

**Town of Elon
Board of Aldermen
Agenda Session**

AGENDA ITEMS

**September 7, 2021
Municipal Building, 6:00 PM**

I. CALL TO ORDER

**II. MOTION TO APPROVE BY REFERENCE THE ITEMS LISTED WITHIN THE
CONSENT AGENDA**

- A. Board of Aldermen Meeting Minutes- DiAnne Enoch
- August 2, 2021 Agenda Session Minutes
 - August 10, 2021 Regular Meeting Minutes

III. PUBLIC COMMENTS

- *The public may speak on any non-agenda item up to three minutes.*
- *An agenda item will only be discussed at its appropriate time.*
- *Public Hearing items can only be discussed during the public hearing.*
- *Be sure to sign in, stand, and state your name and address for the Minutes.*

IV. PUBLIC HEARING(S)

- A. Land Development Ordinance Text Amendment #21-02 Regarding Campaign and Election Signs - Pamela DeSoto
- B. Ordinance to Make Certain Revisions to the Town of Elon Code of Ordinances - Pam DeSoto
- A. Bond Order and Series Resolution - Rich Roedner

V. NEW BUSINESS

- A. Policy for Water and Sewer - Misty Hagood
- B. Proposed Police Department Incentives - Rich Roedner
- C. Consideration of Ordinance and Policy Review Committee - Rich Roedner
- D. COVID Policy Changes - Rich Roedner

VI. REPORTS

- A. Town Manager
- B. Mayor and Board of Aldermen

VII. CLOSED SESSION

- A. Land Acquisition negotiations per NC General Statutes, § 143-318.11.a.(5)

VIII. ADJOURNMENT

**TOWN OF ELON
BOARD OF ALDERMEN AGENDA REPORT**

Item Type: Other

SUBJECT: Board of Aldermen Meeting Minutes- DiAnne Enoch

DATE: September 7, 2021

BOARD OF ALDERMEN ACTION REQUESTED ON: September 14, 2021

ATTACHMENTS:

Description	Upload Date	Type
August 2, 2021 Meeting Minutes	9/3/2021	Minutes
August 10, 2021 Meeting Minutes	9/3/2021	Minutes

**TOWN OF ELON
BOARD OF ALDERMEN
AGENDA SESSION MEETING MINUTES
August 2, 2021**

CALL TO ORDER

The Town of Elon Board of Aldermen Agenda Session was convened on August 2, 2021 at 6:00 p.m. in the Elon Municipal Building located at 104 S. Williamson Ave. Mayor Jerry Tolley presided. Aldermen Mark Greene, Quinn Ray, Monti Allison and Alderwoman Emily Sharpe were present. Mayor Pro Tem Davis Montgomery participated via remote access.

Town Manager Richard Roedner, and Assistant Town Manager/Planning Director Pam DeSoto were also present. Attending via remote access were Downtown Development Administrator Kathleen Patterson, Town Clerk, DiAnne Enoch, and Finance Director, Misty Hagood.

Others present were Harrison Wenshell, Stewart, Inc., Mitch Bruglio and Doug Taylor from Davenport, and Alamance News reporter Ashley Tate.

**MOTION TO APPROVE BY REFERENCE THE ITEMS LISTED WITHIN THE
CONSENT AGENDA**

A. Board of Aldermen Meeting Minutes - DiAnne Enoch

1. June 7, 2021, Agenda Session Meeting
2. June 15, 2021 Regular Meeting

Assistant Town Manager/Planning Board Director Pam DeSoto read the items on the Consent Agenda. Mayor Tolley commented that the items would remain on the consent agenda.

PRESENTATION

A. Presentation of Draft ADA Assessment and Transition Plan

Assistant Town Manager/Planning Board Director Pam DeSoto introduced the guests Doug Taylor and Harrison Wenstell, present to make a presentation on the ADA Self Assessment Transition Plan. Ms. DeSoto informed the Board that the public comments period was still open, and that at the conclusion of the comments period, final edits to the plan would be made and then it would be brought back to the Board for adoption. Mr. Wenstell made the presentation. Board members asked questions and had discussion about the plan. Ms. DeSoto informed the Board that David Murphy had been assigned as the coordinator for ADA.

PUBLIC COMMENTS

Mayor Tolley asked if there were any public comments. There were none.

Resolution Providing for Application to the LGC for Approval of Enterprise System Revenue Bonds

Town Manager, Rich Roedner informed the Board that present was Mitch Brigulio with Davenport to review the RFP responses in the summary provided for them. He reported that Town staff has worked with our financial advisors and bond counsel to issue the RFP to secure a commitment for a direct bank loan evidenced by a Revenue Bond and to prepare the Resolution necessary to request LGC approval for the bond issue and approve the financing with Sterling National Bank for a 15 year term. Mr. Roedner stated that the request is that the Mayor and Board of Aldermen approve the Resolution providing for application to the Local Government Commission for approval of enterprise systems revenue bonds; requesting Local Government Commission approval of such enterprise systems revenue

bonds; approval of financing proposals and certain related matters and findings. Mr. Taylor informed the Board that they would be entering a contract that would need approval at the September 14 Regular Meeting.

Budget Amendment #1 2021-2022

Town Manager Roedner stated that the request is to amend the budget in the Federal Asset Forfeiture Fund for the purchase of a 2021 Dodge Durango. He further stated that the budget amendment will increase the Appropriated Fund Balance and Expenditures by \$30,000 in the Federal Asset Forfeiture Fund to allow the Police Department to purchase a 2021 Dodge Durango. Mr. Roedner stated that we would like to make this purchase now, with a vehicle available and on hold, due to the lack of availability of police packages in the coming year. He reported that this vehicle has a police package with a V-6 engine and would be used by Police Administration. Mr. Roedner shared that they would like to purchase hybrid cars however they are non-existing right now. Alderman Allison made the motion to approve the budget amendment for the purchase of the car. Alderwoman seconded the motion with the vote being 5 - 0 for approval.

NEW BUSINESS

Consideration of Amendment to Retirement Benefits

Town Manager Roedner explained that this request is for the Board to consider providing a retirement bonus to assist retirees with pre-Medicare health insurance costs. He shared that the North Carolina retirement policies allow for retirement following a certain number of years in service, rather than the Federal program which is age-based. For most positions, 30 years of service is required, while Police only need 20. He further shared that this allows people who have met the length of service requirement to retire potentially in their 40s or 50s. Mr. Roedner stated that however, with retirement comes the issue of health coverage, as early retirees are not eligible for Medicare until they turn 65.

Mr. Roedner made the following report.

"At the time of separation, employees are allowed to purchase no more than 18 months of employer health coverage through the COBRA program. Some communities address this gap by allowing retirees to receive health coverage at the Town's cost until they hit 65 years of age. Currently, this is about \$8,000 per year for our employee insurance plan. We do not offer this benefit. For an employee retiring in their 40s, this could be a significant financial obligation on the part of the Town.

We have talked with the Personnel Committee about adding a benefit for employees at the point of retirement of one month's salary. For all employees, this would give their final pay level a boost, which would increase their retirement income. For employees retiring early under Social Security, it would provide some financial support to cover health care costs until they reach Medicare eligibility."

Mr. Roedner stated that the cost to the Town would be covered by the hiring process (seldom is a new employee coming in the door as the former employee is leaving), and, particularly with long term employees at the top of the salary range, a new employee would likely not come in at the same level. He stated that the request is that staff formalize the proposed benefit package.

Alderwoman Emily Sharpe asked if a retirement health saving plan had been considered. Mayor Pro Tem Montgomery asked whether they should consider looking at the entire benefits packet and not look at this in isolation. Mr. Roedner informed the Board that this item was for discussion and that he and staff would continue to work on it.

REPORTS

Town Manager

Town Manager Roedner informed the Board that the first block of W. Lebanon and W. Trollinger would be paved in the next couple of days. He reported that there would be road closures at times. Mr. Roedner reported that the Town had budgeted for a generator to be installed at Town Hall where the computer is located for Town government. Mr. Roedner made a recommendation of the Board that Town Offices be closed at 11am on Friday to have the generator installed. Mr. Roedner announced that Music to Dine to would start back on Friday, August 13 and run through Friday, October 8. Mr. Roedner announced that the next community cleanup would be Saturday, August 8. Mr. Roedner shared with the Board that with the COVID infection numbers increase in Alamance County and throughout the State, that all persons entering Town Hall are asked to wear a mask. He stated that staff are required to wear a mask when dealing with the public.

Mayor and Board of Aldermen

Alderman Quinn Ray complemented the July 4 decorations in Town. He shared that the Arts Advisory Board will begin with the crosswalks and fire hydrant paintings. Alderman Ray extended a word of thanks to the University for the metal umbrellas and seats downtown. Alderwoman Emily Sharpe reported that there was a lot of conversation on the next door app concerning increase of water bills. She stated that she has directed people to contact the Town Manager who has answers to a list of questions about the increase. Alderwoman Sharpe shared that on next week she, Mayor Pro Tem Montgomery and Mr. Roedner would meet to discuss the Equality Resolution and or ordinance option. Alderman Monti Allison extended his appreciation for Downtown Development Administrator, Kathleen Patterson and staff for the decoration of downtown for the fourth of July. He asked about the status of the Equality ordinance or resolution and whether it would be ready to be voted on in September. Mayor Pro Tem Davis Montgomery met with NC Equality and Equality North Carolina (ENC) who are the lead organization for Non-Discrimination Ordinance (NDO) for North Carolina and gave a synopsis of their conversation. Mr. Roedner shared with the Board that Jeff Stein contacted him via email to say that the University would have a 95% vaccination rate for the fall school year.

ADJOURNMENT

With no further business Mayor Tolley asked for a motion to adjourn. Alderwoman Sharpe made the motion which was seconded by Alderman Allison . The motion carried 5 - 0.

Attest:

Jerry R. Tolley, Mayor

Town Clerk

**TOWN OF ELON
BOARD OF ALDERMEN
REGULAR MEETING MINUTES
August 10, 2021**

CALL TO ORDER

The Town of Elon Board of Aldermen Regular Meeting was convened on August 10, 2021 at 6:00 p.m. in the Elon Municipal Building located at 104 S. Williamson Avenue. Mayor Jerry Tolley presided. Mayor Pro Tem Davis Montgomery, Aldermen Mark Greene, Monti Allison, Quinn Ray and Alderwoman Emily Sharpe were present.

Staff present included Town Manager Richard Roedner, Town Clerk DiAnne Enoch, Finance Director Misty Hagood, Downtown Development Administrator Kathleen Patterson, Police Chief Kelly Blackwelder, and Assistant Police Chief Lyle Anibal.

Others present included Alamance News reporter Allison Tate. Elon News reporter Kyra O'Connell, was remote.

**MOTION TO APPROVE BY REFERENCE THE ITEMS LISTED WITHIN THE
CONSENT AGENDA**

Board of Aldermen Meeting Minutes - DiAnne Enoch

1. June 7, 2021, Agenda Session Meeting
2. June 15, 2021 Regular Meeting

Town Clerk DiAnne Enoch read the items that were on the Consent Agenda. Mayor Pro Tem Davis Montgomery made the motion to approve those items. Alderman Monti Allison seconded the motion which carried 5 - 0.

PRESENTATION

- A. Promotion Recognition/Introduction
Lt. Lyle Anibal promotion

Chief Blackwelder announced and presented to the Board Lyle Anibal who had been promoted to Assistant Chief due to the departure of Assistant Chief James Perry. She shared that Assistant Chief Anibal has been employed with the Town since 1995 and would be chief over patrol operations. Assistant Chief Anibal gave comments and stated that he looked forward to finishing up his career with the Town of Elon.

PUBLIC COMMENT(S)

There were no public comments.

ORDINANCE(S) AND RESOLUTION(S)

Resolution Providing for Application to the LGC for Approval of Enterprise System Revenue Bonds

Town Manager Roedner commented that this item was to request that the Mayor and Board of Aldermen approve the Resolution providing for application to the Local Government Commission for

approval of enterprise systems revenue bonds; requesting Local Government Commission approval of such enterprise systems revenue bonds; approval of financing proposals and certain related matters and findings. Alderwoman Sharpe made the motion to approve the resolution. Alderman Greene seconded the motion which carried 5 - 0.

OLD BUSINESS

Discussion of Equality Resolution

Town Manager Roedner stated that the draft resolution was in their packet last week. He shared that he, Mayor Pro Tem Montgomery and Alderwoman Sharpe had met the previous day to revise the draft resolution. A marked up copy of the resolution was included in Novus as well as in their emails to the Board. Hard copies were placed at their places for the meeting. Alderwoman Sharpe explained their process for edits and revisions. She further stated that they really wanted to put in place a what's next action plan and not just create a resolution and it is done. Alderwoman Sharpe shared that they would like to create a local committee, residents of the Town of Elon and other locals to evaluate the Town's municipal policies and ordinances to see if there are any discriminatory impacts, create a forum for public inputs and for that group to make recommendations to the Board of Aldermen. Mr. Roedner informed the Board that the Town's stated policies have been added on the Town website on the employment application. He further stated that under the ADA plan changes will be made to the website as well. Alderman Greene commented that he think that Mayor Pro Tem Montgomery, Alderwoman Sharpe and Mr. Roedner has done a very good job in their efforts on this sensitive subject and that he really appreciates them taking the time to put this together. Alderman Allison commented that he agreed with Alderman Greene's comments. He further stated that this was more positive to search for equality as opposed to search for discrimination. Discussion took place for typical errors. Alderman Ray commented that this was a great first step. He further said that he echoes the other Aldermen comments in their appreciation of the three of them taking the time to put this together. Mr. Roedner informed the Board that the next step is the Board as to what would they like to see done next. Alderman Ray suggested that Elon review the process that the City of Mebane used to form their Racial Equity Committee. Alderwoman Sharpe made the motion to approve the resolution with the aforementioned edits. Alderman Greene seconded the motion which carried 5 - 0. Mayor Tolley thanked the Mayor Pro Tem Montgomery and Alderwoman Sharpe as well as Town staff for the good work that they had performed.

REPORTS

Town Manager

Town Manager Roedner shared Q & A about the rise in cost of the water bills for Elon customers. He gave a brief history on how the town gets its water from the City of Burlington and how the cost is passed on to Elon customers. He also shared how the water system works and what the Town has done to involve it. Alderman Quinn Ray asked what would it look like for the Town to have a consolidation, a regional water commission with the City of Burlington and surrounding municipalities. He stated that it could be beneficial to look more into this.

Mr. Roedner reminded everyone that next Friday, August 20 would be move in day for the University students. He further shared that on August 18 and 19 there will be work done on the front counter in Town Hall to bring it in compliance with the ADA requirements. Mr. Roedner also informed the Board that on Labor Day weekend the 2020 Graduation for Elon University would take place.

Mayor and Board of Aldermen

Alderman Greene congratulated Assistant Chief Anibal on his promotion. He also welcomed Town Clerk DiAnne Enoch back to in-office work. Alderman Ray also congratulated Assistant Chief Anibal

on his promotion and years of service. He asked if there was a way to share with year round residents events and activities that are occurring that they could be apart of or participate in. Alderwoman Sharpe mentioned that the former Sonoco location had been purchased by SPC Mechanical. She also welcomed all of the recently hired new employees and congratulated Assistant Chief Anibal on his promotion. Alderwoman welcomed Ms. Enoch back. Alderman Allison sated that he would echo all that has been said especially the work on the resolution. He further congratulated Assistant Chief Anibal for his promotion and his service for our country. Alderman Allison asked if a date had been set to hold the ribbon cutting celebration for former Mayor Pro Tem Ron Klepcyk for the playground dedication at the park. Mr. Roedner informed the Board that he was working with Mr. Klepcyk on a date. Mayor Pro Tem Montgomery commented that he thought that the conversation on water rates is timely and that the idea of a regional water authority is used in a lot of places and makes for a neutral territory on decisions. Mayor Tolley commented that most do not know but he was a police officer at one time here in the Town of Elon "College" in 1969. Mayor Tolley addressed Ms. Enoch and told her that it was good to have her back from her injury.

ADJOURNMENT

With no further business to be had Mayor Tolley asked for a motion to adjourn. Mayor Pro Tem Montgomery made the motion which was seconded by Alderwoman Sharpe. The motion carried 5 - 0.

Jerry R. Tolley, Mayor

Attest:

DiAnne Enoch, Town Clerk

TOWN OF ELON
BOARD OF ALDERMEN AGENDA REPORT

Item Type: Other

SUBJECT: Land Development Ordinance Text Amendment #21-02
Regarding Campaign and Election Signs - Pamela DeSoto

DATE: September 7, 2021

BOARD OF ALDERMEN ACTION REQUESTED ON: September 14, 2021

PURPOSE:

1. To request that the Mayor and Board of Aldermen conduct a public hearing on September 7, 2021 to receive comments on proposed Land Development Ordinance (LDO) Text Amendment #21-02 Regarding Campaign and Election Signs (**Attachment 1**).
 2. To request that the Mayor and Board of Aldermen consider approval of the draft text amendment and the Plan Consistency Statement (**Attachment 2**) on September 14, 2021.
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HISTORY:

1. Elon's Land Development Ordinance (LDO), adopted in 2004, includes a short subsection in Chapter 5 entitled "Sign Regulations". This section has not been updated in the years since adoption to comply with N.C. General Statutes or with relevant case law. While additional updating will occur during the rewriting of our LDO in the upcoming months, with election season occurring before the end of this calendar year, updating this section will allow better communication of the requirements to the public, candidates, and code enforcement staff.
 2. During their August 17, 2021 meeting, the Planning Board recommended approval of the text amendment by unanimous vote, and without any recommended changes to the draft.
-

FACTS AND ISSUES:

1. Elon's LDO includes outdated and incomplete regulations regarding the placement of campaign and election signs. The attached draft text amendment seeks to make our ordinance language consistent with N.C. General Statutes and to create clear parameters for such signage so that candidates as well as the general public can be informed and avoid enforcement misunderstandings.
2. The draft text amendment includes new language in underlined red text, and language to be removed in red text with a "strikethrough", (or red line) through the text.
3. The first section of the amendment includes requirements provided in state statutes for placement of political signs on the rights-of way of the state highway system (any state-maintained roadway with the exception of fully controlled access highways such as I-40/85). The proposed amendment would institute the same requirements for town-maintained rights-of-way.
4. The second section includes additional requirements for town-maintained rights-of-way, over and beyond those in the first section. The proposed language is discretionary, and the Board may choose to make revisions prior to adoption.
5. The third section includes requirements for private property adjacent to, but outside of, state and town-maintained rights-of-way.
6. Please note that, while the language which applies to state-maintained rights-of-way is strictly regulated by statute, the statute allows local governments leniency in the requirements outside of that realm. A town or city may altogether prohibit the placement of political signs on their own rights-of-way, though this draft amendment does not propose to be that restrictive. Rather, the amendment proposes to mimic the state requirements with regards to the time period of placement, the dimensional limitations of the signs, and other provisions such as distance from the road pavement and visibility. However, the proposal places additional limitations beyond what is required for state-maintained rights-of-way, such as not placing signs on other signs or on trees, and that the signs may not be illuminated. The proposed language in the second and third sections of the draft is borrowed from sign ordinances in other N.C. communities.

7. During their August 17, 2021 meeting, the Planning Board made a recommendation for approval of the text amendment by unanimous vote, and agreed upon a consistency statement, now being offered for Board consideration and approval (**Attachment 2**). The amendment is considered to be consistent with the Comprehensive Land Use Plan.
 8. The N.C. General Statute addressing this type of signage is also included as **Attachment 3**.
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OPTIONS:

1. Mayor and Board of Aldermen:
 - a. Conduct a public hearing on the proposed text amendment on September 7, 2021, and
 - b. On September 14, 2021, consider adoption of the Ordinance to Amend the Elon Land Development Ordinance and approve the Plan Consistency Statement;
 2. Mayor and Board of Aldermen defined option.
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TOWN MANAGER RECOMMENDED ACTION:

Option 1

Prepared by: Pamela DeSoto, Assistant Town Manager/Planning Director

ATTACHMENTS:

Description	Upload Date	Type
Ordinance Draft	8/26/2021	Cover Memo
Plan Consistency Statement	8/24/2021	Cover Memo
NCGS 136-32	8/26/2021	Cover Memo

Ordinance No. #21-835

**AN ORDINANCE TO AMEND THE ELON LAND DEVELOPMENT ORDINANCE
REGARDING CAMPAIGN AND ELECTION SIGNS**

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF ELON THE FOLLOWING:

Section 1. Elon Land Development Ordinance Subsection 5.10.5 Exempt Signs is amended as follows:

G. Campaign or Elections Signs – ~~Not to exceed 4 square feet per side, located only on private property with the permission of the property owner. Campaign signs are limited to one per candidate per road right-of-way. May be displayed not more than 45 days prior to an election and must be removed within 7 days after the election.~~

Temporary campaign or election signs may be placed in the right-of-way of the State highway system only in accordance with G.S. 136-32. In part, this statute includes the following provisions, which shall also be applied to temporary campaign or election signs in the right-of-way of Town of Elon maintained streets:

1. The period where such signs are allowed begins on the 30th day before the beginning date of “one-stop” early voting under G.S. 163 and ends on the 10th day after the primary or election day;
2. The agency or individual responsible for the placement of the sign must obtain the permission of any property owner of a residence, business, or religious institution fronting the right-of-way where a sign would be erected;
3. No sign shall be permitted in the right-of-way of a fully controlled access highway;
4. No sign shall be closer than three feet from the edge of the pavement of the road;
5. No sign shall obscure motorist visibility at an intersection;
6. No sign shall be higher than 42 inches above the edge of the pavement of the road;
7. No sign shall be larger than 864 square inches (6 square feet);
8. No sign shall obscure or replace another sign.

In addition to the requirements listed above, the following requirements shall apply to the placement of temporary campaign or election signs in the right-of-way of Town of Elon maintained streets:

1. No sign may be placed on utility poles, traffic control signal poles, street signs, or any other sign or sign support erected by a duly constituted governmental body;
2. No sign shall be stapled, nailed, or otherwise attached to a tree or other living plant;
3. Any sign which is determined to be a hazard or otherwise threatens the health, safety, and welfare is prohibited;
4. Portable signs shall not be allowed for political purposes;
5. Such signs may not be illuminated.

The following provisions shall regulate campaign and election signs placed on property adjacent to State or Town rights-of-way:

1. Permission from the property owner must be obtained prior to placement;
2. No setback from the property line shall be required;
3. The maximum square footage of a campaign or election sign located on private property shall not exceed 32 square feet;
4. The maximum height shall be 60 inches above adjacent grade;
5. No such sign shall be placed on roofs or painted on roofs;
6. The maximum number of campaign or election signs on any individual parcel shall be limited to six (6).

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, was duly adopted this _____ day of _____, 2021.

Dated: _____

Jerry R. Tolley, Mayor

Attest:

DiAnne C. Enoch, Town Clerk

STATEMENT OF LAND USE PLAN CONSISTENCY

WHEREAS, an amendment to the *Land Development Ordinance, Town of Elon, North Carolina* as required by Chapter 8 of the Town of Elon Land Development Ordinance has been proposed, which amendment is identified and described as follows: **Land Development Ordinance Text Amendment LDO #21-02 Regarding Campaign and Election Signs.**

NOW THEREFORE, the Board of Alderman of the Town of Elon resolves as follows:

Section 1. The Board of Alderman concludes that the above described amendment is consistent with the Envision Elon 2040 Future Land Use Plan based on the following recommendations from the Plan:

1. LU-8.11: Make improvements to the LDO to improve the accessibility and user-friendliness of the ordinance.
2. LU-8.12: Ensure that all LDO sections are up-to-date and compliant with state and federal legislation, guidance, and jurisprudence.

Section 2. The Board of Alderman concludes that the above described amendment is reasonable and in the public interest as it is supported by the adopted Land Use Plan's recommendation for compliance with state legislation.

Section 3. The Board of Alderman makes the following additional findings:

This statement adopted the ____ day of September ____, 2021.

Jerry R. Tolley, Mayor

Attest:

Pamela DeSoto, Assistant Town Manager

§ 136-32. Regulation of signs.

(a) **Commercial Signs.** – No unauthorized person shall erect or maintain upon any highway any warning or direction sign, marker, signal or light or imitation of any official sign, marker, signal or light erected under the provisions of G.S. 136-30, except in cases of emergency. No person shall erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial or political advertising, except as provided in subsections (b) through (e) of this section: Provided, nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the Department of Transportation or by any local authority referred to in G.S. 136-31. Any person who shall violate any of the provisions of this section shall be guilty of a Class 1 misdemeanor. The Department of Transportation may remove any signs erected without authority or allowed to remain beyond the deadline established in subsection (b) of this section.

(b) **Compliant Political Signs Permitted.** – During the period beginning on the 30th day before the beginning date of "one-stop" early voting under G.S. 163A-1300 and ending on the 10th day after the primary or election day, persons may place political signs in the right-of-way of the State highway system as provided in this section. Signs must be placed in compliance with subsection (d) of this section and must be removed by the end of the period prescribed in this subsection.

(c) **Definition.** – For purposes of this section, "political sign" means any sign that advocates for political action. The term does not include a commercial sign.

(d) **Sign Placement.** – The permittee must obtain the permission of any property owner of a residence, business, or religious institution fronting the right-of-way where a sign would be erected. Signs must be placed in accordance with the following:

- (1) No sign shall be permitted in the right-of-way of a fully controlled access highway.
- (2) No sign shall be closer than three feet from the edge of the pavement of the road.
- (3) No sign shall obscure motorist visibility at an intersection.
- (4) No sign shall be higher than 42 inches above the edge of the pavement of the road.
- (5) No sign shall be larger than 864 square inches.
- (6) No sign shall obscure or replace another sign.

(e) **Penalties for Unlawful Removal of Signs.** – It is a Class 3 misdemeanor for a person to steal, deface, vandalize, or unlawfully remove a political sign that is lawfully placed under this section.

(f) **Application Within Municipalities.** – Pursuant to Article 8 of Chapter 160A of the General Statutes, a city may by ordinance prohibit or regulate the placement of political signs on rights-of-way of streets located within the corporate limits of a municipality and maintained by the municipality. In the absence of an ordinance prohibiting or regulating the placement of political signs on the rights-of-way of streets located within a municipality and maintained by the municipality, the provisions of subsections (b) through (e) of this section shall apply. (1921, c. 2, s. 9(b); C.S., s. 3846(r); 1927, c. 148, ss. 56, 58; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1991 (Reg. Sess., 1992), c. 1030, s. 39; 1993, c. 539, s. 981; 1994, Ex. Sess., c. 24, s. 14(c); 2011-408, s. 1; 2017-6, s. 3.)

TOWN OF ELON
BOARD OF ALDERMEN AGENDA REPORT

Item Type: Other

SUBJECT: Ordinance to Make Certain Revisions to the Town of Elon
Code of Ordinances - Pam DeSoto

DATE: September 7, 2021

BOARD OF ALDERMEN ACTION REQUESTED ON: September 14, 2021

PURPOSE:

To request that the Mayor and Board of Aldermen adopt the Ordinance to Amend the Town of Elon Code of Ordinances (**Attachment 1**).

FACTS AND ISSUES:

1. Several sections of the Code of Ordinances are proposed for amendments, and are presented in the attached draft ordinance (**Attachment 1**). New language is shown in red underlined text, and language to be removed is shown in red with a strikethrough.
 2. A summary of the proposed amendments is also provided as **Attachment 2**.
-

OPTIONS:

1. Mayor and Board of Aldermen adopt the Ordinance to Amend the Town of Elon Code of Ordinances.
 2. Mayor and Board of Aldermen defined option.
-

TOWN MANAGER RECOMMENDED ACTION:

Option 1.

Prepared by: Pamela Graham, Assistant Town Manager/Planning Director

ATTACHMENTS:

Description	Upload Date	Type
Amendment Summary	9/2/2021	Cover Memo
Ordinance Draft	9/2/2021	Backup Material

Summary of Amendments to Elon Code of Ordinances

For September 7, 2021 Board Agenda Session

1. Several changes to Chapter 8 – Cemeteries, including:
 - a. Change each instance where the Tax Collector is identified to “Town Manager’s designee”.
 - b. Clarifying revision to the definition of “plot” to differentiate it from a “grave” or “grave space”, and removal of language in the definition that no longer applies.
 - c. The addition of language to accommodate the purchase and sale of columbarium niche rights.
 - d. As advised by the Town Attorney, deeds shall no longer be prepared to convey ownership of cemetery plots or grave spaces, or columbarium niches. As an alternative, the Town shall issue an interment privilege certificate that conveys the rights to interment in a specific plot, grave space, or niche. Changes have been made to reflect this new practice.
 - e. A change to clarify that maintenance of the Town cemetery may be contracted out.
 - f. A slight change that would permit owners of grave spaces to place a bench on the space if there is not a headstone on the space. The current language prohibits the placement of benches anywhere on a plot. The ordinance defines a “plot” as the numbered divisions within the cemetery, which consist of more than one grave space. The Town does not provide benches in the cemetery, though some will be placed in the columbarium area.

