without consideration of the value thereof or the solvency of any person liable for the payment of the amounts then owing. The Beneficiary at its option, in lieu of an appointment of a receiver, shall have the right to do all those things the receiver could have done. If such receiver should be appointed, or if there should be a sale of the Mortgaged Property and Collateral by foreclosure, as provided above, the Grantor or any person in possession of the Mortgaged Property and Collateral, as tenant or otherwise, shall become a tenant at will of the receiver or of the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

(e) The Trustee may proceed against the Collateral as provided in and in accordance with the applicable provisions of the Uniform Commercial Code as adopted by the State of North Carolina. The Beneficiary may require the Grantor to assemble the Collateral, or evidence thereof, and make them reasonably available to the Beneficiary at one or more places to be designated by the Beneficiary which are reasonably convenient to the Beneficiary. The Beneficiary may take possession of the Collateral and hold, prepare for sale, lease or other disposition and sell, lease or otherwise dispose of the Collateral at public or private sale, for cash or on credit, as a whole or in part.

(f) The exercise by the Beneficiary of any right or remedy granted to the Beneficiary or Trustee in law or equity, or by this or any other document shall not be deemed an irrevocable election of remedies thereby precluding the Beneficiary or the Trustee from exercising or pursuing any other right or remedy granted to the Trustee or the Beneficiary under this Deed of Trust, the Contract, or any other document or at law or in equity. All remedies contained herein in the Contract or in any other separate agreement executed contemporaneously with the execution of this Deed of Trust are intended to be cumulative.

Section 3. Application of Proceeds. Unless otherwise required by law, proceeds derived from the exercise of either the power of sale or the collection of rents and profits shall be applied to pay, **first**, costs and expenses, including the Trustee's commission in the amount of one percent (1%) in the event of sale, reasonable attorney's fees for legal services actually performed, and reasonable auctioneer's fees if such expenses have been incurred and any other expenses or advances made or incurred in the protection of the rights of the Trustee or in the pursuit of any remedy hereunder; **second**, to taxes and assessments due and unpaid, if the Trustee deems it appropriate to do so; **third**, to the payment of any indebtedness, including principal and interest under the Contract, secured by this Deed of Trust; and **fourth**, the balance, if any, to the person or persons entitled thereto.

Section 4. Payment of Amounts Due Under the Contract. The Grantor covenants and agrees that it will pay when due the Installment Payments due under the Contract when due, including both the principal and interest components thereof.

Section 5. Payment of Taxes, Assessments and Other Amounts; Maintenance of Insurance.

(a) The Grantor shall pay, when due, all charges for utility services used in connection with the Mortgaged Property and Collateral. The Grantor shall pay, or cause to be paid, when due, any and all taxes levied by any governmental body as a result of the Grantor's ownership, possession, or use of the Mortgaged Property and Collateral.

(b) The Grantor shall obtain and maintain, at its expense, at all times a policy of insurance covering the Improvements on the Mortgaged Property and the Collateral and providing the insurance protection described in Section 7.1 of the Contract.

Section 6. Maintenance of the Mortgaged Property. The Grantor shall use the Mortgaged Property and the Collateral in a careful and proper manner, in compliance with all applicable laws and regulations, and shall take no action to adversely affect the Mortgaged Property or the Collateral, and shall take all reasonable action to preserve the Mortgaged Property and the Collateral in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, including, without limitation, at its sole cost and expense, to repair and maintain the Mortgaged Property and the Collateral, and to replace any part of the Mortgaged Property and the Collateral as may from time to time become worn out, lost, stolen, destroyed or damaged or unfit for use. Any and all additions to or replacements of the Mortgaged Property and the Collateral and all parts thereof shall constitute Improvements and shall be subject to all the terms and conditions of this Contract.

Section 7. Assignment of Rents, Leases and Profits.

