

ORDINANCE #19 - 801

**AN ORDINANCE APPROVING THE ANNEXATION AGREEMENT
BETWEEN THE TOWN OF ELON, NORTH CAROLINA, AND
THE TOWN OF GIBSONVILLE, NORTH CAROLINA**

WHEREAS, the governing boards of the Town of Elon (“Elon”) and the Town of Gibsonville (“Gibsonville”) seek to carry out plans for future land uses; plans for provision of important public facilities such as sewer and water services, roadways, and recreation; and plans for the protection of open space and other sensitive areas; and,

WHEREAS, potential conflict and confusion may occur along the interface between Elon and Gibsonville when the future municipal boundaries between the two are unclear; and,

WHEREAS, Chapter 160A, Article 4A, Part 6 “Annexation Agreements” of the General Statutes of North Carolina authorizes municipalities to enter into binding agreements concerning the future extension of the corporate limits of the municipalities in order to enhance orderly planning by such municipalities, residents, and property owners in areas adjacent to such municipalities; and

WHEREAS, prior to entering into any annexation line of agreement N.C.G.S. § 160A-58.24(c) mandates that each participating municipality hold a public hearing on the agreement prior to adopting the ordinance approving the agreement; and

WHEREAS, pursuant to G.S. 160A-58.24(c), the Town of Gibsonville and the Town of Elon both held public hearings on Monday, November 4, 2019 authorizing the adoption of this ordinance and Annexation Agreement;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF ELON:

The Board of Aldermen hereby approves the attached “Annexation Agreement” (“Agreement”), authorizes the Mayor to execute the Agreement together with the associated Asset Purchase Agreement (“APA”) relating to Water and Sewer Services, and authorizes the Town Manager to provide such notices and take such actions as the Agreement and APA contemplate.

Adopted this the ___ day of _____, 2019.

Jerry Tolley, Mayor

ATTEST:

DiAnne Enoch, Town Clerk

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (“Agreement”), is made as of the Effective Date (as hereinafter defined) by the Town of Gibsonville (“Gibsonville”), a North Carolina municipal corporation and the Town of Elon (“Elon”), a North Carolina municipal corporation. Gibsonville and Elon are sometimes referred to individually as “Party” and jointly as “Parties.”

Section 1. Boundary Line

The Boundary Line, more particularly described in Exhibit A and depicted on Exhibit B, both of which exhibits are attached hereto and incorporated herein by reference (hereinafter "Boundary Line"), delineate the boundary line for annexations between the Town of Elon and the Town of Gibsonville for the Term of this Agreement.

Section 2. Elon Annexation Area

The area east of the Boundary Line (hereinafter "Elon Annexation Area") is subject to future annexation by Elon and no portion of the Elon Annexation Area is subject to annexation by Gibsonville during the Term of this Agreement.

Section 3. Gibsonville Annexation Area

The area west of the Boundary Line (hereinafter "Gibsonville Annexation Area") is subject to future annexation by Gibsonville and no portion of the Gibsonville Annexation Area is subject to annexation by Elon during the Term of this Agreement.

Section 4. Notice of Adjacent Annexations

Each Party which proposes any annexation of property in their perspective Annexation Area within one thousand (1,000) feet of the Boundary Line that is established by this Agreement must give written notice to the other municipality of such annexation, at least 60 days before the adoption of any such annexation ordinance. The notice shall be in compliance with N.C.G.S. §160A-58.24(a) (5) and (b) and shall be sent by mail to the Manager of the other Party. The recipient Party will be deemed to have waived the sixty (60) day period, unless within ten (10) days from receiving such notice it provides written notice that it is exercising its right not to so waive the 60 day period.

Section 5. Water and Sewer Service

The provision of Water and Sewer Services shall be governed by the Asset Purchase Agreement of even date herewith.

Section 6. Effective Date

This Agreement shall become effective upon that day it is signed by the last of the two Parties and the condition precedent of the Parties obtaining the appropriate amendments to their respective water and sewer agreements currently in effect with the City of Burlington are obtained. (“Effective Date”). The Parties shall cause a map of the Boundary Line suitable for recordation to be placed of record in the Alamance County Register of Deeds which map shall state the Effective Date.

Section 7. Modifications and Amendments

This Agreement may be modified or amended only by a subsequent agreement signed by both participating Parties pursuant to G.S. §160A-58.24(d). Any amendments to this Agreement shall be approved by ordinance and adopted after public hearings by both Parties.

Section 8. Term of Agreement

The term of this Agreement shall be for a period of twenty (20) years beginning on the Effective Date of this Agreement (“Term”).

Section 9. Termination of Agreement

This Agreement may be terminated by either Party only in the manner prescribed by N.C.G.S. §160A-58.24(f).

Section 10. Notices

Unless otherwise provided, all notices provided for herein shall be in writing and shall be sent properly addressed by first class mail to the Parties at the addresses shown below:

If to the Town of Elon:	Town of Elon Attention: Town Manager 104 S. Williamson Ave Elon, NC 27244
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If to the Town of Gibsonville:	Town of Gibsonville Attention: Town Manager 129 W Main Street Gibsonville, NC 27249
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All notices shall be effective three (3) days after having been deposited, properly addressed and postage prepaid, in the US Postal Service. Any Party hereto may change the person to whom or the address to which notices should be provided by giving written notice to the other Parties of the change.

Section 11. Dispute Resolution

In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes, or other controversies arising out of and between the Parties shall be subject to and decided exclusively by the appropriate General Court of Justice of Alamance County, North Carolina.

Section 12. No Waiver of Non-Compliance

No provision of this Agreement shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other of any provision hereof shall in no way affect the right of the other Party to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by the other Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

Section 13. Governing Law

The Parties intend that this Agreement be governed by the law of the State of North Carolina.