2. Changes to Chapter 11 – Housing to conform with statutory changes and make corrections on who may issue an order of demolition regarding minimum housing (Board of Aldermen rather than Board of Adjustment).

3. Changes to Chapter 13 – Nuisances to address solid waste issues. Please note the following:
 - a. Property owners remain the responsible party when it comes to enforcement of these ordinances. In addition to mailing the notice to the owner of record, we have begun mailing a copy to the address of the violation, if different from the owner’s address, and leaving a notice at the location. These additional efforts are now captured in the ordinance. Notices mailed to the address are addressed to “Occupant”, as only in rare circumstances do we know the name of the tenant in a rental property.
 - b. New language has been added to clarify that garbage outside of approved containers, even if bagged, will not be collected and constitute a violation. Our solid waste contractor maintains a policy of their drivers not leaving their vehicle to pick up items outside of the container.
 - c. New and amended language to the Chronic Violator section that conforms with statutory language.
 - d. Our current fine schedule for public nuisances is included in Section 13.36 (e). No changes are being proposed by staff; however, we welcome Board input and will incorporate any changes approved by the Board. The current structure is \$50 for 1st offense, \$100 for 2nd offense, and \$250 for 3rd offense. Per Section 13.38 (c), if a

violator does not correct the violation within ten days of notice, the Town may contract for abatement of the issue and charge the cost plus a \$100 administrative fee to the owner.

- e. Also please note that Section 13.41 allows for criminal prosecution in addition to civil action in the form of penalties. This provision is unchanged.
4. There are no proposed changes to Chapter 14 “Offenses”, which addresses the act of littering and is under Police enforcement powers. However, the Board may elect to make changes. The current language pertaining to littering is as follows:

Sec. 14.17 . – Littering. It shall be unlawful for any person to throw, drop, or leave any paper, bottles, cans, containers of any other type, or any other litter on any public or private properties within the corporate limits of the Town, except within an appropriate designated container.

Sec. 14.19. - Penalties.

Penalties provided for in Section 1.18 of this Code of Ordinances apply to this chapter.

For reference, Sec. 1.18. – General penalty, reads as follows:

- (a) Unless otherwise provided, any person violating any of the provisions of this Code or failing to comply herewith shall be guilty of a misdemeanor as provided in G.S. 14-4. The violator shall, upon conviction, be subject to a fine of \$50 or, alternatively, imprisonment up to 20 days. An ordinance may expressly provide for a maximum fine greater than \$50, but no fine shall exceed \$500. Every day that any of the provisions of this Code are violated shall constitute a separate offense.*
- (b) (1) Violations of provisions of this Code regulating the operation or parking of vehicles shall be treated as infractions, as provided by G.S. 14-4(b).
(2) Violations of provisions of this Code regulating the parking of vehicles shall subject the violator to a civil penalty as provided for in Chapter 24, Section 24.36.*
- (c) If so provided in the applicable provisions, any person violating those provisions of this Code may be subject to a civil penalty payable to the Town, in addition to or in lieu of other remedies.*
- (d) The Town may seek appropriate equitable remedy or order of abatement to enforce any provision of this Code, as authorized by G.S. 160A-175.*

- 5. Changes to Section 22.10 – Heavy garbage/bulk pickup to indicate that the service is provided by the Town as opposed to a solid waste contractor.
- 6. Changes to Section 26.36 to add “payment due dates and adjustments” to the list of utility rates and regulations-related items that may be adopted by the Town.

7. Changes to Section 26.37 to remove “shall become delinquent 30 days after the billing date” since our due dates will be changed and set by policy.
8. Removed letter (b) in Section 26.39 to remove requirement for second notices to be mailed.

Ordinance No. 21-837**ORDINANCE TO AMEND THE TOWN OF ELON CODE OF ORDINANCES CHAPTERS 8, 11, 13, 22, AND 26**

BE IT ORDAINED by the Board of Aldermen of the Town of Elon, North Carolina:

Section 1. That Chapter 8, "Cemeteries" of the Town of Elon Code of Ordinances be amended as follows:

Sec. 8.2. – Definitions.

[For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.]

Columbarium shall mean a structure or building substantially exposed above ground intended to be used for the interment of the cremated remains of a deceased person within designated spaces, or niches.

Grave shall apply to a single space of sufficient size to accommodate one adult interment, also known as a "burial site", "burial space", or "grave space".

Interment shall mean the permanent disposition of the remains of a deceased person by cremation, entombment, or burial.

Marker shall mean a memorial flush with the ground.

Monument shall include a tombstone or memorial of granite or other materials, which shall extend above the surface of the ground.

Plot shall apply to numbered divisions as shown on the recorded plat, each of which consists of ~~two, four or eight grave spaces~~ more than a single grave space. ~~In the section of the cemetery mapped as of August 11, 1999 beginning with Lot #340, a plot can be a single grave space.~~

Sec. 8.3. – Maps and diagrams.

The Town Manager's designee ~~Tax Collector~~ shall keep maps and/or diagrams of the cemeteries showing thereon all plots or ~~squares~~ grave spaces, and all columbarium niches which are for available sale, together with those already reserved ~~sold~~, indicating the exact location of each. ~~and a copy is to be recorded in the Alamance County, North Carolina, Register of Deeds Office.~~

Sec. 8.4. – Certificates ~~Deeds~~.

Fee simple title to the property included in the cemetery shall remain vested in the Town of Elon. There shall be no conveyance of title to any plot, grave space, or columbarium niche, but the right or privilege of interment shall be sold as herein provided and such right or

privilege shall be evidenced by a certificate in the name of the municipality by the Town Manager or his/her designee. The Tax Collector shall execute and deliver to each purchaser a deed to the plot, after the purchase price has been paid.

Sec. 8.6. – Transfer~~Purchase and sale~~ of plots, ~~and~~ grave spaces, and columbarium niches.

- (a) The purchaser of interment or burial rights or privileges may not transfer the same except as provided for in subsection (d) below. The Town will refund, without interest, any sum paid for interment privilege if requested to do so in writing by the purchaser thereof prior to the opening of a grave in the grave space purchased or any alteration made to the columbarium niche purchased, and upon surrender by the purchaser of the interment or burial privilege certificate issued for such. Upon the death of the holder of a burial or interment privilege certificate, his or her heirs, legatees or devisees, shall succeed to his rights in said certificate(s). The owner of a burial or interment privilege certificate may permit interment in the grave space(s) or columbarium niche(s) therein described of any person designated in writing by the certificate owner, provided no compensation for such interment is received by the certificate owner and provided the interment is made in compliance with the provisions of the map or diagram hereinbefore referred to. It shall be unlawful for any person to sell or transfer a plot or a grave space in the Town cemetery except as provided herein or as provided.
- (b) Purchase of *rights to* a plot, ~~or~~ grave space, or columbarium niche. When a purchaser desires to purchase rights to a town cemetery plot, ~~or~~ grave space, or columbarium niche, the purchase shall be initiated through the Town Manager's designee~~town tax collector~~ based on the cemetery fee schedule established by the Board of Aldermen. The Town Manager's designee ~~tax collector~~ shall prepare a cemetery deed certificate drawn on a form prepared by the town attorney that conveys the plot, grave space, or niche ~~lot~~ from the town to the purchaser. Payment shall be based on the cemetery fee schedule established by the Board of Aldermen.
- (c) *List of purchasers, grave spaces, and columbarium niches to be kept.* A list of purchasers of interment privilege certificates and a section-numerical list of grave spaces and columbarium niches shall be kept on file in the Town Hall by the Town Manager's designee. ~~*Sale of plot or grave space by owner.* When an owner desires to sell a town cemetery plot or grave space, the transaction shall be by execution of a deed from the owner reconveying the lot to the town. The owner shall initiate the reconveyance through the town tax collector. Upon verification of ownership and other required information by the tax collector, a cemetery deed shall be drawn on a form prepared by the town attorney that conveys the lot from the grantor to the town. The town tax collector shall maintain a record of ownership of all town cemetery plots and grave spaces.~~
- (d) Transfer of plots, ~~or~~ grave spaces, or columbarium niches between family members. When the owner or owners of a plot, ~~or~~ a grave space, or columbarium niche in a town cemetery desires to transfer the ~~lot or the grave space property~~ to an immediate family member, related by blood or marriage, the ~~cemetery division~~ Town Manager's designee responsible for managing the cemetery records shall obtain a notarized statement from the owner acknowledging transfer of the interment or burial rights to the plot, grave space, or columbarium niche indicated on the certificate (or a cemetery deed given under the Town's prior practice) ~~town cemetery lot~~ to the designated family member. "Immediate family" shall mean parents, children, grandchildren, brothers or sisters, spouses and nephews or nieces.

Sec. 8.11. – Maintenance.

The Town cemetery shall be maintained by the public works staff, or by contract with a firm or individual.

Sec. 8.14. – Maintenance provisions and restrictions.

- (a) Owners of plots or grave spaces may place benches for seating on their plots or spaces, provided that benches shall not be permitted on ~~plots or~~ spaces with a headstone. No benches may be placed in the columbarium area except for those provided by the Town.
- (b) With the exception of benches, in order to allow for the safe, efficient and orderly maintenance and visitation of cemeteries, the following items are prohibited from placement on or around all gravesites, and town staff shall have the right to remove them.
 - (1) Fencing.
 - (2) Gravel.
 - (3) Hardscapes (i.e. block, rocks or bricks).
 - (4) Trinkets.
 - (5) Solar lights.
 - (6) Glass objects.
 - (7) Any other items interfering with the safe and efficient maintenance of the cemetery.

Section 2. That Chapter 11, “Housing” of the Town of Elon Code of Ordinances be amended as follows:

Sec. 11.5. – Applicability of chapter.

The provisions of this chapter are applicable to all buildings used for human habitation within the planning and development regulation jurisdiction of the Town. All structures, when used or intended for use for human habitation within the Town, shall be subject to the applicable provisions of this chapter.

Sec. 11.6. – Definitions.

Code Enforcement Officer: The Town public officer ~~official~~ designated to enforce this chapter, or the official authorized in writing by the Town to carry out the enforcement provisions of this chapter. Also referred to as Enforcement Officer.

Dwelling: Any building, ~~or~~ structure, manufactured home, or mobile home or portion thereof, which is used, or designed or intended to be used, for human habitation including living, sleeping, cooking and eating, or any combination thereof, and shall include outhouses and other accessory buildings and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home, mobile home, or recreational vehicle if used solely for a seasonal vacation purpose.

Dwelling unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

~~Any room or group of rooms located within a building and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.~~

~~Owner: A holder of the title in fee simple and every mortgagee of record any legal or equitable estate in the premises, whether alone or jointly with others, and whether in possession or not.~~

Sec. 11.93. – Investigation by Duty of Code Enforcement Officer ~~of to examine~~ residential buildings.

~~Whenever a petition is filed with the Code Enforcement Officer by a public authority or by at least five residents of the Town's jurisdiction charging that any dwelling is unfit for human habitation or when it appears to the Code Enforcement Officer that any dwelling is unfit for human habitation, the Code Enforcement Officer shall conduct a preliminary investigation to determine if a basis for such charges exists. It shall be the duty of the Enforcement Officer to diligently examine the dwellings within the Town, for the purpose of locating and taking action with respect to such dwellings as appear to be unfit for human habitation and dangerous.~~

Sec. 11.96. – Issuance of complaint and notice of hearing.

~~(a) Filing of lis pendens. If the dwelling has been condemned, the Enforcement Officer may file a notice of lis pendens in the Office of the Clerk of Superior Court where the property is located. A copy of this notice of lis pendens shall be served upon the owners and parties of interest in the building or dwelling at the time of filing. If the Enforcement Officer does not file a complaint and notice as provided for herein within 60 days, the Enforcement Officer shall cancel the notice of lis pendens. The notice of lis pendens shall remain in full force and effect until cancelled. The clerk of superior court shall cancel the notice of lis pendens upon receipt of notice from the Town.~~

~~(b)(a) Issuance of complaint and notice. If, following a preliminary investigation, it appears to the Enforcement Officer that a dwelling is unfit for human habitation, the Enforcement Officer shall issue and cause to be served upon the owner of and parties in interest in such dwelling a complaint stating the charges in that respect and containing a notice that an administrative hearing will be held before the Enforcement Officer or the Officer's designated agent. or designee shall issue a complaint and notice of hearing whenever a petition is filed with the Enforcement Officer by a public authority or by at least five residents of the Town charging that the subject building is unfit for human habitation, or whenever it appears to the Enforcement Officer (on his own motion) that the building is unfit for human habitation or is dangerous. The complaint and notice of hearing shall be served as provided in section 11.102 upon the owner of and parties in interest in such building stating the charges in that respect.~~

~~(c)(b) Contents of notice; hearing. The complaint shall contain a notice that a hearing will be held before the Code Enforcement Officer at a place therein fixed within the Town, not less than ten days nor more than 30 days after the serving of such complaint. The notice shall also state that owners and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. Notice of such hearing shall also be given to at least one of the persons signing any petition relating to such building.~~

At the hearing before the Code Enforcement Officer, any person desiring to do so may attend and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law ~~or equity~~ shall not control in the hearing.

Sec. 11.97. – Issuance of order.

If, after notice and hearing as provided above the Code Enforcement Officer determines that the building under consideration is unfit for human habitation in accordance with the standards set forth in section 11.94, the Enforcement Officer shall state in writing his finding of fact in support of such determination and shall issue and cause to be served upon the owner as set forth in section 11.102, one of the two following orders, whichever is appropriate: ~~The Code Enforcement Officer shall issue an order that repair shall be completed or the building demolished within a period of time designated as provided below and cause the order to be served on the owner as set forth in section 11.102.~~

- (a) If it is determined that the repair, alteration or improvement of the dwelling to render it fit for human habitation can be made at a cost not exceeding 50 percent of the then current value of the dwelling, the Code Enforcement Officer's order shall require that the owner either complete repair or demolish and remove the dwelling within a designated period not less than 60 nor more than 90 days. The order may require that the property be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order. ~~Or~~
- (b) If it is determined that the repair, alteration or improvement of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding 50 percent of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within a designated period no longer than 90 days.

Sec. 11.100. – Failure of compliance – placard.

If the owner of a building fails to comply with the order to repair, alter or improve or ~~demolish~~ to vacate and close the dwelling, the Enforcement Officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; and shall cause to be posted on the main entrance of any such building a placard with the following words:

“This building is unfit for human habitation; the use or occupancy of this building for human habitation is prohibited and unlawful.”

Occupation of a building so posted shall constitute a Class 1 misdemeanor. The duties of the Code Enforcement Officer set forth in this section shall not be exercised until the Board of Aldermen shall have by ordinance ordered the Code Enforcement Officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the Code Enforcement Officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. The ordinance shall be recorded in

the Alamance County Register of Deeds and shall be indexed in the name of the property owner in the grantor index.

If the dwelling has been vacated and closed for a period of one year pursuant to an ordinance adopted under this section or after the Code Enforcement Officer issues an order, or proceedings have commenced under the substandard housing regulations requiring a dwelling to be repaired or vacated and closed as provided in this section, then the Board of Aldermen may find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, and welfare of the local government in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling that might otherwise have been made available to ease the persistent shortage of decent and affordable housing, then in such circumstances, the Board of Aldermen may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- (a) If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish the dwelling within 90 days; or
- (b) If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Alamance County Register of Deeds and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the Code Enforcement Officer shall effectuate the purpose of the ordinance.

Sec. 11.101. – ~~Report to Manager; o~~Order of demolition by Board of Aldermen.

- (a) Enforcement officer's ~~report to manager and~~ notice to owner. If the owner fails to comply with an order to remove or demolish the dwelling, the Code Enforcement Officer may cause such dwelling to be removed or demolished. The duties of the Code Enforcement Officer set forth in this section shall not be exercised until the Board of Aldermen shall have by ordinance ordered the Code Enforcement Officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the Code Enforcement Officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the Alamance County Register of Deeds and shall be indexed in the name of the property owner in the grantor index. ~~If, following notice and hearing, the Board of Adjustment orders demolition of the property, the Code Enforcement Officer shall file a written report with the Town Manager who shall place the report on the agenda for action by the Board of Aldermen at its next regular meeting or at a subsequent meeting to which the Board may continue the matter.~~ The Enforcement Officer shall provide notice to the owner and parties in interest as provided in section 11.101. The notice shall specify the

date of the meeting of the Board of Aldermen for which the matter will be docketed for action.

- (b) *Demolition ordinance.* Upon hearing the report of the Code Enforcement Officer that the owner has failed to comply with the order to repair or demolish, the Board of Aldermen may adopt an ordinance of demolition and authorize funding to effect the ordinance.

Sec. 11.102. – Service of complaints and methods of notice under this chapter.

All service of complaints, notices or orders issued pursuant to this chapter hereto shall be served upon persons either personally or by ~~registered or~~ certified mail, and may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.; ~~but, if~~ if the whereabouts of any person is unknown and the same cannot be ascertained by the Enforcement Officer ~~or~~ his designee or in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by certified mail, and the and the Enforcement Officer shall make an affidavit to that effect, then the serving of such compliant, notice or order upon such person may be made by publication in a newspaper having general circulation in the jurisdiction at least once no later than the time by which personal service would be required under the provisions of this section. When service is made by publication, publishing the same once a week for two successive weeks in a newspaper published in the Town, service being deemed complete upon the date of the last publication. A copy of any notice, complaint or order served by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the notice, complaint or order on or before the date of the ~~last~~ publication.

State Law reference – Service of complaints and orders, G.S. 160A-445.

Sec. 11.106. – Recovery of Town's expense.

The costs of demolition and removal shall be a lien against the real property upon which the cost was incurred as provided by G.S. 160D-1203A-443(6).

The Town shall sell and distribute the proceeds of the sale of usable materials of the dwelling and any personal property, fixtures, or appurtenances found in or attached to the building as provided by G.S. 160D-1203A-433(6).

Section 3. That Chapter 13, "Nuisances", Article II, "Public Nuisances" of the Town of Elon Code of Ordinances be amended as follows:

Sec. 13.35. – Conditions constituting public nuisance.

Every person or entity owning any parcel of land or vacant lot shall keep the premises free from any condition constituting a public nuisance under this article. The existence of any of the following conditions on any parcel or land or vacant lot within the corporate limits is declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance:

- (a) The uncontrolled growth of noxious weeds or grass to a height in excess of eight inches causing or threatening to cause a hazard detrimental to the public health or safety except for ornamental grasses chosen for features like color and form, such as switch grass pampas grass, fountain grass, and bamboo, and with the following provisions:
- (1) Vacant lots. Vacant lots one acre in size or greater or adjacent vacant lots with a combined acreage of one acre or greater shall have a buffer maintained 20 feet from any improved road surface and 20 feet from the side and rear lot lines of any adjacent property occupied by a dwelling or other structure. The buffer shall be maintained such that dense growth and noxious vegetation has the main stem or trunk less than one inch in thickness.
 - (2) Natural landscape areas and wooded lots shall be allowed under the following conditions:
 - a. Natural landscape areas and wooded lots shall be maintained and shall not harbor, create nor allow to exist any condition defined as a nuisance or determined by the code enforcement officer to be a condition which poses a health hazard for the general welfare of the public;
 - b. Natural landscape vegetation shall not overhang into the public right-of-way nor into adjoining properties; and
 - c. Natural landscape areas shall use borders to define the areas. Borders may consist of, but not be limited to, edging material, an edge of low plants, wood, timber, or stone or woodchips.
- (b) Any accumulation of rubbish, trash, or junk causing or threatening to cause a fire hazard or causing or threatening to cause the accumulation of stagnant water, or causing or threatening to cause the inhabitation therein of rats, mice, snakes, or vermin of any kind which is or may be dangerous or prejudicial to the public health.
- (c) Any accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or by the inhabitation therein of rats, mice, snakes, or vermin of any kind which is or may be dangerous or prejudicial to the public health.
- (d) The open storage of any abandoned refrigerator, stove, glass, building material, building rubbish, or similar items.
- (e) Garbage placed on any streets, sidewalks, or public or private properties except in containers from which solid waste will be collected by the contracted solid waste collector, or as otherwise provided in the article. **Bags and unauthorized containers of garbage shall not be placed at the curb for pick-up; garbage or similar refuse will not be collected unless in a Town-issued container.**
- ~~(e)~~(f) Any accumulation of trash and/or garbage which is the result of the absence of or overflowing of improperly closed or overfilled containers. Additional container(s) will be delivered to households by request; additional fees may apply.
- ~~(f)~~(g) Any condition detrimental to the public health which violates the rules and regulations of the County Health Department.
- ~~(g)~~(h) The existence of any of the following conditions in open space. (For the purposes of this section, "open spaces" are defined as areas of properties or portions thereof that are open to the exterior, including building openings of residential dwelling units, such as carports or porches, and any other exterior portions of properties ordinarily exposed to the outside and/or public view, including front, side and rear yards):
- (1) Any litter consisting of man-made and used materials which is scattered, cast, thrown, blown, placed, swept, or deposited anywhere on a persistent, continuous or ongoing basis so as to accumulate on any property in open places. The owner

and occupant of any dwelling unit shall exercise reasonable diligence to keep exterior premises clean of litter, including glass, bottles, waste paper, wrapping paper, paper napkins, cartons, package containers, and other used or waste materials intentionally or unintentionally scattered, discarded, thrown or haphazardly left on such premises on a continuous, ongoing or persistent basis, and to prevent same from drifting or blowing to adjoining premises by removing such waste or ensuring that same is placed in approved refuse containers and/or locations for collection by the Town.

- (2) Any worn-out, deteriorated or abandoned household or office furniture, appliances or other similar products of any kind which are kept in open spaces.
- (3) Any junk, waste materials, unusable building materials, trash, garbage, barrels, cans, papers, bricks or brickbats and other litter, refuse, rubbish or combustible materials which is scattered, cast, placed, or deposited in a yard or yards, so as to constitute an accumulation or concentration in an open area.
- (4) The presence, accumulation, storage, or placement of any indoor furniture situated on porches and in yards. (e.g., couches, recliners etc.)
- (5) The presence, accumulation, storage, or placement of junk, including but not limited to, deteriorated, unusable or inoperative furniture appliances, machinery, equipment, building materials, and automobile parts, tires, or any man-made items which are either in whole, or in part, wrecked, junked, disused, worn out, dismantled or inoperative.

~~(5)~~(6) Accumulation of hazardous or toxic materials or chemicals.

Sec. 13.36. – Enforcement of article.

- (a) *Enforcement.* Enforcement of this article shall be under the supervision of the duly authorized Town official.
- (b) A duly designated Town official or the official's designee shall have the right to enter at any reasonable time and upon reasonable notice any premises for the purpose of making inspections or investigations or enforcement as required by this article.
- (c) *Investigation of conditions.* The Town Manager, upon notice from any person of the possible existence of any of the conditions described in Section 13.35 shall cause to be made by the duly authorized Town official such investigation as may be necessary to determine whether conditions exist which may constitute a public nuisance as declared in Section 13.35
- (d) *Obstructing enforcement prohibited.* It shall be unlawful for any person to hinder, obstruct, or delay a duly authorized Town official or the official's designee in the lawful discharge of their duties.
- (e) The penalty for violation of this article, in addition to the provisions of sections ~~1.40 and 13.41~~, and unless otherwise provided for, shall be as listed below. Any civil penalty that has not been paid when delinquent notice was sent shall carry an additional late payment fee of \$25.
 - (1) First offense: \$50.
 - (2) Second offense: \$100.
 - (3) Third offense: \$250.

Sec. 13.37. – Abatement, notice and right of appeal.

- (a) *Notice of violation to owner.* When it appears that conditions constituting a public nuisance as declared in Section 13.35 exist, the duly authorized Town official shall cause to be delivered or mailed to the owner of the property upon which the conditions exist a notice of violation stating that conditions on the property constitute a violation, identifying the reasons therefore, and directing the owner or persons in possession of the property to abate the unlawful conditions within ten days of the date of notice. Additionally, the Town official may leave a written notice at the location where the apparent violation has been observed and may also mail a notice to the address of the apparent violation, if such address differs from the owner's address of record.
- (b) *Method of notice.* Notice shall be sent by ~~certified~~registered mail, return receipt requested, to the owner as listed on the County Tax record. ~~the conditions constituting a nuisance will be abated, and the costs of the abatement shall constitute a lien against the premises in accordance with other provisions of this chapter.~~ If any such lot is owned by more than one person, the notice may be mailed to any person having any estate or interest in the lot, and such service shall be deemed sufficient compliance with this section. If any such lot is owned by a corporation, the notice may be mailed to local officer or agent of the corporation. If said notice is not accepted or received by the owner as provided herein, the posting of "notice of violation" on said property shall constitute notice.
- (c) *Effect of defect in notice.* Any defect in the method of giving the notice of violation, or in the form thereof, or the giving of such notice to an improper person, shall not prevent the Town, in any case where the work of abatement of any nuisance from any lot is actually done by the Town, from collecting the cost thereof from the owner, nor shall it affect the validity of the lien on the lot for such cost.
- (d) *Appeal.* Within the ten-day period mentioned in section 13-37(a), the owner of the property where the nuisance exists may appeal the findings of the designated Town official to the Town Manager by giving written notice of appeal to the official who served the notice. An appeal stays the abatement of the nuisances until a final determination by the manager.

Sec. 13.38. – Action to abate.

- (a) *Owner's request to Town.* Any person who has been ordered to abate a public nuisance may within the time allowed by this section request the Town in writing to remove the condition, the cost of which shall be paid by the person making the request.
- (b) *Abatement by Town.* If the owner, having been ordered to abate a public nuisance, fails, neglects, or refuses to abate or remove the condition constituting the public nuisance within ten days from the date of the notice of violation and if there has been no appeal, the designated Town official, the official's designee or an authorized contractor may enter upon the premises for the purpose of abating the nuisance and may summarily remove, abate, or remedy any condition in the Town limits that is a prohibited nuisance under Section 13.35.
- (c) *Charges.* The property will be charged the cost of clean-up and a \$100 administrative fee.

Sec. 13.39. – Costs, lien.

- (a) The actual cost incurred by the Town in removing or otherwise remedying a public nuisance shall be charged to the owner of the lot or parcel of land, and it shall be the duty of the Tax Collector or his or her designee to mail a statement of these charges to the owner or other person in possession of the premises with instructions that the charges are due and payable within 30 days from the date of the statement.
- (b) In the event charges for the removal or abatement of a public nuisance are not paid within 30 days of the date of a statement of charges, the charges shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes, as provided in G.S. 160A-193.

Sec. 13.40. – Chronic violators.

As provided by G.S. 160A-200.1, the Town may notify a chronic violator of this article that, if the violator's property is found to be in violation of the article, the Town shall, without further notice after second notice in the calendar year in which notice is given, take action to remedy the violation. The property owner shall be charged the cost of clean-up by the Town or the Town's contractor, a \$100 administrative fee, plus an automatic \$250 fine for each subsequent violation. The expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The Notice and process shall be as required by G.S. 160A-200.1 shall be sent by certified mail. When service is attempted by certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected.

For purposes of this section, "chronic violator" shall be as defined in G.S. 160A-200.1 or subsequently amended as a person who owns property whereupon, in the previous calendar year, the Town gave notice of violation at least three times under any provision of this chapter.

Sec. 13.41. – Other remedies not precluded.

The abatement of any nuisance in accordance with the procedure prescribed by this chapter shall not prevent the Town from proceeding in a criminal action against any person violating the provisions of this chapter. In such case, violators shall be guilty of a misdemeanor punishable by a fine of \$50 or imprisonment for not more than 20 days. Violations of this chapter may also be subject to abatement summarily by appropriate injunction issued by a court of competent jurisdiction in accordance with the provisions of G.S. 160A-175.

Section 4. That Chapter 22, "Solid Waste" of the Town of Elon Code of Ordinances be amended as follows:

Sec. 22.1 - Definitions.

~~Bulk Waste. Residential waste that by size or weight are too large to fit in the Town-approved container, provided for other types of waste, such as miscellaneous household furniture and appliances. Also referred to as heavy or bulk garbage.~~

Sec. 22.10. – Heavy garbage/bulk pickup.