(a) As further security for the payment of the obligations under the Contract and for the faithful performance of all the covenants, agreements, terms and provisions of this Deed of Trust, the Grantor hereby sells, transfers and assigns unto the Beneficiary all the Grantor's right, title and interest in and to the rents, issues, profits, revenues, royalties, rights and benefits from the Mortgaged Property. To that end, the Grantor hereby assigns and sets over unto the Beneficiary all leases of all or part of the Mortgaged Property now made, executed or delivered, whether written or verbal, or to be hereafter made, whether written or verbal (hereinafter referred to individually and collectively as "*Tenants' Leases*"); **PROVIDED THAT NOTHING CONTAINED IN THIS SECTION 7, OR ELSEWHERE IN THIS DEED OF TRUST, SHALL CONSTITUTE CONSENT BY BENEFICIARY TO ANY SUCH TENANTS' LEASES UNLESS OTHERWISE SPECIFICALLY PROVIDED HEREIN OR IN THE CONTRACT.** The Grantor hereby authorizes and empowers the Beneficiary to collect these rents, issues, profits, revenues, royalties, rights and benefits as they shall become due and hereby directs each and all of the tenants of the

Mortgaged Property to pay such rents, as may now be due or shall hereafter become due, to the Beneficiary, upon demand for payment thereof by the Beneficiary. No such demand shall be made unless and until there has been an Event of Default under the Contract or this Deed of Trust. Until such demand is made, the Grantor is authorized by the Beneficiary to collect or continue collecting such rents, issues, profits, revenues, royalties, rights and benefits; provided, however, the Grantor shall not collect any rents more than two months in advance without the prior written consent of the Beneficiary.

(b) The Grantor covenants and agrees: (i) that it will promptly and fully keep, perform and comply with all the terms, provisions, covenants, conditions and agreements imposed upon or assumed by it as landlord (or similar designation) under the Tenants' Leases, and (ii) that it will not do, permit anything to be done, or omit or refrain from doing anything, the doing or omission of which will give any tenant a right to terminate any of the Tenants' Leases.

(c) If the Grantor shall, in any manner, fail in any of the above covenants and agreements, the Beneficiary may (but shall not be obligated to) take any action the Beneficiary deems necessary or desirable to prevent or cure any default by the Grantor in the performance of or compliance with any of the Grantor's covenants or obligations under any of the Tenants' Leases. The Beneficiary shall have the right to enter upon the Mortgaged Property to such extent and as often as the Beneficiary, in its sole discretion, deems necessary or desirable in order to prevent or cure any such default by the Grantor. The Beneficiary may expend such sums of money as the Beneficiary, in its sole discretion, deems necessary for any such purpose. The Grantor hereby agrees to pay to the Beneficiary, immediately upon demand, all sums so expended by the Beneficiary, together with interest thereon from the date of each such payment at the rate provided for in the Contract. All sums so expended by the Beneficiary, and the interest thereon, shall be secured by this Deed of Trust. The Grantor will give the Beneficiary immediate notice by certified mail of any notice of default or notice of cancellation received from any tenant.

Section 8. Damage, Destruction or Condemnation. Pursuant to Section 7.2 of the Contract, in the event of any damage or destruction to the Improvements on the Mortgaged Property and the Collateral, the Grantor shall have the option to repair and restore the Improvements on the Mortgaged Property and the Collateral, or, with the written consent of the Beneficiary, to prepay the unpaid balance of principal and interest due under the Contract. Pursuant to Section 7.3 of the Contract, in the event of a loss of title, condemnation or taking of all or any part of the Mortgaged Property, the Grantor shall have the option to restore the Mortgaged Property or, with the written consent of the Beneficiary, to prepay the unpaid balance of principal and interest due under the Contract.

Section 9. Security Agreement.