Section 14. Execution in Counterparts/Electronic Version of Agreement

This Agreement may be executed in two counterparts, each of which shall be an original and each of which shall constitute but one and the same instrument. Either Party may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

Section 16. No third-Party Beneficiaries

There are no third-party beneficiaries to this Agreement.

IN TESTIMONY WHEREOF, the Parties, pursuant to ordinances of their respective Boards of Aldermen have caused this Agreement to be executed by their respective Mayors, attested by their respective Town Clerks and their official seals affixed, the day and year written below.

Adopted this the ____ day of November, 2019.

TOWN OF ELON

Jerry Tolley, Mayor

ATTEST:

DiAnne Enoch, Town Clerk

TOWN OF GIBSONVILLE

Mayor

ATTEST:

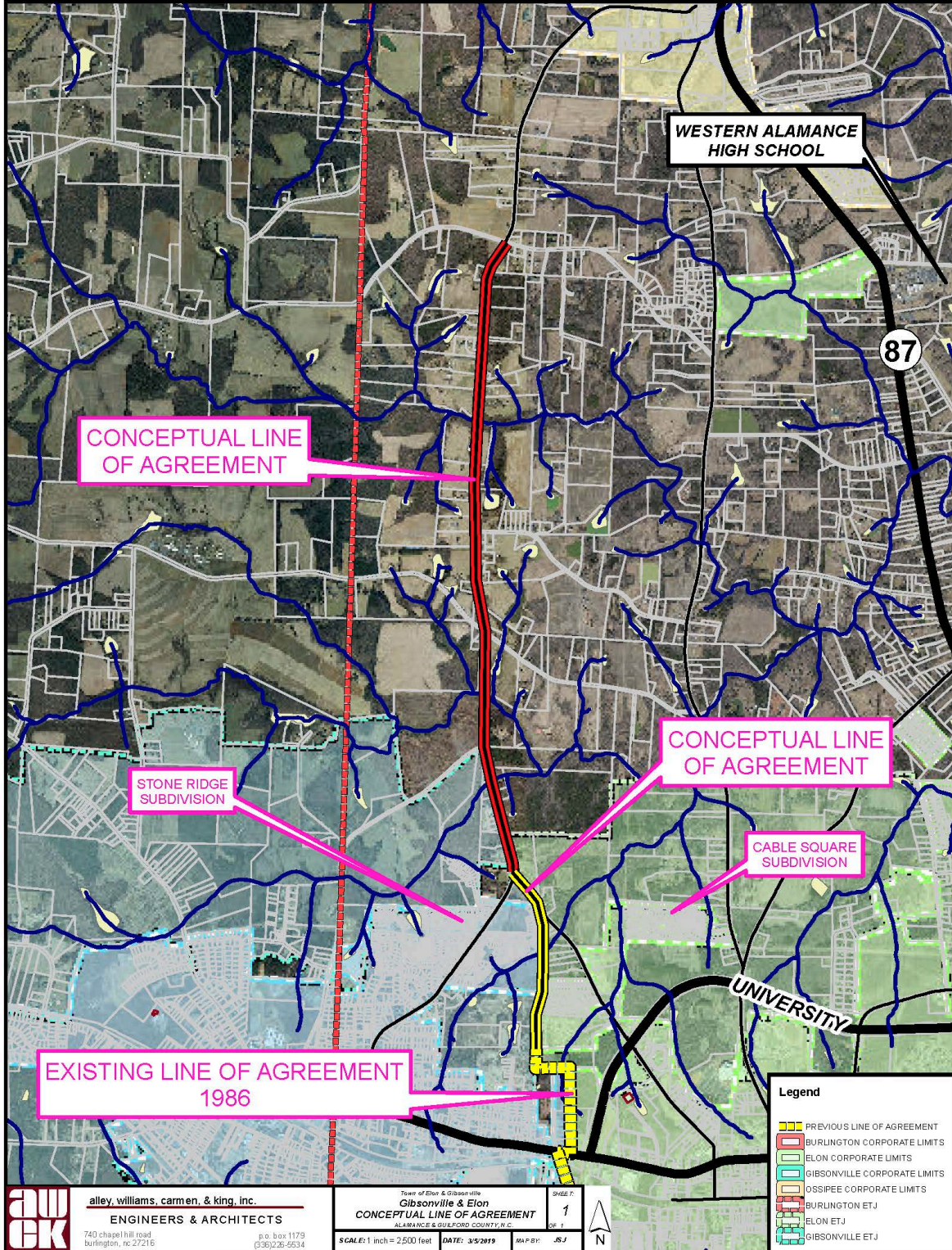
Town Clerk

EXHIBIT "A"**Boundary Line Description**

BEGINNING at the northern most point of the existing Demarcation Line as shown on the Extra-Territorial Area and Annexation between towns of Elon College and Gibsonville map, AWCK job number 86025 and recorded in the Alamance County Registry in Plat Book 32 page 52 said point being the northwestern most corner of the property of Cynthia A. Foster and husband David J. Foster (Formerly owned by Wallace Sumner) Alamance County parcel #108814 and running thence in a northerly direction with the easternmost line of the following Alamance County parcels: Parcel # 170808 property of Violet D. Patton, Trustee of the D.C. Patton Revocable Trust as described in Deed Book 3582 page 336; Parcel # 108617 property of Patricia D. Patton Former deed description found in Deed Book 282 page 417; Parcel # 110121 property of Manning Crossing, LLC as described in Deed Book 3807 page 943 and shown on Plat Book 69 page 455; Parcel # 171856 property of Manning Crossing, LLC as shown as Tract A Plat Book 76 page 267 "Final Plat Manning Crossing Phase 2"; Parcel # 171855 property of Manning Crossing, LLC as shown as Tract A Plat Book 75 page 467 "Final Plat Manning Crossing Phase 1"; running thence in a northerly direction(the same course as the aforementioned easternmost line of Parcel # 171855) to a point in the centerline of the 60 foot right of way of Manning Avenue State Road # 1503; running thence in a northwesterly direction along the centerline of said 60 foot right of way of Manning Avenue State Road #1503 to a point at the centerline of the intersection of Manning Avenue State Road #1503 and Gibsonville-Ossipee Road State Road # 1500; running thence in a northerly direction along the centerline of the 60 foot right of way of Gibsonville-Ossipee Road State Road # 1500 approximately 2.52 miles to a point at the centerline of the intersection of Gibsonville-Ossipee Road State Road # 1500 and Midway Church Road (east) and Guilford County Farm Road(west) State Road # 1553. The above described line is the Conceptual Line of Agreement as shown on the exhibit map titled "Town of Elon & Gibsonville Gibsonville & Elon Conceptual Line of Agreement" by Alley, Williams, Carmen & King, Inc. Dated 3/05/19

EXHIBIT "B"

Boundary Line Map



NORTH CAROLINA**ASSET PURCHASE AGREEMENT****ALAMANCE COUNTY**

THIS ASSET PURCHASE AGREEMENT (“Agreement”) is made and entered into this ____ day of November, 2019, by and between **TOWN OF GIBSONVILLE**, (hereinafter “Seller”), a North Carolina municipal corporation, and **TOWN OF ELON**, a North Carolina municipal corporation (hereinafter “Buyer”) as of the Effective Date (“Effective Date”). Buyer and Seller are hereinafter sometimes collectively referred to as the “Towns”.

WITNESSETH

WHEREAS, Seller is the owner of that certain tract or parcel located in the County of Alamance, State of North Carolina at 2712 Amick Road, Elon, NC 27244 designated as Parcel ID No. 110271 and GPIN# 8846-85-4911 by Alamance County commonly known as the “Travis Creek Pump Station” and being more particularly described by **Exhibit “A”** attached hereto and by reference made a part hereof (hereinafter, the “Land”);