Pick-up of heavy/bulk garbage from residences shall be provided by the Town or as provided in the contract between the Town and the Town's ~~solid waste~~ contractor. Information on what is included and when and how pick-up may be scheduled shall be provided to residents in written form and on the Town's website. The Board of Alderman shall approve a fee schedule for heavy garbage pick-up.

Section 5. That Chapter 26, "Water and Sewer, Article V. – Rates, Charges and Service Regulations" of the Town of Elon Code of Ordinances be amended as follows:

Sec. 26.36. – Utility rates and regulations.

The Town may, from time to time, adopt rules and regulations governing the use of utility services, rates and charges for water and sewer service, payment of accounts, payment due dates, adjustments, and discontinuation of service. Such rules and regulations shall be approved by the Board of Aldermen and shall be on file in the office of the Town Clerk.

Sec. 26.37. – Bills due when presented.

All bills are due and payable when presented ~~and shall become delinquent 30 days after the billing date.~~ If a bill has not been paid by the delinquent date indicated on the bill of the next bill, water service shall be discontinued. No water service shall thereafter be rendered until all charges and fees outstanding, including non-payment and delinquent fees, have been paid in full.

Sec. 26.38. – Renters' deposit.

Only those persons renting a residence or lot shall be required to make deposit in an amount as determined by the Board of Aldermen. (See current fee schedule on file in the office of the Town Clerk.)

Sec. 26.39. – Termination of utility service.

- (a) *Policy.* It is the policy of the Town before terminating utility service to give the customer a fair opportunity to avoid termination either by paying charges due or by showing the charges are in error. ~~As soon as possible following the past due date, written notice of delinquency shall be sent to the customer by first class mail.~~
- ~~(b) *Notice.* The notice shall contain the following information:~~
 - ~~(1) The amount which must be paid to avoid termination;~~
 - ~~(2) The date on which termination shall occur which must be at least ten days after the mailing date; and~~
 - ~~(3) A statement that the customer may come to the Municipal Building between the hours of 8:30 a.m. and 4:00 p.m. on any business to work out a satisfactory~~

~~extended payment arrangement, for the purpose of showing error or to request an informal hearing with the Town Manager.~~

~~(e)~~(b) Termination. If the customer does not make acceptable payment arrangements and fails to show cause why service should not be terminated, service may be terminated by the Town on or after the date specified ~~on the bill in the notice of termination~~. Service may be terminated between the hours of 8:30 a.m. and 4:00 p.m. on business days from Monday through Thursday only. If the customer fails to comply with mutually agreed extended payment arrangements, service may be terminated without further notice.

~~(d)~~(c) Reconnection. Water service which has been discontinued for non-payment shall be reconnected only upon payment in full of the delinquent account. Payment made between the hours of 8:30 a.m. and 4:00 p.m. shall result in service being turned on the same day. Any payment after 4:00 p.m. will result in reconnection the next business day.

Reconnection shall be made only by town staff. Tampering with meters and cut-offs by any citizen is prohibited. A service charge and a delinquent fee may be set by the Board of Aldermen.

Section 7. That all ordinances or parts of ordinances inconsistent or in conflict with this ordinance are hereby repealed.

Section 8. That this ordinance shall take effect upon passage.

Jerry R. Tolley, Mayor

ATTEST:

DiAnne C. Enoch, Town Clerk

Date

TOWN OF ELON
BOARD OF ALDERMEN AGENDA REPORT

Item Type:

SUBJECT: Bond Order and Series Resolution - Rich Roedner

DATE: September 7, 2021

HISTORY:

In August, the Board received a presentation of the bonding process for the purchase of the Travis Creek Pump Station. Since then, staff and the Town's consultants have met twice with the Local Government Commission, and have addressed the questions raised about the project and ability to pay off the upcoming bond issue.

Attached are multiple documents that describe the actual bond agreement, and the rules under which the Town is committing to operate under, including raising rates as needed to pay the bonds off.

These documents are probably 95% final, but there may be some tweaks to the language before you will be asked to vote on them on Sept. 14.

FACTS AND ISSUES:

- Elon's application to the LGC for approval to issue bonds will be on the Sept. 14 LGC agenda. We all anticipate approval at that meeting.
- This Board will have the opportunity to approve the final versions of the Bond Order and Bond Series Resolution on Sept. 14.
- We have a closing on the Bond scheduled for Sept. 22. At that point, the funds will be deposited with our lender, Sterling National, until we have to draw on the account to pay for the closing on the Pump Station and to pay consulting costs.
- On or about December 1, we will close on the Pump Station acquisition from Gibsonville.

OPTIONS:

Option #1 Place final approval of the Bond Order and the Bond Series Resolution on the Sept. 14 agenda for final approval.

Option #2 Board option

TOWN MANAGER RECOMMENDED ACTION:

Option #1

Prepared by: Richard Roedner, Town Manager

ATTACHMENTS:

Description	Upload Date	Type
Bond Order	9/2/2021	Cover Memo
General Indenture	9/2/2021	Backup Material
Series Indenture	9/2/2021	Backup Material

BOND ORDER AUTHORIZING THE ISSUANCE OF TOWN OF ELON, NORTH CAROLINA ENTERPRISE SYSTEMS REVENUE BOND, SERIES 2021; AUTHORIZING THE APPROVAL, EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND; PROVIDING FOR THE ISSUANCE OF THE BOND; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE AND DELIVERY OF THE BOND

WHEREAS, the Town of Elon, North Carolina (the “Town”) is authorized by the State and Local Government Revenue Bond Act, General Statutes of North Carolina, Section 159-80 et seq. (the “Act”), to issue, subject to the approval of the Local Government Commission of North Carolina (the “LGC”), at one time or from time to time, revenue bonds of the Town for the purposes as specified in the Act;

WHEREAS, the Town has determined to issue its Enterprise Systems Revenue Bond, Series 2021 (the “2021 Bond”) in an aggregate principal amount not to exceed \$2,000,000 to provide funds to (1) acquire the Travis Creek Pump Station from the Town of Gibsonville, North Carolina and to make certain improvements to the water and sewer system (the “Project”) and (2) pay the costs of issuing the 2021 Bond;

WHEREAS, the Town will issue the 2021 Bond under a General Trust Indenture to be dated as of September 1, 2021 (the “General Indenture”) between the Town and U.S. Bank National Association, as trustee (the “Trustee”), and Series Indenture, Number 1 to be dated as of September 1, 2021 (the “Series Indenture”) between the Town and the Trustee;

WHEREAS, the Town has filed with the LGC an application for the approval and private sale without advertisement of the 2021 Bond in accordance with Section 159-85 of the General Statutes of North Carolina, as amended;

WHEREAS, the Town and the LGC have arranged for the issuance of the 2021 Bond to Sterling National Bank (the “Lender”);

WHEREAS, copies of the forms of the General Indenture and the Series Indenture have been filed with the Town;

NOW THEREFORE, BE IT ORDERED BY THE BOARD OF ALDERMEN OF THE TOWN OF ELON, NORTH CAROLINA:

Section 1. The 2021 Bond is hereby authorized and will be issued pursuant to the Act to provide the funds necessary, in addition to any funds which may be made available for such purpose from any other source, to (1) finance the Project and (2) pay the costs of issuing the 2021 Bond, all as set out in the Town’s application to the LGC. The use of the proceeds of the 2021 Bond to finance the Project is necessary to meet the demands of the users of the Town’s water and sewer system.

The 2021 Bond will be issued pursuant to a General Indenture, which pledges to the Trustee, for the benefit of the holders of the 2021 Bond and all other bonds issued under the General Indenture, the revenues, income, receipts and other money received or accrued by or on behalf of the Town from or in connection with the operation of the Town’s Enterprise Systems, initially consisting of the Town’s Water and Sewer System. The Town hereby pledges the Net Revenues to secure the payment of the principal of, redemption premium, if any, and interest on the Bonds issued under the General Indenture. The Net Revenues, as received by the Town, shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act and the lien of this pledge shall have priority over any or all other obligations and liabilities of the Town, including any general obligation bonds, or notes issued in

anticipation thereof, heretofore or hereafter issued by the Town for the purpose of providing water and sewer systems or facilities and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Town irrespective of whether such parties have notice thereof.

Section 2. The aggregate principal amount of the 2021 Bond authorized by this Bond Order will not exceed \$2,000,000. The 2021 Bond hereby authorized will be a special obligation of the Town, secured by and paid solely from the proceeds thereof or from the Net Revenues from the Enterprise Systems, initially consisting of the Town's Water and Sewer System, as further described in the General Indenture.

Section 3. The Town has requested that the 2021 Bond be sold at private sale without advertisement to the Lender at such price as the LGC determines to be in the best interest of the Town and as provided in the Town's application and at an interest rate not exceeding 1.72% per annum. The Board of Aldermen approves the sale of the 2021 Bond to the Lender on the terms provided in the term sheet provided by the Lender and as provided in the Series Indenture. The Authorized Officers (as defined below), are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to consummate the issuance of the 2021 Bond.

Section 4. The Town's issuance of the 2021 Bond, in substantially the form to be provided in the Series Indenture, is hereby in all respects approved and confirmed. The provisions of the General Indenture and the Series Indenture with respect to the 2021 Bond are hereby approved and confirmed and are incorporated herein by reference. The proceeds from the issuance of the 2021 Bond will be deposited in accordance with the Series Indenture. The principal of, premium, if any, and interest on the 2021 Bond will not be payable from the general funds of the Town, nor will the 2021 Bond constitute a legal or equitable pledge, charge, lien or encumbrance on any of the Town's property or on any of its income, receipts or revenues except the Net Revenues which are pledged under this Bond Order and the General Indenture. Neither the credit nor the taxing power of the State of North Carolina (the "State") or the Town is pledged for the payment of the principal of, premium, if any, or interest on the 2021 Bond, and no holder of the 2021 Bond has the right to compel the exercise of the taxing power by the State or the Town or the forfeiture of any of its property in connection with any default thereon.

Section 5. The form and content of the General Indenture and the Series Indenture, including the exhibits thereto, are hereby in all respects approved and confirmed. The Mayor, the Town Manager, the Finance Director and the Town Clerk, including anyone serving as such in an interim capacity, or their respective designees (collectively, the "Authorized Officers") are hereby authorized, empowered and directed to execute and deliver the General Indenture, and the Series Indenture for and on behalf of the Town, including necessary counterparts, in substantially the form and content presented to the Town, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the Board of Aldermen's approval of any and all such changes, modifications, additions or deletions therein. From and after the execution and delivery of the General Indenture and the Series Indenture, the Authorized Officers are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the General Indenture and the Series Indenture as executed. The Trustee is hereby appointed as Registrar and Paying Agent under the Series Indenture.

Section 6. The Town Manager or the Finance Director is hereby authorized to execute a tax certificate to comply with Section 148 of the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder.

Section 7. If any one or more of the covenants, agreements or provisions contained in this Bond Order is held contrary to any express provision of law or contrary to the policy of express law, though

not expressly prohibited, or against public policy, or is for any reason whatsoever held invalid, then such covenants, agreements or provisions will be null and void and will be deemed separable from the remaining agreements and provisions and will in no way affect the validity of any of the other agreements and provisions of this Bond Order or of the 2021 Bond authorized hereunder.

Section 8. No stipulation, obligation or agreement contained in this Bond Order or contained in the 2021 Bond, the General Indenture, the Series Indenture or any other instrument related to the issuance of the 2021 Bond is a stipulation, obligation or agreement of any officer, agent or employee of the Town in his or her individual capacity, and no such officer, agent or employee is personally liable on the 2021 Bond or subject to personal liability or accountability by reason of the issuance thereof.

Section 9. The Authorized Officers are hereby authorized, empowered and directed to do any and all other acts and to execute any and all other documents which they, in their discretion, deem necessary and appropriate to consummate the transactions contemplated by this Bond Order, the General Indenture or the Series Indenture.

Section 10. The Authorized Officers are hereby authorized, empowered and directed to prepare and furnish, when the 2021 Bond is issued, certified copies of all the proceedings and records of the Board of Aldermen relating to the 2021 Bond, and such other affidavits, certificates and documents as may be required to show the facts relating to the legality and marketability of the 2021 Bond as such facts appear on the books and records in such party's custody and control or as otherwise known to them; and all such certified copies, certificates, affidavits and documents, including any heretofore furnished, constitute representations of the Town as to the truth of all statements contained therein.

Section 11. All acts and doings of the Authorized Officers that are in conformity with the purposes and intent of this Bond Order and in the furtherance of the issuance of the 2021 Bond and the execution, delivery and performance of the General Indenture and the Series Indenture are hereby in all respects approved and confirmed. Any provision in this Resolution that authorizes more than one Authorized Officer to take certain actions will apply to the respective designees of the Authorized Officers, including any person serving in an interim capacity, and will be read to permit such persons to take the authorized actions either individually or collectively.

Section 12. All resolutions or parts thereof of the Board of Aldermen in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

Section 13. This Bond Order will take effect immediately on its adoption and, pursuant to Section 159-88 of the General Statutes of North Carolina, as amended, need not be published or subjected to any procedural requirements governing the adoption of ordinances or resolutions by the Board of Aldermen other than the procedures set out in the Act.

Jerry Tolley, Mayor

ATTEST:

DiAnne Enoch, Town Clerk

I, DiAnne Enpoch, Town Clerk of the Town of Elon, North Carolina, **DO HEREBY CERTIFY** that the foregoing is a true and exact copy of an order entitled “**BOND ORDER AUTHORIZING THE ISSUANCE OF TOWN OF ELON, NORTH CAROLINA ENTERPRISE SYSTEMS REVENUE BOND, SERIES 2021; AUTHORIZING THE APPROVAL, EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND; PROVIDING FOR THE ISSUANCE OF THE BOND; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE AND DELIVERY OF THE BOND**” adopted by the Board of Aldermen of the Town of Elon, North Carolina, at a meeting held on the 14th day of September, 2021.

WITNESS my hand and the corporate seal of the Town of Elon, North Carolina, this the ____ day of September, 2021.

[Seal]

Town Clerk
Town of Elon, North Carolina

TOWN OF ELON, NORTH CAROLINA

and

U.S. BANK NATIONAL ASSOCIATION,

as Trustee

GENERAL TRUST INDENTURE

Dated as of
September 1, 2021

**Town of Elon, North Carolina
Enterprise Systems Revenue Bonds**

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GENERAL TRUST INDENTURE

THIS GENERAL TRUST INDENTURE dated as of September 1, 2021 (together with any further Supplemental Indentures, this “Indenture”), by and between the **TOWN OF ELON, NORTH CAROLINA** (the “Town”), a municipal corporation of the State of North Carolina and **U.S. BANK NATIONAL ASSOCIATION**, as trustee (the “Trustee”); having an office and place of business in Charlotte, North Carolina, duly organized and existing under the laws of the United States of America, being authorized to accept and execute trusts of the character herein set out;

W I T N E S S E T H:

WHEREAS, the existing Enterprise Systems (as hereinafter defined) currently provide water and sewer services to the residents, businesses and other users located within the jurisdiction of the Town and its surrounding areas;

WHEREAS, the Town proposes to issue bonds (the “Bonds”) under this Indenture and pursuant to the Act (hereinafter defined) and to apply the proceeds of the Bonds to finance or refinance the costs of extensions, additions and capital improvements to, or the acquisition, renewal or replacement of capital assets of, or purchasing and installing new equipment for the Enterprise Systems; and

WHEREAS, the Bonds issued under this Indenture will be secured by a pledge of the Net Revenues (hereinafter defined) of the Enterprise Systems.

GRANTING CLAUSES

In order to secure the payment of the Principal of and Interest and premium, if any, on the Bonds to be issued under this Indenture according to their tenor, purport and effect, and in order to secure the performance and observance of all the covenants and conditions contained herein and in the Bonds and in order to declare the terms and conditions on which the Bonds are issued, authenticated, delivered, secured and accepted by all persons who from time to time are or become Owners thereof, and for and in consideration of the mutual covenants herein contained, of the acceptance by the Trustee of the trust hereby created, and the purchase and acceptance of the Bonds by the Owners or obligees thereof, the Town has executed and delivered this Indenture, and by these presents does hereby assign and pledge to the Trustee, its successors in trust and its assigns forever, to the extent provided in this Indenture:

I.

All Net Revenues of the Enterprise Systems.

II.

All moneys and securities held by the Trustee, the Town or any other depositaries in any and all of the funds and accounts established under this Indenture except the Surplus Fund.

III.

Any additional property that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien hereof, by the Town or by anyone authorized to act on its behalf, and the Trustee is hereby authorized to receive the same at any time as additional security hereunder. This Indenture does not convey, mortgage, pledge or create any lien on any real estate or tangible personal property owned by the Town or on any revenues of the Town other than the Net Revenues.

TO HAVE AND TO HOLD, all and singular, the Trust Estate, including all additional property which by the terms hereof has or may become subject to the encumbrance of this Indenture, unto the Trustee and its successors and assigns forever.

BUT IN TRUST NEVERTHELESS, on the terms and trusts herein set forth, for the equal and proportionate benefit and security of the Bonds issued and to be issued hereunder and secured by this Indenture, without preference, priority or distinction as to participation in the lien, benefit and protection hereof of any one Bond over any other for any reason whatsoever (except as expressly provided in this Indenture), so that each and all such Bonds has the same right, lien and privilege under this Indenture and is equally secured hereby, with the same effect as if the same had all been made, issued and negotiated simultaneously with the delivery hereof.

PROVIDED, HOWEVER, and these presents are upon the condition that, if the Town pays, causes to be paid or provides for the payment to the Owners of the Bonds, the Principal, Interest and premium (if any) to become due in respect thereof at the times and in the manner stipulated therein, herein and in any Series Indenture relating thereto and keeps, performs and observes all and singular the covenants and agreements in such Bonds and in this Indenture expressed to be kept, performed and observed by or on the part of the Town, then this Indenture and the rights hereby granted will cease, determine and be void and of no further force and effect.

It is hereby mutually covenanted and agreed that the terms and conditions on which the Bonds are to be issued, authenticated, delivered, secured and accepted by all persons who from time to time be or become the Owners thereof are as follows:

ARTICLE I
DEFINITIONS OF TERMS, CONSTRUCTION AND
CERTAIN GENERAL PROVISIONS

Section 1.1 **Definitions.** In this Indenture, the following words and terms will, unless the context otherwise requires, have the following meanings:

“Account” or “Fund” means one of the special funds or accounts created and established pursuant to Section 5.2.

“Accountant” means an independent certified accountant or firm of certified public accountants as may be selected by the Town.

“Accreted Value” means (i) on a Compounding Date with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond at the date of delivery to the original purchasers thereof plus the interest accrued on such Capital Appreciation Bond from such date to that Compounding Date as shown in the Series Indenture under which it is issued, or (ii) as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond at the date of delivery to the original purchasers thereof plus the interest accrued on such Capital Appreciation Bond from such date to the date of computation, calculated based on the assumption that Accreted Value as shown in the Series Indenture under which it is issued accrues during any period in equal daily amounts on the basis of a year of 360 days consisting of twelve months of thirty days each, or as otherwise stated in the Series Indenture.

“Act” means The State and Local Government Revenue Bond Act, General Statutes of North Carolina Section 159-80 et seq., as the same may hereafter be amended, or any successor statute.

“Additional Bonds” means Bonds issued under this Indenture and meeting the requirements of Section 6.8.

“Annual Budget” means the annual budget approved by the Board of Aldermen of the Town concerning the operation of the Enterprise Systems for each Fiscal Year.

“Authenticating Agent” means with respect to any given Series of Bonds, the Registrar or any other entity appointed in the related Series Indenture to act as an authenticating agent for such Series of Bonds or a portion thereof.

“Balloon Indebtedness” means a Series of Bonds, either (a) 25% or more of the Principal Installments of which are payable in a single Fiscal Year or (b) 25% or more of the Principal Installments of which may, at the option of the holder thereof, be redeemed at one time, and in either event which portion of the Principal Installments is not required by the documents pursuant to which such Bonds are issued to be amortized by redemption prior to such date; provided, however, if any Principal Installment is sized to take into account money in the Reserve Fund that the Town expects to be available to pay such Principal Installment, then the Principal Installment will be treated as net of that amount in the Reserve Fund.

“Bond” means one of the obligations delivered pursuant to this Indenture, including all Series of Bonds issued pursuant to a Series Indenture.

“Bond Counsel” means an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal, state and public agency financing, selected by the Town and not unacceptable to the Trustee.

“Board of Aldermen” means the Board of Aldermen of the Town.

“Business Day” means any day other than (a) a day on which banking institutions in New York, New York, or in the State or in the cities in which the Trustee or the Paying Agent have their respective principal offices are authorized to close or (b) a day on which the New York Stock Exchange is closed.

“Capital Appreciation Bonds” means any Bonds, however denominated in the related Series Indenture, as to which interest is compounded periodically on each Compounding Date and which are payable in an amount equal to the then-current Accreted Value only at maturity, earlier redemption or other payment date therefor.

“Certificate” means (i) a signed document either attesting to or acknowledging the circumstances, representations or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Indenture or (ii) the report of an accountant as to audit or other procedures called for by this Indenture.

“Code” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein will be deemed to include the United States Treasury Regulations in effect with respect thereto.

“Compounding Date” means, with respect to any Capital Appreciation Bond, the dates set forth in the Series Indenture under which it is issued.

“Construction Fund” means the Fund so designated and established under Section 5.2.

“Consulting Engineer” means the Town’s professional engineer or a firm of engineers or utilities consultants with recognized expertise for advising governmental entities with respect to the construction, maintenance and use of the Enterprise Systems from time to time employed by the Town.

“Costs of Construction” means the costs reasonably incurred in connection with the Enterprise Systems, including but not limited to the costs of (1) acquisition of all property, real or personal, tangible or intangible, and all interests in connection therewith including all rights-of-way and easements therefor, (2) physical construction, installation and testing, including the costs of labor, services, materials, supplies and utility services used in connection therewith, (3) architectural, engineering, legal, financial advisory and other professional services, (4) premiums for insurance policies taken out and maintained during construction, to the extent not paid for by a contractor for construction and installation, (5) any taxes, assessments or other charges which become due during construction, (6) expenses incurred by the Town or on its behalf with its approval in seeking to enforce any remedy against any contractor or sub-contractor in respect of any default under a contract relating to construction, (7) Costs of Issuance, (8) capitalized interest on the Bonds, (9) miscellaneous expenses incidental thereto and (10) reimbursements of such Cost of Construction properly incurred prior to the issuance of the Bonds.

“Costs of Issuance” means all items of expense, directly or indirectly payable by or reimbursable to the Town, related to the authorization, sale and issuance of Bonds.

“Current Expenses” means the current expenses of operation, maintenance and current repair of the Enterprise Systems, as calculated in accordance with generally accepted accounting principles except as otherwise provided herein, and includes, without limiting the generality of the foregoing: insurance premiums; any rebate required to be paid to the United States Government; fees and expenses of the Trustee and any Paying Agent; fees and expenses of any entity providing credit support or liquidity for any Series of the Bonds; administrative and engineering expenses of the Town relating solely to the Enterprise Systems; labor; executive compensation; the cost of materials and supplies used for current operations; and charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but which

are such as may reasonably be expected to be incurred as determined by the Town in accordance with generally accepted accounting principles except as otherwise provided herein. “Current Expenses” will not include (1) any allowance for depreciation or replacements of capital assets of the Enterprise Systems, (2) moneys payable as Interest and as interest on General Obligation Indebtedness, Subordinate Indebtedness or Other Indebtedness, (3) moneys deposited or transferred to the Reserve Fund pursuant to the applicable Series Indenture, (4) any loss from extinguishment of debt or the sale, exchange or other disposition of capital assets and (5) any accrued expenses for other post-retirement benefits not resulting in (i) payments of such benefits to current or future retired employees or (ii) deposits of funds into an irrevocable trust for the purpose of making future payments of such benefits to current or future retired employees. When generally accepted accounting principles provide that amounts be treated as Current Expenses but (1) the timing of the required payment of the expense or a portion thereof, while known, is more than one year in the future or (2) the actual timing of the required payment of the expense is not readily determinable (such as post-employment benefits calculated actuarially), the Town may include as a Current Expense the amount required to be paid for in the current period rather than the entirety of amounts required to be expensed.

“Debt Service Fund” means the Fund so designated and established by Section 5.2.

“Derivative Agreement” means an interest rate swap, cap, collar, floor, forward, option, put, call or other similar agreement however denominated, relating to the Bonds.

“Direct Subsidy Bonds” means any Bonds, Subordinate Indebtedness, Other Indebtedness or General Obligation Indebtedness incurred or issued under an interest subsidy program established under the Code.

“Enterprise Systems” means (1) initially, the Water and Sewer System, providing water and sewer services inside and outside the jurisdiction of the Town, including any and all additions, modifications, replacements and parts thereof and including any portion thereof owned by a public authority or agency or a nonprofit corporation organized solely for the purpose of assisting the Town and (2) thereafter, any revenue-producing enterprise of the Town which qualifies as a “revenue bond project” under Section 159-81(3) of the General Statutes of North Carolina, as amended from time to time, and added to the Enterprise Systems under Section 6.11, but (3) less any portion of the Enterprise Systems removed from the Enterprise Systems or designated otherwise under Section 6.11.

“Enterprise Systems Operating Fund” means the Fund so designated and established pursuant to Section 5.2.

“Event of Default” means any of the events specified in Section 9.1 together with any other events specified as such in a Series Indenture.

“Existing Other Indebtedness” means the installment financing obligations, or any portion thereof, the payments under which are payable from Net Revenues, outstanding at the time of the execution of this Indenture.

“Federal Securities” means, to the extent otherwise permitted by law, (a) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged; (b) obligations the payment of the principal of and interest on which is fully guaranteed as full faith and credit obligations of the United States of America (including any securities described in (a) or (b) issued or held in the name of the Trustee in book entry form on the books of the Department of Treasury of the United States of America), which obligations, in either case, are held in the name of the Trustee and are not subject to redemption or purchase prior to maturity at the option of anyone other than the owner; (c) any

bonds or other obligations of the State or of any agency, instrumentality or local governmental unit of the State which are (i) not callable prior to maturity or (ii) as to which irrevocable instructions have been given to the trustee or escrow agent of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified, and which are rated by Moody's, if the bonds are rated by Moody's, and S&P, if the bonds are rated by S&P, within the highest rating category and which are secured as to principal, redemption premium, if any, and interest by a fund consisting only of cash or bonds or other obligations of the character described in clause (a) or (b) hereof which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate; or (d) direct evidences of ownership of proportionate interests in future interest and principal payments on specified obligations described in (a) held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor on the underlying obligations described in (a), and which underlying obligations are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated.

"Finance Officer" means the finance officer of the Town appointed in accordance with Section 159-24 of the General Statutes of North Carolina, as amended, or any successor statute, or the official succeeding to the Finance Officer's principal functions.

"Financial Consultant" means an independent person or firm with recognized expertise for advising governmental entities with respect to financial forecasting and analysis of the applicable enterprise system from time to time employed by the Town.

"Fiscal Year" means a twelve-month period commencing on the first day of July of any year, or such other twelve-month period adopted as the Fiscal Year of the Town.

"Fitch" means Fitch Ratings, Inc., its successors and their assigns, and, if such corporation for any reason no longer performs the functions of a securities rating agency, "Fitch" will be deemed to refer to any other nationally recognized securities rating agency designated by the Finance Officer of the Town by notice to the Trustee.

"General Obligation Indebtedness" means (1) general obligation indebtedness incurred by the Town which is payable from Net Revenues and the proceeds of which were or are to be used to provide for capital costs of the Enterprise Systems and (2) general obligation indebtedness of another governmental unit, the payment on which is assumed by the Town in connection with acquisition of assets for the Enterprise Systems.

"Independent Insurance Consultant" means a person or firm, appointed by the Town and not unacceptable to the Trustee, qualified to survey risks and to recommend insurance coverage for facilities of the type operated by the Town and having a favorable reputation for skill and experience in such surveys and such recommendations, which insurance consultant, in the case of an individual, must not be an officer or employee of the Town and, in the case of a firm, must not have a partner, director, member, officer or employee who is an officer or employee of the Town.

"Interest" means (1) the amount designated as interest on any Bonds and (2) payments due from the Town under a Derivative Agreement other than for the termination thereof.

"Interest Payment Date" means any date on which interest is due and payable in accordance with the terms set forth with respect to each Series of Bond in the related Series Indenture or any other document executed and delivered by the Town in accordance with this Indenture.

Investment Securities” means investments permitted under Section 159-30 of the North Carolina General Statutes, as amended from time to time, or any successor statute, or as otherwise permitted by law for the investment of public funds of the Town.

“LGC” means the North Carolina Local Government Commission or any successor to its functions under the laws of the State, or its designated representative.