(a) This Deed of Trust shall constitute a security agreement with respect to all Collateral of the Grantor. The Grantor hereby grants to the Beneficiary a security interest in the Collateral including, without limitation, all boilers, all heating, air conditioning and ventilating components and systems, all lighting, electrical power, plumbing, sprinkler and water components and systems, all carpets, wall coverings, screens and drapes, all mechanical and hydraulic components and systems and all appliances located on and used in connection with the operation or maintenance of the Improvements to the extent any of the foregoing constitutes personal property. The security interest in, and lien upon the Collateral shall be in addition to, and not in lieu of, any lien upon or security interest in the Collateral acquired under real property law.

With respect to those items of the Collateral which are or are to become fixtures related to the Mortgaged Property, **this Deed of Trust shall constitute a financing statement filed as a fixture filing.** The lien upon fixtures granted herein and perfected hereby shall be in addition to, and not in lieu of, any lien upon fixtures acquired under real property law. The fixtures are located on the land described on

Exhibit A hereto, and the Grantor is the record owner of such land. The name and address of the Grantor, as debtor, and the Beneficiary, as secured party, are set forth in Section 13 hereof. The lien upon fixtures granted herein and perfected hereby shall be in addition to and not in lieu of any lien upon fixtures acquired under real property law.

Section 10. Environmental Covenants.

(a) To the best of the Grantor's knowledge, the Mortgaged Property is not now and has not ever been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials and no Hazardous Materials have ever been installed on such Mortgaged Property except as otherwise disclosed to the Beneficiary as required by the Contract. The Grantor covenants that such Mortgaged Property shall be kept free of Hazardous Materials and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in connection with the normal construction, maintenance and operation of the Public Services Facility and in compliance with all Environmental Laws. The Grantor shall not cause or permit as a result of any intentional or unintentional act or omission on the part of the Grantor or any lessee, tenant, subtenant, licensee, guest, invitee, employee, agent or contractor, the installation of Hazardous Materials in the Public Services Facility or a release of Hazardous Materials onto the Mortgaged Property or suffer the presence of Hazardous Materials on the Mortgaged Property, except in connection with the normal construction, maintenance and operation of the Public Services Facility and in compliance with all Environmental Laws. The Grantor shall comply with and ensure compliance by all sublessees, tenants, subtenants, licensees, guests, invitees, employees, agents and contractors with all applicable federal, state and local laws, ordinances, rules and regulations with respect to Hazardous Materials and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations. The Grantor has not received any notice from any governmental agency, entity or any other person who receives any notices from any governmental agency, entity or any other person with regard to Hazardous Materials on, from or affecting the Mortgaged Property. In the event the Grantor does receive any such notices, the Grantor shall immediately notify the Beneficiary. The Grantor, at no expense to the Beneficiary, shall conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to comply with all applicable Environmental Laws.

(b) Notwithstanding the description of Collateral contained in this Deed of Trust, all Hazardous Materials (as defined in this Section) are specifically excluded from Collateral subject to this Deed of Trust. In addition, any and all underground storage tanks and piping located on the Mortgaged Property described above are specifically [check one]:

_____ included as part of the Mortgaged Property. x excluded as part of the Mortgaged Property.

Section 11. Release of Mortgaged Property. Notwithstanding any other provisions of this Deed of Trust, at any time so long as there is no Event of Default, the Trustee must release the Mortgaged Property or any part thereof from the lien and security interest of this Deed of Trust when and if the following requirements have been fulfilled:

- (i) In connection with any release of the Mortgaged Property, or any part thereof, there shall be filed with the Beneficiary a certified copy of the resolution of the Board of Commissioners of the Grantor stating the purpose for which the Grantor desires such release of the Mortgaged Property, giving an adequate legal description of the part of the Mortgaged Property to be released, requesting such release and providing for the payment by the Grantor of all expenses in connection with such release.

- (ii) In connection with the release of any part of the Mortgaged Property constituting less than the entire Mortgaged Property, the Beneficiary shall have consented to such release.
- (iii) In connection with the release of any part of the Mortgaged Property constituting less than the entire Mortgaged Property, such release shall not prohibit Grantor's ingress, egress and regress to and from the remainder of the Mortgaged Property not being released, or materially interfere with the use of the remainder of the Mortgaged Property not being released and evidence of such shall be filed with the Beneficiary.
- (iv) In connection with the release of all property constituting the entire Mortgaged Property, there is paid to the Beneficiary an amount sufficient to provide for the payment in full of all Installment Payments in accordance with Section 3 of the Contract.