WHEREAS, Seller is also the owner of certain improvements constructed on the Land (hereinafter, the “Improvements”);

WHEREAS, in connection with an Annexation Line of Agreement between Buyer and Seller, Buyer desires to purchase from Seller the Assets (as enumerated in Article 1.2 herein), including the Land and the Improvements, and Seller desires to sell and transfer the same to Buyer;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Towns agree as follows:

ARTICLE I

ASSETS TO BE PURCHASED AND SOLD

1.1 Assets. Buyer agrees to buy and Seller agrees to sell and convey all of Seller’s right, title, and interest in and to the property enumerated in Article 1.2 hereof (the “Assets”) pursuant to the terms and conditions set forth herein.

1.2 Description of Assets. The Assets shall consist of the following:

Agreement of Purchase and Sale by and between
Town of Gibsonville as Seller and Town of Elon as Buyer
(Travis Creek Pump Station)

- (a) The Land (as set-out in Exhibit "A")
- (b) The Easements (as set-out in Exhibit "C"): Grantor shall convey All rights, privileges and easements appurtenant to the Land, including all rights, rights-of-way, roadways, roadbeds, and reversions and those appurtenances used in connection with the Land including those sewer outfall easements as recorded in the Alamance County Register of Deeds and set-out and incorporated herein in **Exhibit "C"** (the "Appurtenant Rights");
- (c) The Improvements;
- (d) All personal property, if any, belonging to Seller located on and used in connection with the Land, Improvements and Appurtenant Rights (the "Personal Property");
- (e) To the extent assignable, at no cost to Seller, all of Seller's interest in any intangible property now or hereafter owned by Seller in connection with the Land, the Appurtenant Rights, the Improvements, and the Personal Property including, without limitation, any licenses, approvals, certificates, permits, warranties or guarantees; and all other rights related to the ownership or use of the Land, Appurtenant Rights, Improvements, or Personal Property (the "Intangible Property");
- (f) To the extent assignable and if requested by Buyer, all of Seller's interest in any and all service contracts, maintenance contracts, management contracts, construction contracts and similar agreements that relate to the Land, Appurtenant Rights, Improvements, or Personal Property.

ARTICLE II

PURCHASE PRICE

The purchase price for the Assets ("Purchase Price") shall be One Million Nine Hundred Seven Thousand Seven Hundred Ninety-Four and 37/100ths Dollars (\$1,907,794.37) subject to the prorations and adjustments provided in this Agreement. The Purchase Price shall be paid in cash or other immediately available funds (pursuant to the terms set forth in this Agreement) at Closing. For accounting purposes, the Purchase Price shall be allocated as follows: \$858,611.70 to the Land and Improvements (with the exception of any Outfall Lines or Force Main situated thereon), together with the Personal Property, \$186,992.00 to the Force Main and \$862,190.67 ("Estimated Cost") to the Outfall Lines (with the exception of the Force Main). The price of the Outfall Lines will be the final cost directly associated with the Outfall Rehabilitation as hereinafter defined. If the event that final cost of the Outfall Rehabilitation differs by less than 15% in either direction from the Estimated Cost, then

the price shall be adjusted accordingly. If the event that final cost of the Outfall Rehabilitation differs by more than 15% in either direction from the Estimated Cost, then the concurrence of the Boards of Aldermen for both Towns as to the manner of adjustment is required.