“Moody’s” means Moody’s Investors Service, its successors and their assigns, and, if such corporation for any reason no longer performs the functions of a securities rating agency, “Moody’s” will be deemed to refer to any other nationally recognized rating agency designated by the Finance Officer of the Town by notice to the Trustee.

“Net Revenues” means the excess of Revenues over Current Expenses.

“Other Indebtedness” means capital leases, installment financing agreements or other contracts used to provide capital improvements to the Enterprise Systems, the payments under which are payable from Net Revenues.

“Outstanding” means all Bonds which have been authenticated and delivered by the Trustee under this Indenture, except:

- (a) Bonds canceled after purchase in the open market or because of payment (it being understood that a payment to an Owner of the purchase price of a Bond, as prescribed in the related Series Indenture, is not payment of a Bond) at or redemption prior to maturity or on acceleration;
- (b) Bonds deemed paid under Article X;
- (c) Bonds for the payment of the principal of, redemption premium, if any, and interest on which Federal Securities have been irrevocably set aside; and
- (d) Bonds in lieu of which other Bonds have been authenticated under Article III.

“Owner” means any person in whose name any Outstanding Bond is registered on the books of the Registrar.

“Paying Agent” means any entity appointed in a Series Indenture to act as a paying agent for a Series of Bonds.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

“Principal” means the principal amount of an Outstanding Bond (including as to Capital Appreciation Bonds, the Accreted Value thereof except with respect to the order of priority of payment of Bonds after an event of default under Section 9.1, in which case, “Principal” means the principal amount of such Capital Appreciation Bonds on their date of delivery and the balance of the Accreted Value will be “Interest”) payable as a Sinking Fund Payment or at maturity.

“Principal and Interest Requirements on the Bonds” means, with respect to any particular Fiscal Year, an amount equal to the sum of (i) all Interest payable on the Outstanding Bonds during such Fiscal

Year excluding any capitalized interest payable from the proceeds of a Series of the Bonds, plus (ii) any Principal Installments of the Outstanding Bonds during such Fiscal Year.

(a) For purposes of computing “Principal and Interest Requirements on the Bonds,” the rate of interest used to determine (i) above will be a rate per annum equal to (1) with respect to Bonds which bear interest at a fixed rate, the rate of interest borne or to be borne by such Bonds, (2) with respect to Bonds which bear interest at a variable or periodically determined rate of interest, the rate which is equal to the greater of (A) the average of all the interest rates in effect on the Bonds (or, as certified by a financial institution or investment banking firm acceptable to the Finance Officer, which would have been in effect on the Bonds had such Bonds been Outstanding) during the immediately preceding twelve-month period or (B) the average of all the interest rates in effect on the Bonds (or, as certified by a financial institution or investment banking firm acceptable to the Finance Officer, which would have been in effect on the Bonds had such Bonds been Outstanding) during the immediately preceding one-month period and (3) with respect to Direct Subsidy Bonds, any subsidy payments that are received or expected to be received and deposited in the Debt Service Fund to be used to pay interest on such Direct Subsidy Bonds, the interest rate will be calculated by subtracting the applicable direct subsidy percentage from the stated interest rate (in other words, the Town will receive a credit against the interest paid or to be paid on such Direct Subsidy Bonds). If the Town has entered into a Derivative Agreement under which it will receive payments calculated on a notional amount equal to all or a portion of the aggregate Principal amount of a Series of the Bonds and will make payments calculated on the same notional amount, the interest used to calculate (1) above will be the amount to be paid by the Town, and the amount to be received will be deducted; payments on a variable or periodic basis under such an agreement will be calculated in accordance with clause (2) above.

(b) For purposes of computing “Principal and Interest Requirements on the Bonds,” the Principal Installments for each Series of Bonds used to determine (ii) above will be the actual planned Principal Installments, except for any Balloon Indebtedness the Principal Installment for any Fiscal Year will be assumed to be the result of dividing (A) the outstanding principal amount of such Balloon Indebtedness by (B) thirty (30) years, in each case determined as of the original issuance of the Balloon Indebtedness (in other words, the Principal Installment for any Fiscal Year will be deemed to be $1/30^{\text{th}}$ of the initial aggregate principal amount of the Balloon Indebtedness); provided, however, if the date of calculation is within 12 months of the final maturity date of such Series of Bonds, the Town will use the actual planned Principal Installment unless the Town has a binding commitment by an institutional lender or municipal underwriting firm to provide moneys to refinance the aggregate Principal of such Series of Bonds then Outstanding and if such binding commitment exists, then the payment terms contained in the commitment are to be used for purposes of calculating Principal for such Series of Bonds.

“Principal and Interest Requirements on General Obligation Indebtedness” means, with respect to any particular Fiscal Year, an amount equal to the sum of (1) all interest payable on the General Obligation Indebtedness during such Fiscal Year excluding any capitalized interest, plus (2) any principal of the General Obligation Indebtedness during such Fiscal Year. Principal and interest for purposes of this definition will be computed in the manner in which the Principal Installments and interest on the Bonds is calculated under the definition of “Principal and Interest Requirements on the Bonds.”

“Principal and Interest Requirements on Other Indebtedness” means, with respect to any particular Fiscal Year, an amount equal to the sum of all payment obligations with respect to Other Indebtedness during such Fiscal Year excluding any capitalized interest. If the payment obligation under any Other Indebtedness is stated in terms of principal and interest, such principal and interest will be computed for

purposes of this definition in the manner in which the Principal Installments and interest on the Bonds is calculated under the definition of “Principal and Interest Requirements on the Bonds.”

“Principal and Interest Requirements on Subordinate Indebtedness” means, with respect to any particular Fiscal Year, an amount equal to the sum of (1) all interest payable on Subordinate Indebtedness during such Fiscal Year excluding any capitalized interest, plus (2) any principal of Subordinate Indebtedness during such Fiscal Year. Principal and interest for purposes of this definition will be computed in the manner in which the Principal Installments and interest on the Bonds is calculated under the definition of “Principal and Interest Requirements on the Bonds.”

“Principal Installment” means, as of any date of calculation, (1) the aggregate Principal amount of Outstanding Bonds (including as to Capital Appreciation Bonds, the Accreted Value thereof) due on a certain future date, reduced by the aggregate Principal amount of such Bonds which would be retired by reason of the payment when due and application in accordance with this Indenture of Sinking Fund Payments payable before such future date, plus (2) any Sinking Fund Payments due on such certain future date, together with the aggregate amount of the premiums, if any, applicable on such Sinking Fund Payments.

“Principal Payment Date” means any date upon which Principal is due and payable.

“Qualified Reserve Fund Substitute” means (1) an irrevocable letter of credit, naming the Trustee as beneficiary, issued by any domestic or foreign bank, or any branch or agency thereof, whose long-term debt obligations are rated by at least one national rating agency in the “A” rating category or higher, or the equivalent, (2) a surety bond issued by a financial institution whose long-term rating is in the “A” rating category or higher, or equivalent, by at least one national rating agency or (3) a policy of reserve fund insurance issued by an insurance company whose claims-paying ability is rated by at least one national rating agency in the “A” rating category or higher, or the equivalent. In each case, ratings set forth above shall be determined at the time of issuance of such Qualified Reserve Fund Substitute and without regard to ratings subcategories.

“Rate Covenant” means the Town’s covenant under Section 6.6.

“Redemption Price” means, with respect to any Bond, the Principal amount thereof plus the applicable premium, if any, and accrued interest payable on the redemption thereof.

“Registrar” means the Trustee or, in lieu of the Trustee, any other entity appointed in a Series Indenture to act as the Registrar for a Series of Bonds or a portion thereof.

“Released Revenues” means Revenues released from the grant of security for the Bonds under Section 6.3.

“Reserve Fund” means the Fund so designated and established pursuant to Section 5.2.

“Reserve Requirement” means, as of any date of calculation, the collective amount required to be on deposit in the Reserve Fund as determined by the Series Indentures under which all Series of Bonds secured by an account in the Reserve Fund are issued.

“Revenues” means all rates, fees, rentals, assessments, capacity fees, system development fees or other charges or other money received by the Town in connection with the ownership, management and operation of the Enterprise Systems, and all parts thereof, including amounts received from the investment of money in any Fund or Account (but not including amounts received from interest or other investment

income earned in the Construction Fund and, during the construction period, the Reserve Fund), all as calculated in accordance with generally accepted accounting principles, but shall not include (1) net proceeds of insurance or condemnation awards or other extraordinary items, (2) any amounts collected by the Town representing sales or use taxes which may be required by law or agreement to be paid to the State or a governmental unit thereof, (3) refundable deposits made by customers of the Enterprise Systems, (4) any proceeds or any gain or loss from the extinguishment of debt or the sale, exchange or other disposition of capital assets, (5) Released Revenues, (6) proceeds of assessments, capacity fees, system development fees or similar charges identified in a Certificate of a Town Representative filed with the Trustee stating that such are not to be Revenues because the proceeds thereof are to be utilized exclusively for the payment of the cost of the capital projects for which they were collected, or (7) any amounts otherwise included under this definition as Revenues but not permitted by law to be pledged hereunder.

“S&P” means S&P Global Ratings, its successors and their assigns, and, if such corporation for any reason no longer performs the functions of a securities rating agency, “S&P” will be deemed to refer to any other nationally recognized securities rating agency designated by the Finance Officer of the Town by notice to the Trustee.

“Series of Bonds” or “Series” means any series of Bonds issued hereunder pursuant to a Series Indenture.

“Series Indenture” means any indenture or other document supplementing this Indenture, executed by the Town and effective in accordance with Article VII, providing for the issuance of a Series of Bonds.

“Sinking Fund Payment” means, as of any particular date of calculation, the amount required to be paid by the Town on a certain future date for the retirement of Outstanding Bonds which mature after such future date, but does not include any amount payable by the Town by reason of the maturity of a Bond or by call for redemption at the election of the Town.

“State” means the State of North Carolina.

“Subordinate Indebtedness” means debt, other than General Obligation Indebtedness, the payment of the principal and interest on which is secured by a lien on Net Revenues that is subordinate to the lien on Net Revenues securing the payment of the Principal of and Interest on the Bonds, including any loan or other obligation payable to the State under a State loan program unless by its terms it is stated to be on parity with the Bonds.

“Supplemental Indenture” means any indenture supplemental to this Indenture delivered pursuant to Article VII hereof amending or supplementing this Indenture.

“Surplus Fund” means the fund so designated and established by Section 5.2.

“Town” means the Town of Elon, North Carolina.

“Town Representative” means the Town Manager, any Assistant Town Manager, the Finance Officer and, in the case of any act to be performed or duty to be discharged, any other member, officer or employee of the Town then authorized to perform such act or discharge such duty.

“Trustee” means the Trustee with respect to the Bonds and any other person at any time substituted in its place as provided in Article VIII.

“Trust Estate” means all property and rights conveyed by the Town under the Granting Clauses of this Indenture.

“Water and Sewer System” means the public water transmission and distribution facilities, and the wastewater collection facilities owned and operated by the Town that provide utility services to residential and nonresidential customers both within and outside the incorporated limits of the Town.

Section 1.2 **Interpretation.** In this Indenture, unless the context otherwise requires:

- (a) the terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms used in this Indenture refer to this Indenture, and the term “heretofore” means before, and the term “hereafter” means after the date of adoption of this Indenture;
- (b) the words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa;
- (c) any references to Section and Article numbers shall be deemed to refer to the Section and Article numbers contained herein unless the context clearly indicates otherwise; and
- (d) any typographical error, irregularity or inconsistency herein shall be read to be given the meaning the context reasonably requires.

[End of Article I]

ARTICLE II TERMS OF BONDS

Section 2.1 **Indenture to Constitute Contract; Parity Bonds.** In consideration of the purchase and acceptance of the Bonds by those who hold the same from time to time, the provisions of this Indenture will be a part of the contract of the Town with the Owners of Bonds and is deemed to be and constitutes a contract among the Town, the Trustee and the Owners from time to time of the Bonds. The pledges and assignments made hereby and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Town are for the equal benefit, protection and security of the Owners of any and all the Bonds, each of which, regardless of the time or times of its issue or maturity, will be of equal rank without preference, priority or distinction over any other thereof except as expressly provided in this Indenture.

Section 2.2 **Special Obligations.** The Bonds are special obligations of the Town. The Principal of, premium, if any, and Interest on the Bonds are not payable from the general funds of the Town, nor do they constitute a legal or equitable pledge, charge, lien or encumbrance on any of its property or on any of its income, receipts or revenues, except the Trust Estate pledged hereunder. Neither the credit nor the taxing power of the Town are pledged for the payment of the Principal of the Bonds, premium if any, or Interest, and no Owner has the right to compel the exercise of the taxing power by the Town or the forfeiture of any of its property in connection with any default on the Bonds.

Section 2.3 **Authorization of Bonds.** In order to provide sufficient funds to construct any expansion or improvement of the Enterprise Systems, to acquire property in connection therewith or to refund all or any principal amount of obligations issued therefor, Bonds of the Town are hereby authorized to be issued hereunder, in one or more Series, pursuant to a Series Indenture, in accordance with the laws of the State.

Section 2.4 **Conditions Precedent to Delivery of Bonds.** The Bonds of each Series will be delivered upon the receipt by the Trustee of:

(a) certified copies of the bond order and any other necessary authorizations adopted by the Board of Aldermen and approving this Indenture, the related Series Indenture and the transactions related to the Series of Bonds being issued;

(b) certified copies of this Indenture and the Series Indenture authorizing the Series of Bonds being issued;

(c) a Bond Counsel's opinion to the effect that (1) such Series Indenture has been duly and lawfully authorized, executed and delivered and is in full force and effect; (2) this Indenture has been duly and lawfully authorized, executed and delivered by the Town and is valid and binding upon, and enforceable against, the Town (except to the extent that the enforceability thereof may be limited by the operation of bankruptcy, insolvency and similar laws affecting rights and remedies of creditors); (3) this Indenture creates the valid pledge which it purports to create of the Trust Estate for the purposes and on the conditions permitted by this Indenture; and (4) on the execution and delivery thereof, such Series of Bonds has been duly and validly authorized and issued in accordance with this Indenture;

(d) a request and authorization to the Authenticating Agent on behalf of the Town to authenticate and deliver the Series of Bonds to the purchasers therein identified on payment to the Trustee or otherwise as directed by the Trustee, for the account of the Town, of a sum specified in such request and authorization;

(e) evidence reasonably satisfactory to the Trustee that the Reserve Fund is equal to the Reserve Requirement, if any, after issuance of such Series of Bonds; and

(f) such additional documents and certificates as Bond Counsel or the Trustee may reasonably require.

[End of Article II]

ARTICLE III GENERAL TERMS AND PROVISIONS OF BONDS

Section 3.1 **Provisions of a Series of Bonds.** Each Series Indenture will include provisions, as applicable, concerning the medium and times of payment, denominations, forms, dates, redemption, purchase, registration, exchange, transfer, replacement, cancellation and execution of such Bonds.

Section 3.2 **Legends.** The Bonds of each Series may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Indenture as may be necessary or desirable to comply with custom, or otherwise.

Section 3.3 **Books for Registration.** Unless otherwise provided in a Series Indenture with respect to the related Series of the Bonds, so long as any Bonds are Outstanding, the Town will cause to be maintained and kept, at a corporate trust office of the Registrar, books for the registration of Bonds, which may be in electronic form. On presentation thereof for such purpose at such office by the Owner thereof or his or her duly authorized attorney, the Registrar will register or cause to be registered in such books, any Bonds entitled to registration, under such reasonable regulations as the Registrar may prescribe.

Section 3.4 **Transfer and Exchange of Bonds.** Ownership of Bonds will be transferable only on the books of the Registrar, on surrender of the Bonds to be transferred with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner thereof or his or her duly authorized attorney. Bonds may be exchanged for Bonds of the same Series and maturity in other authorized denominations, on surrender of the Bonds to be exchanged to the Registrar with a written instrument requesting such exchange, duly executed by the Owner thereof or his duly authorized attorney.

When the privilege of transferring or exchanging Bonds is exercised, the Town will execute or cause to be executed and the Authenticating Agent will authenticate and deliver Bonds in exchange for Bonds being transferred or exchanged. For every such transfer or exchange of Bonds, whether temporary or definitive, the Town or the Registrar may charge an amount sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

Section 3.5 **Replacement of Mutilated, Destroyed, Stolen or Lost Bonds.** If a Bond is mutilated, destroyed, stolen or lost, the Town will execute or cause to be executed and the Authenticating Agent will authenticate and deliver replacement Bonds of the same Series and maturity. For any mutilated Bonds, such new Bonds will be delivered only on surrender and cancellation of the mutilated Bonds. For destroyed, stolen or lost Bonds, such new Bonds will be delivered only on the filing with the Trustee of evidence satisfactory to establish to the Town and the Trustee that such Bonds have been destroyed, stolen or lost and to prove the ownership thereof and on furnishing the Town and the Trustee with indemnity satisfactory to them as the Town and the Trustee may require. The person requesting the delivery of new Bonds pursuant to this Section must comply with such other reasonable regulations as the Town and the Trustee prescribe and pay such expenses as the Town and the Trustee incur in connection therewith.

Section 3.6 **Cancellation and Destruction of Bonds.** All Bonds paid or redeemed, either at or before maturity and all Bonds delivered for transfer or exchange as provided in Section 3.4 must be delivered to the Trustee when such payment or redemption is made. The Trustee will promptly cancel such Bonds, together with all Bonds surrendered for replacement pursuant to Section 3.5 and any other Bonds delivered to the Trustee with instructions to cancel the same. Bonds so canceled may at any time be cremated or otherwise destroyed by the Trustee. Upon the cremation or destruction of canceled Bonds, the Trustee will provide to the Town a written certification thereof.

Section 3.7 **Execution and Authentication.** The Bonds will be executed on behalf of the Town with the manual, facsimile or electronic signature of its Mayor or the Town Manager, or any other officer of the Town authorized to do so by the Board of Aldermen. If any officer of the Town whose signature appears on the Bonds ceases to be such officer before the delivery of such Bonds, such signature or facsimile signature will nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery. In addition, each Bond shall be authenticated by the manual or facsimile signature of an authorized officer of the Authenticating Agent. If any official of the Authenticating Agent whose signature appears on the Bonds ceases to be such official before delivery of the Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if he had remained in office until delivery. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit hereunder unless and until executed and authenticated in the manner prescribed by this Section, and such execution and authentication of any Bond shall be conclusive evidence that such Bond has been properly executed and delivered hereunder.

Section 3.8 **Ownership of Bonds.** The Town and the Trustee may deem and treat the Owner of any Bond as the absolute owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the Principal of and interest on such Bond and for all other purposes, and all such payments so made to any such Owner will be valid and effectual to satisfy and discharge the liability on such Bond to the extent of the sum or sums so paid, and neither the Town nor the Trustee will be affected by any notice to the contrary.

Section 3.9 **Temporary Bonds.** Pending the preparation of definitive Bonds of any Series, the Town may execute and the Authenticating Agent will authenticate and deliver temporary Bonds of such Series. Temporary Bonds will be issuable as fully registered Bonds, of any denomination permitted by the related Series Indenture, and substantially in the form of the definitive Bonds of such Series but with such omissions, insertions and variations as may be appropriate for temporary Bonds, all as may be determined by the Town. Every temporary Bond will be executed by the Town and authenticated by the Authenticating Agent on the same conditions and in substantially the same manner, and with like effect, as the definitive Bonds. As promptly as practicable, the Town will execute and will furnish definitive Bonds and then temporary Bonds may be surrendered in exchange therefor without charge at the designated corporate trust office of the Registrar, and the Authenticating Agent will authenticate and the Registrar will deliver in exchange for such temporary Bonds a like aggregate Principal amount of definitive Bonds. Until so exchanged, the temporary Bonds will be entitled to the same benefits under this Indenture as definitive Bonds.

Section 3.10 **Book-Entry System.** A Series Indenture may provide that a Series of Bonds may be held in a book-entry system by a securities depository in which case the rules and procedures of the securities depository shall supersede the provisions of this Indenture with respect to the process of substitution, exchange, payment, redemption, tender and similar administrative issues covered by such rules and procedures for the Series of Bonds.

[End of Article III]

ARTICLE IV
APPLICATION OF BOND PROCEEDS

Section 4.1 **Application of Bond Proceeds.** The proceeds of sale of any Series of Bonds will, as soon as practicable on the delivery of the Series of Bonds by the Trustee pursuant to Section 2.4, be applied as set forth in the applicable Series Indenture.

Section 4.2 **Bonds Not Delivered for Payment.** If any Bond is not presented for payment when the Principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, or if any interest check is not cashed, if funds sufficient to pay such Bond have been made available by the Town to the Trustee or any Paying Agent for the benefit of the Owner thereof, all liability of the Town to the Owner thereof for the payment of such Bond will forthwith cease, terminate and be completely discharged, and it will then be the duty of the Trustee and any Paying Agent to hold such funds in trust, uninvested and without liability for interest thereon, for the benefit of the Owner of such Bond who will thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond. Any money that is so set aside and that remains unclaimed by the Owners for a period of five (5) years, or such other time period required under Section 116B of the General Statutes of North Carolina, or any successor statute (the "Escheat Statute"), after the date on which such Bonds have become payable shall be treated as abandoned property pursuant to the provisions of the Escheat Statute and the Trustee or Paying Agent, as applicable, shall report and remit this property to the Escheat Fund according to the requirements of the Escheat Statute. Thereafter, the Owners shall look only to the Escheat Fund for payment and then only to the extent of the amounts so received, without any interest thereon, and the Trustee, the Paying Agent and the Town shall have no responsibility with respect to such money.

[End of Article IV]

ARTICLE V
PLEDGE OF INDENTURE; FUNDS
AND ACCOUNTS; INVESTMENTS

Section 5.1 **Pledge Effected by Indenture.** The Trust Estate is hereby pledged, and the Town hereby grants a security interest therein, to the Trustee for the benefit of Owners, to secure the payment of Bonds in accordance with their terms and the provisions of this Indenture. The Trust Estate will immediately be subject to the lien of such pledge without any physical delivery thereof or further act and such lien will be valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice hereof.

Section 5.2 **Funds and Accounts.**

(a) The Town hereby establishes and creates the following special Funds on its books and records which for administrative convenience may be subdivided by the Town Representative or the Trustee into Accounts with appropriate identification:

- (1) Enterprise Systems Operating Fund;
- (2) Debt Service Fund;
- (3) Construction Fund;
- (4) Reserve Fund, if required; and
- (5) Surplus Fund.

The Trustee or the Town may also create such other Funds or Accounts as it deems necessary or desirable in the administration of this Indenture.

(b) The Debt Service Fund, the Construction Fund and the Reserve Fund will be held by the Trustee; provided that, the Construction Fund may be held by or at the direction of the Town as provided in any Series Indenture. If the Reserve Fund is used for a Series of Bonds, the related Series Indenture must establish the provisions for the use thereof. The Enterprise Systems Operating Fund and the Surplus Fund will be held by one or more financial institutions determined by the Town.

Section 5.3 **Enterprise Systems Operating Fund.**

(a) The Town will cause all Revenues to be deposited in the Enterprise Systems Operating Fund. There will also be deposited in the Enterprise Systems Operating Fund any other amounts required to be deposited therein pursuant to this Indenture or any Supplemental Indenture and any other amounts available therefor and determined by the Town to be deposited therein. All amounts collected by the Town that do not constitute Revenues, which have been deposited in the Enterprise Systems Operating Fund, may be paid out of the Enterprise Systems Operating Fund in the amounts and at the times determined by the Town Representative.

(b) Except as provided in subsection (a) of this Section, the Town will cause disbursements to be made from the Enterprise Systems Operating Fund as follows:

FIRST: Directly to the Persons entitled thereto at any time as may be required, the amount required to pay the Current Expenses as shown in the Annual Budget for the current Fiscal Year;

SECOND: To the Debt Service Fund, on or before the fifth day preceding each Interest Payment Date, an amount such that, after taking into consideration amounts then on deposit in the Debt Service Fund allocated to pay Interest on the Bonds, there will be in the Debt Service Fund an amount equal to the Interest due on that Interest Payment Date;

THIRD: To the Debt Service Fund, on or before the fifth day preceding each Principal Payment Date, an amount such that, after taking into consideration amounts then on deposit in the Debt Service Fund allocated to pay Principal of the Bonds, there will be in the Debt Service Fund an amount equal to the Principal due on that Principal Payment Date;

FOURTH: At any time as may be required, to the provider of any Qualified Reserve Fund Substitute in satisfaction of the then current obligations of the Town incurred in connection therewith;

FIFTH: At any time as may be required, to the Trustee for deposit in the Reserve Fund (1) the amount necessary for the balance therein to equal the Reserve Requirement, but if the Revenues are insufficient therefor, to each Account of the Reserve Fund pro rata on the basis of the Reserve Requirement for each Series of Bonds secured by an Account of the Reserve Fund or (2) if the Reserve Fund is less than 90% of the Reserve Requirement as a result of a valuation of investments therein, the amount necessary for the balance therein to equal the Reserve Requirement; but the Town is not required to transfer in any month more than an amount such that if the same amount were deposited in equal monthly installments over the subsequent 11 months, the Reserve Fund would equal the Reserve Requirement;

SIXTH: At any time as may be required, to the Persons entitled to payment of any principal, premium, if any, or interest on any Subordinate Indebtedness, an amount equal to the principal, premium or interest then due and owing;

SEVENTH: At any time as may be required, to the paying agent or directly to the registered owners of General Obligation Indebtedness in an amount necessary to pay when due the principal of, premium, if any, and interest on the General Obligation Indebtedness;

EIGHTH: At any time as may be required, to the Persons entitled to payment with respect to any Other Indebtedness, an amount equal to the payment then due and owing; and

NINTH: On the first day of each Fiscal Year, to the Surplus Fund, the balance remaining in the Enterprise Systems Operating Fund as of the last day of the preceding Fiscal Year, after reserving therein an amount sufficient to pay the Current Expenses for the first two months of that Fiscal Year as shown in the Annual Budget.

Section 5.4

Debt Service Fund.

(a) There will be deposited in the Debt Service Fund any amounts required to be deposited therein pursuant to this Indenture and any other amount available therefor and determined by the Town to be deposited therein.

(b) The Trustee will disburse amounts deposited in the Debt Service Fund as follows:

(1) On each Interest Payment Date, to the Persons entitled thereto, Interest due on such date.

(2) Subject to the provisions hereof requiring the application thereof to the payment or redemption of any particular Bond, on each Principal Payment Date, to the Owners, the amounts required for the payment of the Principal due on such date.

(3) On each Redemption Date, to the Owners, the amount required for redemption of Bonds called for redemption.

If on an Interest Payment Date or a Principal Payment Date, the amounts in the Debt Service Fund are insufficient to pay in full the Interest or Principal, the amounts in the Debt Service Fund will be applied pro rata first to the Persons entitled to Interest and then to the Persons entitled to Principal. Except as otherwise specifically provided herein or in any Series Indenture, the Trustee has no obligation to purchase or attempt to purchase Bonds at a price below the Redemption Price, the Principal amount or at any other price, and any arms' length purchase by the Trustee will conclusively be deemed fair and reasonable.

(c) If on any Interest Payment Date or Principal Payment Date, there is a deficiency in the Debt Service Fund, the amount of such deficiency will be made up from the following Funds and in the order or priority set forth below:

(1) Enterprise Systems Operating Fund;

(2) Surplus Fund;

(3) the Account of the Reserve Fund securing a Series of Bonds to pay the Principal of and Interest on such Series of the Bonds, to the extent such deficiency is attributable to the Series of the Bonds secured by that Account of the Reserve Fund; and

(4) Construction Fund.

(d) To the extent moneys are required to be transferred from any Fund held by the Town to make up a deficiency in the Debt Service Fund as required by subparagraph (c), the Trustee shall notify the Town by telephone promptly confirmed in writing on the Business Day preceding the date on which moneys are required to be transferred by it pursuant to this subparagraph and thereafter the Town shall cause the required transfer to be made on the date set therefor.

Section 5.5

Surplus Fund.

(a) There will be deposited from time to time in the Surplus Fund all amounts required to be deposited therein pursuant to this Indenture or any Series Indenture and any other amounts available therefor and determined by the Town to be deposited therein.