Section 12. Grant and Release of Easements and Fixtures. (a) Notwithstanding any other provisions of this Deed of Trust and subject to the Contract, at any time so long as there is no Event of Default, with the consent of the Trustee, the Grantor may at any time or times grant easements, licenses, rights of way and other rights and privileges in the nature of easements with respect to any part of the Mortgaged Property and the Grantor may release existing interests, easements, licenses, rights of way and other rights or privileges with or without consideration. The Beneficiary agrees that it shall execute and deliver and will cause, request or direct the Trustee to execute and deliver any instrument reasonably necessary or appropriate to grant or release any such interest, easement, license, right of way or other right or privilege but only upon receipt of (a) a copy of the instrument of grant or release, (b) a written request of the Grantor requesting such instrument and (c) a certificate executed by the Grantor that the grant or release is not detrimental to the proper conduct of the operations of the Grantor at the Mortgaged Property and will not impair the effective use, nor materially decrease the value, of the Mortgaged Property.

(b) Notwithstanding any other provisions of this Deed of Trust, at any time so long as there is no Event of Default, with the consent of the Trustee, the Grantor may at any time or times release fixtures to be added to the Mortgaged Property from the security interest created hereby with or without consideration. The Beneficiary agrees that it shall execute and deliver and will cause, request or direct the Trustee to execute and deliver any instrument reasonably necessary or appropriate to release any such fixture but only upon receipt of (a) a copy of the instrument of release, (b) a written request of the Grantor requesting such instrument and (c) a certificate executed by the Grantor that the release is not detrimental to the proper conduct of the operations of the Grantor at the Mortgaged Property and will not impair the effective use, nor materially decrease the value, of the Mortgaged Property.

Section 13. Notices. All notices, certificates and other communications hereunder shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows: if to the Grantor, **Town of Holden Beach, North Carolina, 110 Rothschild Street, Holden Beach, North Carolina 28462**, Attention: Town Manager; if to the Beneficiary, **[BANK], [BANK ADDRESS]**, and, if to the Trustee, **[DEED OF TRUST TRUSTEE ADDRESS]**, with a copy to the Beneficiary, **[BANK ADDRESS]**. The Grantor, the Trustee and the Beneficiary may, by written notice given hereunder, designate a different address where communications should be sent and may agree on a different method of delivery of communications.

Section 14. Miscellaneous.

(a) No delay or forbearance by the Beneficiary in exercising any or all of its rights hereunder or rights otherwise afforded by law shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default as set forth herein or in the event of any subsequent default hereunder. In the event that the Beneficiary or the Trustee voluntarily or otherwise shall become a party to any suit or legal proceeding to protect the Mortgaged Property or to protect the title of the Trustee created by this Deed of Trust, the Trustee and the Beneficiary shall be saved harmless and shall be reimbursed by the Grantor for any amounts paid, including all reasonable costs, charges and attorney's fees incurred in any such suit or proceeding to the full extent permitted by law. These amounts together with interest on the amounts at the rate set forth in the Contract shall be secured by this Deed of Trust and their payment enforced as if they were a part of the original debt.

(b) It is specifically agreed that the parties hereto shall in no event be deemed to have contracted for a greater rate of interest than the maximum rate permitted by law. Should a greater amount be collected, it shall be construed as a mutual mistake of the parties and the excess shall be returned to the party making such a payment.

(c) The Beneficiary shall at any time have the irrevocable right to remove the Trustee herein named without notice or cause and to appoint his successor by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in North Carolina. In the event of the death or resignation of the Trustee herein named, the Beneficiary shall have the right to appoint his successor by such written instrument. Any Trustee so appointed shall be vested with the title to the Mortgaged Property and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though such person were named herein as Trustee.