ARTICLE III

SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

In order to induce Buyer to enter into this Agreement and to purchase the Assets, in addition to warranties, representations and covenants contained elsewhere in this Agreement, Seller hereby makes the following representations, warranties and covenants, each of which is material and is relied upon by Buyer:

3.1 Title to Assets. Seller has not impaired such title as Seller received with respect to the Land and Appurtenant Rights. Seller shall neither cause any additional encumbrances on title to the Assets between the Effective Date of this Agreement and Closing. Seller shall not sell or otherwise transfer any part of the Assets without Buyer's prior written consent.

3.2 Good Standing. Seller is a municipal corporation existing under the laws of the State of North Carolina.

3.3 Authority of Seller. Seller has the right, power and authority to enter into this Agreement and to sell the Assets in accordance with the terms and conditions hereof which terms and conditions have been duly approved by Seller's Board of Aldermen. This Agreement, and all of the documents executed by Seller which are to be delivered to Buyer at the Closing, when executed and delivered by Seller, will be valid and binding obligations of Seller in accordance with their respective terms, and do not and will not violate any provisions of any agreement to which Seller is a party or to which it is subject.

3.4 No Bankruptcy. Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, or (iv) suffered the attachment or other judicial seizure of all or substantially all of Seller's assets.

3.5 Non-Foreign Person. Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and any related regulations.

3.6 Options. No options or other contracts have been granted or entered into which are still outstanding and which give any other party a right to purchase or lease any interest in the Land

3.9 Contracts. To Seller's knowledge, except for those contracts listed on **Exhibit "B"** attached hereto and incorporated herein by reference, there are no service contracts, maintenance contracts, management contracts, construction contracts, license agreements or similar agreements which relate to the Assets (collectively "Contracts"). Seller shall not modify, amend, or supplement the existing Contracts or enter into any new Contracts after the Effective Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld.

3.10 Intentionally Omitted.

3.11 Maintenance. Seller, at its sole expense and through the date of Closing, shall perform all of the Preventative Maintenance ("PM") outlined in Section 5.0 of that certain Charles R. Underwood, Inc. report dated December 6, 2018. With regard to any major repairs in excess of \$5,000.00 not included in PM arising between the Effective Date and Closing, such repairs shall be split evenly between Buyer and Seller. The repairs recommended ("Recommended Repairs") in the Electrical & Wet Well Inspection Report by Charles R. Underwood, Inc. dated October 2, 2019 are included in this cost sharing arrangement. Buyer, at its sole expense and through that date which is one (1) year from the date of Closing, shall perform all of the PM. With regard to any major repairs in excess of \$5,000.00 not included in PM arising between the date of Closing and that date which is one (1) year thereafter, such repairs shall be split evenly between Buyer and Seller.

3.12 Condemnation Proceedings; Roadways. To the Seller's actual knowledge, there are no condemnation or eminent domain proceedings pending or contemplated against the Land or any part thereof and the Seller has received no notice, oral or written, of the desire of any public authority or other entity to take or use the Assets or any part thereof.

3.13 Mechanic's Liens and Litigation. No payments for work, materials, or improvements furnished to the Assets at the direction of Seller other than for the Outfall Rehabilitation (to be paid at Closing) will be due or owing at Closing and no mechanics lien, materialman's lien, or other similar lien created by Seller shall be of record against the Assets nor shall there be any bond claim at the time of Closing. Seller is not aware of any pending lawsuits, condemnation or eminent domain proceedings with respect to the Assets.

The representations and warranties set forth above are true and correct as of the Effective Date of this Agreement and shall be true and correct as of the Closing. Any obligations imposing an obligation after Closing are expressly intended to survive Closing including, without limitation, the operation provisions herein contained.

ARTICLE IV

BUYER'S WARRANTIES AND REPRESENTATIONS

4.1 This Agreement, when executed and delivered by Buyer and upon approval of the Water/Sewer Contract Amendments as hereinafter defined, will be a valid and binding obligation of Buyer enforceable in accordance with its terms.

4.2 Buyer has made such legal, factual, environmental and other inquiries and investigations as Buyer deems necessary, desirable or appropriate with respect to the Assets, the appurtenances, facilities and equipment thereof, and that by entering into this Agreement, Buyer will be relying solely thereon.

4.3 Buyer has the financial ability to perform this Agreement.

4.4 The persons signing this Agreement on behalf of Buyer have been duly authorized by Buyer's Board of Aldermen to sign and deliver this Agreement on behalf of Buyer.

4.5 Buyer has no knowledge of any litigation, proceeding or action pending or threatened against or relating to Buyer or which questions the validity of this Agreement or any action taken or to be taken by Buyer pursuant to this Agreement.

ARTICLE V

CONDITIONS PRECEDENT TO OBLIGATIONS

The following shall be conditions precedent to the obligations of the Towns hereunder:

5.1 Status of Title. Seller shall convey fee simple title to the Assets to Buyer subject only to such encumbrances and exceptions as will not impair continued use of the Assets for their current purposes (collectively "Permitted Exceptions").

5.2 Water/Sewer Contract Contingency. The Towns need to obtain amendments to their respective water and sewer agreements currently in effect with the City of Burlington ("Water/Sewer Contract Amendments"). **The Effective Date shall be the date upon which all of the Water/Sewer Contract Amendments are duly approved by the City of Burlington it being acknowledged that this Agreement cannot come into effect and be a binding obligation of either Town without the Water/Sewer Contract Amendments.**

ARTICLE VI

CLOSING

The purchase and sale contemplated hereunder shall be consummated at the closing (referred to herein as the "Closing") which shall take place on a Business Day between July 1, 2021 and December 31, 2021 designated upon sixty (60) days advance notice from Seller to Buyer.