(b) Moneys held in the Surplus Fund shall be applied in the following order of priority: (1) first, to the Enterprise Systems Operating Fund and the Debt Service Fund to make up any deficiency therein to meet the obligations therefor; (2) second, to pay the Person entitled thereto a termination payment under a Derivative Agreement; (3) third, to the Persons entitled to payment of any principal, premium, if any, or interest on any Subordinate Indebtedness, an amount equal to the principal, premium or interest then due and owing; (4) fourth, to the paying agent or directly to the registered owners of General Obligation Indebtedness in an amount necessary to pay when due

the principal of, premium, if any, and interest on the General Obligation Indebtedness; (5) fifth, to the Persons entitled to payment with respect to any Other Indebtedness, an amount equal to the payment then due and owing; and (6) sixth, for any lawful purpose from time to time authorized by the Town.

Section 5.6 **Construction Fund.** There will be deposited from time to time in the Construction Fund all amounts required to be deposited therein pursuant to, and expended in accordance with, any Series Indenture and any other amounts available therefor and determined by the Town to be deposited therein. Amounts on deposit in the Construction Fund may be transferred to the Debt Service Fund to make up any deficiency therein in accordance with the order of priorities established in Section 5.4.

Section 5.7 **Investments.** The Trustee will invest moneys held in the Debt Service Fund, the Construction Fund and the Reserve Fund, at the written direction of the Town or as otherwise set forth in a Series Indenture, in Investment Securities. The Town will invest all Funds and Accounts held by or on behalf of it pursuant hereto in such Investment Securities as it determines in its sole discretion. The proceeds of any remarketing of a Series of the Bonds will be held uninvested or will be invested in Federal Securities maturing not later than the earlier of 30 days or the date needed for payment. The Town will invest, and as to the Debt Service Fund, the Reserve Fund and the Construction Fund, will direct the Trustee (in writing or orally with subsequent confirmation in writing) to invest all moneys held hereunder pursuant to the investment instructions as provided in connection with a Series of Bonds. Whenever the Trustee has not received written direction from the Town and moneys in a Fund or Account created under this Indenture or a Series Indenture are therefore uninvested, the Trustee shall invest the moneys in Federal Securities maturing the earlier of (i) the date such moneys are needed to meet an obligation under this Indenture or a Series Indenture or (ii) 30 days after such investment.

Unless otherwise provided in a Series Indenture, the Trustee will deposit earnings from investment of moneys (i) in the Construction Fund immediately on receipt thereof into the Construction Fund, (ii) in the Debt Service Fund immediately on receipt thereof into the Debt Service Fund, and (iii) in the Reserve Fund as set forth in each Series Indenture. All other earnings from the investment of moneys held in any other Fund or Account hereunder will be credited to the Enterprise Systems Operating Fund.

The Trustee may rely on the Town's directions and is not responsible for any loss on the investment of moneys invested in accordance with this Indenture.

Section 5.8 **Valuation and Sale of Investments.**

(a) In computing the amount in any Fund or Account, obligations purchased as an investment of moneys therein will be valued at the market value on the last day of each Fiscal Year unless an earlier date is required in this Indenture or in a Series Indenture. The Trustee shall value each Account of the Reserve Fund separately for purposes of determining if the Account is in the amount required by the Series Indenture under which it was created.

(b) Except as otherwise provided herein, the Trustee shall sell, or present for redemption, any Investment Security whenever it shall be required in writing by a Town Representative to do so or whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any Fund or Account held by it, and the Town Representative shall cause to be sold, or presented for redemption, any Investment Security whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any Fund or Account held by or on behalf of the Town. An Investment Security may be credited on a pro rata basis to more than one

Fund or Account and need not be sold in order to provide for the transfer of amounts from one Fund or Account to another.

[End of Article V]

ARTICLE VI PARTICULAR COVENANTS

Section 6.1 **Payment of Bonds.** The Town will duly and punctually pay or cause to be paid, as herein provided, the Principal of and the Interest on every Bond or the Redemption Price thereof, at the dates and places and in the manner stated in the Bonds, according to the true intent and meaning thereof and will duly and punctually pay or cause to be paid all Sinking Fund Payments, if any, becoming payable with respect to any of the Bonds and all other payments of Interest required under this Indenture.

Section 6.2 **Power To Issue Bonds and Pledge.** The Town is duly authorized under the Act to authorize and issue the Bonds and to enter into, execute and deliver this Indenture and to pledge the Trust Estate, including the Net Revenues, purported to be pledged hereby in the manner and to the extent herein provided. The Bonds and the provisions of this Indenture are and will be the valid and legally enforceable obligations of the Town in accordance with the terms of the Bonds and of this Indenture. The Town will at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Trust Estate and all the rights of the Owners under this Indenture against all claims and demands of all persons whomsoever.

Section 6.3 **Further Assurance.** At any and all times the Town will, so far as it may be authorized by law, pass, make, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, pledging, assigning and confirming all and singular the Trust Estate.

Section 6.4 **Accounts and Reports.**

(a) The Town will keep, or cause to be kept, proper books of record and account in which complete and accurate entries will be made relating to the Enterprise Systems, which will at all reasonable times be subject to the inspection of the Trustee and the Owners or their representatives duly authorized in writing.

(b) The Town will file with the Trustee and the LGC, within 210 days after the close of each Fiscal Year, a copy of an audited annual financial report as to the obligations and activities of the Enterprise Systems during such Fiscal Year. The financial statements for each Fiscal Year, shall set forth in reasonable detail:

(1) a balance sheet for the Enterprise Systems at the end of such Fiscal Year;

(2) a statement of the Enterprise Systems revenues and expenses in accordance with the categories or classifications established by the Town for its operating and program purposes and showing the Revenues and Current Expenses during such Fiscal Year; and

(3) a statement of cash flows of the Enterprise Systems as of the end of such Fiscal Year.

In addition, the Town will file with the Trustee and the LGC an audited calculation demonstrating its compliance with the Rate Covenant which may be contained (i) in the Town's annual financial report or (ii) in a separate document. The contents of the financial statements may vary from that set forth in clauses (1) through (3) if the Accountant certifies that they conform to then-existing generally accepted accounting principles. The financial statements must be accompanied by an Accountant's Certificate stating whether the financial statements examined fairly present the financial position of the Town, including the Enterprise Systems, at the end of the

Fiscal Year, and whether the results of its operations and the changes in financial position for the period examined are in conformity with generally accepted accounting principles. The Trustee will make a copy of the financial statements available to any Owner of a Bond on written request therefor.

(c) The Town may employ Consulting Engineers to inspect the operation and maintenance of the Enterprise Systems or to review the performance by the Town of the duties relating thereto provided for in this Indenture. The Town will file any report of the Consulting Engineers regarding their inspection or review with the Trustee and the LGC.

(d) Within 210 days after the close of each Fiscal Year, the Town will file or cause to be filed with the Trustee and the LGC (i) a certificate that no Event of Default under Section 9.1 has occurred or (ii) if an Event of Default has occurred, a special report, accompanied by an Accountant's Certificate as to the fair presentation of the financial statements contained therein, setting forth in reasonable detail the individual balances and receipts and disbursements for each Fund hereunder.

(e) Any financial statements required hereunder may be presented on a consolidated or combined basis with other reports of the Town, so long as the information relating to the Enterprise Systems is separately identified and only to the extent that such basis of reporting will be consistent with that required under subsection (b) of this Section. The filing of information with the Trustee under this Section may be satisfied by posting such information on the Town's website or other publicly available site.

Section 6.5 **Annual Budgets.**

(a) The Board of Aldermen will approve by July 1 of each year an Annual Budget covering the fiscal operations of the Enterprise Systems for the Fiscal Year. Such budget need not necessarily be the budget prepared by the Town for budgeting purposes. The Annual Budget will set forth for such Fiscal Year the estimated Revenues; the Principal and Interest Requirements on the Bonds, the Principal and Interest Requirements on Subordinate Indebtedness, the Principal and Interest Requirements on General Obligation Indebtedness and the Principal and Interest Requirements on Other Indebtedness, due and payable or estimated to become due and payable during such Fiscal Year; estimated Current Expenses; and, unless capital expenditures for the Enterprise Systems are included in the Town's capital investment plan or similar document, the estimated amounts, if any, to be expended for extension, improvement, enlargement, renewal or replacement of the Enterprise Systems, whether begun, continued or completed during such Fiscal Year. The Town may at any time adopt an amended Annual Budget in the manner provided in this Indenture for the adoption of the Annual Budget. Copies of the Annual Budget as then amended and in effect will be made available by the Town at normal business hours in the Trustee's designated corporate trust office for inspection by the Trustee or any Owner or will be made publicly available by posting such information on the Town's website or other publicly available site. If the Town does not approve or adopt an Annual Budget for a Fiscal Year on or before the first day of such Fiscal Year, the Annual Budget for the preceding Fiscal Year will be deemed to have been adopted and be in effect for such Fiscal Year until the Annual Budget for such Fiscal Year has been adopted as above provided.

(b) The Town will not expend for Current Expenses in any Fiscal Year sums in excess of the reasonable or necessary amount thereof.

*Section 6.6***Rate Covenant.**

(a) Before the commencement of each Fiscal Year, the Town will fix, establish or maintain or cause to be fixed, established and maintained such rates and charges for the provision of services of the Enterprise Systems, and revise or cause to be revised the same, as necessary, as will produce (a) Revenues, which together with 20% of the balance in the Surplus Fund at the end of the preceding Fiscal Year, at least equal in such Fiscal Year to the total of (i) the Current Expenses budgeted for such Fiscal Year, as may be amended from time to time, plus (ii) 120% of (1.20 times) the Principal and Interest Requirements on the Bonds to become due during that Fiscal Year and (b) Revenues at least equal in such Fiscal Year to the total of (i) the Current Expenses budgeted for such Fiscal Year, as may be amended from time to time, plus (ii) 100% of (1.00 times) the Principal and Interest Requirements on the Bonds to become due during that Fiscal Year plus (iii) 100% of (1.00 times) the Principal and Interest Requirements on Subordinate Indebtedness to become due in such Fiscal Year plus (iv) 100% of (1.00 times) the Principal and Interest Requirements on General Obligation Indebtedness to become due in such Fiscal Year plus (v) 100% of (1.00 times) the Principal and Interest Requirements on Other Indebtedness to become due in such Fiscal Year plus (vi) 100% of (1.00 times) the amount required to reimburse the provider of a Qualified Reserve Fund Substitute, if any, for any amounts owing thereunder. All users, including political subdivisions and public bodies (State or federal) who receive services from the Enterprise Systems will pay therefor at the established rates, fees and charges, unless otherwise prohibited by law, but the Town may adopt specific policies with respect to use by persons of low income and the rates, fees and charges need not be uniform.

(b) If the Town fails to comply with the covenant set forth in subsection (a) above, the Town will, within 30 days of the receipt by the Town of its audit report required by Section 6.4, request a Financial Consultant to make its recommendations, if any, as to a revision of the Town's rates and charges, Current Expenses or the method of operation of the Enterprise Systems in order to satisfy the foregoing requirements of this Section. Copies of such request and of the recommendations of the Financial Consultant, if any, will be filed by the Town with the Trustee and the LGC. Promptly on its receipt of the recommendations of the Financial Consultant, the Town will, after giving due consideration to the recommendations, revise its rates and charges or Current Expenses or alter its methods of operation, which revisions or alterations need not comply with all of the Financial Consultant's recommendations but which are projected by the Town to result in compliance with the covenant in subsection (a) of this Section. If the Town complies with the recommendations of the Financial Consultant which are projected by the Town to result in compliance with the covenant in subsection (a) of this Section, failure to comply with the provisions of subsection (a) above will not constitute an Event of Default under the provisions of Section 9.1(c).

Section 6.7

Derivative Agreements. The Town will not enter into a Derivative Agreement without the approval of the LGC or a person designated by the LGC to approve a contract such as a Derivative Agreement.

*Section 6.8***Issuance of Additional Bonds.**

(a) The Town will not issue any other obligations, except on the conditions and in the manner provided in this Indenture, payable from the Revenues, having priority to or being on a parity with the lien of the Bonds issued pursuant to this Indenture, nor voluntarily create or cause to be or suffer to be created any debt, lien, pledge, assignment, encumbrance or any other charge having priority to or being on a parity with the lien of the Bonds issued pursuant to this Indenture.

(b) The Town may issue Bonds to refund all or any Principal amount of Bonds if the debt service on the Bonds remaining Outstanding after the issuance of the refunding Bonds will decrease as a result of such refunding. Otherwise, the Town must satisfy the requirements in paragraph (d) of this Section.

(c) If the Town has issued Bonds, the proceeds of which were used to acquire or construct any portion of the Enterprise Systems and such proceeds are insufficient to pay the Costs of Construction, the Town may issue a Series of Bonds in an amount equal to (i) the insufficiency, (ii) any required deposit to the Reserve Fund with respect to such Series and (iii) the Costs of Issuance related thereto. Before the issuance of any Series of Bonds under this paragraph, the Town shall deliver to the Trustee a Certificate of a Consulting Engineer or a Financial Consultant stating that the proceeds from the Series of Bonds together with other available funds will be sufficient to pay the Costs of Construction of the portion of the Enterprise Systems for which such Series of Bonds are being issued.

(d) No Series of Bonds, other than the initial Series of Bonds and the Bonds described in paragraphs (b) and (c) above, will be issued hereunder unless either:

(1) the Net Revenues for the most recent Fiscal Year for which audited financial statements are available, adjusted in the manner hereinafter provided, were at least equal to (a) 120% of (1.20 times) the maximum Principal and Interest Requirements on the Bonds, including the Series of Bonds to be issued, (b) 100% of (1.00 times) the Principal and Interest Requirements on Subordinate Indebtedness for the most recent Fiscal Year for which audited financial statements are available, (c) 100% of (1.00 times) the Principal and Interest Requirements on General Obligation Indebtedness for the most recent Fiscal Year for which audited financial statements are available and (d) 100% of (1.00 times) the Principal and Interest Requirements on Other Indebtedness for the most recent Fiscal Year for which audited financial statements are available, in each case excluding any Bonds and other applicable indebtedness to be refunded by the proposed Additional Bonds; or

(2) the Town has met the Rate Covenant for the most recent Fiscal Year for which audited financial statements are available, as certified by the Finance Officer; and

(A) the Net Revenues, as projected by a report of a Financial Consultant, for the first two Fiscal Years following either (I) the date capitalized interest, if any, provided from the proceeds of the proposed Series of Bonds is expended in the case of the acquisition of assets for or construction of improvements to the Enterprise Systems or (II) the date the proposed Series of Bonds is issued, are at least equal to (a) 120% of (1.20 times) the Principal and Interest Requirements on the Bonds, including the Series of Bonds to be issued, for such Fiscal Years, (b) 100% of (1.00 times) the Principal and Interest Requirements on Subordinate Indebtedness to become due in such Fiscal Years, (c) 100% of (1.00 times) the Principal and Interest Requirements on General Obligation Indebtedness to become due in such Fiscal Years and (d) 100% of (1.00 times) the Principal and Interest Requirements on Other Indebtedness to become due in such Fiscal Years, in each case excluding any Bonds and other applicable indebtedness to be refunded by the proposed Additional Bonds; and

(3) no Event of Default under this Indenture has occurred and is continuing.

(e) For purposes of calculating Net Revenues in paragraph (d)(1) or paragraph (d)(2)(A), (1) if any rates, fees or charges of the Enterprise Systems have been increased since the date of such audited financial statements or are scheduled to be increased at the time the proposed Series of Bonds are issued, the Finance Officer may add to the Net Revenues his or her estimate of the additional Revenues that would have been included in the calculation of Net Revenues if such rates, fees and charges had been in effect in such Fiscal Year and (2) if users of the Enterprise Systems have been added since the date of such audited financial statements, the Finance Officer may add to the Net Revenues his or her estimate of the additional Revenues that would have been included in the calculation of Net Revenues if such users had been a part of the Enterprise Systems as of the beginning of such Fiscal Year.

Section 6.9 **Construction; Maintenance of Enterprise Systems.** The Town will complete or cause to be completed the additions, extensions and improvements of the Enterprise Systems provided for in this Indenture in accordance with plans and specifications and in an economical and efficient manner with all practicable dispatch and thereafter will maintain or cause to be maintained the Enterprise Systems in good condition and will continuously operate or cause to be operated the same in an efficient manner and at a reasonable cost as a revenue-producing enterprise.

In the event of any material default by a contractor under any construction contract, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the Town shall promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against any such contractor or against each surety of any bond securing the performance of the construction contract.

Section 6.10 **Insurance; Condemnation.** The Town will carry or cause to be carried such insurance with a reputable insurance carrier or carriers, such as is maintained or carried by similar systems as the Enterprise Systems, including public liability insurance, and such property loss and damage insurance will at all times be in an amount sufficient to indemnify in amounts sufficient to repay the Enterprise Systems for loss, to the extent that such insurance is obtainable.

The Town will deposit the proceeds of any insurance or condemnation, with respect to the Enterprise Systems, in excess of \$5,000,000 in any given Fiscal Year (i) in the Construction Fund, to rebuild or replace the Enterprise Systems or portion thereof giving rise to the referenced proceeds or (ii) in the Debt Service Fund, to redeem or pay the Principal of the Bonds pursuant to a Series Indenture.

The Town may provide for and maintain the insurance required under this Section partially or wholly by means of an adequate self-insurance fund. Reserves for a self-insurance fund will be determined by using actuarial principles. Any self-insurance fund will be reviewed annually by the Town's risk manager or an Independent Insurance Consultant.

Section 6.11 **Adding to or Removing from the System.**

(a) An enterprise within the Enterprise Systems may be sold, leased or otherwise disposed of, in whole or in part, to another political subdivision, public agency, public authority, public instrumentality or other entity authorized by law in the State to own and operate such systems only (i) if there is filed with the Trustee (A) a report prepared by a Financial Consultant satisfactory to the Trustee showing that there is no material adverse effect on the ability of the Enterprise Systems to produce Revenues to satisfy the Rate Covenant, (B) written evidence from any rating agency then rating the Bonds that such sale will not adversely affect its rating then in effect on the Bonds (without regard to gradation within category), (C) an opinion of counsel to the Town that such disposition has been properly authorized and (D) an opinion of Bond Counsel that such

disposition will not adversely affect the federal or state income tax treatment of interest on the Bonds, if applicable and (ii) for a disposition in whole, if such political subdivision, public agency, public authority, public instrumentality or other entity described in this paragraph assumes all of the obligations of the Town related to such enterprise under this Indenture.

(b) Any part of an enterprise within the Enterprise Systems constructed on behalf of or with funds provided by another governmental unit may be sold, leased or otherwise disposed of to that governmental unit, if the Trustee receives a certificate from the Financial Consultant which states that the projected Revenues of the Enterprise Systems as it will exist after the proposed disposition for each of the two Fiscal Years subsequent to the year in which the disposition is expected to be completed are equal to the sum of the Current Expenses projected for each such Fiscal Year plus 120% of (1.20 times) the Principal and Interest Requirements on the Bonds for such Fiscal Year plus 100% of (1.00 times) the maximum Principal and Interest Requirements on Subordinate Indebtedness plus the maximum Principal and Interest Requirements on General Obligation Indebtedness plus 100% of (1.00 times) the maximum Principal and Interest Requirements on Other Indebtedness due in any Fiscal Year.

(c) Any part of an enterprise within the Enterprise Systems may be sold, mortgaged, leased or otherwise disposed of, in whole or in material part to a nongovernmental entity only if (1) the net proceeds to be realized will be sufficient, together with other moneys available therefor, to discharge the lien of this Indenture as described in Article X as to all Series of Bonds or the portion thereof related thereto and such net proceeds are deposited in a separate segregated account for such purpose and (2) the Trustee has received (A) an opinion of counsel to the Town that such disposition has been properly authorized and is permitted by the law of the State, (B) an opinion of Bond Counsel to the effect that such disposition will not adversely affect the federal and state income tax treatment of the interest on the Bonds, if applicable (C) written evidence from any rating agency then rating the Bonds that such sale will not adversely affect its rating then in effect on the Bonds (without regard to gradation within category) and (D) a certificate from the Finance Officer that the disposition will not materially adversely affect the ability of the Town to meet its financial obligations under this Indenture, including the ability of the Town to meet its Rate Covenant.

(d) The Town hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the Enterprise Systems hereafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Before any such sale, lease or other disposition of such property, a Town Representative will determine that such property comprising a part of the Enterprise Systems is no longer necessary, useful or profitable in the operation thereof and that the disposition of such property will not materially adversely affect the ability of the Town to meet its financial obligations under this Indenture, including the ability of the Town to meet its Rate Covenant. Such findings will be approved by resolution of the Board of Aldermen if the amount to be received therefor is in excess of five percent (5%) of the total assets of the Enterprise Systems net of accumulated depreciation. All proceeds derived from the sale, lease or other disposition of any property comprising a part of the Enterprise Systems as provided above, will be deposited in the Enterprise Systems Operating Fund.

(e) If the Town acquires an enterprise, or a portion thereof, the Board of Aldermen will designate, as soon as practicable, whether or not the acquired assets will constitute a part of the Enterprise Systems for purposes of this Indenture. If the acquired assets will not be a part of the Enterprise Systems, the Town will maintain, operate and account for such assets in a way that the assets can be owned and operated independently of the Enterprise Systems. The Board of Aldermen may subsequently designate such assets be included as part of the Enterprise Systems.

(f) An enterprise may be added to or removed from the Enterprise Systems if the Trustee receives (1) a certificate from the Financial Consultant which states that the projected Revenues of the Enterprise Systems as it will exist after the proposed addition or removal for each of the two Fiscal Years subsequent to the year in which the addition or removal is expected to be completed are projected to satisfy the Rate Covenant, (2) an opinion of Bond Counsel to the effect that the addition or removal will not adversely affect the federal income tax treatment of the interest on the Bonds, if applicable, and (3) written evidence from any rating agency then rating the Bonds that such addition or removal will not adversely affect its rating then in effect on the Bonds (without regard to gradation within category).

Section 6.12 **Compliance With Conditions Precedent.** On the date of issuance of any of the Bonds, all conditions, acts and things required by law or by this Indenture to exist, to have happened or to have been performed precedent to or in the issuance of such Bonds exist, have happened and have been performed and such Bonds, together with all other indebtedness of the Town, are within every debt and other limit prescribed by law.

Section 6.13 **Liens or Charges.** The Town may create liens on any vehicles or equipment for the Enterprise System to secure the issuance of Other Indebtedness as long as at the time of the creation of the lien loss of the vehicles or equipment secured by the lien will not materially adversely affect the ability of the Town to meet its financial obligations under this Indenture, including the ability of the Town to meet its Rate Covenant. In addition to liens on vehicles and equipment and any existing liens related to the Town's Existing Other Indebtedness, the Town may create or permit to be created a lien on property for the Enterprise Systems in order to secure the issuance of Other Indebtedness as long as at the time of the creation of the lien (i) loss of the property secured by the lien will not materially adversely affect the ability of the Town to meet its financial obligations under this Indenture, including the ability of the Town to meet its Rate Covenant and (ii) the current value of all parts of the Enterprise Systems subject to a lien securing Other Indebtedness, including property which may be added to the Enterprise Systems as a result of issuance of the proposed Other Indebtedness, does not exceed [five percent (5%)] of the current value of the Enterprise Systems' tangible assets. The Town will not otherwise create or permit to be created any lien or charge on the Enterprise Systems. The Town will pay or cause to be discharged or make provisions to satisfy and discharge, within 60 days after the same accrues, all claims and demands for labor, materials, supplies or other items which, if unpaid, might by law become a lien on the Enterprise Systems or the Revenues on a parity with the lien of the Bonds, except for the liens permitted by this Section. The Town need not pay or cause to be discharged or make provision for any lien or charge as long as the validity thereof is being contested in good faith by appropriate legal proceedings.

Section 6.14 **Covenant to Obtain Permits.** No approval or consent is required from any governmental authority with respect to the entering into or performance by the Town of this Indenture and the performance by the Town of the transactions contemplated by this Indenture, except certain approvals and consents relating to certain extensions, additions and capital improvements to, or the acquisition, renewal or replacement of capital assets of, or purchasing and installing new equipment for, the Enterprise Systems and if such approvals are required, will be duly obtained.

Section 6.15 **Waiver of Laws.** The Town will not at any time insist on or plead in any manner whatsoever, or claim or take the benefit or advantage of any stay or extension of law now or at any time hereafter in force which may affect the covenants and agreements contained in this Indenture or in the Bonds and all benefit or advantage of any such law or laws is hereby expressly waived by the Town.

Section 6.16 Released Revenues. Revenues will become Released Revenues on the filing of the following with the Trustee:

(a) a resolution of the Board of Aldermen describing a specific identifiable portion of Revenues and approving that such Revenues be excluded from the term Revenues;

(b) either (1) a certificate prepared by the Finance Officer showing that Net Revenues for each of the two most recent completed Fiscal Years, after the specific identifiable portion of Revenues covered by the Board of Aldermen's resolution described in (a) above are excluded, were at least equal to the larger of (A) the amounts needed for making the required deposits and payments under Section 5.3(b), or (B) an amount not less than 150% of average Principal and Interest Requirements on the Bonds for each Fiscal Year during the remaining term of all Bonds that will remain Outstanding after the exclusion of such specific identifiable portion of Revenues; or (2) a certificate prepared by a Financial Consultant showing that the estimated Net Revenues (excluding the specific identifiable portion of Revenues covered in the resolution adopted by the Board of Aldermen described in (a) above) for each of the first three complete Fiscal Years immediately following the Fiscal Year in which the resolution described in (a) above is adopted by the Board of Aldermen, will not be less than the larger of (A) the amounts needed for making the required deposits and payments under Section 5.3(b), or (B) an amount not less than 150% of the average Principal and Interest Requirements on the Bonds for each Fiscal Year during the remaining term of all Bonds that will remain Outstanding after the exclusion of such specific identifiable portion of Revenues;

(c) an opinion of the Town's bond counsel to the effect that the exclusion of such specific identifiable portion of revenues from the definition of Revenues and from the pledge and lien of this Indenture will not, by itself, cause the interest on any Outstanding Bonds to be included in gross income for purposes of federal income tax; provided, however this provision is only applicable to those Bonds that are intended to be excludable from gross income for purposes of federal income tax; and

(d) written confirmation from each of the rating agencies that has been requested by the Town to maintain a rating on the Bonds and are then maintaining a rating on any of the Bonds to the effect that the exclusion of such specific identifiable portion of Revenues from the pledge and lien of this Indenture will not cause a withdrawal or reduction in the rating then assigned to the Bonds.

Upon filing of such documents, the specific identifiable portion of Revenues described in the resolution of the Board of Aldermen and collected after such filing shall no longer be included in Revenues and shall be excluded from the pledge and lien of this Indenture, unless subsequently included in Revenues and in the pledge and lien of this Indenture under a Supplemental Indenture or a Series Indenture.

Section 6.17 Lien on Net Revenues. The Town represents and warrants that (1) Section 159-91 of the Act creates a valid and binding pledge, charge and lien on the Net Revenues in favor of the Owners as security for payment of the Bonds, which lien is enforceable by the Trustee in accordance with the terms of the Act, (2) such pledge, charge and lien on the Net Revenues are prior to any judicial lien hereafter imposed on such collateral to enforce a judgment against the Town in tort, contract or otherwise, and (3) under Section 25-9-109(d) of the North Carolina General Statutes, as amended, no filing under Article 9 of the North Carolina Uniform Commercial Code is required in order to perfect such pledge, charge and lien on the Net Revenues.

[End of Article VI]

ARTICLE VII SUPPLEMENTAL INDENTURES

Section 7.1 **Supplemental Indentures Effective On Filing With the Trustee.** For any one or more of the following purposes and at any time or from time to time, a Supplemental Indenture of the Town may be executed and delivered, which, on the filing with the Trustee of a copy thereof certified by a Town Representative and execution by the Trustee, will be fully effective in accordance with its terms:

- (a) to close this Indenture against, or provide limitations and restrictions in addition to the limitations and restrictions contained in this Indenture on, the delivery of Bonds or the issuance of other evidences of indebtedness;
- (b) to add to the covenants and agreements of and the limitations and restrictions on the Town in this Indenture other covenants and agreements or limitations and restrictions to be observed by the Town which are not contrary to or inconsistent with this Indenture as theretofore in effect;
- (c) to surrender any right, power or privilege reserved to or conferred on the Town by the terms of this Indenture, but only if the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the Town contained in this Indenture;
- (d) to confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, this Indenture of the Trust Estate, including the Net Revenues or any other revenues or assets;
- (e) to modify any of the provisions of this Indenture in any respect whatsoever, but only if (i) such modification will be, and be expressed to be, effective only after all Bonds Outstanding at the date of the adoption of such Supplemental Indenture cease to be Outstanding and (ii) such Supplemental Indenture will be specifically referred to in the text of all Bonds delivered after the date of the adoption of such Supplemental Indenture and of Bonds issued in exchange therefor or in place thereof;
- (f) to provide for the delivery of a Qualified Reserve Fund Substitute;
- (g) to include additional facilities, property or equipment within the definition of "Enterprise Systems" and the revenues therefrom within the definition of "Revenues";
- (h) in the event of changes to generally accepted accounting principles or changes in law, in each case which become effective after the date of this Indenture, to modify any definition in this Indenture so as to perpetuate the meaning and effect of such definition as originally intended at the time of the execution of this Indenture; or
- (i) provided that any changes do not, in the opinion of Bond Counsel, adversely affect the interests of the Owners of the Bonds.