(d) All the terms and conditions of the Contract pursuant to which the obligations secured hereby are incurred, are incorporated by this reference and made a part hereof. To the extent of any conflict between this Deed of Trust and the Contract, the Contract shall take priority.

(e) The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to, the respective successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular. If two or more parties have joined as Grantor, each of the parties shall be jointly and severally obligated to perform the conditions and covenants herein contained. Notwithstanding the foregoing, any Grantor who executes this Deed of Trust but who does not execute the Contract hereby secured has executed the Deed of Trust only to subject whatever interest such Grantor has or may hereafter have in the Mortgaged Property, Improvements and Collateral to the lien and security interest created by this Deed of Trust. The term "*Beneficiary*" shall include any payee of the indebtedness hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise.

Section 15. Limited Obligation of the Grantor.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, PURSUANT TO SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, NO DEFICIENCY JUDGMENT SHALL BE RENDERED AGAINST THE GRANTOR IN ANY ACTION FOR BREACH BY THE GRANTOR OF ITS OBLIGATIONS UNDER THE CONTRACT; THE REMEDIES PROVIDED UNDER THIS DEED OF TRUST, INCLUDING FORECLOSURE UNDER THIS DEED OF TRUST, BEING THE SOLE REMEDY GRANTED HEREBY. THE TAXING POWER OF THE GRANTOR IS NOT AND MAY NOT BE PLEDGED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO SECURE THE PAYMENT OF ANY MONEY DUE UNDER THE CONTRACT, INCLUDING THE

INSTALLMENT PAYMENTS OR ADDITIONAL PAYMENTS UNDER THE CONTRACT, OR ANY OTHER INSTRUMENT CONTEMPLATED HEREBY OR THEREBY. No provision of this Deed of Trust shall be construed or interpreted as creating a pledge of the faith and credit of Grantor within the meaning of any Constitutional debt limitation. No provision of this Deed of Trust shall be construed or interpreted as creating a pledge of the faith and credit of Grantor within the meaning of the Constitution of the State of North Carolina. This Deed of Trust shall not directly or indirectly or contingently obligate Grantor to make any payments beyond the amount appropriated, if any, in the sole discretion of the Grantor for any fiscal year in which this Deed of Trust shall be in effect. Grantor may at the end of any fiscal year terminate its future payment obligations under the Contract secured by this Deed of Trust if Grantor has not appropriated sufficient funds to make the next fiscal year's scheduled payment obligations; however, during each fiscal year, Grantor shall exercise its best efforts to appropriate funds for such obligations due in the next fiscal year. **No deficiency judgment may be rendered against Grantor in any action for breach of a contractual obligation under the Contract or this Deed of Trust and the taxing power of the Grantor is not and may not be pledged directly or indirectly to secure any money due thereunder or hereunder.** No provision of this Deed of Trust shall be construed to pledge or to create a lien on any class or source of Grantor's money. In addition, any terms of this Deed of Trust which is, or may have the effect of being, a "non-substitution clause" is void and of no effect. To the extent of any conflict between this Section and any other provision of this Deed of Trust, this Section shall take priority. Notwithstanding the foregoing, nothing in this Section is intended to impair or prohibit foreclosure under this Deed of Trust if the Installment Payments (as defined under the Contract) are not paid when due or otherwise upon the occurrence of any Event of Default, and in such event, Beneficiary may request the Trustee to foreclose on the Mortgaged Property and Collateral as provided in this Deed of Trust.