ARTICLE VII

CLOSING COSTS AND PAYMENTS, PRORATIONS, AND ADJUSTMENTS

7.1 Closing Costs and Payments. Costs and payments related to the purchase and sale of the Assets shall be paid at Closing as follows:

- (a) Seller shall satisfy or pay for:
 - i. all mortgage liens with respect to the Assets and all transfer, servicing, or prepayment penalties or fees assessed by the holders of such mortgages;
 - ii. any other liens with respect to the Assets;
 - iii. the cost of deed stamps or transfer taxes assessed in connection with the conveyance of the Assets; and
 - iv. all of Seller's legal fees including preparation of the Deed for the Land and assignments of the Easements;
- (b) Buyer shall pay for:
 - i. title insurance costs due in connection with the issuance of Buyer's owner's insurance policy including abstracting and issuance of commitment, and any endorsements;
 - ii. the cost of any survey obtained by Buyer;
 - iii. all of Buyer's legal fees; and
 - iv. the recording cost of the deed and assignments conveying title to the Assets to Buyer;

7.2 Prorations. revenues from the operation of the Assets to the extent paid shall be prorated as of the date of the Closing. All prorations required under this

Agreement shall be computed as of the date of Closing (and Buyer shall be deemed to be in title to the Assets for the entire day on which the Closing occurs), and the purchase price paid to Seller shall be adjusted to reflect such prorations. If any of the prorated items must be estimated at Closing, the Towns agree to re-prorate at such time as the actual amount(s) to be prorated are available.

ARTICLE VIII

CONDITIONS TO BUYER'S OBLIGATIONS

Buyer's obligation to consummate the purchase and sale transaction contemplated by this Agreement is subject to the satisfaction or waiver of the following conditions ("Buyer's Conditions Precedent"):

8.1 Title Policy. The title company shall have unconditionally committed by the end of the Inspection Period to issue, at the Closing, an ALTA Owner's Extended Coverage Policy of Title Insurance, insuring Buyer's interest in the Land and Improvements with liability in the amount of the Purchase Price subject only to the Permitted Exceptions ("Title Policy").

8.2 No Breaches. Seller shall not have materially breached any of Seller's covenants set forth in this Agreement.

8.3 Accuracy of Representations and Warranties. Seller's representations and warranties shall be true and correct as of the Closing.

8.4 Condition of Assets. Seller shall complete the Outfall Rehabilitation to the and, subject to Buyer's cost contribution in Section 3.11., will complete the Recommended Repairs prior to Closing. . With the exception of the foregoing upgrades and repairs, the Assets shall, at Closing, be in substantially the same condition as it was on the Effective Date, normal wear and tear excepted.

ARTICLE IX

SELLER'S DELIVERIES

In addition to other conditions precedent set forth elsewhere in this Agreement, Seller shall deliver to Buyer all of the following documents and items, the delivery and accuracy of which shall be a further condition precedent to Buyer's obligations to consummate the purchase and sale herein contemplated:

9.1 Items Delivered Within This Agreement. Seller shall deliver all of the following items if they exist currently in the possession or control of Seller within thirty (30) Business Days after the full execution of this Agreement (“Seller’s Deliveries”):

- (a) Seller’s most current Owner’s Title Insurance Policy.
- (b) Existing survey(s) of the Land.
- (c) Plans for the Improvements.
- (d) All environmental studies and reports with respect to the Land.
- (e) copies of insurance certificates.

9.2 Seller shall deliver the following items to Escrow Agent on or before the day of Closing:

- (a) A special warranty deed executed by Seller and acknowledged by a notary conveying good and marketable fee simple title to the Land and Improvements subject only to encumbrances permitted by this Agreement (“Deed”);
- (b) An assignment of the Easements (“Assignment”);
- (c) Typical mechanic’s lien affidavit required by Buyer’s title insurance company with regard to the Land and with respect to the Easements such an affidavit only as to work contracted for by Seller;
- (d) “Payoff” letters from the holders of all liens to be satisfied under the terms of this Agreement, if any;
- (e) A bill of sale transferring Seller’s title to the Personal Property (“Bill of Sale”);
- (f) One (1) original FIRPTA affidavit (along with one (1) original of any state or local equivalent affidavit) each executed by Seller (together “FIRPTA”);
- (g) One (1) original of an assignment and assumption agreement executed by Seller with respect to any leases, licenses agreements and contracts applicable to the Assets, which shall provide that Buyer shall assume such agreements, that Buyer shall be responsible for all of Seller’s obligations under such agreements from and after Closing, that Seller shall indemnify Buyer with respect to all obligations of Seller under such agreements

for periods prior to Closing, and that Buyer Seller shall indemnify Seller with respect to all obligations of Buyer under such agreements for periods after Closing (“Lease, License and Contract Assignment”);

(h) One (1) original of an assignment agreement executed by Seller assigning Seller’s right, title and interest in and to the Intangible Property including, without limitation, Seller’s rights in all warranties related to the Improvements (“Intangibles Assignment”);

(i) Seller’s counterpart of a closing statement for this transaction; and

(j) Any other documents, instruments or agreements reasonably necessary to effectuate the transaction contemplated by this Agreement.

ARTICLE X

BUYER’S DELIVERIES AT CLOSING

On or before the day of Closing, Buyer shall deliver the following to Escrow Agent: The Purchase Price (as adjusted pursuant to this Agreement), Buyer’s counterpart of the closing statement for this transaction, and any and all other documents reasonably required to be executed by Buyer to consummate this transaction.