Section 7.2 **Supplemental Indentures Effective On Consent of Trustee.**

- (a) For any one or more of the following purposes and at any time or from time to time, a Supplemental Indenture may be executed and delivered, which, on (i) the filing with the Trustee of a copy thereof certified by a Town Representative, and (ii) the filing with the Trustee

and the Town of an instrument in writing, made by the Trustee consenting thereto, will be fully effective in accordance with its terms:

- (i) to cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision in this Indenture;
- (ii) to insert such provisions clarifying matters or questions arising under this Indenture as are necessary or desirable and are not contrary to or inconsistent with this Indenture as theretofore in effect; or
- (iii) to effectuate such changes herein which do not adversely affect the interests of the Owners.

(b) Any such Supplemental Indenture may also contain one or more of the purposes specified in Section 7.1 and, in that event, the consent of the Trustee required by this Section will be applicable only to those provisions of such Supplemental Indenture as contain one or more of the purposes set forth in subsection (a) of this Section.

Section 7.3 **Supplemental Indentures Effective On Consent of Owners.** Exclusive of Supplemental Indentures covered by Sections 7.1 and 7.2, the consent of the Owners of not less than a majority in aggregate Principal amount of the Bonds Outstanding, will be required for the execution by the Town and the Trustee of any indenture or indentures supplemental hereto; provided, however, that without the consent of the Owners of all the Bonds Outstanding affected thereby nothing herein contained will permit, or be construed as permitting:

- (a) A change in the terms of redemption or maturity of the Principal amount of or the Interest on any Outstanding Bond, or a reduction in the Principal amount of or premium payable on any redemption of any outstanding Bond or the rate of interest thereon;
- (b) The deprivation of the Owner of any Bond Outstanding of the lien created by Indenture (other than as originally permitted hereby);
- (c) A privilege or priority of any Bond over any other Bond; or
- (d) A reduction in the aggregate Principal amount of the Bonds required for consent to such Supplemental Indenture.

If at any time the Town requests the Trustee to enter into a Supplemental Indenture for any of the purposes of this Section, the Trustee will, on being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such Supplemental Indenture to be given by mail to the Owners of the Bonds Outstanding at the address shown on the registration books maintained by the Registrar. Such notice will briefly set forth the nature of the proposed Supplemental Indenture and will state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all Owners. If, within 60 days (or such longer period prescribed by the Town) following the giving of such notice, the Owners of not less than a majority in aggregate Principal amount of the Bonds Outstanding (and in the case of Supplemental Indentures involving paragraphs (a) through (d) above, the Owners of all of the Bonds Outstanding) at the time of the execution of any such Supplemental Indenture have consented to and approved the execution thereof as herein provided, no Owner will have any right to object to any of the terms and provisions contained therein, or in the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Town from executing the same or from taking any action pursuant to the provisions thereof.

The consent by the purchaser of a Series of Additional Bonds constitutes the consent of the Owners of that Series of Additional Bonds.

Section 7.4 **General Provisions.**

(a) As a condition to the effectiveness of any Supplemental Indenture, an opinion of Bond Counsel must be delivered to the Trustee stating that such Supplemental Indenture has been duly and lawfully adopted in accordance with the provisions of this Indenture, is authorized or permitted by this Indenture, is valid and binding on the Town, and does not adversely affect the tax treatment of interest on the Bonds, if applicable.

(b) The Trustee is hereby authorized to accept the delivery of a certified copy of any Supplemental Indenture referred to and permitted or authorized by Sections 7.1, 7.2 or 7.3 and to make all further agreements and stipulations which may be therein contained.

(c) No Supplemental Indenture will change or modify any of the rights or obligations of the Trustee without its written consent thereto.

(d) Nothing contained in this Article will affect or limit the right or obligations of the Town to adopt, make, do, execute, acknowledge or deliver any resolution, act or other instrument pursuant to the provisions of Section 6.3 or the right or obligation of the Town to execute and deliver to the Trustee any instrument which is to be delivered to the Trustee pursuant to this Indenture.

(e) Nothing contained in this Article will affect or limit the right of the Town to enter into Series Indentures in connection with the issuance of additional Series of Bonds. Any Series Indenture may be amended or supplemented as provided therein.

(f) No Supplemental Indenture may affect the provisions regarding the LGC under this Indenture without the consent of the LGC or a person designated by the LGC to execute such a consent, and no Supplemental Indenture under Section 7.1(e) will be effective without the consent of the LGC or a person designated by the LGC to execute such a consent.

(g) Notwithstanding anything in this Indenture or a Series Indenture to the contrary, (1) any initial purchaser, underwriter or remarketing agent holding any Series of the Bonds may, regardless of its intent to sell or distribute such Bonds in the future, consent as the Owner of such Bonds to any amendment or supplemental indenture as required or permitted by this Article, including any amendment or supplemental indenture that adversely affects the interests of other Owners, and (2) any Owner is not entitled to receive, nor is the Town required to provide, any prior notice or other documentation regarding such amendment or supplemental order.

Section 7.5 **Exclusion of Bonds.** Bonds owned or held by or for the account of the Town will not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article, and the Town will not be entitled with respect to such Bonds to give any consent or to take any other action provided for in this Article. At the time of any consent or other action taken under this Article, the Town will furnish to the Trustee a Certificate of a Town Representative, on which the Trustee may rely, describing all Bonds so to be excluded.

Section 7.6 **Notation on Bonds.** Bonds delivered after the effective date of any action taken as provided in this Article may, and if the Trustee so determines will, bear a notation, by endorsement or otherwise, in a form approved by the Town and the Trustee, as to such action. On any transfer or exchange

of any Bond Outstanding at such effective date or on demand of the Owner of any Bond Outstanding at such effective date and presentation of such Bond, the Trustee will make suitable notation as to such action on such Bond or on any Bond issued on any such transfer or exchange. If the Town or the Trustee will so determine, new Bonds modified to conform to such action in the opinion of the Trustee and the Town will be prepared, executed and delivered, and on demand of any Owner will be exchanged, without cost to such Owner, on surrender of such Outstanding Bond.

[End of Article VII]

**ARTICLE VIII
CONCERNING THE TRUSTEE, PAYING AGENT
AND AUTHENTICATION AGENT**

Section 8.1 **The Trust.** The Trustee agrees to hold in trust, for the benefit of the Owners, all property conveyed or delivered to it under this Indenture and all Funds and Accounts and the moneys or Investment Securities held therein.

Section 8.2 **Responsibility of the Trustee.** The statements of fact contained herein and in the Bonds will be taken as the statements of the Town and the Trustee does not assume any responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of any Bonds or coupons issued hereunder or in respect of the security afforded hereby, and the Trustee will not incur any responsibility in respect thereof. The Trustee will not be under any responsibility or duty with respect to the issuance of the Bonds for value or the application of the proceeds thereof or the application of any moneys paid to the Town. The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. In case an Event of Default of which the Trustee has or is deemed to have notice hereunder has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise as a prudent person would exercise or use in the conduct of such person's own affairs. The Trustee will not be under any obligation or duty to perform any act other than an acceleration of the Bonds under Section 9.2(a) which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own moneys, unless properly indemnified. The Trustee will not be liable in connection with the performance of its duties hereunder except for its own negligence or willful misconduct.

Section 8.3 **Evidence on Which Trustee May Act.** The Trustee will be protected in acting on any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document reasonably believed by it to be genuine, and to have been signed or presented by the proper party or parties. The Trustee is not required to make any inquiry or investigation into the facts of matters stated in such notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document. The Trustee may consult with counsel, who may be counsel to the Town, and the opinion of such counsel will be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith. Whenever the Trustee deems it necessary or desirable that a matter be proved or established before taking or suffering any action hereunder, including payment of moneys out of any Fund or Account, such matter (unless other evidence in respect thereof is specifically prescribed herein) may be deemed to be conclusively proved and established by a Certificate signed by a Town Representative, and such Certificate will be full warrant for any action taken or suffered in good faith thereon, but in its sole discretion the Trustee may in lieu thereon accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable. Neither the Trustee nor any successor Trustee will be liable to the Town, the Owners of any of the Bonds or any other person for any act or omission done or omitted to be done by the Trustee in reliance on any instruction, direction or certification received by the Trustee pursuant to this Indenture or for any act or omission done or omitted in good faith and without willful or reckless misconduct. Except as otherwise expressly provided herein, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision hereof by the Town to the Trustee will be sufficiently executed if executed in the name of the Town by a Town Representative.

Section 8.4 **Compensation; Indemnification.** The Town will pay to the Trustee from time to time reasonable compensation for all services rendered under this Indenture, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties under this Indenture, and, except

as otherwise provided in a Series Indenture, the Trustee will have a lien therefor on any and all Funds at any time held by it under this Indenture. To the extent permitted by law, the Town further agrees to indemnify and save the Trustee harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder, and which are not due to its negligence or willful misconduct.

Section 8.5 **Permitted Acts and Functions.** The Trustee may become the Owner of any Bonds, with the same rights it would have if it were not the Trustee. The Trustee may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not any such committee represents the Owners of a majority in aggregate Principal amount of the Bonds Outstanding. The Trustee may be an underwriter in connection with the sale of the Bonds or of any other securities offered or issued by the Town. The Trustee may not serve as the provider of any financial guaranty instrument under this Indenture or any Series Indenture, unless approved to do so by the LGC.

Section 8.6 **Resignation of Trustee.** The Trustee may at any time resign and be discharged of the duties and obligations created by this Indenture by giving not less than 60 days' written notice to the Town and such resignation will take effect on the appointment of a successor Trustee as provided in Section 8.8.

Section 8.7 **Removal of Trustee.**

(a) The Trustee may be removed by the Town if at any time so requested by an instrument or concurrent instruments in writing, filed with the Trustee and the Town and signed by the Owners of a majority in aggregate Principal amount of the Bonds Outstanding or their duly authorized attorney, excluding any Bonds held by or for the account of the Town.

(b) The Town may remove the Trustee at any time, except during the existence of an Event of Default, for such cause as is determined in its sole discretion, by filing with the Trustee an instrument signed by a Town Representative.

(c) The Trustee will automatically be deemed removed if it becomes incapable of acting, or is adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee or of its property is appointed, or if any public officer takes charge or control of the Trustee or of its property or affairs.

No removal of the Trustee pursuant to this Section will be effective until the appointment of a successor Trustee as provided in Section 8.8.

Section 8.8 **Appointment of Successor Trustee.**

(a) If the Trustee resigns or is removed, the Town covenants and agrees that it will then appoint a successor Trustee.

(b) If no appointment of a successor Trustee is made pursuant to subsection (a) of this Section within 60 days after (1) the Trustee has given to the Town written notice as provided in Section 8.6, (2) the Trustee has been removed as provided in subsection (a) or (b) of Section 8.7 or (3) the events described in subsection (c) of Section 8.7 have occurred, the Trustee or the Owner of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee.

(c) Unless otherwise approved by the LGC, any successor Trustee appointed under the provisions of this Section must be a trust company, bank or national banking association having the powers of a trust company within or outside the State, having capital, surplus and undivided profits aggregating at least \$100,000,000 if there be such a trust company, bank or national banking association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed on it by this Indenture.

Section 8.9 **Transfer of Rights and Property to Successor Trustee.** Any successor Trustee appointed under this Indenture will execute, acknowledge and deliver to its predecessor Trustee, and also to the Town, an instrument accepting such appointment, and such successor Trustee, without any further act, deed or conveyance, will then become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if originally named as Trustee. The Trustee ceasing to act will nevertheless, on the request of the Town or of its successor Trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of the predecessor Trustee in and to any property held by it under this Indenture, and will pay over, assign and deliver to its successor Trustee at the Town's expense. Should any deed, conveyance or instrument in writing from the Town be required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing will, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by the Town at the Town's expense. On the effectiveness of the resignation or removal of the Trustee, such Trustee's authority to act pursuant to this Indenture will terminate and such Trustee will have no further responsibility or liability whatsoever for performance of this Indenture as Trustee, except for an act or omission occurring before the effective date of the resignation or removal.

Section 8.10 **Merger or Consolidation.** Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it is a party or any company to which the Trustee sells or transfers all or substantially all of its corporate trust business, provided such company is a trust company or bank which is qualified to be a successor to the Trustee under Section 8.8 and is authorized by law to perform all the duties imposed on it by this Indenture, will be the successor to the Trustee without the execution or filing of any paper or the performance of any further act, anything herein to the contrary notwithstanding.

Section 8.11 **Appointment of Paying Agent.** Unless a different or additional Paying Agent is appointed in a Series Indenture with respect to a Series of Bonds, the Trustee will serve as Paying Agent for the Bonds. Any Paying Agent other than the Trustee will designate its chosen corporate office to the Town and the Trustee and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Trustee and the Town. The Town will cooperate with the Trustee and any Paying Agent to cause the necessary arrangements to be made and to be thereafter continued whereby funds derived from the sources specified herein will be made available to the Paying Agent for the payment when due of the Bonds.

Section 8.12 **Qualifications of Paying Agent; Resignation; Removal.** Unless otherwise approved by the LGC, any Paying Agent other than the Trustee must be a commercial bank or trust company, duly organized under the laws of the United States of America or any state or territory thereof, having at the time of appointment a combined capital stock, surplus and undivided profits of at least \$100,000,000 and authorized by law to perform all the duties imposed on it by this Indenture. Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days' written notice to the Town and the Trustee. Any Paying Agent may be removed at any time at the direction of the Town, by an instrument signed by the Town and filed with the Paying Agent

and the Trustee. Any Paying Agent will automatically be deemed removed if it is dissolved or its property or affairs are taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency.

The resignation or removal of any Paying Agent will take effect on the date specified in such instrument or notice unless a successor Paying Agent has been appointed before such date. In the event of the resignation or removal of any Paying Agent, the Paying Agent will pay over, assign and deliver any moneys held by it in such capacity to its successor or, if there is no successor, to the Trustee.

On the resignation or removal of the Paying Agent, the Town may appoint a successor Paying Agent, or, if the Town fails to appoint a successor Paying Agent within 60 days after such resignation or removal, the Trustee may appoint a successor Paying Agent or the Trustee or the Owner of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. The Trustee will be the Paying Agent for any Series of Bonds with respect to which no Paying Agent is serving in such capacity. The Town and the Trustee will incur no liability as a result of any appointment or failure to appoint any Paying Agent except for the appointment of a Paying Agent which does not conform to the requirements of this Section.

Section 8.13 **Appointment of Registrar.** The Trustee may, with the consent of the Town, appoint one or more Registrars to perform any of the obligations and duties of the Trustee hereunder by a written instrument executed by the Registrar and the Trustee under which such Registrar will signify its acceptance of the duties and obligations imposed on it by this Indenture and any additional duties or obligations imposed on it by agreement.

Section 8.14 **Several Capacities.** Anything in this Indenture to the contrary notwithstanding, the same entity may serve hereunder as the Trustee, the Paying Agent and the Registrar.

Section 8.15 **Appointment of Co-Trustee.** In case of litigation under this Indenture or the enforcement hereof on an Event of Default, or if the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, the Trustee may appoint an additional institution as a separate or Co-Trustee, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto will be exercisable by and vest in such separate or Co-Trustee, but only to the extent necessary to enable such separate or Co-Trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or Co-Trustee will run to and be enforceable by either of them.

Should any conveyance or instrument in writing from the Town be required by the separate or Co-Trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to it such properties, right, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing will, on request, be executed, acknowledged and delivered by the Town. In case any separate or Co-Trustee, or a successor to either, dies, becomes incapable of acting, resigns or is removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or Co-Trustee, so far as permitted by law, will vest in and be exercised by the Trustee until the appointment of a new Trustee or successor to such separate or Co-Trustee.

Section 8.16 **Authenticating Agent.** There may be an Authenticating Agent appointed by the Trustee with power to act on its behalf and subject to its direction in the authentication and delivery of the Bonds in connection with transfers and exchanges and the other provisions hereof relating to authentication of Bonds hereunder and under one or more Series Indentures, as fully to all intents and purposes as though

the Authenticating Agent had been expressly authorized herein and therein to authenticate and deliver Bonds. For all purposes of this Indenture, the authentication and delivery of Bonds by the Authenticating Agent pursuant to this Section shall be deemed to be the authentication and delivery of Bonds “by the Trustee.” Unless otherwise approved by the LGC, such Authenticating Agent shall at all times be a bank or trust company organized and doing business under the laws of the United States or of any state with a combined capital and surplus of at least \$100,000,000 and authorized under such laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority. If such corporation publishes reports of condition at least annually pursuant to law or the requirements of such authority, then for the purposes of this Section the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

Any corporation into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authenticating Agent, shall be the successor of the Authenticating Agent hereunder, if such successor corporation is otherwise eligible under this Section, without the execution or filing of any further act on the part of the parties hereto or the Authenticating Agent or such successor corporation.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Town. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and the Issuer.

Section 8.17

Electronic Means. The Trustee shall have the right to accept and act upon instructions or directions, including funds transfer instructions, pursuant to this Indenture sent by Electronic Means. As used in this Section, “Electronic Means” means unsecured e-mail as a portable document format (“pdf”) or other replicating image attached to an email, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder); provided, however, that the Town shall provide to the Trustee an incumbency certificate listing designated persons authorized to provide such instructions (“Authorized Officers”), which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Town elects to give the Trustee instructions via Electronic Means and the Trustee in its discretion elects to act upon such instructions, the Trustee’s understanding of such instructions shall be deemed controlling. The Town agrees that the Trustee cannot determine the identity of the actual sender of such instructions and that the Trustee shall conclusively presume that instructions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Town shall be responsible for ensuring that only Authorized Officers transmit such instructions to the Trustee, and the Town and the Authorized Officers are responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and authentication keys provided by the Trustee. The Trustee shall not be liable for any losses, costs, or expenses arising directly or indirectly from the Trustee’s reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Town agrees (i) to assume all risks arising out of the use of such Electronic Means to submit instructions and direction to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the ; (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) that it will notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures

[End of Article VIII]

ARTICLE IX DEFAULTS AND REMEDIES

Section 9.1 **Events of Default.** If any of the following events occur, it is hereby defined and deemed an “Event of Default” under this Indenture:

(a) A failure to pay the Principal of or premium, if any, on any Bond when the same becomes due and payable, whether at the stated maturity thereof or on proceedings for redemption including sinking fund redemptions;

(b) A failure to pay any installment of Interest when the same becomes due and payable; and

(c) A failure by the Town to observe and perform any covenant, condition, agreement or provision (other than as described in subsections (a) and (b) of this Section) contained in the Bonds or in this Indenture on the part of the Town to be observed or performed, which failure continues 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 Trustee, which may give such notice in its discretion and must give such notice at the written request of Owners of not less than 25% of the aggregate Principal amount of the Bonds, unless the Trustee, or the Trustee and Owners of a Principal amount of Bonds not less than the Principal amount of Bonds the Owners of which requested such notice, as the case may be, agrees in writing to an extension of such period prior to its expiration.

Further events which will constitute “Events of Default” hereunder may be set forth in a Series Indenture.

Section 9.2 **Remedies on Default.**

(a) On the occurrence and continuance of an Event of Default, the Trustee may, or if required by a majority of the registered Owners of the Bonds Outstanding, must, declare the Bonds to be immediately due and payable, whereupon they will, without further action, become due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding.

(b) The provisions of the preceding paragraph are subject to the condition that if, after the Principal of any of the Bonds has been so declared to be due and payable, and before any judgment or decree for the payment of the moneys due has been obtained or entered as hereinafter provided, the Town causes to be deposited with the Trustee a sum sufficient to pay all matured installments of the Principal of and Interest on all Bonds which will have become due otherwise than by reason of such declaration (with interest on such overdue installments of Interest, at the rate per annum borne by the respective Bonds) and such amount as is sufficient to cover reasonable compensation and reimbursement of expenses payable to the Trustee, and all Events of Default hereunder other than nonpayment of the Principal of the Bonds which have become due by such declaration have been remedied, then, in every such case, such Event of Default will be deemed waived and such declaration and its consequences rescinded and annulled, and the Trustee will promptly give written notice of such waiver, rescission or annulment to the Town and will give notice thereof by Mail to all Owners; but no such waiver, rescission and annulment will extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon.

(c) On the occurrence and continuance of any Event of Default, the Trustee in its discretion may, and on the written direction of Owners of not less than a majority in aggregate

Principal amount of the Bonds Outstanding and receipt of indemnity to its satisfaction, must, in its own name and as the trustee of an express trust:

- (i) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Owners, and require the Town to carry out any agreements with or for the benefit of the Owners and to perform its duties under this Indenture;
- (ii) take custody of the Enterprise Systems Operating Fund and the Surplus Fund; or
- (iii) take whatever action at law or in equity may appear necessary or desirable to enforce its rights against the Town.

If the Trustee takes possession of the Enterprise Systems Operating Fund, the Trustee will make the payments therefrom in accordance with Section 5.3 and shall appoint a consultant satisfactory to the Trustee with experience in the operation and maintenance of municipal enterprise systems similar to the Enterprise Systems to assist the Trustee in evaluating the Annual Budget, the cost of which will be paid from the Enterprise Systems Operating Fund.

No right or remedy is intended to be exclusive of any other rights or remedies, but each and every such right or remedy will be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. If any Event of Default has occurred and if requested by the Owners of a majority in aggregate Principal amount of Bonds Outstanding and indemnified as herein provided, the Trustee will be obligated to exercise such one or more of the rights and powers conferred by this Section as the Trustee, being advised by counsel, deems most expedient in the interests of the Owners.

If the Town causes to be deposited with the Trustee a sum sufficient to pay all matured installments of the Principal of and Interest on all Bonds which have become due (with interest on such overdue installments of Interest, at the rate per annum borne by the respective Bonds) and such amount as is sufficient to cover reasonable compensation and reimbursement of expenses payable to the Trustee, and all Events of Default hereunder shall otherwise be made good or secured to the satisfaction of the Trustee, the Trustee will relinquish possession and control over all money, securities, funds and Revenues then remaining unexpended in the hands of the Trustee that it took custody of under this Section 9.2 and thereupon all Revenues shall thereafter be applied as otherwise provided in this Indenture. No such payment over to the Town by the Trustee or resumption of the application of Revenues as provided in this Indenture shall extend to or affect any subsequent Event of Default or impair any right consequent thereon.

Section 9.3

Priority of Payments After Default.

(a) If, on the happening and continuance of any Event of Default, the funds held by the Trustee are insufficient for the payment of the Principal or Redemption Price then due of and Interest then due on the Bonds, such funds (other than funds held for the payment of particular Bonds which have theretofore become due at maturity or by redemption) and any other amounts received or collected by the Trustee acting pursuant to this Indenture, after making provision for the payment of any expenses necessary in the opinion of the Trustee to protect the interest of the Owners and for the payment of the charges and expenses and liabilities incurred and advances made by the Trustee in the performance of its duties under this Indenture, will be applied, subject to Section 9.11, as follows:

- (1) Unless the Principal of all of the Bonds has become or has been declared due and payable:

FIRST: To the payment to the Persons entitled thereto of all installments of Interest then due in the order of the maturity of such installments, and, if the amounts available are not sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or preference;

SECOND: To the payment to the Persons entitled thereto of the unpaid Principal or Redemption Price of any Bonds which have become due and, if the amounts available are not sufficient to pay in full all the Bonds due, then to the payment thereof ratably, according to the amounts of Principal or Redemption Price due on such date, to the Persons entitled thereto, without any discrimination or preference; and

THIRD: To be held for the payment to the Persons entitled thereto, as the same become due, of the Principal or Redemption Price of and Interest on the Bonds which thereafter become due and, if the amounts available are not sufficient to pay in full all the Bonds due on any date, together with such Interest, payment will be made ratably according to the amount of Principal due on such date to the Persons entitled thereto, without any discrimination or preference.

(2) If the Principal of all of the Bonds has become or has been declared due and payable, to the payment of the Principal and Interest then due and unpaid on the Bonds without preference or priority of Principal over Interest or of Interest over Principal, or of any installment of Interest over any other installment of Interest, or of any Bond over any other Bond, ratably, according to the amounts due collectively for Principal and Interest, to the Persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(b) Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys will be applied by the Trustee at such times, and from time to time, as required by the terms of this Indenture and otherwise as the Trustee determines in its prudent discretion, having due regard to the amount of moneys available for such application. The setting aside of such moneys in trust for the proper purpose, will constitute proper application by the Trustee, and the Trustee will incur no liability whatsoever to the Town, to any Owner or to any other person for any delay in applying such moneys, so long as the Trustee acts with reasonable diligence, having due regard for the circumstances, and ultimately applies the same in accordance with such provisions of this Indenture. Whenever the Trustee will exercise discretion in applying such moneys, it will fix the date (which must be an Interest Payment Date unless the Trustee deems another date more suitable) on which such application is to be made. The Trustee will not be required to make payment to any Owner unless its Bond is presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 9.4 **Termination of Proceedings.** If any proceedings taken by the Trustee on account of any Event of Default have been discontinued or abandoned for any reason, the Town, the Trustee and the Owners will be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers, and duties of the Trustee will continue as though no such proceeding had been taken.

Section 9.5 **Owners' Right to Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in aggregate Principal amount of the Bonds Outstanding will have the right, at any time, to the extent permitted by law, by instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection

with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver, and any other proceedings hereunder; provided that such direction may not be otherwise than in accordance with the provisions of this Indenture. The Trustee will not be required to act on any direction given to it pursuant to this Section until the indemnity described in Section 8.2 is furnished to it by such Owners.

Section 9.6

Limitation on Rights of Owners.

(a) No Owner will have any right to institute any suit, action, mandamus or other proceeding in equity or at law hereunder, for the protection or enforcement of any right under this Indenture unless such Owner has given to the Trustee written notice of the Event of Default or breach of duty on account of which such suit, action or proceeding is to be taken, and unless the Owners of not less than 25% in aggregate Principal amount of the Bonds Outstanding have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, has accrued, and has afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted under the law or to institute such action, suit or proceeding in its name and unless, also, there has been offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee has refused or neglected to comply with such request within a reasonable time. Such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers under this Indenture or for any other remedy hereunder or by law. It is understood and intended that no one or more Owners will have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under law with respect to the Bonds or this Indenture, except in the manner herein provided, and that all proceedings at law or in equity must be instituted, had and maintained in the manner herein provided and for the benefit of all Owners. Nothing contained in this Article will affect or impair the right of any Owner to enforce the payment of the Principal of and Interest on its Bonds at the time and place expressed in such Bond.

(b) Each Owner by its acceptance of a Bond will be deemed to have agreed that any court in its discretion may require, in any suit for the enforcement of any right or remedy under this Indenture or any Series Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the reasonable costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable pre-trial, trial and appellate attorneys' fees, against any party litigant in any such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant. The provisions of this paragraph will not apply to any suit instituted by the Trustee, to any suit instituted by Owners of at least 25% in aggregate Principal amount of the Bonds Outstanding, or to any suit instituted by any Owner for the enforcement of the payment of any Bond on or after the respective due date thereof expressed in such Bond.

Section 9.7

Possession of Bonds by Trustee Not Required. All rights of action under this Indenture or under any of the Bonds enforceable by the Trustee may be enforced by it without the possession of any of the Bonds or the production thereof at the trial or other proceeding relative thereto, and any such suit, action or proceeding instituted by the Trustee will be brought in its name for the benefit of all the Owners of such Bonds, subject to the provisions of this Indenture.

Section 9.8

Remedies Not Exclusive. No remedy herein conferred on or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy will be cumulative and will be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 9.9 **No Waiver of Default.** No delay or omission of the Trustee or of any Owner to exercise any right or power will be construed to be a waiver of any such default or any acquiescence therein and every power and remedy given by this Indenture to the Trustee and any Owner, respectively, may be exercised from time to time and as often as may be deemed expedient.