Section 16. Future Advances. The obligations under the Contract secured by this Deed of Trust include present and future obligations of Grantor to Beneficiary, and this Deed of Trust is executed to secure all such obligations. The period in which future obligations may be incurred and secured by this Deed of Trust is the period between the date hereof and that date which is thirty (30) years from the date hereof. The maximum principal amount, including present and future obligations, which may be secured by this Deed of Trust at any one time is [] Dollars (\$[]). Any additional amounts advanced by Beneficiary pursuant to the provisions of this Deed of Trust shall be deemed necessary expenditures for the protection of the security. Each future advance need not be evidenced by a written instrument or notation signed by Grantor stipulating that such advance is secured by this Deed of Trust. All future obligations shall be considered to be made pursuant to the requirements of North Carolina General Statutes Section 45-67, et seq., or any amendments thereto.

[SIGNATURE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Deed of Trust is duly executed, sealed and delivered by the Grantor as of the day and year first above written.

TOWN OF HOLDEN BEACH, NORTH CAROLINA

[SEAL]

By: _____
David W. Hewett
Town Manager

ATTEST:

By: _____
Heather Finnell
Town Clerk

STATE OF NORTH CAROLINA)
)
COUNTY OF BRUNSWICK)

I, a Notary Public of Brunswick County and State aforesaid, certify that Heather Finnell (the "Signatory") personally came before me this day and acknowledged that she is the Town Clerk of the Town of Holden Beach, North Carolina (the "Town") and that by authority duly given and as the act of the Town, the foregoing instrument was signed in its name by the Town Manager and attested by her as Town Clerk.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)
____ (I have personal knowledge of the identity of the Signatory); or
____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
___ a driver's license or
___ in the form of _____); or
____ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the _____ day of _____, 2023.

Notary Public

Print: Name: _____
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: _____
☛ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

EXHIBIT A
LEGAL DESCRIPTION

[to come]

EXHIBIT B

PERMITTED ENCUMBRANCES

“Permitted Encumbrances” shall include (a) all matters shown on record at the Brunswick County Register of Deeds affecting the Mortgaged Property as of the date hereof, (b) liens for taxes and assessments not then delinquent, (c) the Contract and as permitted by the Contract and (d) easements, rights-of-way and other such minor defects or restrictions as normally exist with respect to property of the same general character as the Mortgaged Property which will not impair the Grantor’s intended use of the Mortgaged Property.



Date: September 11, 2023

To: Mayor Holden & Commissioners

From: Chris Clemmons, Public Works Director C.C.

Re: Southern Disaster Recovery, LLC Contract

The County has informed the Town that the Multijurisdictional Disaster Debris Management contract with Southern Disaster Recovery, LLC does not include the removal of eligible hazardous tress of less than six inches in diameter. The proposed amendment to the contract adds this service to the fee schedule in the contract.

The recommended motion is to approve the second amendment to the contract between Southern Disaster Recovery, LLC and the Town of Holden Beach.

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

THIS SECOND AMENDMENT TO CONTRACT, made and entered into this 19th day of September, 2023, by and between **SOUTHERN DISASTER RECOVERY, LLC**, a South Carolina limited liability company, hereinafter referred to as “Contractor” and the **TOWN OF HOLDEN BEACH**, a duly chartered municipal corporation and body corporate and politic of the County of Brunswick, hereinafter referred to as “Activating Entity”.

WITNESSETH:

THAT WHEREAS, Contractor and Activating Entity previously entered into a Multi-Jurisdictional Disaster Debris Management contract with an effective date of September 12, 2019; and

WHEREAS, it now appears there was an omission in the fee schedule for removal of eligible hazardous trees with work consisting of removing hazardous trees; and

WHEREAS, Contractor and Activating Entity have agreed to amend the original contract to set forth the facts for said additional services.

NOW THEREFORE, Contractor and Activating Entity hereby agree:

- 1. That ATTACHMENT 1 – FEE SCHEDULE to the above-referenced contract is hereby amending by adding to Section 11 of said attachment the following additional removal of eligible hazardous tree category:

11f	Less than six-inch diameter	per tree	\$50.00
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- 2. Except as specifically set forth herein, all other terms and conditions of the original contract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this contract to be executed in duplicate originals on the day and year first written.