ARTICLE XI

ESCROW AND CLOSING

11.1 Opening of Escrow. Buyer has selected its counsel Pittman & Steele, PLLC to act as the escrow agent (the “Escrow Agent”) with respect to the transaction contemplated by this Agreement. Within five (5) Business Days after the Effective Date, Buyer and Seller shall deposit a duplicate original of this Agreement with Escrow Agent. This Agreement, together with such further instructions, if any, as the Towns shall provide to Escrow Agent by written agreement, shall constitute the escrow instructions with respect to the escrow for the transaction contemplated by this Agreement. If any requirements relating to the duties or obligations of Escrow Agent hereunder are not acceptable to Escrow Agent, or if Escrow Agent requires additional instructions, the Towns agree to make such deletions, substitutions and additions hereto as counsel for Buyer and Seller shall mutually approve, which additional instructions shall not substantially alter the terms of this Agreement unless otherwise expressly agreed to by Seller and Buyer.

11.2 Disbursements and Other Actions by Escrow Holder. Upon the Closing, Escrow Agent shall promptly undertake all of the following:

(a) Recordation of Deed. Cause the Deed and any other documents which the Towns hereto may mutually direct to be recorded in the Alamance County Register of Deeds and obtain conformed copies thereof for distribution to Buyer and Seller.

(b) Calculation and Disbursement. Disburse all funds deposited with Escrow Agent by Buyer as follows:

- i. first, deduct all items chargeable to the account of Seller pursuant to Article VII.
- ii. next, disburse the balance of the Purchase Price and any additional amounts owed to Seller under this Agreement to or as directed by Seller promptly upon the Closing by wire transfer in accordance with instructions received from Seller.

(c) Title Policy. Direct the title company to issue the Title Policy to Buyer.

(d) Deliveries to Seller. Deliver to Seller: one (1) copy of the Contract Assignment; one (1) copy of Intangibles Assignment; and a conformed copy of the recorded Deed.

(e) Deliveries to Buyer. Deliver to Buyer: one (1) original Bill of Sale and Assignment; one (1) original Lease, License and Contract Assignment; one (1) original Intangibles Assignment, the original FIRPTA; and a conformed copy of the recorded Deed.

11.3 Deliveries By Seller to Buyer Upon Closing. Seller shall deliver the following items to Buyer upon the Closing:

(f) Assets Documents. Originals of all documents applicable to the Assets in Seller's possession.

ARTICLE XII

ASSET OPERATION

12.1 Travis Creek Pump Station. The Travis Creek Pump Station is located at 2712 Amick Road and was placed into service in 1981 and receives both The Town of Elon's and The Town of Gibsonville's sewage. The Town of Elon's sewage is metered onsite and billed monthly by the Town of Gibsonville. The sewage is pumped

through a force main into the City of Burlington's sewer system. The firm capacity of the pump station is approximately 800,000 gallons per day with a max capacity of 1.2 MGD. The Pump Station, its current condition, and its present worth are described in detail within the "Present Worth Analysis of Travis Creek Pump Station" report from Charles R. Underwood on December 6, 2019. The original design documents are included with Alley, Williams, Carmen, and King, Inc. project number 15-76.

(a) Capacity. Capacity within the Travis Creek Pump Station will be split evenly between the Towns based on a capacity of 800,000 gallons per day. The average gallons per day will be calculated on a quarterly basis. Increases in capacity at the pump station will be funded according to the percentage of capacity, or the desire to expand, for each Town. Should a scenario arise where, in order to delay expansion of the pump station, one Town (Town A) requests and is granted a transfer of some portion of the other Town's (Town B) unused capacity, the Town A would be bound by one of the following three options if and when Town B requires additional capacity: 1) Town A may retain (return?) all used or unused capacity to Town B that had been previously relinquished to them and expand the pump station, at their expense, to the degree necessary to provide Town B with an equal or greater capacity than that previously relinquished; or 2) Town A shall return the full amount of capacity to Town B, if unused, that had previously been relinquished; or 3) Some combination of Options 1 and 2 sufficient to provide Town B with the same or greater degree of capacity that had previously been relinquished. Buyer will be responsible for sewer metering of flow from the Seller. At present, no new sewer meters will be required and both Towns will agree on future location and type of sewer meters with the Buyer being financially responsible for installation of the sewer meter.

(b) Reimbursement. The Towns will continue to reimburse each other through the same general practices included in the 2013 Water and Sewer Agreement Addendum until the fiscal year beginning at least twenty-four (24) months after all payments have been exchanged, unless both Towns agree to changes in terms prior. This will involve minor changes to the addendum to amend the payments based on flow direction. A financial update will be completed prior to May 1st of the year following the twenty-four (24) month period to allow for implementation within fiscal year budgets.

12.2 Travis Creek Outfall Line – Travis Creek Outfall line is a gravity sewerline measuring 15" and 18" in diameter that runs along Travis Creek from the Town of Gibsonville to the Travis Creek Pump Station. The line is within recorded easements to the Town of Gibsonville and was constructed as part of Alley, Williams, Carmen, and King, Inc. project number 15-76. The outfall line is to be rehabilitated using cured in place pipe with manhole lining in accordance with the 2015 Town of Gibsonville Sewer

Rehabilitation as described within the contract documents for Alley, Williams, Carmen, and King, Inc's project number 15010 with an effective construction contract date of May 20, 2019 ("Outfall Rehabilitation"). The portion of the outfall line being conveyed from Gibsonville to Elon is from sanitary sewer manhole within the right of way of Gibsonville-Ossipee Road, identified as #18 of the AWCK project number 15010, and all manholes to the east.

(a) The rehabilitation project is being funded through a USDA loan. After closing, Gibsonville will pay off the portion of the loan associated with the portion of the project being conveyed from Gibsonville to Elon. This payment will happen in accordance with USDA procedure.

(b) From the Effective Date, Buyer shall be permitted to freely tap into the Travis Creek Outfall Line.