Section 9.10 **Notice of Event of Default.** The Trustee will give to the Owners and the LGC notice of each Event of Default hereunder known to the Trustee within 90 days after actual knowledge of the occurrence thereof, unless such Event of Default has been remedied or cured before the giving of such notice; provided that, except in the case of default in the payment of the Principal or Redemption Price of or Interest on any of the Bonds, or in the making of any payment required to be made into the Debt Service Fund, notice will be given immediately after its occurrence. Each such notice of an Event of Default will be given by the Trustee by mailing written notice thereof (i) to all Owners appearing on the registration books maintained by the Registrar and (ii) to such other persons as is required by law.

Section 9.11 **Subordination of Claims for Interest.** No claim for interest appertaining to any of the Bonds which in any way at or after maturity has been transferred or pledged separate and apart from the Bond to which it appertains will, unless accompanied by such Bond, be entitled, in case of an Event of Default hereunder, to any benefit by or from this Indenture, except after the prior payment in full of the Principal of all of the Bonds then due and of all claims for interest then due not so transferred or pledged.

[End of Article IX]

ARTICLE X
DEFEASANCE

If the Town pays or causes to be paid or is deemed to have paid to the Owner of any Bond the Principal of and interest due and payable, and thereafter to become due and payable on such Bond, or any portion of such Bond in any integral multiple of the authorized denomination thereof, such Bond or portion thereof will cease to be entitled to any lien, benefit or security under this Indenture. If the Town pays or causes to be paid the Principal of, premium, if any, and interest due and payable on all Outstanding Bonds, pays or causes to be paid all other sums payable by the Town, including all fees, expenses and other amounts payable to the Trustee and any Paying Agent and all amounts owing to the provider of a Qualified Reserve Fund Substitute, then the right, title and interest of the Trustee in and to the Trust Estate will thereupon cease, terminate and become void.

Any Bond will be deemed to be paid within the meaning of this Article and for all purposes of this Indenture when (a) payment of the Principal and premium, if any, of such Bond plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided herein) either (i) has been made or caused to be made in accordance with the terms thereof, or (ii) has been provided for by irrevocably depositing with the Trustee in trust and irrevocably set aside exclusively for such payment and, in either case, the Trustee has received verification from an independent certified public accounting firm or other bona fide verification firm that the moneys or Federal Securities deposited with the Trustee, together with investment earnings thereon, will be sufficient to pay when due the Principal and premium, if any, of and interest due and to become due on the Bond on and before the redemption date or maturity date thereof, (1) moneys, sufficient to make such payment or (2) non-callable Federal Securities maturing as to principal and interest in such amount and at such time as will insure the availability of sufficient moneys to make such payment, and (b) all necessary and proper fees, compensation and expenses of the Trustee and any Paying Agent pertaining to the Bonds with respect to which such deposit is made have been paid or the payment thereof provided for to the satisfaction of the Trustee. At such times as a Bond is deemed to be paid hereunder, as aforesaid, such Bond will no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Federal Securities.

Notwithstanding the foregoing paragraph, no deposit under clause (a)(ii) of the immediately preceding paragraph will be deemed a payment of such Bonds as aforesaid until (a) proper notice of redemption of such Bonds has been previously given in accordance with the applicable Series Indenture, or if such Bonds are not to be redeemed within the next 35 days, until the Town has given the Trustee, in form satisfactory to the Trustee, irrevocable instructions to notify, as soon as practicable, the Owners of such Bonds in accordance with the applicable Series Indenture, that the deposit required by (a)(ii) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with this Article and stating the maturity or redemption date on which moneys are to be available for the payment of the Principal and premium, if any, of such Bonds plus interest thereon to the due date thereof, or (b) the maturity of such Bonds.

[End of Article X]

ARTICLE XI MISCELLANEOUS

Section 11.1 **Evidence of Signature of Owners and Ownership of Bonds.** Any request, consent or other instrument which this Indenture may require or permit to be signed and executed by the Owners may be in one or more instruments of similar tenor, and will be signed or executed by such Owners in person or by their attorneys appointed in writing. Proof of the execution of any such instrument or of an instrument appointing any such attorney, or the ownership of Bonds will be sufficient (except as otherwise herein expressly provided) if made in the following manner, but the Trustee may, nevertheless, in its discretion require further or other proof in cases where it deems the same desirable:

(a) The fact and date of the execution by any Owner or its attorney of such instrument may be proved by the bond of any officer authorized to take acknowledgments in the jurisdiction in which he or she purports to act that the person signing such request or other instrument acknowledged to him or her the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before a notary public.

(b) The ownership of the Bonds will be proved by the registration books kept under the provisions of Section 3.3.

Any request or consent of the registered Owner of any Bond will bind all future Owners of such Bond in respect of anything done or suffered to be done by the Town or the Trustee in accordance therewith.

Section 11.2 **Parties Interested Herein.** Nothing in this Indenture expressed or implied is intended or will be construed to confer on, or to give to any person other than the Town, the Trustee and the Owners, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Town or the Trustee will be for the sole and exclusive benefit of the Town, the Trustee and the Owners.

Section 11.3 **Titles, Headings, Captions, Etc.** The titles, captions and headings of the articles, sections and subdivisions of this Indenture have been inserted for convenience of reference only and will in no way modify or restrict any of the terms or provisions hereof.

Section 11.4 **Severability.** If any provision of this Indenture is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 11.5 **Governing Law.** This Indenture will be governed and construed in accordance with the laws of the State.

Section 11.6 **Execution in Counterparts; Electronic Signatures.** This Indenture may be executed in any number of counterparts, by manual, facsimile, digital, electronic or .pdf file signatures, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. An executed copy of this Indenture delivered by Electronic Means will be deemed to have the same legal effect as delivery of a manual signed copy of this Indenture. This Indenture and related documents may be sent and stored by Electronic Means.

Section 11.7 **Notices.** All notices, certificates or other communications are sufficiently given and shall be deemed given when delivered, mailed by certified or registered mail, postage prepaid or by electronic mail with confirmation of delivery receipt (with an automatic “read receipt” or similar notice not

constituting an acknowledgement of an email receipt for purposes of this Section). The addresses are as follows: Town of Elon, North Carolina, 104 S. Williamson Ave, Elon, NC 27244, Attention: Town Manager; North Carolina Local Government Commission, 3200 Atlantic Avenue, Raleigh, North Carolina 27604, Attention: Secretary; U.S. Bank National Association, 214 N. Tryon Street, Suite 2700, Charlotte, North Carolina 28202, Attention: Ryan Riggleman. Each of the foregoing, may (1) by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications will be sent and (2) accept any notice, certificates or other communications by such other delivery methods as they deem acceptable.

Section 11.8 **Payments Due on Holidays.** If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Indenture, is not a Business Day, such payment may be made or act performed or right exercised on the next day that is a Business Day with the same force and effect as if done on the nominal date provided in this Indenture.

Section 11.9 **No Recourse Against Members, Officers or Employees of Town or LGC.** No recourse under, or on, any statement, obligation, covenant, or agreement contained in this Indenture, or in any Bond hereby secured, or in any document or certification whatsoever, or under any judgment obtained against the Town or the LGC or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any member, officer or employee, as such, of the Town or the LGC, either directly or through the Town for the payment for or to, the Town or the LGC or any receiver of either of them, or for, or to, any Owner or otherwise, of any sum that may be due and unpaid on any such Bond. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such member, officer or employee, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for, or to, the Town or the LGC or any receiver of either of them, or for, or to, any Owner of any sum that may remain due and unpaid on the Bonds hereby secured or any of them, is hereby expressly waived and released as an express condition of, and in consideration for, the execution of this Indenture and the issuance of the Bonds.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Town and the Trustee have caused this Indenture to be executed in their respective names as of the date first above written.

TOWN OF ELON, NORTH CAROLINA

By: _____
Mayor

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[Signature page to the General Trust Indenture dated as of September 1, 2021
between the Town of Elon, North Carolina
And U.S. Bank National Association]

[Counterpart signature page to the General Trust Indenture dated as of September 1, 2021
between the Town of Elon, North Carolina
and U.S. Bank National Association]

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Vice President

TOWN OF ELON, NORTH CAROLINA

and

U.S. BANK NATIONAL ASSOCIATION

as Trustee

SERIES INDENTURE, NUMBER 1

Dated as of
September 1, 2021

**Town of Elon, North Carolina
Enterprise Systems Revenue Bond, Series 2021**

**SERIES INDENTURE
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SERIES INDENTURE

THIS SERIES INDENTURE, NUMBER 1 dated as of September 1, 2021 (together with any supplements and amendments hereto made in accordance herewith, this “Series Indenture”), is by and between the **TOWN OF ELON, NORTH CAROLINA** (the “Town”), a municipal corporation duly created and existing under the laws of the State of North Carolina and **U.S. BANK NATIONAL ASSOCIATION**, as trustee (the “Trustee”), having an office and designated place of business in Charlotte, North Carolina, duly organized and existing as a national banking association, being authorized to accept and execute trust of the character herein set out under and by virtue of the laws of the United States of America (the “State”).

WITNESSETH:

WHEREAS, the Town proposes to issue its Enterprise Systems Revenue Bond, Series 2021 (the “2021 Bond”) hereunder and under that certain General Trust Indenture dated as of September 1, 2021 between the Town and the Trustee and apply the proceeds of the 2021 Bond to (1) finance the costs of extensions, additions and capital improvements to, or the acquisition, renewal or replacement of capital assets of, or purchasing and installing new equipment for the Enterprise Systems and (2) pay the costs of issuing the 2021 Bond.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein it is agreed as follows:

ARTICLE I

DEFINITIONS

Except as provided herein, all defined terms contained in Section 1.1 of the General Indenture have the same meanings in this Series Indenture and are incorporated herein by reference. In addition, the following words and terms, unless the context otherwise requires, have the following meanings:

“General Indenture” means the General Trust Indenture dated as of September 1, 2021, between the Town and the Trustee, and any amendments and supplements thereto.

“Interest Payment Date” means each September 1, beginning September 1, 2022.

“Interest Rate” means 1.72% per annum, calculated on a 30/360-day basis, as may be adjusted as provided herein.

“Lender” means Sterling National Bank, as initial Owner of the 2021 Bond, or its permitted successors and assigns under the General Indenture and this Series Indenture.

“Mail” means first-class United States mail, postage prepaid.

“Owner”, when used in this Series Indenture, means the registered owner of the 2021 Bond.

“Record Date” means the 15th day of the month immediately preceding each Interest Payment Date.

“Redemption Date” means the date on which 2021 Bond is to be called for redemption under this Series Indenture.

“Redemption Price” means, with respect to the 2021 Bond, the principal amount thereof plus the applicable premium, if any, payable on redemption thereof plus accrued interest to the Redemption Date.

“Series Indenture” means this Series Indenture, Number 1 and any amendments or supplements adopted in accordance with the terms thereof.

“Tax Certificate” means the Tax Certificate dated September 22, 2021 by the Town related to the 2021 Bond.

“2021 Bond” means the Enterprise Systems Revenue Bond, Series 2021 to be issued pursuant to this Series Indenture.

“2021 Construction Account” means the account by that name in the Construction Fund created pursuant to Section 5.1.

“2021 Project” means the acquisition of the Travis Creek Pump Station from the Town of Gibsonville, North Carolina and certain other improvements to the Water and Sewer System.

[End of Article I]

ARTICLE II

THE 2021 BOND

Section 2.1 **Authorized Amount of 2021 Bond.** No 2021 Bond may be issued under the provisions of this Series Indenture and the General Indenture except in accordance with this Article. The total principal amount of the 2021 Bond that may be issued is hereby expressly limited to \$1,964,000 except as provided in Sections 3.4 and 3.5 of the General Indenture.

Section 2.2 **Issuance of 2021 Bond.** The 2021 Bond will be designated “Town of Elon, North Carolina Enterprise Systems Revenue Bond, Series 2021.” The 2021 Bond will be issuable as a single, fully registered bond in the principal amount thereof. The 2021 Bond will be numbered from R-1 upwards. The 2021 Bond will be substantially in the form provided in Exhibit A with such appropriate variations, omissions and insertions as are permitted or required by this Series Indenture.

Section 2.3 **Delivery of 2021 Bond.** The items required under Section 2.4 of the General Indenture must be filed with the Trustee before the delivery by the Trustee of the 2021 Bond.

Section 2.4 **Details of 2021 Bond; Payment.** Principal of the 2021 Bond shall be payable in annual installments on September 1 of each year, beginning September 1, 2022, in the amounts provided in the payment schedule attached to the 2021 Bond. The Bond will mature, subject to redemption as provided herein, on September 1, 2036 and will bear interest at the Interest Rate. The amount of interest payable on each Interest Payment Date is provided in the payment schedule attached to the 2021 Bond. The principal of, premium, if any, and interest on the 2021 Bond are payable in any lawful coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. The 2021 Bond will bear interest until its principal sum has been paid. The 2021 Bond will bear interest (1) from the date of its initial issuance, if authenticated prior to the first Interest Payment Date, or (2) otherwise from the Interest Payment Date that is, or that immediately precedes, the date on which such 2021 Bond is authenticated (unless payment of interest is in default, in which case such 2021 Bond will bear interest from the date to which interest has been paid). The 2021 Bond is payable at the designated corporate trust office of the Trustee without the need for presentation and surrender of the 2021 Bond; provided; however, presentation of the final payment at maturity or redemption in whole will be required at the designated corporate trust of the Trustee. Interest on the 2021 Bond will be paid by the Trustee by check or draft mailed on the Interest Payment Date to the Owner as its name and address appear on the registration books kept by the Registrar at the close of business on the Record Date. At the written request of the Owner, principal and interest may be payable by wire transfer at the address specified in writing by the Owner to the Trustee by the Record Date.

Section 2.5 **Tax Covenants.** The Town covenants that it will not take or permit, or omit to take or cause to be taken, any action that would adversely affect the exclusion from federal income taxation of the interest on the 2021 Bond and, if it should take or permit, or omit to take or cause to be taken, any such action, the Town will take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof. The Town acknowledges that the continued exclusion of interest on the 2021 Bond from an Owner’s gross income for federal income tax purposes depends, in part, on compliance with the arbitrage limitations imposed by Section 148 of the Code. The Town covenants that it will comply with all the requirements of Section 148 of the Code, including the rebate requirements, and that it will not permit at any time any of the proceeds of the 2021 Bond or other funds under their control be used, directly or indirectly, to acquire any asset or obligation, the acquisition of which would cause the 2021 Bond to be “arbitrage bonds” for purposes of Section 148 of the Code. The Town covenants that it will comply and will direct the Trustee to comply with the investment instructions in the Tax Certificate.

Section 2.6 **Restriction on Transfer of 2021 Bond.** The 2021 Bond will be non-transferable, except to (i) an affiliate of the Owner, (ii) a bank, insurance company or similar financial institution or (iii) any other entity approved by the LGC. Nothing herein shall limit the right of the Owner or its assignees to sell or assign participation interests in the 2021 Bond to one or more entities listed in (i), (ii) or (iii) above. The Trustee will have no obligation to pay any amounts due on the 2021 Bond to anyone other than the Owner of the 2021 Bond as shown on the registration books kept by the Registrar.

[End of Article II]

ARTICLE III

REDEMPTION OF 2021 BOND

Section 3.1 **Optional Redemption of the 2021 Bond.** The 2021 Bond is not subject to optional call and redemption prior to September 1, 2026. The 2021 Bond is subject to optional call and redemption on any date on or after September 1, 2026 through August 31, 2030, at the option of the Town, from any funds that may be available for such purpose, either in whole or in part, at a redemption price of 101% of the principal amount of the 2021 Bond to be redeemed plus accrued interest with respect thereto to the redemption date. On and after September 1, 2030, the 2021 Bond may be redeemed prior to the maturity, at the option of the Town, from any funds that may be available for such purpose, either in whole or in part on any date, at a redemption price equal to 100% of the principal amount of the 2021 Bond to be redeemed plus accrued interest with respect thereto to the redemption date. Any redemption in part of the 2021 Bond pursuant to this Section shall be applied in inverse order of the Outstanding principal amount. The Town may exercise its right of partial redemption no more than once during any consecutive 12-month period, and any such partial redemption must be in an amount of at least \$250,000 and not more than \$500,000.

Section 3.2 **Notice of Redemption.** Notice of redemption under Section 3.1 will be given by the Trustee not less than 30 days before the Redemption Date (or such lesser time as may be permitted by the Owner) (1) to the LGC by Mail or electronic transmission, and (2) by registered or certified mail to the then-registered Owners of the 2021 Bond at the last address shown on the registration books kept by the Registrar (or by such other means as may be permitted by the Owner). Such notice must (1) specify the Redemption Date, the Redemption Price and the place or places where amounts due on such redemption must be payable (which must be the designated office of the Trustee) and (2) state that on the Redemption Date, the 2021 Bond or portion thereof to be redeemed will cease to bear interest. If at the time of mailing of notice of redemption there is not on deposit with the Trustee money sufficient to redeem the 2021 Bond called for redemption, which money is or will be available for redemption of the 2021 Bond, such notice may state that it is conditional on the deposit of the redemption money with the Trustee not later than the Redemption Date. Any notice, once given, may be withdrawn by notice delivered in the manner set forth above, on receipt by the Trustee of written instructions from the Town with respect to such withdrawal. Failure to provide such notice to the LGC will not affect the validity of any proceedings for such redemption.

If money is on deposit in the Debt Service Fund to pay the Redemption Price of the 2021 Bond called for redemption and premium, if any, thereon on a Redemption Date, the 2021 Bond or portions thereof so called for redemption as hereinabove specified will not bear interest after such Redemption Date and will not be considered to be Outstanding or to have any other rights under the General Indenture or this Series Indenture other than the right to receive payment. No payment of principal will be made by the Trustee on the 2021 Bond or portions thereof called for redemption until such 2021 Bond or portions thereof have been delivered for payment or cancellation as may be required hereunder or the Trustee has received the items required by Section 3.5 of the General Indenture with respect to any mutilated, lost, stolen or destroyed 2021 Bond.

Section 3.3 **Payment of Redemption Price.** The Town will cause to be deposited in the Debt Service Fund, solely out of the Trust Estate, an amount sufficient to pay the Redemption Price of the 2021 Bond on the Redemption Date, and such 2021 Bond will be deemed to be paid within the meaning of Article X of the General Indenture.

[End of Article III]

ARTICLE IV

AMENDMENTS

Section 4.1 **Amendments to this Series Indenture.** This Series Indenture and the rights and obligations of the Town and the Owner may be modified or amended at the same times, in the same manner and for the same purposes as the General Indenture, but if the modification or amendment affects only the 2021 Bond, the percentage to be applied under Section 7.3 of the General Indenture will be applied only to the Outstanding 2021 Bond. The Town will provide a copy of any amendment entered into under the terms hereof to the LGC.

Before the Town and the Trustee enter into any supplemental indenture pursuant to this Section, there must have been delivered to the Trustee and the Town an opinion of Bond Counsel stating that such supplemental indenture is authorized or permitted by this Series Indenture, complies with the terms hereof, will, upon the execution and delivery thereof, be valid and binding upon the Town in accordance with its terms and will not adversely affect the exclusion from the gross income of the recipients thereof of interest on the 2021 Bond for federal income tax purposes.

[End of Article IV]

ARTICLE V

CREATION OF ACCOUNTS; APPLICATION OF 2021 BOND PROCEEDS

Section 5.1 **2021 Construction Account.** The Town hereby establishes and creates a 2021 Construction Account within the Construction Fund. The 2021 Construction Account shall be held at the Lender in the name of the Town, and the Trustee shall have no responsibility for handling disbursements from the Construction Account. The Town will submit requisitions to the Lender, signed by a Town Representative in the form attached hereto as Exhibit B, for the payment of the Costs of Construction and Costs of Issuance. The Lender will disburse funds from the 2021 Construction Account in accordance with the instructions in such requisition. Any balance remaining in the 2021 Construction Account on completion of the 2021 Project will be deposited in the Debt Service Fund and applied to the payment of interest due on the 2021 Bond unless otherwise directed in writing by a Town Representative on advice of Bond Counsel.

Section 5.2 **Application of 2021 Bond Proceeds.** On the date of delivery of the 2021 Bond to the Lender, the Lender will deposit the purchase price for the 2021 (in an amount equal to the par amount of such 2021 Bond) to the 2021 Construction Account of the Construction Fund, to be used to pay the Costs of Construction of the 2021 Project and the Costs of Issuance of the 2021 Bond.

[End of Article V]

ARTICLE VI

MISCELLANEOUS

Section 6.1 **Parties Interested Herein.** Nothing in this Series Indenture expressed or implied is intended or will be construed to confer on, or to give to any person other than the Town, the Trustee and the Owners, any right, remedy or claim under or by reason of this Series Indenture or any covenant, condition or stipulation hereof. All the covenants, stipulations, promises and agreements in this Series Indenture contained by and on behalf of the Town or the Trustee will be for the sole and exclusive benefit of the Town, the Trustee, and the Owners.

Section 6.2 **Titles, Headings, Captions, Etc.** The titles, captions and headings of the articles, sections and subdivisions of this Series Indenture have been inserted for convenience of reference only and will in no way modify or restrict any of the terms or provisions hereof.

Section 6.3 **Severability.** If any provision of this Series Indenture is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 6.4 **Governing Law.** This Series Indenture will be governed and construed in accordance with the laws of the State.

Section 6.5 **Execution in Counterparts; Electronic Signature.** This Series Indenture may be executed in any number of counterparts, by manual, facsimile, digital, electronic or .pdf file signatures, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. An executed copy of this Series Indenture delivered by Electronic Means will be deemed to have the same legal effect as delivery of a manual signed copy of this Series Indenture. This Series Indenture and related documents may be sent and stored by Electronic Means.

Section 6.6 **Notices.** All notices, certificates or other communications will be sufficiently given and will be deemed given when delivered or mailed by certified or registered mail, postage prepaid, as follows: if to the Town, to the Town of Elon, North Carolina, 104 S. Williamson Ave, Elon, NC 27244, Attention: Town Manager; if to the Trustee and the Registrar to U.S. Bank National Association, 214 N. Tryon Street, Suite 2700, Charlotte, North Carolina 28202, Attention: Ryan Riggelman; if to the initial Owner to Sterling National Bank, 9667 Ravenscroft LN NW, Concord, North Carolina 28027, Attention: Mark A. Cargo. The Town, the Trustee and the Owner, may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications will be sent. Notices or other communication may also be given electronically if receipt is acknowledged by the recipient.

The Trustee shall have the right to accept and act upon instructions or directions, including funds transfer instructions, pursuant to the General Indenture and this Series Indenture sent by Electronic Means. As used in this Section, "Electronic Means" means unsecured e-mail as a portable document format ("pdf") or other replicating image attached to an email, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder); provided, however, that the Town shall provide to the Trustee an incumbency certificate listing designated persons authorized to provide such instructions ("Authorized Officers"), which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Town elects to give the Trustee instructions via Electronic Means and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Corporation agrees that the Trustee cannot determine the identity of the actual sender of such instructions and that the

Trustee shall conclusively presume that instructions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Town shall be responsible for ensuring that only Authorized Officers transmit such instructions to the Trustee, and the Authorized Officers are responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and authentication keys provided by the Trustee. The Trustee shall not be liable for any losses, costs, or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Town agrees (i) to assume all risks arising out of the use of such Electronic Means to submit instructions and direction to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the Town; (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) that it will notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

All notices, approvals, consents, requests and any communications hereunder must be in writing (provided that any communication sent to Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in writing to Trustee by the authorized representative), in English. The Town agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Trustee, including without limitation the risk of Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 6.7 **Payments Due on Holidays.** If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Series Indenture, is not a Business Day, such payment may be made or act performed or right exercised on the next day that is a Business Day with the same force and effect as if done on the nominal date provided in this Series Indenture.

Section 6.8 **E-Verify.** The Trustee 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 in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Trustee uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Trustee will require that any subcontractor that it uses in connection with the transactions contemplated by this Series Indenture certify to such subcontractor's compliance with E-Verify.

Section 6.9 **USA Patriot Act.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a Trust or other legal entity, the Trustee asks for documentation to verify its formation and existence as a legal entity. The Trustee may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

Section 6.10 **Continuing Disclosure Undertakings.** In connection with the Town's compliance with any continuing disclosure undertakings (each, a "Continuing Disclosure Agreement") entered into by the Town on and after February 27, 2019, pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "Rule"), the Lender acknowledges

that the Town may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("EMMA"), notice that the Town has incurred obligations hereunder and notice of certain subsequent events reflecting financial difficulties in connection with the 2021 Bond. The Town agrees that it shall not file or submit, or permit to be filed or submitted, with EMMA any documentation that includes the following unredacted sensitive or confidential information about the Lender or its affiliates: address and account information of the Lender or its affiliate, e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of the Lender or its affiliates, unless otherwise required for compliance with the Rule or otherwise required by law. The Lender acknowledges that the Lender is not responsible for the Town's compliance or noncompliance with the Rule or any Continuing Disclosure Agreement.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Town and the Trustee have caused this Series Indenture to be executed in their respective names as of the date first above written.

TOWN OF ELON, NORTH CAROLINA

By: _____
Jerry Tolley
Mayor

SIGNATURE PAGE TO
SERIES INDENTURE, NUMBER 1

RELATED TO

TOWN OF ELON, NORTH CAROLINA
ENTERPRISE SYSTEMS REVENUE BOND, SERIES 2021

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Name:
Title:

SIGNATURE PAGE TO
SERIES INDENTURE, NUMBER 1

RELATED TO

TOWN OF ELON, NORTH CAROLINA
ENTERPRISE SYSTEMS REVENUE BOND, SERIES 2021

EXHIBIT A**FORM OF 2021 BOND****THIS BOND, EXCEPT FOR PERMITTED TRANSFERS, IS NON-TRANSFERABLE****TOWN OF ELON, NORTH CAROLINA
ENTERPRISE SYSTEMS REVENUE BOND, SERIES 2021****No. R-1****\$1,964,000****INTEREST RATE
1.72%****DATED DATE
September 22, 2021****MATURITY DATE
September 1, 2036****REGISTERED OWNER: STERLING NATIONAL BANK****PRINCIPAL AMOUNT: ONE MILLION NINE HUNDRED SIXTY-FOUR THOUSAND DOLLARS**

The Town of Elon, North Carolina (the “Town”), a municipal corporation of the State of North Carolina (the “State”), for value received, promises to pay, but solely from the sources and in the manner hereinafter provided, to the Registered Owner named above the Principal Amount stated above on the Maturity Date provided above (or earlier as described below), and to pay such Registered Owner at the address as it appears on the registration books kept by U.S. Bank National Association, the Registrar and the Trustee for this 2021 Bond (the “Registrar” and the “Trustee”), at the close of business on the 15th day preceding each Interest Payment Date (each, a “Record Date”), interest on such Principal Amount at the Interest Rate provided above, calculated on a 30/360-day basis, until the Principal Amount of this 2021 Bond has been paid, but if this 2021 Bond has matured or has been called for redemption and the Redemption Date has occurred and funds are available for the payment thereof in full in accordance with the terms of the Indenture (as defined below), this 2021 Bond will then cease to bear interest as of the Maturity Date or Redemption Date. The principal of, premium, if any, and interest on this 2021 Bond are payable in any lawful coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. Interest on this 2021 Bond will be paid by the Trustee by check or draft mailed on the Interest Payment Date to the Registered Owner as its name and address appear on the registration books kept by the Registrar at the close of business on the Record Date. At the written request of the Registered Owner, principal and interest may be payable by wire transfer at the address specified in writing by the Registered Owner to the Trustee by the Record Date. Interest on this 2021 Bond will be payable September 1, 2022 and thereafter on each September 1 (each, an “Interest Payment Date”).

THIS 2021 BOND IS A SPECIAL OBLIGATION OF THE TOWN. THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS 2021 BOND ARE NOT PAYABLE FROM THE GENERAL FUNDS OF THE TOWN, NOR DOES IT CONSTITUTE A LEGAL OR EQUITABLE PLEDGE, CHARGE, LIEN, OR ENCUMBRANCE UPON ANY OF ITS PROPERTY OR UPON ANY OF ITS INCOME, RECEIPTS, OR REVENUES EXCEPT THE FUNDS WHICH ARE PLEDGED UNDER THE INDENTURE (AS DEFINED BELOW). NEITHER THE CREDIT NOR THE TAXING POWER OF THE STATE OR THE TOWN ARE PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THIS 2021 BOND, AND NO OWNER OF THIS 2021 BOND HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER BY THE STATE OR THE TOWN OR THE FORFEITURE OF ANY OF ITS PROPERTY IN CONNECTION WITH ANY DEFAULT.