SOUTHERN DISASTER RECOVERY, LLC

BY: _____

TOWN OF HOLDEN BEACH

BY: _____

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

Daniel McRainey, Finance Officer

§ 92.03 REMOVAL OF SAND.

No person, firm or corporation shall remove or cause to be removed any beach sand from its natural state, except necessary excavation in preparation for building, remodeling, or repairing the premises; provided that any beach sand so removed shall be placed nearer the road adjoining the premises or, at the option of the owner of the premises, hauled to another suitable location within the town limits, provided also that the sand dunes lying adjacent to the ocean front shall not be lowered below six feet in height above the abutting street elevation, and that in making such excavation no vegetation shall be destroyed which is growing on the front slope of the ocean front sand dune. Provided further that under no circumstances shall any quantity of beach sand be transported to a location outside the town limits.

('75 Code, § 3-12-1) Penalty, see § 10.99

Sec. 38-33. Removal of sand.

- (a) No person shall remove or cause to be removed any beach sand from its natural state, except necessary excavation in preparation for building, remodeling or repairing the premises; provided that any beach sand so removed shall be placed nearer the road adjoining the premises or, at the option of the owner of the premises, hauled to another suitable location within the town limits; provided also that the sand dunes lying adjacent to the oceanfront shall not be lowered below six feet in height above the abutting street elevation, and that in making such excavation no vegetation shall be destroyed which is growing on the front slope of the oceanfront and sand dune. Provided further that under no circumstances shall any quantity of beach sand be transported to a location outside the town limits.
- (b) Bulldozing, pushing of sand by mechanical means or other mechanical change of the topography is prohibited except in the following situations:
 - (1) When such work is performed as a part of a hurricane or erosion protection project or beach nourishment project sponsored by the town or any local, state or federal governmental agency;
 - (2) When such work is performed at the direction of the town for the purpose of beach maintenance;
 - (3) When such work is performed by any nongovernmental person or entity to protect primary structures (not including walkways to the ocean beach, swimming pools, or accessory use structures), that are imminently threatened as a result of severe erosion of the ocean beaches or the sand dune structure, but only upon receipt of a permit for such work from the local CAMA permitting officer after a finding by such officer that the structure is imminently threatened ("imminently threatened" means that the foundation of the structure is less than 20 feet from the tow of the erosion scarp and/or the sewer system is exposed); or
 - (4) When such work is authorized by the board of commissioners following a natural disaster or other extreme weather event. The property owner shall file an application with the town setting forth the reasons why this action is necessary to protect the property of the owner or is in the public interests. In the event that the board authorizes the requested action, the board may place any conditions or requirements upon the authorization that it deems to be in the best interest of the town and public.
- (c) Any person who violates this section shall be subject to a civil fine of \$500.00 and each day that the property is not restored to its prebulldozed condition shall be a separate violation. Collection and enforcement of the civil penalty shall be in accordance with section 1-6 of the town's Code of Ordinances.

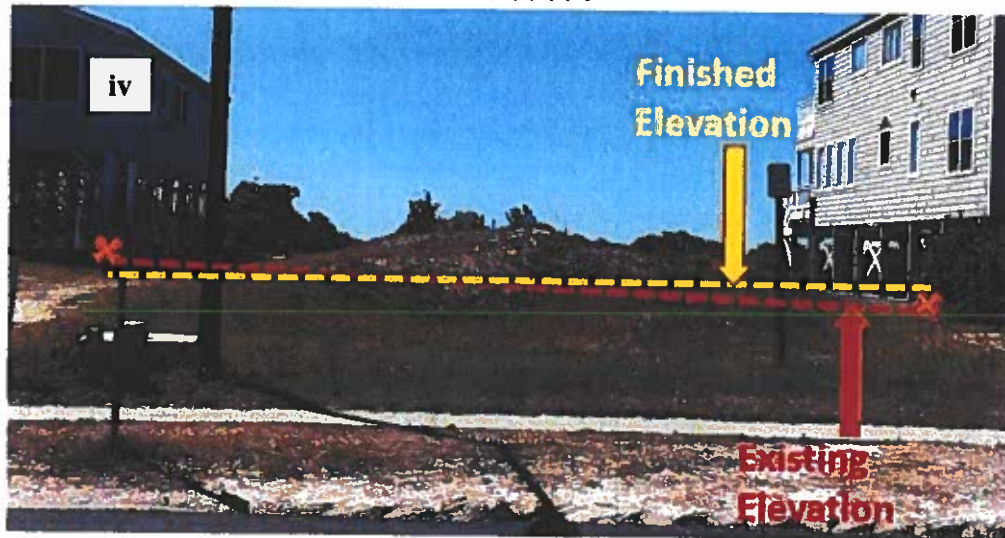
(Code 1983, § 6-5-8; Ord. of 3-13-2007, §§ 1—3; Res. No. 2015-25, § 1, 11-10-2015)