12.3 Travis Creek Force Main – The Travis Creek Force Main is constructed of ductile iron and is approximately 4000' in length. It was installed in 1981 and is primarily in the shoulder of Pitt Road. The 12" force main runs from the Travis Creek Pump Station down Pitt Road until discharging into the City of Burlington's Dry Creek Interceptor near Shallowford Church. The force main is within existing street right of ways and sewer easements throughout this length.

ARTICLE XIII

REAL ESTATE COMMISSION

Seller and Buyer represent and warrant to each other that no brokerage fees or real estate commissions are or shall be due or owing in connection with this transaction or in any way with respect to the Assets. Seller agrees to defend, indemnify, and hold Buyer harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons claiming real estate brokerage fees through Seller. Buyer agrees to defend, indemnify, and hold Seller harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons claiming real estate brokerage fees through Buyer.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

14.1 Completeness and Modification. This Agreement constitutes the entire agreement between the Towns hereto with respect to the transactions contemplated herein and supersedes all prior discussions, undertakings or agreements between the Towns. This Agreement shall not be modified except by a written agreement executed by both Towns.

14.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Towns hereto, and their respective heirs, devisees, personal representatives, successors and assigns.

14.3 Survival of Warranties; No Representations Except as Expressly Stated Herein; Disclaimer as to Warranties. It is the express intention and agreement of the Towns to this Agreement that all covenants, agreements, statements, representations and warranties made by Buyer and Seller in this Agreement (which shall be deemed to include the matters and information disclosed in any of the Exhibits attached hereto or in any document or instrument delivered by Seller pursuant to the provision of this Agreement or at or in connection with the Closing) shall be true and correct as of the date of Closing and shall merge into the Deed.

Except as expressly stated herein, Seller makes no warranties or representations as to the Assets, the condition of the Assets, or the operation of the facility on the Assets.

14.4 Waiver. Failure by Buyer or Seller to insist upon or enforce any of its rights hereunder shall not constitute a waiver thereof.

14.5 Governing Law. This Agreement shall be governed by and construed under the laws of the State of North Carolina.

14.6 Article Headings. The Article headings as herein used are for convenience or reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations, and warranties herein set forth or limit the provisions or scope of any Article.

14.7 Business Days. If any of the dates specified in this Agreement shall fall on a Saturday, a Sunday or a date upon which both the Alamance County Register of Deeds and commercial banks in Alamance County are closed for business, then the date of such action shall be deemed to be extended to the next "Business Day".

14.8 Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or entity may require.

14.9 Time of Essence. Both Towns hereto specifically agree that time is of the essence to this Agreement.

14.10 Notices. All notices, requests, consents and other communications hereunder shall be in writing and delivered by personal service, by a nationally-recognized overnight delivery service (such as Federal Express) that provides receipted delivery, or mailed by First Class, Registered or Certified Mail, return receipt requested, postage prepaid, as follows:

If to Buyer: Town of Elon
Attention: Town Manager
104 S. Williamson Ave
Elon, NC 27244

With a copy to: Pittman & Steele, PLLC
Attention: Joseph J. Kalo, IV
1694 Westbrook Avenue (PO Box 2290)
Burlington, NC 27215

If to Seller: Town of Gibsonville
Attention: Town Manager
129 W Main Street
Gibsonville, NC 27249

With copy to: Law Offices of Douglas R. Hoy
Attention: Douglas R. Hoy
2006 S Church St # A
Burlington, NC 27215

Escrow Agent: Pittman & Steele, PLLC
Attention: Joseph J. Kalo, IV
1694 Westbrook Avenue (PO Box 2290)
Burlington, NC 27215

Except as otherwise provided herein, any such notice, request, consent or other communications shall be deemed received at such time as it is personally served, if by personal service, or on the date of confirmed delivery, if delivered by other means as provided in this Section 14.10. Counsel for the Towns may deliver notice on behalf of the Towns.

14.11 Invalid Provisions. In the event any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

14.12 No Third-Party Beneficiaries. No third party shall have any rights hereunder.

14.13 “As Is” Transfer. Except as set forth in this Agreement, the Assets shall be conveyed to Buyer on an “as is, where is” basis.

15.17 Counterpart Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one of the same instrument. Electronically transmitted signatures (via facsimile, pdf file, or otherwise) shall be deemed valid and original signatures.

15.18 Reasonableness. Seller and Buyer hereby agree to act reasonably with respect to all actions and decisions called for by either party under the terms hereof, and Seller and Buyer further agree that neither party will take any action or fail to take any action hereunder which is designed to hinder or impede the other party from realizing the practical benefits hereof.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Towns hereto have executed this Agreement as of the dates set forth below.

ATTEST:

BUYER:

TOWN OF ELON

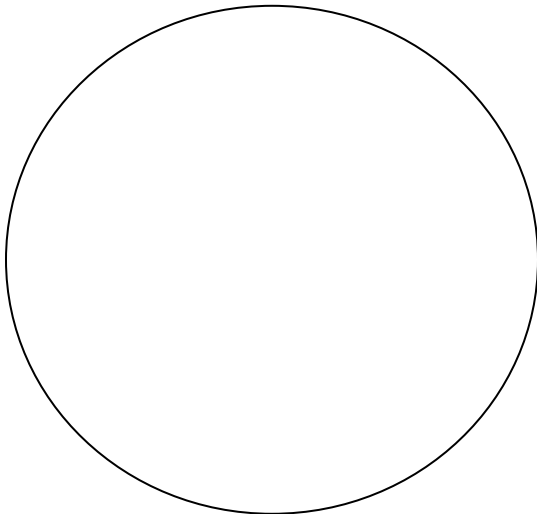
By: _____

Mayor

Date: _____

Town Clerk

SEAL



Pre-Audit Certification:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. This the _____ day of November, 2019.