This Bond is issued as a single, fully registered bond of the Town, designated “Town of Elon, North Carolina Enterprise Systems Revenue Bond, Series 2021” (the “2021 Bond”), issued under a General Trust

Indenture dated as of September 1, 2021 (the “General Indenture”) between the Town and U.S. Bank, National Association (the “Trustee”) and Series Indenture, Number 1 dated as of September 1, 2021 (the “Series Indenture” and, together with the General Indenture and all supplements thereto, being hereinafter referred to collectively as the “Indentures”) between the Town and the Trustee. Unless the context indicates otherwise, all capitalized, undefined terms used herein have the meanings ascribed to them in the Indentures. This 2021 Bond is being issued to (1) finance the costs of extensions, additions and capital improvements to, or the acquisition, renewal or replacement of capital assets of, or purchasing and installing new equipment for the Enterprise Systems and (2) pay the costs of issuing this 2021 Bond. Any additional Series of Bonds issued under the Indentures will be parity obligations with this 2021 Bond.

This 2021 Bond, together with interest thereon, is a special obligation of the Town payable solely from Revenues (except to the extent paid out of money attributable to Bond proceeds or the income from the temporary investment thereof and, under certain circumstances, proceeds from insurance and condemnation awards) after payment of the Current Expenses of the Enterprise Systems and constitute a valid claim of the respective Owners thereof only against the funds and other money held by the Trustee for the benefit of the Owners of the Bonds, which amounts are pledged and assigned pursuant to the Indentures for the equal and ratable payment of the Bonds and will be used for purposes authorized in the Indentures.

Under the Indentures the Town has, for the benefit of the Owners of the Bonds, pledged and assigned the Town’s rights to all Net Revenues of the Enterprise Systems and to any and all money and securities in all of the funds and accounts established under the Indenture, except the Surplus Fund, to the Trustee in trust.

Reference is made to the Indentures for a more complete statement of the provisions thereof and of the rights of the Town, the Trustee and the Owners of this 2021 Bond. Copies of the Indentures are on file and may be inspected at the designated office of the Trustee in Charlotte, North Carolina. By the acquisition and acceptance of this 2021 Bond, the Owner hereof signifies assent to all of the provisions of the aforementioned documents.

This 2021 Bond is issued and the Indentures were made and entered into under and pursuant to the Constitution and laws of the State, and particularly in conformity with the provisions, restrictions and limitations of General Statutes of North Carolina Section 159-80 et seq., as amended.

THIS 2021 BOND WILL BE NON-TRANSFERABLE, EXCEPT (I) TO AN AFFILIATE OF THE OWNER, (II) A BANK, INSURANCE COMPANY OR (III) SIMILAR FINANCIAL INSTITUTION OR ANY OTHER ENTITY APPROVED BY THE LOCAL GOVERNMENT COMMISSION OF NORTH CAROLINA. NOTHING HEREIN OR IN THE INDENTURES SHALL LIMIT THE RIGHT OF THE OWNER OR ITS ASSIGNEES TO SELL OR ASSIGN PARTICIPATION INTERESTS IN THIS 2021 BOND TO ONE OR MORE ENTITIES LISTED IN (I), (II) OR (III) ABOVE.

This 2021 Bond is not subject to optional call and redemption prior to September 1, 2026. The 2021 Bond is subject to optional call and redemption on any date on or after September 1, 2026 through August 31, 2030, at the option of the Town, from any funds that may be available for such purpose, either in whole or in part, at a redemption price of 101% of the principal amount of the 2021 Bond to be redeemed plus accrued interest with respect thereto to the redemption date. On and after September 1, 2030, the 2021 Bond may be redeemed prior to the maturity, at the option of the Town, from any funds that may be available for such purpose, either in whole or in part on any date, at a redemption price equal to 100% of the principal amount of the 2021 Bond to be redeemed plus accrued interest with respect thereto to the redemption date. Any redemption in part of the 2021 Bond pursuant to this Section shall be applied in inverse order of the Outstanding principal amount. The Town may exercise its right of partial redemption

no more than once during any consecutive 12-month period, and any such partial redemption must be in an amount of at least \$250,000 and not more than \$500,000.

Notice of optional redemption will be given by the Trustee not less than 30 days before the Redemption Date (or such lesser time as may be permitted by the Owner) (1) to the LGC by Mail or electronic transmission, and (2) by registered or certified mail to the then registered Owners of the 2021 Bond at the last address shown on the registration books kept by the Registrar (or by such other means as may be permitted by the Owner). Such notice must (1) specify the Redemption Date, the Redemption Price and the place or places where amounts due on such redemption must be payable (which must be the designated of the Trustee) and (2) state that on the Redemption Date, this 2021 Bond or portion thereof to be redeemed will cease to bear interest. If at the time of mailing of notice of redemption there is not on deposit with the Trustee money sufficient to redeem this 2021 Bond called for redemption, which money is or will be available for redemption of this 2021 Bond, such notice may state that it is conditional on the deposit of the redemption money with the Trustee not later than the Redemption Date. Any notice, once given, may be withdrawn by notice delivered in the manner set forth above, on receipt by the Trustee of written instructions from the Town with respect to such withdrawal. Failure to provide such notice to the LGC will not affect the validity of any proceedings for such redemption.

If money is on deposit in the Debt Service Fund to pay the Redemption Price of this 2021 Bond called for redemption and premium, if any, thereon on a Redemption Date, this 2021 Bond or portions thereof so called for redemption as hereinabove specified will not bear interest after such Redemption Date and will not be considered to be Outstanding or to have any other rights under the General Indenture other than the right to receive payment. No payment of principal will be made by the Trustee on this 2021 Bond or portions thereof called for redemption until this 2021 Bond or portions thereof have been delivered for payment or cancellation as may be required hereunder or the Trustee has received the items required by the General Indenture with respect to any mutilated, lost, stolen or destroyed 2021 Bond.

The Indentures permit amendments thereto upon the agreement of the Town and the Trustee and with the approval of the registered Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding. The Indenture also contains provisions permitting the Town and the Trustee to enter into amendments to the Indentures without the consent of the Owners of the Bonds for certain purposes.

Any consent or request by the Owner of this 2021 Bond will be conclusive and binding upon such Owner and upon all future Owners of this 2021 Bond and of any 2021 Bond issued upon the transfer of this 2021 Bond whether or not notation of such consent or request is made upon this 2021 Bond.

This 2021 Bond is issued with the intent that the laws of the State of North Carolina will govern its legality, validity, enforceability and construction.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this 2021 Bond and the execution of the Indentures have happened, existed and have been performed as so required.

This 2021 Bond will not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indentures until it will have been authenticated by the execution by the Authenticating Agent (as defined in the Indentures) of the certificate of authentication endorsed hereon.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Town of Elon, North Carolina has caused this 2021 Bond to be executed with the signatures of the Mayor and Town Clerk.

TOWN OF ELON, NORTH CAROLINA

By: _____
Jerry Tolley
Mayor

[SEAL]

By: _____
DiAnne Enoch
Town Clerk

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

The issue hereof has been approved under the provisions of The State and Local Government Revenue Bond Act.

Secretary of the Local Government Commission of
North Carolina

SIGNATURE PAGE

RELATED TO

TOWN OF ELON, NORTH CAROLINA
ENTERPRISE SYSTEMS REVENUE BOND, SERIES 2021

CERTIFICATE OF AUTHENTICATION

This Bond is the Enterprise Systems Revenue Bond, Series 2021 designated herein issued under the provisions of the within-mentioned Indentures.

U.S. BANK NATIONAL ASSOCIATION,
as Authenticating Agent

By: _____
Vice President

Date of Authentication: September 22, 2021

SIGNATURE PAGE

RELATED TO

TOWN OF ELON, NORTH CAROLINA
ENTERPRISE SYSTEMS REVENUE BOND, SERIES 2021

FORM OF ASSIGNMENT

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please print or typewrite Name and Address,
including Zip Code, and Federal Taxpayer Identification or
Social Security Number of Assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to register the transfer of the within Bond on the books kept for registration thereof,
with full power of substitution in the premises.

Dated: _____

Signature guaranteed by:

NOTICE: Signature must be guaranteed by a participant of the Securities Transfer Agent Medallion Program ("STAMP") or similar program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration, enlargement or any change whatever.

TRANSFER FEE MAY BE REQUIRED

PAYMENT SCHEDULE

INTEREST PAYMENT DATE AND REDEMPTION DATE	PRINCIPAL AMOUNT	INTEREST AMOUNT	TOTAL AMOUNT
9/1/2022	\$118,000	\$31,810.25	\$149,810.25
9/1/2023	118,000	31,751.20	149,751.20
9/1/2024	120,000	29,721.60	149,721.60
9/1/2025	122,000	27,657.60	149,657.60
9/1/2026	124,000	25,559.20	149,559.20
9/1/2027	126,000	23,426.40	149,426.40
9/1/2028	128,000	21,259.20	149,259.20
9/1/2029	130,000	19,057.60	149,057.60
9/1/2030	133,000	16,821.60	149,821.60
9/1/2031	135,000	14,534.00	149,534.00
9/1/2032	137,000	12,212.00	149,212.00
9/1/2033	140,000	9,855.60	149,855.60
9/1/2034	142,000	7,447.60	149,447.60
9/1/2035	144,000	5,005.20	149,005.20
9/1/2036	147,000	2,582.40	149,528.40

EXHIBIT B**FORM OF REQUISITION**

Sterling National Bank, as Lender
 9667 Ravenscroft LN NW
 Concord, North Carolina 28027

Re: Disbursement from the 2021 Construction Account of the Construction Fund (the "2021 Construction Account") relating to the Town of Elon, North Carolina Enterprise Systems Revenue Bond, Series 2021

Pursuant to Section 5.1 of Series Indenture, Number 1 dated as of September 1, 2021 (the "Series Indenture") between the Town of Elon, North Carolina, and U.S. Bank National Association, as trustee, we hereby request you, as Lender and holder of the 2021 Construction Account, disburse from such account as follows:

1. The amount to be disbursed is \$_____.
2. The name and address of the person, firm or corporation to whom the disbursement should be made is as follows: _____.
3. Taking into account disbursements pursuant to prior requisitions from the 2021 Construction Account, the balance of the 2021 Construction Account is sufficient to make the disbursement requested.
4. The purpose of the disbursement is to _____.
5. The disbursement herein requested is for an obligation properly incurred, is a proper charge against the 2021 Construction Account as a Cost of Construction or Cost of Issuance under the Series Indenture and such obligation has not been the basis of any previous disbursement.

Dated this ____ day of _____, 20__.

TOWN OF ELON, NORTH CAROLINA

By: _____
 Town Representative

**TOWN OF ELON
BOARD OF ALDERMEN AGENDA REPORT**

Item Type: Recommendation

SUBJECT: Policy for Water and Sewer - Misty Hagood

DATE: September 7, 2021

BOARD OF ALDERMEN ACTION REQUESTED ON: September 14, 2021

PURPOSE:

To establish policies and procedures related to water and sewer billing and collections ahead of the transition to monthly billing.

FACTS AND ISSUES:

1. Section 26.36 of the Town Ordinances states that "The Town may, from time to time, adopt rules and regulations governing the use of utility services, rates and charges for water and sewer service, payment of accounts, payment due dates, adjustments, and discontinuation of service. Such rules and regulations shall be approved by the Board of Aldermen and shall be on file in the office of the Town Clerk."
2. The Town will transition from bi-monthly to monthly billing for water and sewer services on October 1, 2021.
3. The Policy for Water and Sewer establishes a new billing cycle, due dates, and outlines adjustment procedures.

OPTIONS:

1. Mayor and Board of Aldermen vote to approve the Policy for Water and Sewer (Attachment 1).
2. Mayor and Board of Aldermen defined option.

TOWN MANAGER RECOMMENDED ACTION:

Option 1

Prepared by: Misty Hagood, Finance Director

ATTACHMENTS:

Description

Policy for Water & Sewer

Upload Date

8/17/2021

Type

Backup Material

Town of Elon Policy for Water & Sewer

Effective 10/1/2021

The following information has been adopted by the Board of Aldermen as the policies regarding Water & Sewer, effective October 1, 2021, with the implementation of monthly billing.

Establishing Water and/or Sewer Service

Utility service can be established by completing the application form online or in person and returning it to Town staff. The meter will be read, and an account established. Service can only be turned on during normal business hours.

There is a deposit required for rental properties before water and/or sewer service can be established. The rate will be established each year with the annual budget as part of the Fee Schedule.

Rates and Fees

The Board of Aldermen sets the rates for both water and sewer annually as part of the budget process. The non-payment fee and delinquent fees will also be set each year as part of the budget process.

The Town will waive a non-payment or delinquent fee once every fiscal year if there have not been any late payments during the previous year.

Normal Billing

The normal billing cycle is accomplished in this manner:

1. The meters are read around the 15th of each month.
2. Bills are sent out by the 1st day of the following month.
3. The payment due date is the 15th of each month. If the payment is not received by the 15th, a non-payment fee will be imposed. If the bill is not paid by the 25th of the month, a delinquent fee will be added, and water is subject to be disconnected.
4. When service has been disconnected due to non-payment, full payment of the outstanding balance must be paid before service is restored.

No additional notices of disconnection will be made. If a resident has special circumstances

requiring extended payment options, they should contact the Utility Billing Clerk. Only two special payment arrangements may be made for a resident each fiscal year.

Failure to receive a bill in the mail does not excuse responsibility for timely payment or prevent service disconnection. The Town of Elon is not responsible for failure of the US Postal Service to deliver bills or payments. We will not accept a postmark date to waive penalties.

Payments may be made in person at Town Hall during normal business hours, placed in the drop box, by mail, bank draft, or online. No payments are accepted over the phone. There are two payment drop boxes, one is located just outside the front entrance to the Municipal Building at 104 South Williamson Avenue and the other is located as you exit the parking lot onto West Trollinger Avenue. Payments placed in the drop box after 5 p.m. will be considered next-day payments.

To set up a bank draft, submit a Bank Draft Authorization Form by mail or in person. The form is available online, at Town Hall, or you can call to request a form.

High Water Meter Readings

The Town recognizes that residents may occasionally see a large increase in the usage of water as documented by water meter readings. The increase in consumption may be due to a number of reasons. In the event of questions, residents will be shown previous consumption information to help provide information with regard to water usage over time and they may request a data logger for their meter.

Leak Adjustments

In the event a resident has a leak causing a water meter reading that is unusually high, the following procedure will be followed:

1. The resident may request in writing for an adjustment of the billed amount. Town staff will research the past year's usage and come up with an average usage. There is no guarantee any amount of a bill will be waived or adjusted, as each case will be reviewed based on the circumstances. Residents should be under the assumption all water that has gone through the water meter.
2. An adjustment may be requested and will only be granted one time each fiscal year. If the leak crosses into the next billing period, we will make the adjustment to both bills if it is eligible. This request requires written documentation describing the problem, along with proof that a repair has been completed. Proof is an itemized bill from a professional service listing the repairs which were completed or if the resident made the repair a receipt showing the parts purchased along with a letter explaining what was fixed.
3. The bill must exceed \$100.00 and be three times the average bill over the past 12 months. If the resident has less than 12 months of history, the average used will be

5,000 gallons per month.

4. If there is proof that the water did not enter the sewer system, sewer charges will be adjusted to the average and water over the average will be charged at the cost we pay the City of Burlington. If the water entered the sewer system, water and sewer over the average will be charged at the cost we pay the City of Burlington.
5. Once an adjustment has been granted, residents should not expect to receive additional credits to their water bill(s).
6. Any request for an adjustment does not absolve the requirement to pay what is due. If adjustments are justified and documented, they will be applied to your account.

Pool Fills

The Town will allow a sewer adjustment for pool fills once per year. The following procedure will apply:

1. The resident should call the Utility Billing Clerk to report the pool fill and the size of the pool.
2. If it is not a complete pool refill, the resident should let the Town know how many gallons were used to fill the pool.
3. The Town will adjust off the sewer charges for the gallons of water that were used to fill the pool.

Termination or Suspension of Service

In the event a resident wishes to terminate service the following procedures apply:

1. The resident must fill out a Turn Off Request online or in person and return it to Town staff. Turn off requests are only processed during regular business hours.
2. Town staff will read the meter and finalize the bill in the next billing cycle.
3. The final bill will be mailed to the resident for payment. If the final bill amount is less than the deposit on file, a refund will be generated.
4. Non-payment of final bills may be referred to the North Carolina Debt Setoff program for resolution through the North Carolina Department of Revenue.

**TOWN OF ELON
BOARD OF ALDERMEN AGENDA REPORT**

Item Type:

SUBJECT: Proposed Police Department Incentives - Rich Roedner

DATE: September 7, 2021

BOARD OF ALDERMEN ACTION REQUESTED ON: September 14, 2021

PURPOSE:

We have seen police departments in our region institute new benefits for new and existing police officers, improving the competitive edge they have in attracting and hiring new officers, retaining existing officers, as well as recruiting officers from other departments. In order to maintain our position of being a desirable department to work for, we have developed a revised benefit package that will improve our competitiveness with other departments.

HISTORY:

Working with the Police Chief and Finance Director, we have developed a revised incentive package that encourages officers to seek higher educational levels, advanced certifications and specialized training. These steps not only improve the capacity of individual officers, but also improve the capacity of the Department.

The Personnel Liaison Committee has reviewed this draft proposal and has voiced support for this change.

OPTIONS:

Option #1 Forward to Regular Meeting for adoption

Option #2 Proposed amendments for adoption at Regular Meeting

Option #3 Board option

TOWN MANAGER RECOMMENDED ACTION:

Option #1

Prepared by: Richard Roedner, Town Manager

ATTACHMENTS:

Description

Police Incentive Package

Upload Date

8/19/2021

Type

Backup Material

POLICE DEPARTMENT INCENTIVES

Incentives for AA, BS/BA, MS/MA – annual bonus of 3%, 4%, 5%

Degree incentives will be paid as a lump sum bonus on the first pay period in July of each year and will be calculated on the employee's salary as of July 1st

- Criminal Justice
- Social Science (Psychology, Sociology, Criminology)
- Homeland or National Security
- Public Administration
- Public Safety Leadership
- Liberal Arts (Associates Degree)
- Forensic Science
- Cyber Security
- Emergency Management

SPECIAL CERTIFICATIONS:

- **K9 - \$1500.00 annually at end of fiscal year**
- **FTO - \$500 per trainee at end of fiscal year**
- **Special Response Team Operator (SRT/SWAT) – 3% at end of fiscal year**
- **Traffic Crash Reconstructionist - 3% at end of fiscal year**
- **Drug Recognition Expert (DRE) - 3% at end of fiscal year**
- **Specialized Certified NC General Instructor - \$500 annually at end of fiscal year**
 - Firearms Instructor
 - Hazardous Materials and explosives Instructor
 - Subject Control and Tactics (SCAT) Instructor
 - Drivers Training Instructor
 - Physical Fitness Instructor
 - Speed Measurement Instrument Instructor (RADAR unit instructor)
- **Intermediate Certificate – one-time bonus of 2% at time of achievement**
- **Advance Certificate -one-time bonus of 3% at time of achievement**
- **FBI LEEDA Trilogy – one-time bonus of 3% at time of achievement**

**TOWN OF ELON
BOARD OF ALDERMEN AGENDA REPORT**

Item Type:

SUBJECT: Consideration of Ordinance and Policy Review Committee

- Rich Roedner

DATE: September 7, 2021

BOARD OF ALDERMEN ACTION REQUESTED ON: September 14, 2021

PURPOSE:

To consider creating an Ordinance and Policy Review Committee in accordance with the Board's adopted Resolution for Equality.

HISTORY:

At the August 10 Board of Alderman Meeting, the Board adopted a Resolution for Equality (attached), that recommends creating a committee to review the Town's Ordinances and Policies for discriminatory impacts.

In addition to the Resolution, there is a draft of a short committee structure document for the Board's review. This is a simple structure that identifies the purpose, membership and time frame for action by the Committee. At the end of the project, the Committee would be dissolved.

Since it is just a temporary, advisory committee, there is no need for any formal ordinance creating it.

OPTIONS:

Option #1 Review and amend draft committee structure document

ATTACHMENTS:

Description

Upload Date

Type

Adopted Resolution for Equality

8/25/2021

Backup Material

Draft Committee Structure

8/25/2021

Backup Material

TOWN OF ELON RESOLUTION FOR EQUALITY

WHEREAS, it is the mission of the Town of Elon to support a vibrant and connected community life by investing and enabling a high quality of life for all residents; and

WHEREAS, the Town of Elon embraces people of all backgrounds and recognizes the importance of diversity of opinions, cultures and personal histories, and declares that all people should be free from discrimination, including, but not limited to, discrimination based on race, ethnicity, natural hair or hairstyles, creed, color, sex, marital or familial status, sexual orientation, gender identity or expression, national origin or ancestry, pregnancy, military or veteran status, religious belief or non-belief, age, disability or other protected class; and

WHEREAS, the Town of Elon desires to protect and safeguard the rights and opportunities of all persons to be free from discrimination in public accommodations, employment, and housing; and

WHEREAS, the Town of Elon will not discriminate against any human being in employment practices or taxpayer-funded programs; will not discriminate based on race, ethnicity, natural hair or hairstyles, creed, color, sex, marital or familial status, sexual orientation, gender identity or expression, national origin or ancestry, pregnancy, military or veteran status, religious belief or non-belief, age, disability or other protected class; and welcomes companies and corporations who adopt equality and non-discrimination policies and procedures; and

WHEREAS, in the Town of Elon, discrimination will not be condoned in areas of public accommodations which include places such as hotels, restaurants, retail establishments, government buildings, etc.

WHEREAS, the purpose and intent of this Resolution is to promote the principles of diversity, inclusion, harmony, and equal treatment for all and thereby the health, safety, and welfare of those who live in, work in, and visit the Town of Elon, and to provide guidance to the Town of Elon for future actions.

NOW THEREFORE, BE IT RESOLVED, that the Town of Elon calls upon its residents, businesses, visitors, municipal and private employees to join with Town to treat all people with respect and dignity as a means of supporting the Town of Elon's mission and values.

AND BE IT FURTHER RESOLVED, that the Board of Aldermen is encouraged to create a local committee to:

- a. Evaluate municipal policies and ordinances for discriminatory impacts;
- b. Create a forum for public input; and to
- c. Make recommendations to the Board of Aldermen for any future actions related to any discrimination within the community.

Adopted on this 10 day of August, 2021 by the Elon Board of Aldermen as listed:

Mayor Jerry Tolley
 Alderwoman Emily Sharpe
 Alderman Quinn Ray

Mayor Pro Tem Davis Montgomery
 Alderman Mark Greene
 Alderman Monti Allison

ATTEST:

Town Clerk DiAnne Enoch

Policy and Ordinance Review Committee

Purpose

The purpose of the Policy and Ordinance Review Committee (Committee) is to:

- Review Town Codes and Policies for discriminatory impacts
- Solicit public input and comment as to the impact of ordinances and policies
- Advise the Town Manager and Board of Aldermen if any such impacts are identified
- Provide recommendations to Town Manager and Board of Aldermen for any remedies;
- Make any additional recommendations to Town Manager and Board of Aldermen as deemed appropriate

Definitions

Discriminatory – means to affect one group or class of residents more than any other group or class of residents

Committee Formed

The Board of Aldermen hereby establishes an Ordinance and Policy Review Committee.

Committee Makeup

The Committee shall consist of five (5) residents, business owners, or private employees within the Town. At least three of the appointed members of the Committee members shall be residents.

The Board may, at its discretion, also appoint one or more Board members to the Committee in an ex officio manner.

The Board may, at its discretion, also authorize one or more Town employees to sit on the Committee in an ex officio manner.

The Town Manager shall ensure that the Committee has sufficient staff support in order to complete its stated purpose.

Committee Organization

The Committee shall appoint one of its appointed members as Chairperson, and one as Vice Chairperson.

The Committee shall meet at least monthly, with additional meetings to be determined by the committee.

The Committee shall keep a record of its meetings and findings in accordance with NC Public Meeting statutes.

All meetings of the Committee shall be open to the public.

Final Report

The Committee shall provide a final, written, report to the Town Manager and Board of Aldermen within six (6) months of appointment, complete with a list of codes and policies reviewed, discriminatory impact (if any) identified, and recommendations for remedy. In addition, the Committee may make additional recommendations to the Town Manager and Board of Aldermen as deemed appropriate by the Committee.

**TOWN OF ELON
BOARD OF ALDERMEN AGENDA REPORT**

Item Type: Recommendation

SUBJECT: COVID Policy Changes - Rich Roedner

DATE: September 7, 2021

BOARD OF ALDERMEN ACTION REQUESTED ON: September 14, 2021

PURPOSE:

To amend policies regarding COVID sick time and Vaccine incentives. (see attached)

HISTORY:

Over the past 8 months, approximately 29 of our employees have received COVID vaccinations, which represents about 47% of our full time staff. We do not have comparable information regarding our part time staff.

With the current Delta variant surge of cases, we have recently seen 4 employees test positive, and at least one other employee have to quarantine due to a close contact.

In 2020, the Federal government funding a COVID rider to the FMLA rules, allowing for sick leave to be used for COVID related absences. This expired on Dec. 31 of last year. The Board opted to create a local COVID sick leave policy that ran through the end of June.

Cash incentives have been shown to be somewhat effective in encouraging people to seek vaccinations.

FACTS AND ISSUES:

1. Employees who contract COVID are required to be out of work for at least 10 days per CDC recommendations. For many employees, they lack the sick leave or accrued vacation time to take this leave at full pay.
2. While many employees have been vaccinated, many more remain unvaccinated. Cash incentives have demonstrated some success at encouraging vaccinations.
3. While not part of the proposed policy at this time, mandatory vaccinations have been upheld in multiple court cases over the past several months as entirely permissible.

OPTIONS:

Option #1 Approve the proposed COVID policy amendments as described in the attached document

Option #2 Board option, which can include any changes or amendments that the Board sees as appropriate

TOWN MANAGER RECOMMENDED ACTION:

Option #1

Prepared by: Richard Roedner, Town Manager

ATTACHMENTS:

Description

COVID Policy Amendment

Upload Date

9/2/2021

Type

Backup Material

Proposed COVID Policy Changes

- Any employee who shows proof of complete vaccination against COVID 19 by November 1, shall receive a one-time cash bonus of \$200, to be paid through payroll
- For employees vaccinated after September 7, 2021, funds shall be drawn from ARPA funds
- For employees vaccinated prior to September 7, 2021, funds shall be drawn from the Town's Operating Budget.
- The Town shall provide up to 40 hours of COVID sick leave to any employee who contracts COVID-19, who is required to quarantine due to close contact with a positive case of COVID-19, or who misses work due to receiving a COVID-19 vaccination.
- Employees eligible for the vaccine bonus include any full-time or part-time employee.
- To the extent allowed under NC General Statutes, volunteer firefighters who provide proof of vaccination shall receive a \$100 cash bonus.

At this time, this Policy does not consider:

- mandatory vaccines for all employees
- mandatory, routine testing of non-vaccinated employees

Effective Date: September 7, 2021

Expiration Date: December 31, 2021

**TOWN OF ELON
BOARD OF ALDERMEN AGENDA REPORT**

Item Type: Recommendation

SUBJECT: Land Acquisition negotiations per NC General Statutes, §
143-318.11.a.(5)

DATE: September 7, 2021

BOARD OF ALDERMEN ACTION REQUESTED ON: September 7, 2021

TOWN MANAGER RECOMMENDED ACTION:

Motion to enter Closed Session to discuss negotiations related to property acquisition, per NC General Statutes, §
143-318.11.a.(5)

Prepared by: Richard Roedner, Town Manager

ATTACHMENTS:

Description

Closed Session Statute

Upload Date

8/27/2021

Type

Backup Material

§ 143-318.11. Closed sessions.

(a) Permitted Purposes. – It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
- (2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.
- (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.
- (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations, or to discuss matters relating to military installation closure or realignment. Any action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.
- (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
- (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

- (7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.
 - (8) To formulate plans by a local board of education relating to emergency response to incidents of school violence or to formulate and adopt the school safety components of school improvement plans by a local board of education or a school improvement team.
 - (9) To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity.
 - (10) To view a recording released pursuant to G.S. 132-1.4A.
- (b) Repealed by Session Laws 1991, c. 694, s. 4.
 - (c) Calling a Closed Session. – A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.
 - (d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 570, s. 2. (1979, c. 655, s. 1; 1981, c. 831; 1985 (Reg. Sess., 1986), c. 932, s. 5; 1991, c. 694, ss. 3, 4; 1993 (Reg. Sess., 1994), c. 570, s. 2; 1995, c. 509, s. 84; 1997-222, s. 2; 1997-290, s. 2; 2001-500, s. 2; 2003-180, s. 2; 2013-360, s. 8.41(b); 2014-79, s. 9(a); 2016-88, s. 3.)