State law reference(s)—Damages and other offenses to land and fixtures, G.S. 14-127 et seq.

ARTICLE 2. GENERAL REGULATIONS

ground level shall be no greater than one foot above the crown of the road.

- iv. For **lots** whose average grade is above the adjacent road, the established **finished ground level** shall be determined by measuring the average elevation of the ground. The average elevation shall be measured in accordance with Section 2.18 (A)(a)(ii).



- v. Sand will not be taken from the island nor shall it be removed from the CAMA Area of Environmental Concern (AEC) from which it originated.
- vi. In no instance shall the construction of a **street** result in a change in elevation at any point along said **street** that exceeds one foot above the existing grade at the time of applying for a Town issued permit for Fill and Grade.
- b. For **lots** on the mainland:
When grading or filling of a lot is proposed, the **finished ground level** of any **lot** shall be measured in accordance with Section 2.18 (A)(a)(ii).
- c. In instances whereby the **finished ground level** cannot be obtained as specified herein due to natural topography, existing development adjacent to the **lot**, or other factors relative to site conditions, the **Planning Board** shall determine the **finished ground level** upon review and approval of a proposed grading plan.

ARTICLE 2. GENERAL REGULATIONS

- (D) All fill shall be established at a slope not to exceed 3:1 (three feet horizontal run for every one-foot vertical rise) and shall be stabilized to prevent erosion. Alternatively, construction of a retaining wall, bulkhead, or other engineered containment device to prevent fill and surface water from running onto adjacent **lots** may be permitted.
- (E) The builder and/or owner shall be responsible for grading the **lot** in such a manner as to absorb surface runoff and/or provide a stormwater catchment system for runoff.
- (F) A silt fence must be erected around that portion of a **lot** being disturbed that causes erosion onto adjacent property, waterbodies, and/or street right of ways. Exception: Only the portion of the **lot** adjoining golf course greens or fairways or a portion of a **lot** for construction access is exempt.
- (G) This section does not alleviate any property owner from adhering to nor from obtaining required permits from any County, State or Federal authority.

Site work in accordance with the approved Town Fill and Grade permit must be complete within 90 days of issuance. Upon expiration and provided that substantial progress has occurred, the Town Fill and Grade permit may be extended for a period of 90 days.

SECTION 2.19 Alteration of Sand Dunes or Ocean Front Vegetation

- (A) It shall be unlawful to alter, disturb, or relocate any sand, sand dune, or cut or remove vegetation on any lot except under the following circumstances, whichever is most restrictive, after proper application to the Town and the issuance of a zoning permit:
 - (1) Alteration needed to accomplish CAMA approved activities;
 - (2) Vegetation exceeding the height of the first, habitable floor level of the house on the lot. In such case, the vegetation may be trimmed down no lower than the first habitable floor level.
- (B) Exemptions. The Town, County, State or Federal governments shall be exempt from this section in the normal upkeep, construction, or maintenance of Town or other approved governmental facilities and infrastructure and in compliance with all applicable CAMA regulations.
(Am. Ord. of 04/19/16)