Town of Elon Finance Officer

Approved as to form:

Town Attorney

Date: _____

BUYER:

TOWN OF GIBSONVILLE

ATTEST:

By: _____
Mayor

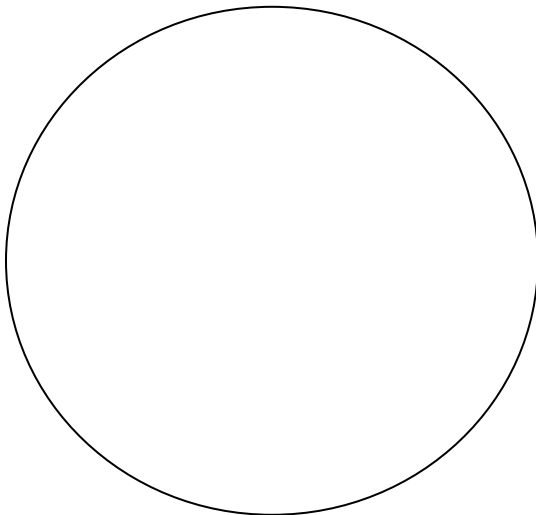
Date: _____

Town Clerk

Pre-Audit Certification:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. This the _____ day of November, 2019.

SEAL



Town of Gibsonville Finance Officer

Approved as to form:

Town Attorney

Date: _____

**LIST OF EXHIBITS
AGREEMENT OF PURCHASE AND SALE**

Exhibit "A" - Legal Description

Exhibit "B" – Contracts

Exhibit "C" - Easements

Agreement of Purchase and Sale by and between
Town of Gibsonville as Seller and Town of Elon as Buyer
(Travis Creek Pump Station)

EXHIBIT "A"

**LEGAL DESCRIPTION
THE LAND**

THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING IN BOONE STATION TOWNSHIP, ALAMANCE COUNTY, NORTH CAROLINA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, THE INTERSECTION OF THE CENTER LINES OF STATE ROAD NO. 1546 AND STATE ROAD NO. 1504; THENCE WITH GRANTORS' SOUTHERN LINE NORTH 76 DEG.07' WEST 269.50 FEET TO AN IRON PIN; THENCE CONTINUING WITH GRANTORS' SOUTHERN LINE NORTH 59 DEG. 25' WEST 214.50 FEET TO AN IRON PIN; THENCE CONTINUING WITH GRANTORS' SOUTHERN LINE 52 DEG. 02' WEST 100 FEET. TO A POINT, A CORNER WITH GEORGE W. TROXLER; THENCE NORTH 8 DEG. 03' EAST 10 FEET TO A POINT IN THE CENTER LINE OF STATE ROAD NO. 1549; THENCE WITH THE CENTER LINE OF STATE ROAD NO. 1549 SOUTH 85 DEG. 17' EAST 167.30 FEET TO A POINT; THENCE CONTINUING WITH THE CENTER LINE OF STATE ROAD NO. 1549 SOUTH 85 DEG. 45' EAST 100 FEET TO A POINT; THENCE CONTINUING WITH THE CENTER LINE OF STATE ROAD NO. 1549 SOUTH 87 DEG. 35' EAST 172 FEET TO A POINT IN THE CENTER LINE OF STATE ROAD NO. 1504; THENCE WITH THE CENTER LINE OF STATE ROAD NO. 1504 SOUTH 21 DEG. 30' EAST 233.FEET TO THE PLACE AND POINT OF BEGINNING; AND BEING ALL OF THAT PROPERTY SHOWN ON THE MAP OF SURVEY ENTITLED "PLAT SHOWING PROPERTY OF TOWN OF GIBSONVILLE, BOONE STATION TOWNSHIP, ALAMANCE COUNTY, N.C." DATED AUGUST 2, 1978 PREPARED BY ALLEY, WILLIAMS, CARMEN & KING INC., JOB NO. 15-76-A,

BEING THE IDENTICAL PROPERTY CONVEYED TO THE TOWN OF GIBSONVILLE BY DEED RECORDED IN DEED BOOK 446, PAGE 851 OF THE ALAMANCE COUNTY REGISTRY.

EXHIBIT "B"

**AGREEMENT OF PURCHASE AND SALE
CONTRACTS**

None.

Agreement of Purchase and Sale by and between
Town of Gibsonville as Seller and Town of Elon as Buyer
(Travis Creek Pump Station)

EXHIBIT "C"

EASEMENTS

- (a) (Current Owner) Pruette (Book 445, at Page 159)
(Current Owner) Henley (Book 446, at Page 5)
(Current Owner) Lewis Holt Family Trust (Book 445, at Page 665)
(Current Owner) Hodge (Book 445, at Page 670)
- (b) (Current Owner) Gary Oakley (Book 445, at Page 46)
- (c) (Current Owner) Gary Oakley (Book 445, at Page 50)
- (d) (Current Owner) Paul Helms (Book 445, at Page 888)
(Current Owner) William Parker (Book 445, at Page 338)
- (e) (Current Owner) Jay Field
(Condemnation)
(Book 444, at Page 298 and Book 445, at Page 317)
- (f) (Current Owner) George Wesley Troxler (Deed Book 445, at Page 352)
- (g) (Current Owner) Robert W. Moffett (Book 445, at Page 42)

Access Corridors

- (a) Corridor #5: Henley (Book 446, at Page 5 & Book 3823, at Page 304)
- (b) Corridor #6: Gary Oakley (Book 445, at Page 50 & Book 3849, at
Page 564)
- (c) Corridor #7: Todd Horton (Book 445 at Page 888 & Book 3823, at
Page 300)
- (d) Corridor #8: Robert Ward Moffett (Book 445, at Page 42)